

**立法會**  
**Legislative Council**

LC Paper No. CB(2)463/2022(04)

Ref : CB2/BC/1/22

**Bills Committee on  
Occupational Safety and Occupational Health Legislation  
(Miscellaneous Amendments) Bill 2022**

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information on the Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Bill 2022 (“the Bill”), and gives a brief account of the relevant discussion held by the Panel on Manpower (“the Panel”) in the Seventh Legislative Council (“LegCo”).

**Background**

Existing legislation governing occupational safety and health

2. Currently, employees’ occupational safety and health (“OSH”) is safeguarded under the Factories and Industrial Undertakings Ordinance (Cap. 59) (“FIUO”) and the Occupational Safety and Health Ordinance (Cap. 509) (“OSHO”). FIUO was enacted in 1955 to regulate the industrial safety and health at industrial undertakings (including factories, quarries, construction sites, etc.). OSHO was enacted in 1997, the scope of which covers also OSH at non-industrial workplaces. The penalties of FIUO were last amended and raised in 1994; and those of OSHO have remained unchanged since its enactment.

3. Under the two OSH legislation, duty holders, upon conviction, are liable to a maximum fine from \$2,000 to \$500,000. As for imprisonment, depending on the seriousness of the offences, convicted persons are subject to maximum imprisonment terms ranging from 3 to 12 months. All OSH offences are summary offences.

## Administration's proposals to raise the penalties of OSH legislation

4. According to the Administration, although the overall OSH performance in Hong Kong has greatly improved over the years,<sup>1</sup> the improvement trend has tapered off in recent years. The number of fatal industrial accidents has been hovering at some 20 cases per year in the past decade with no sign of decreasing. To strengthen the deterrence, the Labour Department<sup>2</sup> ("LD") has, subject to the circumstances of individual cases, requested the Department of Justice to seek review of or to appeal against the penalties handed down by the courts.<sup>3</sup> Although the courts have imposed relatively higher fines in certain individual cases, the actual penalties are still on the low side.<sup>4</sup> 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. This is somehow reflected in the high proportion of repeat OSH offenders among those convicted.<sup>5</sup> Besides, in recent years, there were a number of cases involving extremely serious OSH offences in which the duty holders involved were well aware of the high risk associated with the work concerned, but failed to adopt suitable safety precautions. Such disregard to employees' safety resulted in death, severe disability of workers or other dire 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.

5. The Government made a commitment in the 2017 Policy Address to review the penalty regimes of relevant OSH legislation. It completed the review and consulted relevant stakeholders successively on the preliminary proposal in 2019 and the revised proposal in 2020. The salient features of the proposed amendments to the maximum penalties of OSH legislation under these two proposals are set out in **Appendix 1**. Taking into account the views and comments received during subsequent consultations, the Government has made further adjustments and finalized the legislative amendment proposal as set out in the Bill (please see paragraph 6 below for details).

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<sup>1</sup> The industrial accident rate per thousand workers has dropped from 51.7 in 2000 to 12.4 in 2020.

<sup>2</sup> LD is responsible for administering FIUO and OSO.

<sup>3</sup> From 2015 to 2020, LD sought review of or appeal against the penalties of 47 cases.

<sup>4</sup> Taking 2020 as an example, (a) the average fine for each OSH summons was about \$7,800; (b) the average fine of summonses under the employer general duty provisions relating to fatal cases was about \$30,500 (i.e. around 6% and 15% of the maximum fines under FIUO and OSO respectively); and (c) among the 27 cases concerning fatal occupational accidents with trials completed in the year, the average fine for each summons was about \$24,000, and the average fine imposed on each convicted defendant was about \$62,000.

<sup>5</sup> In 2020, among the convicted OSH offenders, about 32% of them were repeat offenders.

## **The Bill**

6. According to the LegCo Brief on the Bill issued by the Labour and Welfare Bureau on 11 May 2022 (File Ref: LD LRT/1-75/MT/2/C), the Bill, gazetted on 13 May 2022 and received First Reading at the Council meeting of 25 May 2022, seeks to amend FIUO and OSHO to:

- (a) make offences under the general duty (“GD”) provisions for employers, proprietors and occupiers of premises (“employer GD provisions”) triable as indictable offences so that blatant offences involving extremely serious OSH breaches can be tried at higher levels of court; and pitch the maximum fines and imprisonment terms of such serious offences on conviction on indictment at \$10 million and two years respectively, with specific provisions to require the courts to take into account the turnover of the convicted entities in determining the amount of fines;
- (b) increase the maximum fines of offences under (i) the employer GD provisions prosecuted summarily and (ii) employee GD provisions to \$3 million and \$150,000 respectively;
- (c) categorize other provisions of summary offences as very serious, serious and minor according to their seriousness, and set corresponding maximum fine levels for employer-related and employee-related offences respectively;
- (d) extend the time limit for prosecution for an offence that is triable summarily from six months to one year; and
- (e) make related and miscellaneous amendments.

