

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 27 May 2022**

**Legal Service Division Report on
Occupational Safety and Occupational Health Legislation
(Miscellaneous Amendments) Bill 2022**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the subsidiary legislation under Cap. 59 and Cap. 509 to:

 - (a) adjust the level of penalties for certain offences;
 - (b) provide that certain offences can be tried on indictment;
 - (c) require the court to take into account the financial information of certain convicted persons in determining the amount of the fine; and
 - (d) make related and miscellaneous amendments.

- 2. Public Consultation**

The Administration has consulted the Labour Advisory Board, major employer and employee organizations, and stakeholders from the construction industry on the legislative proposals from 2019 to 2022. In general, stakeholders agreed that the deterrent effect of the penalties relating to the occupational safety and health offences (“OSH penalties”) should be enhanced, but there were divergent views between the employer and employee sectors on the degree of increase in penalties.

- 3. Consultation with LegCo Panel**

The Panel on Manpower (“Panel”) was consulted on the preliminary legislative proposals in 2019 and 2020. The Panel was consulted on the finalized legislative proposals at its meeting on 10 February 2022. While the Panel generally agreed that there was a need to increase the OSH penalties, various concerns were raised by members.

- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill proposes to increase certain OSH penalties, and in the light of the concerns expressed by the Panel members on the legislative proposals, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 25 May 2022. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: LD LRT/1-75/MT/2/C) issued by the Labour and Welfare Bureau on 11 May 2022 for further details.

Object of the Bill

2. The Bill seeks to amend the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the subsidiary legislation under Cap. 59 and Cap. 509 to:

- (a) adjust the level of penalties for certain offences;
- (b) provide that certain offences can be tried on indictment;
- (c) require the court to take into account the financial information of certain convicted persons in determining the amount of the fine; and
- (d) make related and miscellaneous amendments.

Background

3. Cap. 59 and Cap. 509 were enacted in 1955 and 1997 respectively with the objective, among others, to ensure the safety and health of persons when they are at work. All the offences related to occupational safety and health (“OSH”) under Cap. 59 and Cap. 509 are summary offences. Currently, the maximum fines for OSH offences under Cap. 59 and Cap. 509 and their subsidiary legislation range from \$2,000 to \$500,000, and the maximum custodial penalties range from three to 12 months. In the Chief Executive’s 2017 Policy Address, it was stated that the Government considered it necessary to impose heavier penalties against breaches of OSH legislation, as appropriate, in order to achieve a greater deterrent effect and further enhance OSH protection for workers, and committed to reviewing the relevant legislation.¹ According to paragraph 8 of the LegCo Brief, views collected during the consultations from 2019 to 2022 have been taken into account in formulating the legislative proposals in the Bill after completion of the review.

Provisions of the Bill

4. The Bill contains 116 clauses (in three Parts). The key provisions of the Bill are summarized in the ensuing paragraphs.

¹ Please see paragraph 203 of the 2017 Policy Address.

Certain offences that can be tried on indictment and increased penalties

Proposed amendments to Cap. 59 (Part 2 of the Bill)

5. Section 6A of Cap. 59 imposes general duties on a proprietor of an industrial undertaking (“proprietor”) to ensure, so far as is reasonably practicable, the health and safety at work of all persons employed by the proprietor at the industrial undertaking. Under section 6A(3) of Cap. 59, a proprietor who contravenes section 6A commits an offence and is liable on summary conviction to a fine of \$500,000. Under section 6A(4) of Cap. 59, a proprietor who contravenes section 6A wilfully and without reasonable excuse commits an offence and is liable to a fine of \$500,000 and to imprisonment for six months on summary conviction.

6. Clause 3 of the Bill seeks to amend section 6A of Cap. 59 to:

- (a) make the offences under sections 6A(3) and 6A(4) triable summarily or on indictment;
- (b) increase the maximum fine on summary conviction of the offences under sections 6A(3) and 6A(4) from \$500,000 to \$3,000,000;
- (c) provide that a proprietor who commits an offence under section 6A(3) would be liable on conviction on indictment to a fine of \$10,000,000; and
- (d) provide that a proprietor who commits an offence under section 6A(4) would be liable on conviction on indictment to a fine of \$10,000,000 and to imprisonment for two years.

Proposed amendments to Cap. 509 (Part 3 of the Bill)

7. Section 6(1) of Cap. 509 requires every employer, so far as reasonably practicable, to ensure the safety and health at work of all the employer’s employees. Section 7(1) of Cap. 509 provides that if an employee’s workplace is located on premises that are not under the control of the employee’s employer, the occupier of the premises must ensure, so far as reasonably practicable, the premises are safe and without risks to health. Sections 6(3) and 7(2) of Cap. 509 respectively provide that an employer who fails to comply with section 6(1) or an occupier who fails to comply with section 7(1) commits an offence and is liable on summary conviction to a fine of \$200,000. Sections 6(4) and 7(3) of Cap. 509 respectively provide that an employer or an occupier who fails to comply with section 6(1) or 7(1) intentionally, knowingly or recklessly commits an offence and is liable on summary conviction to a fine of \$200,000 and to imprisonment for six months.

8. Clauses 68 and 69 of the Bill seek to amend sections 6 and 7 of Cap. 509 respectively to:

- (a) make the offences under sections 6(3), 6(4), 7(2) and 7(3) triable summarily or on indictment;

- (b) increase the maximum fine on summary conviction of the offences under sections 6(3), 6(4), 7(2) and 7(3) from \$200,000 to \$3,000,000;
- (c) provide that an employer who commits an offence under section 6(3) or an occupier who commits an offence under section 7(2) would be liable on conviction on indictment to a fine of \$10,000,000; and
- (d) provide that an employer who commits an offence under section 6(4) or an occupier who commits an offence under section 7(3) would be liable on conviction on indictment to a fine of \$10,000,000 and to imprisonment for two years.

