

For discussion on
15 February 2022

Legislative Council Panel on Manpower

Raising Penalties of Occupational Safety and Health Legislation

Purpose

This paper introduces the legislative amendment proposal of the Labour Department (“LD”) to raise the penalties of occupational safety and health (“OSH”) legislation, and invites Members’ views on the proposal.

Background

2. The current OSH legislation mainly includes the Occupational Safety and Health Ordinance (“OSHO”) (Cap. 509), the Factories and Industrial Undertakings Ordinance (“FIUO”) (Cap. 59) and their subsidiary regulations. The FIUO was enacted in 1955 to regulate industrial safety and health in industrial undertakings (including factories, construction sites, etc.). The Government made amendments and raised the penalties of the FIUO and its subsidiary regulations in 1994. The OSHO was then enacted in 1997, the scope of which covers OSH in non-industrial workplaces (including workplaces such as shops, offices, etc.). The penalties of the OSHO have remained unchanged since its enactment. Contraventions of the above-mentioned legislation are summary offences.

3. In the past decade, there have been about 20 fatal industrial accidents every year, and the situation has not improved. 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 fail to pose sufficient deterrent effect on duty holders violating the law.

Justifications for Raising Penalties

Maximum Fines on the Low Side

4. Pursuant to the current FIUO, OSHO and their subsidiary regulations, duty holders, upon conviction, are subject to a maximum fine of \$2,000 to

\$500,000 depending on the seriousness of the offences. As regards the OSH legislation in other advanced countries/regions (such as the United States, Singapore, Australia, New Zealand and Ontario Province of Canada), their maximum fines far exceed those of Hong Kong. Taking the general duty (“GD”) provisions for employers, which are commonly found in the OSH legislation in other jurisdictions, as an example¹, the maximum fine after conversion is approximately HK\$22 million in Australia, HK\$9 million in Ontario Province of Canada and HK\$3 million in Singapore, and there is no upper fine limit in the United Kingdom. Details are at Annex 1.

Actual Sentences on the Low Side

5. Under Hong Kong's judicial system, the adjudicating power and level of fines to be handed down upon conviction rest with the courts. LD is responsible for enforcing the OSH legislation. We have been making efforts to assist the courts in making judgement and determining sentences, with a view to facilitating the courts to impose deterring sentences, especially upon duty holders convicted in serious cases. Specifically, LD strives to collect evidence during the case investigation process and, upon conviction, submits sufficient information to the courts as reference for sentencing. Subject to the circumstances of individual cases, LD also requests the Department of Justice (“DoJ”) when necessary to seek a review of or to appeal against the penalties².

6. Although the courts have imposed relatively higher fines in certain individual cases, the community generally considers that the overall amount of fines are still on the low side. Taking 2020 as an example, the average fine for each summons involving OSH offences was about \$7,800, while that for the construction industry was about \$8,000. Among the 27 cases concerning fatal occupational accidents with trials completed in 2020, the average fine for each summons was about \$24,000, and the average fine imposed on each convicted defendant was about \$62,000. As pointed out by a number of OSH-advocating organisations and individuals, the penalty could not pose sufficient deterrent effect as a result of the low fines. The view is borne out by the high proportion of repeat offenders among those convicted of OSH offences.³

¹ The general duty provision for employer is generally the provision carrying the highest fine in other jurisdictions.

² In the past six years, LD sought review of or appeal against the penalties of 47 cases.

³ In 2020, among the convicted OSH offenders, about 32% of them were repeat offenders.

7. Besides, there were several cases involving extremely serious OSH offences in the past decade, where the duty holders had failed to take suitable safety measures although they were well aware of the high risk associated with the work concerned. Such gross disregard to employees' safety had eventually resulted in very serious consequences such as death or severe disability of the workers. LD considers that the current penalties imposed on duty holders convicted of such extremely serious offences are disproportionate with the offences committed and are not sufficiently deterrent.

8. Although LD will, depending on the circumstances of the case, take out prosecutions from time to time by invoking provisions with imprisonment penalties, there have only been four cases of imprisonment since the commencement of the relevant legislation, with three of them being suspended imprisonment⁴.

Further Improvements in OSH Performance

9. LD has been striving to improve the OSH performance of Hong Kong. Over the years, LD has been adopting a three-pronged approach to promote an OSH culture through inspection and enforcement, publicity and promotion, as well as education and training. LD closely monitors changes in OSH risks in various industries, makes timely adjustments to our strategy, and introduces targeted measures. The OSH measures introduced by LD in recent years are at Annex 2.

