



Labour Department (Headquarters)

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12 March 2021

Ms Betty MA
Clerk to the Panel on Manpower
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms MA,

Follow-up on matters related to
“Raising Penalties of Occupational Safety and Health Legislation”

The Secretariat of the Legislative Council Panel on Manpower wrote to the Secretary for Labour and Welfare on 5 February 2021, enclosing a letter dated 4 February 2021 from the Hon Tony TSE to the Panel Chairman. In the letter, the Hon TSE expressed concern about raising the penalties of occupational safety and health (“OSH”) legislation. The Labour and Welfare Bureau has referred the matter to the Labour Department (“LD”) for follow-up. Our reply to the questions raised in the letter is set out below.

1. The numbers of fatal and non-fatal industrial accidents from 2001 to the first three quarters of 2020 with breakdown by industry are provided in Annex 1. LD does not keep breakdown figures by the seriousness of accidents, nor figures of prosecutions, convictions and sentences for the industrial accidents of the past 20 years. Information on the summonses and convictions regarding violations of OSH legislation from 2001 to 2020 is at Annex 2.

2, 5 & 6.

Although the overall OSH performance in Hong Kong has greatly improved over the years, the improvement trend has clearly tapered off in recent years. Besides, the numbers of fatal industrial accidents have been hovering at some 20 cases in the past two decades or so with no sign of decreasing. The community at large considers that the sentences handed down by the courts have failed to reflect the seriousness of the contraventions and are unable to pose sufficient deterrent effect on duty holders violating the law.

Besides, there were a number of cases involving extremely serious OSH offences in recent years, where the duty holders involved were well aware of the high risks associated with the work concerned, but failed to take suitable safety measures. Such gross disregard to employees' safety resulted in death, severe disability of workers or other very serious consequences. LD considers that, for duty holders having committed extremely serious OSH offences, especially sizeable companies, the maximum fines should be high enough to achieve sufficient deterrence. Therefore, LD proposes to amend the employer General Duty ("GD") provisions so that they can be invoked as indictable offences for extremely serious cases involving extremely high culpability or serious negligence and leading to serious consequences, and be tried in courts of higher levels. From past experience, there have been only a handful of this type of extremely serious cases in the past ten years.

LD came up with a preliminary proposal in 2019 which includes pitching the maximum fine of extremely serious offences at 10% of the convicted entities' turnover. This proposal can subject companies committing extremely serious OSH offences, regardless of their size, to penalties with sufficient deterrent effect. The business sector however expressed strong objection to this proposal, mainly worrying about that maximum fines without a cap may lead to too high a fine actually handed down, hence causing excessive uncertainty to the detriment of business operations. They have therefore appealed for putting a cap for the maximum fines.

In response to the employers' concerns, we have adjusted the proposal and modified the original turnover-pegged maximum fine (i.e. without an actual cap) to a maximum fine capped at \$50

million. In addition, to ensure that the fines handed down for the indictable offences commensurate with the varying sizes of different convicted entities, we propose to add new provisions to require the courts to take the convicted entity's turnover into account when determining the fine level. We consider that the revised proposal balances employers' worries and the need to ensure that penalties for extremely serious offences are sufficiently deterrent. We will further consider adjusting the details of the revised proposal as appropriate based on the opinions of various stakeholders on the proposal.

The relevant recommendations are not based on information showing that the OSH performance of larger companies is generally better or worse. In fact, LD has not conducted analysis in this regard. The purpose of the proposed amendments is to ensure that companies of different scales, when convicted of extremely serious OSH offences, will be sanctioned with sufficiently deterrent penalty.

As far as we know, our proposed penalty is not adopted in Hong Kong laws. However, we notice that the OSH laws in the United Kingdom and New Zealand have the design of referencing the convicted entity's turnover in sentencing.

3. According to the information from the Census and Statistics Department, the gross value of construction works performed by main contractors and the number of manual workers at construction sites from 2001 to the first three quarters of 2020 are provided in Annexes 3 and 4.
4. From 2001 to 2020, no defendants from the construction industry convicted under the summonses issued by the Occupational Safety and Health Branch of LD for contravention of OSH legislation were sentenced to the maximum statutory fine of the offence involved.