## **Relevant discussion held by the Panel**

7. The Administration briefed the Panel in the Seventh LegCo on the finalized proposal to raise the penalties of OSH legislation at the meeting on 10 February 2022. Members’ major concerns are summarized below.

### Maximum fine for extremely serious offences

8. Members generally agreed that there was a need to improve Hong Kong’s OSH performance. To achieve this, it was necessary to increase the penalties for contraventions of OSH legislation which had not been reviewed for more than

two decades. However, diverse views were expressed in respect of the degree of increase, especially in respect of the maximum fine on conviction on indictment. Some members were of the views that the penalties should be substantially increased in order to enhance the deterrent effect, in particular, for cases involving repeat offenders or blatant offences involving extremely serious OSH breaches leading to dire consequence. Some other members, however, considered that pitching the maximum fine for indictable serious OSH offences at \$10 million, which was 20 times of the current maximum fine, was excessively high. It would not only adversely affect the operation of small and medium-sized enterprises (“SMEs”) but would also impact on the overall business environment. SMEs might be scared/driven off the market, as many of them might not be able to afford a potential liability of this magnitude.

9. Some members also opined that the consultation conducted by the Administration in respect of its proposals to increase OSH penalties was not adequate. They questioned why the Administration put up the finalized proposal for the Panel’s consideration despite a lack of consensus among the stakeholders concerned, including the Labour Advisory Board. Noting that under the preliminary proposal, the proposed maximum fines were 10% of the convicted entities’ turnover or \$6 million (whichever was the higher) for indictable GD offences, some members queried why the proposed maximum fines were substantially adjusted to and capped at \$50 million under the revised proposal and reduced to \$10 million under the finalized proposal.

10. According to the Administration, while the overall OSH performance had been improving over the years, the number of fatal industrial accidents had been hovering at some 20 cases per year for the past decade with no sign of decreasing. As such, there was a need to increase OSH penalties to enhance the deterrence. The Administration had conducted extensive consultation on both the preliminary proposal and the revised proposal. Nevertheless, the difference in views between the business sector and the labour organizations in respect of the degree of increase in the maximum penalties remained wide. Taking into account the views expressed by stakeholders during the several rounds of consultation as well as the maximum fines of similar offences in other advanced countries and regions, the Administration proposed to make offences under employer GD provisions triable as indictable offences and pitched the penalties of such serious offences on conviction on indictment at \$10 million, which was the same as the highest maximum fine currently specified in Hong Kong laws.

11. The Administration stressed that in drawing up the legislative proposal, it had struck a balance between the interests of the employer and the employee sides while ensuring the penalties for extremely serious offences sufficiently deterrent. The Administration acknowledged that SMEs constituted a vast majority of business operations in Hong Kong. It therefore proposed to add

new provisions to FIUO and OSHO to require the courts to take into account, in determining the level of fines, the convicted entities' turnover of the financial year within which the date of the offence fell when they were convicted on indictment. The Administration expected to make recourse to the proposed indictable offences only for extremely serious offences involving gross neglect of OSH duties and very high culpability due to wilful or reckless acts or omissions, leading to very serious consequences (e.g. death or serious injury of employee(s)).

#### Maximum fine for contravention of OSH provisions relating to works carried out in confined spaces

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12. Concerns were expressed on whether the seriousness categorization and their penalties could accurately reflect the seriousness of the offences nowadays. Taking the numerous industrial accidents involving works carried out in confined spaces as examples, some members queried whether the proposed maximum fine of \$400,000 for contravention of provisions in the Factories and Industrial Undertakings (Confined Spaces) Regulation (Cap. 59AE) could pose sufficient deterrent effect.

13. According to the Administration, under FIUO and OSHO, there were 659 provisions covering a wide range of statutory OSH requirements from prescriptive risk-mitigating measures targeting at specific work or duty holders to general safety management requirements. These provisions were generally grouped into three different categories according to the seriousness of the breaches, and their fines were pitched at different corresponding maximum fines. The proposed maximum fine for violation of provisions stipulated under Cap. 59AE now categorized as "very serious" offences, such as failing to take safety precautions before beginning work in a confined space (e.g. manhole or pipeline) or failing to ensure that a person entering or remaining in a confined space was properly wearing an approved breathing apparatus to prevent inhalation of toxic gas, had doubled the current level and was believed to have sufficiently deterrent effect.