Adjusting the level of fines for certain other summary offences

9. According to paragraphs 15 to 17 of the LegCo Brief, there are 659 provisions under Cap. 59 and Cap. 509 covering a wide range of statutory OSH requirements. These provisions are generally grouped into three categories, namely minor offences, serious offences and very serious offences, according to the seriousness of the breaches (“seriousness categorization”), and their fines are pitched at different corresponding maximum fines (i.e. \$10,000 for a minor offence, \$50,000 for a serious offence and \$200,000 for a very serious offence). The Administration has reviewed the appropriateness of the seriousness categorization and proposes to adjust the corresponding maximum fine levels to enhance the deterrent effect of the penalties of such offences.

10. Part 2 and Part 3 of the Bill, seek to among others, make amendments to various provisions of Cap. 59, Cap. 509 and their subsidiary legislation to adjust the maximum fines for certain summary offences by:

- (a) setting the maximum fine levels for employer-related offences at level 4 (i.e. \$25,000) for minor offences, level 6 (i.e. \$100,000) for serious offences and \$400,000 for very serious offences; and
- (b) setting the maximum fine levels for employee-related offences at level 3 (i.e. \$10,000) for minor offences, level 5 (i.e. \$50,000) for serious offences and \$150,000 for very serious offences.

Requiring the court to take into account certain financial information

11. Clauses 13 and 15 of the Bill respectively seek to add new sections 20 and 21 to Cap. 59, and clauses 86 and 88 of the Bill respectively seek to add new sections 39A and 39B to Cap. 509, to provide, among others, that if a proprietor is convicted on indictment of an offence under Cap. 59, or an employer or an occupier of premises is convicted on indictment of an offence under Cap. 509, the court must:

- (a) order the convicted proprietor, employer or occupier to give information (covering the year in which the offence is committed) on the turnover of the business of the proprietor, employer or occupier to determine its scale of operation; and

- (b) take into account the information given in compliance with the order mentioned in subparagraph (a) above in determining the amount of the fine to be imposed on the convicted proprietor, employer or occupier.

Extending the time limit for prosecution

12. Currently, under section 17(5) of Cap. 59, prosecution for an offence specified in Schedule 5 to Cap. 59 (including failure to notify the Commissioner for Labour (“Commissioner”) in the prescribed form of such particulars specified in it before the first occasion on which any industrial process is commenced or any industrial operation is carried on in a notifiable workplace under section 9(1) of Cap. 59) shall be commenced within six months from the offence being discovered by or coming to the notice of the Commissioner. For other summary offences under Cap. 59 and the summary offences under Cap. 509, section 26 of the Magistrates Ordinance (Cap. 227) applies and the time limit for prosecution is six months from the date on which the relevant offence is committed.

13. Clauses 11 and 12 of the Bill respectively seek to repeal section 17(5) of Cap. 59 and to add a new section 17A to Cap. 59 to extend the time limit for prosecution under Cap. 59 by providing that a prosecution for (a) an offence specified in Schedule 5 could only be started before the end of 12 months beginning on the date on which the offence is discovered by, or comes to the notice of, the Commissioner; and (b) a summary offence (other than an offence specified in Schedule 5) under Cap. 59, or an indictable offence under Cap. 59 that is to be tried summarily, could only be started before the end of 12 months beginning on the date on which the offence is committed.

14. Clause 85 of the Bill seeks to add a new section 34A to Cap. 509 to extend the time limit in respect of a prosecution for a summary offence under Cap. 509, or an indictable offence under Cap. 509 that is to be tried summarily, from six to 12 months beginning on the date on which the offence is committed.

Commencement

15. Except clauses 14 and 87 of the Bill (relating to the proposed amendments to replace the references to the Professional Accountants Ordinance (Cap. 50) by the Accounting and Financial Reporting Council Ordinance (Cap. 588)) which would come into operation on 1 October 2022², the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

² By L.N. 65 of 2022 published in the Gazette on 29 April 2022, the Secretary for Financial Services and the Treasury has appointed 1 October 2022 as the date on which section 3 of the Financial Reporting Council (Amendment) Ordinance 2021 (Ord. No. 41 of 2021) comes into operation.

Public Consultation

16. According to paragraph 26 of the LegCo Brief, the Administration consulted key stakeholders (including the Labour Advisory Board (“LAB”), major employer and employee organizations, and stakeholders from the construction industry) on the preliminary proposals in early 2019. The Administration consulted stakeholders again from November 2020 to March 2021 on the revised proposals. In 2022, the Administration conducted a new round of consultation with LAB in respect of the latest proposals. In general, stakeholders agreed that the deterrent effect of OSH penalties should be enhanced. Views from the employer and employee sectors on the degree of increase are however diverse, especially in respect of the maximum fine on conviction on indictment.

Consultation with LegCo Panel

17. As advised by the Clerk to the Panel on Manpower (“Panel”), the Panel was consulted on the finalized proposals to raise the penalties of OSH legislation at its meeting on 10 February 2022. Panel members generally agreed that there was a need to increase OSH penalties in order to enhance their deterrent effect. However, there were diverse opinions on the degree of increase, especially in respect of the maximum fine on conviction on indictment. Various concerns were raised by members, such as whether the seriousness categorization and their penalties could accurately reflect the seriousness of the offences nowadays, and whether the proposed increase in OSH penalties would adversely affect the operation of small- and medium-sized enterprises.

Conclusion

18. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill proposes to increase certain OSH penalties, and in the light of the concerns expressed by the Panel members on the legislative proposals, Members may consider forming a Bills Committee to study the Bill in detail.

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