As mentioned above, the numbers of occupational fatalities have remained at a high level in recent years. There are views in the community that one of the major reasons is that the sentences for OSH offences are on the low side, which fail to reflect the seriousness of the contraventions and also fail to pose sufficient

deterrent effect on duty holders violating the law. The community at large considers it necessary to raise the maximum penalties of OSH legislation to strengthen its deterrent effect.

The penalties of OSH legislation in Hong Kong have not been amended for over 20 years. They are much more lenient than those of developed countries. Taking employer GD provisions under the OSH provisions as examples, the maximum fines are \$200,000 and \$500,000 in Hong Kong, while the maximum imprisonment term is 6 months. In the process of the OSH legislation review, LD has made reference to the OSH legislation in other developed countries/ regions (such as the United States, Singapore, Australia, New Zealand and Ontario Province of Canada). The maximum fines of the OSH legislation in most of these places far exceed those of Hong Kong. For example, the maximum fine in Australia is approximately HK\$22 million after conversion, and there is no upper fine limit in the United Kingdom. In respect of imprisonment, the maximum imprisonment terms in Australia and New Zealand are both five years, while those in the United Kingdom and Singapore are both two years and those in the United States and Ontario Province of Canada are one year.

As regards how to ensure that the court will raise the sentence level accordingly after the legislative amendments, when the Government submits the amendment bill to the Legislative Council for approval, we will make it clear that the purpose of the amendment is to raise the maximum penalties so as to increase deterrence. We will also appropriately reflect the intent of the relevant amendments in the legislation during the law drafting stage. After the laws are amended, if the court completely ignores the legislative intent of the revised laws to increase the maximum penalties, such that the sentences are "manifestly inadequate" or "wrong in principle", we will invite the Department of Justice to file a review or appeal, and as appropriate, suggest a higher court to issue relevant sentencing standards.

7. The investigations and prosecutions taken by the LD to enforce OSH legislation is an integral part of LD's ongoing work, and the manpower and expenditure involved cannot be separately identified. The numbers of prosecutions conducted by LD in the past five years are as follows:

No. of prosecutions	2 700	2 600	3 000	3 200	3 000
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LD notices that the general concern of the community is that there have been no successful cases among the prosecution cases concerning OSH where the defendants were sentenced to immediate imprisonment. In this connection, LD considers it necessary to assist the courts in better understanding the seriousness and culpability of the cases, and therefore proposes to step up evidence collection for the offences and to extend the time-bar for issuing summonses from six months to one year. This will allow more time for LD to conduct more in-depth investigations, and thus providing the courts with sufficient evidence for considering appropriate penalties on convicted defendants (including whether to impose immediate imprisonment penalty). If this proposed amendment is passed, LD will only take more than six months to take out prosecutions when handling very serious cases involving a high degree of personal culpability and likely leading to an imprisonment penalty. Other than that, LD believes that the current six-month time-bar for prosecution is sufficient for the investigation and prosecution of most other summary offences.

8. The inspection work at construction sites carried out by the LD to enforce OSH legislation is an integral part of LD's ongoing work, and the manpower and expenditure involved cannot be separately identified.

The numbers of safety inspections of construction sites conducted by LD from 2016 to 2020 are provided in the table below:

Year	2016	2017	2018	2019	2020
No. of inspections	62 465	77 314	70 637	87 668	58 035

From January to September 2020, 1 461 prosecutions relating to OSH were taken out by the LD against the construction industry in which 1 028 were taken out during inspection and the remaining 433 were related to the accidents that happened in construction sites.

The information of the summonses related to construction site inspections that were heard from January to September 2020 is as follows:

Number of summonses heard	Number of summonses convicted	Highest fine of summons convicted (\$)	Lowest fine of summons convicted (\$)	Average fine of summonses convicted (\$)
1 038	875	40 000	800	5 518

Remark: Due to the time required for court proceedings of prosecution cases, the numbers of summonses in the above table do not correspond to the numbers of prosecution cases taken out in the same period.

9. Registered Safety Officers (“RSOs”) and Registered Safety Auditors (“RSAs”) assist proprietors or contractors to promote the OSH of their employees and conduct safety audits, as well as provide independent and professional OSH advice concerning the workplaces. They play an important role in safeguarding the OSH of employees. LD therefore attaches a lot of importance to their professional standards and work performance.