10. With the concerted efforts of the Government and various sectors of the community, the overall OSH performance of Hong Kong has been improving over the past years. The industrial accident rate per thousand workers dropped from 51.7 in 2000 to 12.4 in 2020. The improvement trend has however clearly tapered in recent years. As regards fatal industrial accidents, the numbers have been hovering at some 20 cases per year for the past decade with no sign of going down. A total of 25 fatal industrial accidents were recorded last year, with 24 cases concerning the construction industry. To further protect employees' OSH, while continuing with the three-pronged strategy, we consider it necessary to, from a legislative aspect, also increase the maximum fines for serious OSH offences, introduce "indictable offences" which are more deterrent, and extend the time-bar for prosecution of "summary offences". The proposed amendments will give a clear and strong signal to OSH duty holders, irrespective of employers

⁴ So far, there has only been one incidence of immediate imprisonment for violating the OSH legislation. The convicted person was sentenced to a two-week imprisonment. The sentence is to run concurrently with another imprisonment of 18 months for a convicted charge of dangerous driving for the same accident.

or employees, that through subjecting OSH offenders to more deterrent penalties, they should pay more attention to adopting safety measures and preventing accidents.

Revised proposal

11. LD put forward amendment proposals in 2019 and 2020 respectively and conducted two rounds of extensive consultation in respect of the two proposals. Apart from the Legislative Council (“LegCo”) Panel on Manpower and the Labour Advisory Board, LD also consulted various major chambers of commerce and labour unions to listen to their views. In addition, noting the construction sector’s concern about the proposals, LD also consulted a number of trade associations, labour organisations and professional bodies from the construction industry. On the whole, both the business sector and labour organisations generally agreed that there was a need to increase OSH penalties to enhance their deterrent effect, but there were diverse opinions on the degree of increase. Regarding the maximum fines for extremely serious offences, labour organisations generally considered that the fines should be set as high as possible to make it extremely deterrent. The business sector however expressed strong objection to such an approach, pointing out that the increase should not be too extreme.

Increasing Maximum Fines

(a) Extremely Serious OSH Offences

12. With regard to extremely serious OSH offences, i.e. cases involving extremely high culpability or serious negligence and leading to serious consequences, LD proposes to amend the GD provisions for employers/ proprietors/ occupiers of premises⁵ (hereafter referred to as “employer GD provisions”) so that LD can take out prosecutions by invoking the provisions as indictable offences for extremely serious cases, and bring them to a higher-level court for trial. Making reference to the OSH legislation and related sentencing guidelines of some advanced countries, LD considers that offences of extremely high culpability can be defined as willful or reckless acts or omissions; whilst offences with serious consequences may include those leading to the death or

⁵ There are eight GD provisions in the OSH legislation which require employers/ proprietors/ occupiers of premises to take care of their employees, including provision of safe system of work and plant, and necessary safety supervision, training, instruction and information. Their current maximum fines are \$200,000 or \$500,000.

serious injury of worker(s). From past accidents, four cases that may involve extremely serious offences are quoted for reference (see Annex 3)⁶.

13. Having considered the comments received from the two rounds of consultation, LD proposes to set the maximum fines for indictable offences at \$10 million, which is the highest maximum fine currently in Hong Kong laws⁷. The OSH legislation regulates the wide range of Hong Kong's industries and trades, and they mostly operate in small and medium enterprises ("SMEs")⁸. The proposed maximum fine of \$10 million, being 20 times of the current maximum fine of OSH legislation, should be sufficient to give a clear signal to OSH duty holders, prompting them to pay more attention to adopting safety measures and preventing accidents. In addition, to make the sentences more deterrent, LD proposes to add new provisions to the legislation to require the courts to take into account the convicted company's turnover of the financial year within which the date of the offence falls when determining the sentences, so as to impose a fine that is sufficiently deterrent. LD proposes that the turnover should be the revenue arising from an entity's principal business activities in Hong Kong. The revenue that arise incidentally or are exceptional in nature should be excluded. We consider that the proposed amendment ensures that the penalties for extremely serious offences will be sufficiently deterrent, while acknowledging the reality that SMEs constitute a vast majority of business operations in Hong Kong.

14. As the above-mentioned extremely serious offences may also involve wilful conduct or gross negligence of a duty holder as an individual, LD proposes to pitch the maximum imprisonment term of indictable offences to two years.