#### Sentences actually handed down by the courts

14. Some members pointed out that the fines imposed by the courts on convicted OSH offences were generally on the low side and did not have sufficient deterrence. They urged the Administration to ensure that the penalties handed down by the courts on convicted entities would commensurate with the seriousness of the contraventions. Some other members were of the view that both employers and employees should hold responsibility for ensuring workplace safety and hence, the penalties handed down on a convicted employer should reflect the extent to which he/she should be held responsible for the offence(s) committed. There was a view that consideration should be given to setting a minimum fine for contravening various OSH offences.

15. The Administration advised that under Hong Kong's judicial system, the adjudicating power and level of fines to be handed down on conviction rested with the courts. It should be noted that LD had been making every effort to assist the courts in making judgment and determining sentences in relation to OSH offences. With a view to assisting the courts in better understanding the seriousness and culpability of the cases, the Administration proposed to extend the time bar for issuing summonses of summary offences (including employer or employee GD offences to be tried summarily) from six months to one year, so as to allow sufficient time to conduct more in-depth investigations into those serious cases and provide the courts with sufficient evidence for considering whether immediate imprisonment penalty was warranted, especially on duty holders convicted in serious cases.

#### Other measures to improve OSH performance

16. Some members held the view that workplace accidents could not be effectively reduced by merely increasing the penalties on OSH offences. In their views, the Administration should step up the publicity and education efforts on OSH so as to further enhance the safety awareness of both employers and employees and to inculcate a safety culture among them. Members were pleased to note that the engineering sector had been pioneering a number of measures for enhancing workplace safety, including the adoption of safer work processes, the use of automation to carry out risk-prone procedures as well as the use of technology to monitor workers' safety in real time.

17. The Administration responded that while preventive measures were vital for keeping OSH accidents at bay, the current penalties of OSH legislation, nevertheless, did not have sufficient deterrence to propel improvement in OSH performance. A rise in the maximum penalties was thus necessary.

#### **Relevant papers**

18. A list of the relevant papers on the LegCo website is in **Appendix 2**.

Council Business Division 2  
Legislative Council Secretariat  
13 June 2022

**Proposed Amendments to Maximum Penalties of  
Occupational Safety and Health Legislation in Previous Proposals**

**(1) Preliminary proposal in 2019**

- (a) **Indictable General Duties (GD) offences:** for extremely serious cases, prosecuting duty holders by invoking the employer GD provisions as indictable offences, with the relevant maximum fine pitched at 10% of the convicted entities' turnover or \$6 million (whichever is the higher), and the maximum imprisonment term at three years;
- (b) **Summary GD offences:** aligning and increasing the maximum fines for the employer GD provisions and employee GD provisions to \$3 million and \$150,000 respectively; and increasing the maximum imprisonment terms of the employer GD provisions from six months to two years to bring them closer to those of the advanced overseas jurisdictions;
- (c) **Seriousness level re-alignment:** re-aligning the current seriousness categories of OSH offence provisions, and after considering the inflationary factor and the need to achieve a material increase, subjecting all the re-aligned maximum fines of the penalties (other than the employer and employee GD provisions, see items (1)(a) and (1)(b) above for details) to an across-the-board three-fold increase;
- (d) **Imprisonment terms:** apart from the small number of provisions mentioned in items (1)(a) and (1)(b), keeping the imprisonment terms of the remaining provisions unchanged; and
- (e) **Time-bar:** extending the time-bar for issuing summonses for prosecutions taken out as summary offences from six months to one year.

**(2) Revised proposal in 2020**

LD made the following changes from the preliminary proposal:

- (a) **Indictable GD offences:** revising the maximum fine for extremely serious offences to “\$50 million” from the originally proposed “10% of the convicted entity’s turnover or \$6 million” (see item (1)(a)), and requiring the courts to take the convicted entity’s turnover into account in determining the fines;
- (b) **Summary GD offences:** remained unchanged, i.e. same as item (1)(b);
- (c) **Seriousness level re-alignment:** Fine-tuning the seriousness categorisation of offence provisions;
- (d) **Imprisonment terms:** remained unchanged, i.e. same as item (1)(d); and
- (e) **Time-bar:** remained unchanged, i.e. same as item (1)(e).

**Relevant papers on  
Occupational Safety and Occupational Health Legislation  
(Miscellaneous Amendments) Bill 2022**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Manpower	10.2.2022 (Item IV)	<a href="#">Agenda</a>

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Legislative Council Secretariat  
13 June 2022