RSOs and RSAs have to attain academic qualifications recognized by LD. They also need to be registered by the Commissioner for Labour (“the Commissioner”). When processing registration applications, LD will consider the applicants’ qualifications, competency and whether they are fit and proper to serve as safety officers/safety auditors to perform relevant statutory duties. In addition, in order to enhance the professional competence of RSOs and to meet the continuing development and needs of the relevant industries, RSOs are

required to complete a total of not less than 100 hours of Continuing Professional Development Programme in OSH every 4 years for renewal/ revalidation of their registration.

The performance of RSOs and RSAs is regulated by the “Factory and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations” and the “Factory and Industrial Undertakings (Safety Management) Regulation” respectively. If the Commissioner ceases to be satisfied that any of these safety practitioners is qualified, competent, as well as fit and proper to carry out relevant statutory duties, LD may initiate punishment in accordance with established procedures, including cancellation of registration.

LD enforces the relevant legislation through conducting inspections and examination of the work of RSOs and RSAs from time to time to ensure that they properly discharge their duties. In order to strengthen the monitoring, LD established two dedicated safety management offices in 2018 to monitor the performance and independence of these safety practitioners, including strengthening the examination of the reports they compiled, and conducting on-site inspections of the workplaces concerned. If deficiencies in their performance are identified, LD would issue written warnings, urging them to make necessary improvement in order to enhance their work performance. If no improvement is made after the issuing of the written warnings, LD would also consider prosecution upon discovery of any breaches of relevant legislation with sufficient evidence. From 2019 to the end of June 2020, LD issued 41 written warnings in respect of the performance of RSAs/RSOs.

Among the above 41 written warnings, the majority involved relatively minor irregularities, such as failing to submit notifications and reports in a timely manner, etc.

In the past five years, there was no cancellation of the registration of RSAs/RSOs, but one RSO was prosecuted by LD.

By the end of 2020, there are a total of 3 977 RSOs and 1 430 RSAs. Inspections conducted by LD in recent years have not revealed any relevant duty holders failing to employ sufficient safety practitioners in accordance with the law. We also notice that duty holders generally employ more than the legally required number of safety practitioners having regard to their scale of operation.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'WU Wai-hung', written over a vertical line.

(WU Wai-hung)
for Commissioner for Labour

c.c. Secretary for Labour and Welfare

Breakdown of industrial accidents by industry
from 2001 to the first three quarters of 2020

Industry	2001		2002		2003		2004	
	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases
Construction Industry	9 178	28	6 215	24	4 342	25	3 816	17
Food and Beverage Services	11 914	0	10 149	0	8 527	0	9 410	0
Manufacturing Industry	4 382	3	3 636	0	2 717	2	2 934	2
Other Industries	3 010	3	2 428	1	1 635	1	1 349	5
Total	28 484	34	22 428	25	17 221	28	17 509	24

Industry	2005		2006		2007		2008	
	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases
Construction Industry	3 523	25	3 384	16	3 023	19	3 013	20
Food and Beverage Services	8 902	0	9 294	0	8 876	0	8 049	0
Manufacturing Industry	2 912	0	2 943	6	2 732	3	2 465	2
Other Industries	1 551	4	1 639	4	1 461	3	1 381	2
Total	16 888	29	17 260	26	16 092	25	14 908	24

Industry	2009		2010		2011		2012	
	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases
Construction Industry	2 736	19	2 875	9	3 089	23	3 136	24
Food and Beverage Services	7 470	0	7 541	0	7 158	0	6 215	1
Manufacturing Industry	1 990	1	2 008	1	1 997	4	1 943	1
Other Industries	1 383	1	1 573	8	1 385	2	1 224	3
Total	13 579	21	13 997	18	13 629	29	12 518	29

Industry	2013		2014		2015		2016	
	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases
Construction Industry	3 210	22	3 447	20	3 704	19	3 710	10
Food and Beverage Services	5 740	0	5 566	0	5 386	0	4 975	0
Manufacturing Industry	1 774	1	1 787	0	1 673	2	1 494	3
Other Industries	1 068	5	852	5	710	3	686	5
Total	11 792	28	11 652	25	11 473	24	10 865	18