(b) GD Provisions

15. The above-mentioned employer GD provisions are currently summary offences with maximum fines of \$200,000 or \$500,000. Given the general nature of the provisions, they can be applied in a wide range of site conditions/ work procedures/ industries carrying different risk levels, and are always invoked

⁶ The examples are for reference only. Whether a case can be prosecuted as an "indictable offence" depends on the substance of the case, the evidence collected by LD, and DoJ's opinion.

⁷ Certain provisions in the Securities and Futures Ordinance (Cap.571) and the Protection of Endangered Species of Animals and Plants Ordinance (Cap.586) carry a maximum fine of \$10 million.

⁸ According to Trade and Industry Department, SMEs accounted for more than 98% of the total number of enterprises in Hong Kong.

in fatal or serious cases. As serious accidents happen from time to time in recent years, LD considers that there is a need to increase the maximum fines of the employer GD provisions. Making reference to the maximum fines of employer GD provisions of the advanced countries/ region mentioned in paragraph 4, LD proposes to align and increase the maximum fines to \$3 million.

16. In addition, there are four GD provisions concerning employees in OSH legislation⁹ (hereafter referred to as “employee GD provisions”). Currently, their maximum fines are \$10,000, \$25,000 or \$50,000. Taking into account the maximum fines for similar provisions in different advanced countries/ region, we propose to align and increase the maximum fines to \$150,000.

(c) Other Provisions

17. Other than the above-mentioned GD provisions, LD also reviewed the maximum fines of the remaining some 600 provisions in the OSH legislation, and proposes to raise them appropriately to enhance their deterrent effect.

18. In 1994, LD conducted a comprehensive review of the penalties of the FIUO and its subsidiary regulations, covering 413 penalty provisions. The offences were grouped into three different categories according to the seriousness of the breaches, and were assigned with corresponding maximum fine levels:

- (a) Minor offences : \$10,000
- (b) Serious offences : \$50,000
- (c) Very serious offences : \$200,000

Since then, the LD has on several occasions amended various OSH regulations and also enacted new ones.

19. During the review, LD noted that some existing provisions do not sit well with the above-mentioned seriousness categorisation and their penalties do not accurately reflect the seriousness of the offences. LD therefore considers that the seriousness categories of these offence provisions should be appropriately re-aligned in a reasonable and systematic manner, so as to ensure that the penalties can accurately reflect the seriousness of the offences nowadays and to avoid offences of similar seriousness being assigned with inconsistent maximum fine levels.

⁹ The four employee GD provisions stipulate the basic OSH duties of employees to take care of themselves and other employees including co-operation with employers in the implementation of OSH measures.

20. When determining the seriousness of an OSH offence, LD mainly considers the seriousness of the OSH harm that the offence may cause to employees, and the likelihood of causing such harm.

- (a) Very serious offences – generally refer to offences that will “very likely” cause “serious” harm (e.g. death and limb amputation), such as a major deficiency in safety management system (“SMS”), absence of a safe working platform, acts/ omissions leading to grave fire hazards, use of banned asbestos and prohibited carcinogen, etc..
- (b) Serious offences - generally refer to offences that will “likely” cause “moderate” or “serious” harm, such as general deficiency in SMS, failure to ensure that floors are free of loose materials, failure to provide effective mechanical exhaust, etc..
- (c) Minor offences - generally refer to offences that will cause “minor” harm, or offences that will “less likely” cause moderate to serious harm, such as not keeping records, not posting warning notices or labels, insufficient first aid equipment, etc..

21. In order to enhance the deterrent effect of the penalties, we propose to adjust the maximum fines of the provisions targeting employers and employees. Details are as follows:

	Maximum fine¹⁰	
	Employer	Employee
Minor offences	Level 4 (i.e. \$25,000)	Level 3 (i.e. \$10,000)
Serious offences	Level 6 (i.e. \$100,000)	Level 5 (i.e. \$50,000)
Very serious offences	\$400,000	\$150,000

For offences of the same seriousness, LD proposes a higher maximum fine for provisions concerning employers than those concerning employees so as to reflect the difference in their financial means. In fact, under the OSH legislation of the advanced countries/region mentioned above, the maximum fines for provisions concerning employees are generally lower than those concerning employers. We consider the fine levels for employees as proposed above already carry

¹⁰ According to “Level of Fines for Offences” in Schedule 8 of Criminal Procedure Ordinance (Cap.221).

considerable deterrent effect.

22. According to the above-mentioned seriousness categorisation criteria, the re-alignment results are summarised in the table below, with more details in Annex 4.