Industry	2017		2018		2019		1 st Three Quarters of 2020 ²	
	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases	non-fatal cases	fatal cases
Construction Industry	3 880	22	3 527	14	2 931	16	1 846	11
Food and Beverage Services	4 990	0	5 047	0	4 425	0	2 329	0
Manufacturing Industry	1 457	3	1 321	1	1 197	1	773	0
Other Industries	721	4	691	1	679	5	336	2
Total	11 048	29	10 586	16	9 232	22	5 284	13

Notes:

1. Industrial accidents refer to injuries and deaths arising from industrial activities in industrial undertakings as defined under the Factories and Industrial Undertakings Ordinance.
2. Industrial accident statistics are released on a quarterly basis and the latest available statistics are up to the first three quarters of 2020.

**Information on summonses and convictions
regarding violations of OSH legislation from 2001 to 2020**

	2001	2002	2003	2004	2005
No. of summonses heard	2 659	2 525	1 917	2 163	1 978
No. of summonses convicted	2 409	2 313	1 741	1 862	1 644
Total fine (\$)	32 101 550	30 921 650	24 011 666	19 373 600	13 502 417

	2006	2007	2008	2009	2010
No. of summonses heard	2 100	2 123	1 973	1 935	1 849
No. of summonses convicted	1 781	1 820	1 695	1 634	1 586
Total fine (\$)	13 533 900	16 326 300	12 325 650	11 748 700	13 017 430

	2011	2012	2013	2014	2015
No. of summonses heard	1 746	2 240	2 571	2 437	2 603
No. of summonses convicted	1 484	1 851	2 087	1 956	2 030
Total fine (\$)	12 005 700	14 223 300	16 706 489	20 123 170	21 812 600

	2016	2017	2018	2019	2020
No. of summonses heard	2 944	2 765	3 169	3 034	2 657
No. of summonses convicted	2 144	2 239	2 431	2 379	2 136
Total fine (\$)	24 400 460	22 993 800	25 633 675	21 333 700	16 549 800

**Gross value of construction works ¹ performed
by main contractors from 2001 to the first three quarters of 2020 ²**

	2001	2002	2003	2004	2005
Gross value in nominal terms (HK\$ million)	113 986	106 000	99 032	93 171	90 851

	2006	2007	2008	2009	2010
Gross value in nominal terms (HK\$ million)	90 230	92 866	99 599	100 944	111 274

	2011	2012	2013	2014	2015
Gross value in nominal terms (HK\$ million)	128 535	161 449	176 575	199 737	223 947

	2016	2017	2018	2019	1st Three Quarters of 2020 ³
Gross value in nominal terms (HK\$ million)	236 491	249 919	252 176	236 438	166 436

Notes:

1. Construction works include:
 - (i) Projects commissioned by private developers. Projects under the Private Sector Participation Scheme are also included;
 - (ii) Projects commissioned by the Government of the Hong Kong Special Administrative Region, MTR Corporation Limited and Airport Authority. Projects under the Home Ownership Scheme, which are commissioned by the Housing Authority, are also included;
 - (iii) General trades include decoration, repair and maintenance, and construction works at minor work locations such as site investigation, demolition, and structural alteration and addition works; and
 - (iv) Special trades include carpentry, electrical equipment, ventilation, gas and water fitting installation and maintenance etc.
2. Gross values of construction works in nominal terms performed by main contractors at construction sites are extracted from the Report on the Quarterly Survey of Construction Output published by the Census and Statistics Department.
3. The figure of the first three quarters of 2020 was provisional.

Number of manual workers on construction sites
from 2001 to the first three quarters of 2020¹

	2001	2002	2003	2004	2005
Number of manual workers on construction sites	80 302	73 223	64 112	63 520	59 266

	2006	2007	2008	2009	2010
Number of manual workers on construction sites	52 865	50 185	49 422	50 501	55 341

	2011	2012	2013	2014	2015
Number of manual workers on construction sites	62 635	71 295	79 303	82 795	95 103

	2016	2017	2018	2019	1 st Three Quarters of 2020
Number of manual workers on construction sites	107 799	118 674	111 849	101 750	97 537

Note:

- Figures of manual workers on construction sites are extracted from the Quarterly Report of Employment and Vacancies Statistics published by the Census and Statistics Department.