	Seriousness level raised (a)	Seriousness level lowered (b)	Provisions re-aligned (a)+(b)	Provisions unchanged	Total
Number of provisions	160	70	230	429	659

23. Apart from the above provisions, there are 38 other provisions that are not suitable for the above-mentioned seriousness categorisation because they do not involve OSH risks in specific processes or do not directly cause OSH harm to employees. We propose to uniformly increase the maximum fines of these provisions. For employee-related provisions, the original maximum fines will be increased by 1.5 times and then pitched to the corresponding fine levels, whereas for non-employee-related provisions, the fines will be increased by 2 times and pitched to the corresponding fine levels.

24. When considering the above-mentioned increases of maximum fines for various types of summary offences, a major consideration of LD is the increase in the overall level of maximum fines. LD considers that, apart from catching up with the inflation¹¹ since the enactment of provisions, the increase has to reach a material level in order to enhance the deterrent effect of penalties. As a result of the above-mentioned seriousness re-alignment and the proposed fine increases, the aggregate increase in maximum fines of all employer-related offences is about 2.4-fold and that of all employee-related offences is about 2.2-fold.

Extending time-bar for issuing summonses to one year

25. During the review, LD has carefully examined whether there is a need to also increase the maximum imprisonment terms together with the fine increase. As mentioned above, since the commencement of the OSH legislation, there have only been four cases of imprisonment with three of them being suspended imprisonment. There is a general view of the community that when a serious OSH offence involves an individual breaking the law, such individual should be put behind bars in order to achieve sufficient deterrent effect. As the community's general concern is about the rarity of such cases rather than the current maximum imprisonment terms being on the low side, LD does not

¹¹ The accumulated inflation rate from 1993 to 2020 was about 80%.

recommend increasing the existing imprisonment terms of OSH provisions.

26. LD considers that a more effective way to address the problem is to assist the courts in better understanding the seriousness and culpability of the cases. LD therefore considers it necessary to step up evidence collection for the offences and proposes to extend the time-bar for issuing summonses of summary offences from six months to one year, with a view to allowing sufficient time for LD to conduct more in-depth investigations into the cases and thus providing the courts with sufficient evidence for considering whether to impose immediate imprisonment penalty on convicted defendants.

27. During the consultations, some stakeholders from the construction industry expressed concern that extending the investigation period would delay progress of the concerned works. In fact, LD will only need longer investigation time when handling cases with very serious OSH breaches. For a vast majority of cases, the culpability of individuals does not reach the threshold of invoking provisions with imprisonment terms. We therefore expect that LD will continue to complete investigations of most cases within 6 months in future.

Summary of Proposed Amendments

28. LD's proposals on raising the penalties of OSH legislation are summarised as follows:

- (a) for extremely serious cases, LD may prosecute duty holders by invoking the employer GD provisions as indictable offences. The maximum fine will be set at \$10 million, and the courts have to take into account the turnover of the convicted entities when determining the fines;
- (b) the maximum fines for employer GD provisions prosecuted as summary offences and for employee GD provisions will be \$3 million and \$150,000 respectively;
- (c) offences of other provisions will be categorised as "very serious", "serious" and "minor" according to their seriousness, with corresponding maximum fine levels; and
- (d) for cases where prosecutions are taken out as summary offences, the time-bar for issuing summonses will be extended from six months to one year.

29. LD plans to introduce the Amendment Bill to LegCo for scrutiny in the

first half of 2022.

Further Strengthening of Prosecution Work

30. If the above legislative amendment proposal is passed by LegCo, LD will leverage on the new and amended provisions to further strengthen our prosecution work. Besides, LD will enhance communication and coordination with the Prosecutions Division of DoJ to ensure evidence collection and presentation as well as prosecution work will be properly and effectively done, with a view to bringing offenders to justice and facilitating the courts to hand down more deterring sentences that are commensurate with the seriousness of the offences.

Advice Sought

31. Members are invited to offer views on the above amendment proposal.

Labour and Welfare Bureau
Labour Department
February 2022

**Maximum Fines of GD Provisions for Employers
of OSH Legislation of Overseas Countries/ Region**

Overseas Countries/ Region	Maximum Fine (converted to HK\$)
The United Kingdom	Unlimited
Australia	About \$22,000,000
New Zealand	About \$16,000,000
Canada, Ontario	About \$9,000,000
Singapore	About \$3,000,000
The United States	About \$1,000,000

Three-Pronged Approach to Promote Occupational Safety and Health

The Labour Department (“LD”) has been adopting a three-pronged approach to promote occupational safety and health (“OSH”) in Hong Kong. LD reviews and refines strategies from time to time, and rolls out new initiatives in light of changing OSH risk situation.

Inspection and enforcement

2. LD adopts a risk-based approach to determine the targets, frequency and mode of inspections, taking into consideration the prevailing accident trends and OSH performance of individual sectors/ workplaces. Apart from conducting surprise inspections, LD launches large-scale special enforcement operations targeting at risk-prone sectors and work processes. We carry out prompt investigation of OSH complaints to curb non-compliances. LD has also established mechanisms with relevant government departments and the property management sector to receive referrals of renovation and maintenance works to facilitate the planning of targeted inspections.

3. The following are examples of new initiatives that LD has recently rolled out:

- set up a number of Mega Infrastructure Projects offices to better monitor the OSH performance of these projects;
- enhance participation in site safety management committee meetings of public works projects to get apprised of their OSH situation and to refine inspection strategies accordingly;
- conduct in-depth inspections targeting at selected workplaces with poor safety performance;
- enhance area patrols to inspect minor renovation and maintenance works in a timely manner to deter high-risk operations including unsafe above-ground work; and
- amending OSH legislation to expand the coverage of the construction work notification mechanism to cover construction works with a shorter duration and a smaller number of workers but relatively higher risks; and

- promote the adoption of Construction Design and Management in planning and designing construction projects.

Publicity and promotion

4. With reference to the latest risk profile, LD organises various forms of publicity and promotion activities from time to time targeting at different stakeholder groups and work procedures. The construction industry and catering industry have all along been our key targets, while work-at-height, lifting operation and heat stress are the main themes of our recent promotional campaigns.

5. Depending on the target audiences, we promote OSH messages through different means, including holding seminars, safety talks, exhibitions; issuing OSH publications in different languages as well as Work Safety Alerts; and broadcasting Announcements of Public Interest, etc.. LD also rolls out different sponsorship schemes to encourage industries to use proper devices and equipment to enhance OSH protection.

6. LD has recently launched the following new initiatives:

- produce work safety alerts in the form of animation to enable employees and other stakeholders to better understand causes of serious accidents and relevant preventive measures;
- collaborate with the property management sector to promote the use of light-duty working platforms to tackle the risk of above-ground work;
- produce OSH publications and leaflets in ethnic minority languages; and
- enhance the promotion of safety messages for working at height through the websites and mobile applications frequently used by workers, as well as broadcasting radio announcements by celebrities on race days.

Education and training

7. LD requires employees engaged in higher-risk work to complete mandatory safety training. LD conducts surprise inspections of the training venues to ensure the quality of the courses. In addition, to ensure that registered

safety auditors and registered safety officers perform their duties properly, including providing professional OSH advice to their employers, LD closely scrutinises their qualifications and monitors their performance. On the other hand, LD reviews OSH guidelines from time to time and makes revisions when necessary to promulgate safe work practices.

8. LD has recently launched the following new initiatives:

- revamp mandatory basic safety training (i.e. green card course) and other mandatory safety training courses for construction workers to better meet their needs;
- strengthen monitoring of the providers of these training courses through covert operations and reviewing operating codes and relevant guidelines;
- enhance the qualification requirements for safety practitioners, including tightening up requirements on continuous professional development; and
- promulgate new OSH guidelines, including safety and health guidelines for hand-dug tunnel work and guidelines for standing work and service counter design, etc.

Cases that may involve extremely serious OSH offences

Case 1

Circumstances

At the time of the accident, three workers were working on a bridge under construction over the sea. They used a lifting gear system to lift the temporary supporting structures (“structures”) and its associated temporary working platform (“TWP”) which were located under the bridge, so as to facilitate a barge to transport the structures and TWP away. During the lifting process, the lifting gear system collapsed, causing the structures and TWP falling into the sea. In the meantime, the three workers who were carrying out dismantling work on the TWP fell into the sea together with the collapsed TWP. Two of them were drowned. Some other workers working on the bridge deck were also injured by the falling parts of the lifting gear system. The accident resulted in two deaths and three injuries.

Seriousness of culpability

Investigation revealed that:

- (1) Although the process concerned had been in progress for a long time before the accident, the method statement had not yet been approved by the day of the accident. The relevant management personnel completely ignored the established rules for approval of the method statement.
- (2) The method statement of the process concerned only included a schematic drawing of the lifting gear system, and the risk assessment in the method statement was also very primitive and incomplete. It only involved the general hazards of working at heights, and did not provide detailed information on fall protection measures. However, the management staff responsible for vetting the method statement failed to stop the lifting work or rectify the issue in a timely manner, although they were aware of the inadequacy.
- (3) The lifting gear system involved was not issued with a temporary engineering design certificate and assessment on its stability was not carried out. In fact, supervisory staff had pointed out that its stability should be improved, but no follow-up action was taken. Furthermore, the weight of the structures and TWP exceeded the safe working load of the lifting gear system.

- (4) The contractor failed to provide adequate information, instruction, supervision and training to the workers and other personnel to ensure their safety at work, and allowed the supervisor concerned to devise the work method on his own. Thus, the workers responsible for the lifting operation were not aware that some other workers were carrying out dismantling work on the TWP. The latter also did not know the temporary platform would be lifted neither.

Case 2

Circumstances

Two teams comprising a total of four workers were engaged in the installation of glass curtain wall at the middle level of a building under construction, and they worked in the same location of the external wall at two consecutive floor levels. Since there was only a single-row bamboo scaffold erected outside the building at the work location and no working platform was provided, they had to lay wooden planks between the single-row scaffold and the edges of the building to serve as footholds for doing their work. The accident happened when the wooden planks at the upper level suddenly fell and struck against the planks at the lower level. Except for one worker who was wearing a safety harness and did not fall, all the other workers fell onto 1/F or G/F, causing one death and two injuries.

Seriousness of culpability

Investigation revealed that:

- (1) The workers were tasked to install the glass curtain wall, but the contractors did not conduct task-specific risk assessments nor formulate safe work method and procedures for such high-risk work at the height. The contractors did not take into account that the single-row bamboo scaffold erected outside the building was inherently unsafe for work, and did not provide the workers concerned with the necessary safety information, instruction, training and supervision. It was gross negligence.
- (2) Although the contractor had long planned for the installation of glass curtain wall, arrangement for the provision of safe working platforms was not made prior to the commencement of work. As the workers involved lacked the experience for erecting working platform, they temporarily lay wooden planks at the work locations on their own. The planks were not secured, hence causing the accident.
- (3) Even though there were several independent lifelines provided at the exterior of the building, only one lifeline was available within the proximity of the work location, which was obviously not sufficient for use by all workers at the same time.

Case 3

Circumstances

At the time of the accident, a bamboo scaffolding worker was erecting a truss-out bamboo scaffold at the external wall at an extremely high floor level of a building for conducting water-proofing work at the external wall. During the work, he was only standing on a metal bracket. The metal bracket was suddenly loosened from the external wall and the worker fell dozens of floors to the podium to his death.

Seriousness of culpability

Investigation revealed that:

- (1) The scaffolding worker was assigned to work outside the external wall at an extremely high floor level. However, the contractor responsible for the scaffolding work did not adopt any safety precautions for the scaffolding worker. Apart from failing to conduct risk assessment nor to devise relevant safe work method for the scaffolding work, basic personal protective equipment (namely, full-body safety harness, secured anchorage point or independent lifeline) was also not provided to the workers. The deceased worker only used his own basic mountaineering equipment, and anchored the lanyard of the climbing rope to the louver rack of the air-conditioner at the external wall. At the time of the accident, since the equipment was not a fall-arresting system for industrial use, the climbing rope was subsequently torn off. The louver rack was also broken as it could not withstand the load, causing the worker to fall.
- (2) At the time of the accident, the loosened metal bracket was only fixed by one expansion anchor bolt. The expansion anchor bolt was not up to standard and could not withstand the weight of the deceased.
- (3) The worker who was assigned to erect the bamboo scaffold was not a qualified bamboo scaffolding worker. There was no competent person on site to supervise and give instruction neither. The other workers on site did not possess any valid Mandatory Basic Safety Training Certificate (i.e. Green Card). The contractor concerned did not provide necessary safety information, instruction, training and supervision to the workers. The potential high risks associated with the erection and use of bamboo scaffold and the safety of the workers concerned were neglected.

Case 4

Circumstances

The accident happened when six workers were clearing up a heap of debris inside the lift shaft at an upper floor of a building under construction. The debris rested on a temporary platform erected inside the lift shaft at several floors below. The debris piled up to a height of several storeys. At the time of the accident when the workers had already cleared some of the debris, the platform suddenly collapsed. All six workers fell together with the debris and plunged tens of metres to their death inside the lift shaft.

Seriousness of culpability

Investigation revealed that:

- (1) The workplace was located at an upper floor inside the lift shaft. The contractors did not conduct any risk assessment to identify the hazards in relation to the work and no safe working method was formulated. Moreover, the weight of the debris and possible vibrations exerted on the platform during the clearing work were completely ignored. The contractors did not verify the erection record of the platform, and did not inspect the platform to ascertain whether the platform was of good structural integrity and able to support the debris and workers. It was found out after the accident that the estimated weight of the debris was over 20 tons, and the collapsed platform was only a bamboo scaffold that was not designed for holding debris.
- (2) In the course of the work, the contractors failed to ensure that the workers were using fall arresting equipment inside the lift shaft. Furthermore, no relevant safety information, instruction, training and supervision for the work were provided to the workers. The contractors paid no regard to the risk of workers falling while working at height.

**Distribution and Examples of
230 Provisions with Seriousness Level Re-aligned**

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine(\$)]/ Duty Holder	Example	
			Provision	Offence
<u>Offences with seriousness levels raised</u>				
1	Minor [\$10,000]	Serious [Level 6 i.e.\$100,000]/ Employer	Section 9 of Cap. 59	(i) Failing to give notification on prescribed workplace; (ii) Failing to give notification on construction site; (iii) Failing to maintain a clear passage in wharf; (iv) Operating cartridge-operated fixing tool by unqualified operator; (v) Failing to make full and proper use of personal protective equipment (eye protector); (vi)Failing to provide adequate drinking water to employee to reduce the risk of heat stroke.
2			Regulation 56(1) of Cap.59I	
3			Regulation 9 of Cap.59K	
4			Regulation 11 of Cap.59R	
5			Regulation 8 of Cap.59S	
6			Section 16(1) of Cap.509A	
Sub-total: 19 employer-related provisions, 48 employee-related provisions (Total: 67 provisions)				
7	Minor	Very serious	Regulation 38I of Cap.59I	(i) Failing to wear a safety belt on

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine(\$)]/ Duty Holder	Example	
			Provision	Offence
8	[\$10,000]	[\$150,000]/ Employee	Regulation 34 of Cap.59M	construction site while working at height;
9			Regulation 13 of Cap.59R	(ii) Consuming alcohol while working in compressed air; (iii) Using cartridge-operated fixing tools in an atmosphere containing flammable vapours, flammable gases or explosive dusts.
Sub-total: 18 employee-related provisions (Total: 18 provisions)				
10	Not applicable [\$30,000]	Serious [Level 6 i.e.\$100,000]/ Employer	Regulation 17(1) of Cap.59F	(i) Failing to provide safety helmet while workers working in a quarry; (ii) Permitting persons without receiving sufficient instruction and training to work in a quarry; (iii) Permitting worker not wearing a safety helmet to go to or remain in a quarry.
11			Regulation 27(1) of Cap.59F	
12			Serious [Level 5 i.e. \$50,000]/ Employee	
Sub-total: 1 employer-related provision, 6 employee-related provisions (Total: 7 provisions)				
13	Not applicable	Very Serious	Regulation 18(1) of Cap.59F	(i) Failing to provide safety rope or harness

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine(\$)]/ Duty Holder	Example	
			Provision	Offence
14	[\$30,000]	[\$400,000]/ Employer	Regulation 29(1) of Cap.59F	for worker working at height at a quarry;
15		Very serious [\$150,000]/ Employee	Regulations 37(1) and 58(b) of Cap.59F	(ii) Failing to prohibit any person from entering a dangerous place or road in a quarry; (iii) Failing to ensure worker working in a quarry to wear safety harness securely attached to an anchorage.
Sub-total:		1 employer-related provision, 10 employee-related provisions (Total: 11 provisions)		
16	Serious [\$50,000]	Very serious [\$400,000]/ Employer	Regulation 10A of Cap.59K	(i) Failing to ensure the stability of stacks of containers to prevent their collapse; (ii) Failing to construct a spraying room or a spraying area in compliance with regulations to reduce the risk of gas explosion; (iii) Wilfully altering, damaging, obstructing or otherwise impairing a means of escape; (iv) Failing to insulate and effectively protect live conductor;
17			Regulation 4 of Cap.59N	
18		Very serious [\$150,000]/ Employee	Regulation 5(2) of Cap.59V	
19			Regulation 6 of Cap.59W	
20			Section 28(2) of Cap.59AC	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine(\$)]/ Duty Holder	Example	
			Provision	Offence
				(v) Failing to wear safety belt and keep it attached to lifeline or other anchorage when using suspended working platform.
Sub-total:		33 employer-related provisions, 10 employee-related provisions (Total: 43 provisions)		
21	Not applicable [\$100,000]	Very serious [\$400,000]/ Employer	Sections 7 and 14(1)(a)(i) of Cap.59AE	(i) Failing to take safety precautions before beginning work in a confined space; (ii) Failing to ensure a person entering or remaining in a confined space (e.g. manhole or pipeline) is properly wearing an approved breathing apparatus to prevent inhalation of toxic gas; (iii) Failing to take action on audit report to improve fundamental deficiency of a safety management system promptly so as to ensure it is implemented fully and effectively.
22			Sections 9 and 14(1)(a)(i) of Cap.59AE	
23			Section 16(1)(b) of Cap. 59AF	
Sub-total:		14 employer-related provisions (Total: 14 provisions)		
Total: The seriousness levels of the above 160 offences are raised				

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine(\$)]/ Duty Holder	Example	
			Provision	Offence
<u>Offences with seriousness levels lowered</u>				
24	Serious [\$50,000]	Minor [Level 4 i.e.\$25,000]/ Employer	Regulation 32 of Cap.59A	(i) Failing to keep a notifiable workplace clean;
25			Regulation 12(1)(b) of Cap.59O	(ii) Examiner failing to sign the register after examining a goods lift;
26		Minor [Level 3 i.e.\$10,000]/ Employee	Regulation 19A of Cap.59Z	(iii) Failing to conspicuously display a notice in an approved form regarding the safety officer employed in the industrial undertaking;
27			Section 9(1)(c) of Cap.59AF	(iv) Failing to keep a copy of safety policy;
28			Section 13(1) of Cap.509A	(v) Failing to provide sufficient lighting at the office.
Sub-total:		41 employer-related provisions, 2 employee-related provisions (Total: 43 provisions)		

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine(\$)]/ Duty Holder	Example	
			Provision	Offence
29	Not applicable [\$100,000]	Minor [Level 4 i.e.\$25,000]/ Employer	Sections 26(1) and (2) of Cap. 509A	(i) Failing to keep record of manual handling risk assessment.
Sub-total: 1 employer-related provision (Total: 1 provision)				
30	Very serious [\$200,000]	Serious [Level 6 i.e.\$100,000]/ Employer Serious [Level 5 i.e.\$50,000]/ Employee	Regulations 34(1)(a) and (2) of Cap.59I	(i) Failing to mark safe working load on hoists;
31			Regulation 7F of Cap.59J	(ii) Failing to affix a diagram or notice in a conspicuous place on the crane indicating the position and amount of the weights;
32			Sections 23(1), (2), (3) and (4) of Cap.509A	(iii) Failing to undertake manual handling risk assessment;
33			Sections 31(1), (2) and (3) of Cap. 509A	(iv) Failing to provide training on manual handling operation.
Sub-total: 23 employer-related provisions, 1 employee-related provision (Total: 24 provisions)				

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine(\$)]/ Duty Holder	Example	
			Provision	Offence
34	Very serious [\$200,000]	Minor [Level 4 i.e.\$25,000]/ Employer	Regulation 21(6)(f) of Cap. 59M	(i) Failing to provide a food and hot drink cupboard space in medical lock.
Sub-total: 2 employer-related provisions (Total: 2 provisions)				
Total : The seriousness levels of the <u>70 offences</u> above are lowered				

Note :

- Cap. 59: Factories and Industrial Undertakings Ordinance
- Cap. 59A: Factories and Industrial Undertakings Regulations
- Cap. 59F: Quarries (Safety) Regulations
- Cap. 59I: Construction Sites (Safety) Regulations
- Cap. 59J: Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations
- Cap. 59K: Factories and Industrial Undertakings (Cargo and Container Handling) Regulations
- Cap. 59M: Factories and Industrial Undertakings (Work in Compressed Air) Regulations
- Cap. 59N: Factories and Industrial Undertakings (Spraying of Flammable Liquids) Regulations
- Cap. 59O: Factories and Industrial Undertakings (Goods Lifts) Regulations
- Cap. 59R: Factories and Industrial Undertakings (Cartridge-Operated Fixing Tools) Regulations
- Cap. 59S: Factories and Industrial Undertakings (Protection of Eyes) Regulations
- Cap. 59V: Factories and Industrial Undertakings (Fire Precautions in Notifiable Workplaces) Regulations
- Cap. 59W: Factories and Industrial Undertakings (Electricity) Regulations
- Cap. 59Z: Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations
- Cap. 59AC: Factories and Industrial Undertakings (Suspended Working Platforms) Regulation
- Cap. 59AE: Factories and Industrial Undertakings (Confined Spaces) Regulation
- Cap. 59AF: Factories and Industrial Undertakings (Safety Management) Regulation
- Cap. 509A: Occupational Safety and Health Regulation