

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

**Debate and voting arrangements**

Object of the Bill: According to the Legislative Council Brief, the Bill seeks to amend the Factories and Industrial Undertakings Ordinance (Cap. 59) (“FIUO”), the Occupational Safety and Health Ordinance (Cap. 509) (“OSHO”) and their subsidiary legislation, with the main objects as follows:

- (a) to (i) make offences under the general duty (“GD”) provisions for employers, proprietors of industrial undertakings and occupiers of premises (“employer GD provisions”) triable as indictable offences so that blatant offences involving extremely serious occupational safety and health (“OSH”) breaches can be tried at higher levels of court, and (ii) 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 level of fines;
- (b) to increase the maximum fines of offences under the employer GD provisions prosecuted summarily and employee GD provisions to \$3 million and \$150,000 respectively;
- (c) to adjust the level of penalties for certain summary offences; and
- (d) to extend the time limit for prosecution for an offence that is triable summarily from six months to 12 months.

**Joint debate : Clauses with no amendment, and clauses with – Clauses 1 to 116 amendments by the Secretary for Labour and Welfare (“SLW”)**

Joint debate on the original clauses and the amendments.

**SLW’s amendments**

Updating the reference to the year in the short title of the ordinance

**Clause 1**

- To update the short title of the ordinance as Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Ordinance 2023.

Amending the references to the Professional Accountants Ordinance (Cap. 50)

**Clauses 1, 13, 14, 86 and 87**

- Given that the Financial Reporting Council (Amendment) Ordinance 2021 (Ord. No. 41 of 2021)<sup>1</sup> has come into operation on 1 October 2022 and its implementation has implications on the proposed new section 20(2)(b) of FIUO and section 39A(2)(b) of OSHO, to amend the said provisions to **replace the references to the Professional Accountants Ordinance (Cap. 50) by the Accounting and Financial Reporting Council Ordinance (Cap. 588)**; furthermore, to delete clauses 14 and 87 of the Bill which are no longer applicable and amend the commencement date stipulated in clause 1 accordingly.

<sup>1</sup> The Financial Reporting Council (Amendment) Ordinance 2021 was enacted by the Legislative Council on 22 October 2021.

Amending the time limit for prosecution for offences triable summarily

**Clauses 12, 16 and 85**

- To amend the **time limit for prosecution** for an offence that is triable summarily under the proposed new section 17A of FIUO and heading of Schedule 5 to FIUO and the proposed new section 34A of OSHO **from 12 months as proposed in the Bill to 9 months**, in response to the concerns that extending the time limit for prosecution to 12 months might cause delay to the progress of investigation.

Requiring the court to consider the financial information of the convicted entity in determining the amount of fines

**Clauses 15 and 88**

- To amend the proposed new section 21 of FIUO and section 39B of OSHO to provide that in **determining the amount of fines when an employer, a proprietor of an industrial undertaking or an occupier of premises (“entity”) is convicted on indictment (“convicted entity”)**:
  - (a) the court is required to take into account not only the information requested under a court order as stipulated in the proposed new section 20 of FIUO and section 39A of OSHO, but **also the financial information given by the convicted entity**, in order to determine the scale of operation of the convicted entity and hence an appropriate fine that is sufficiently deterrent; and
  - (b) when the convicted entity eventually fails to provide any financial information to the court, **the court must take into account any financial information from any other source provided by the prosecution** that the court considers relevant in determining the scale of operation of the convicted entity and reliable in the circumstances.

Adjusting the level of fines for certain summary offences

**Clauses 20, 28, 30, 32, 34, 35, 58, 60, 64, 100 and 103**

- To adjust the proposed maximum fines for the following summary offences:

Summary offences	Maximum fine/level of fines <sup>2</sup>		
	Current	Proposal in the Bill	Proposed amendment
OSH offences in relation to lighting condition of workplaces	\$50,000	Level 4 (\$25,000)	<b>To retain the current level (i.e. Level 5 (\$50,000))</b> to maintain the deterrent effect so that the relevant duty holders will continue to pay attention to the lighting condition of their workplaces to prevent accidents
OSH offences in relation to access to drinking water	\$10,000	Level 6 (\$100,000)	<b>To adjust to Level 5 (\$50,000)</b> to lower the level of increase
OSH offences in respect of failure to conduct inspection to hoist, lifting appliance and suspended working platform	\$200,000	Level 6 (\$100,000)	<b>To retain the current level (i.e. \$200,000)</b> to maintain the deterrent effect and convey a clear message to the industries that these are very serious offences
Offences relating to the making of a false statement by the competent examiner or competent person after conduct of examination and inspection	\$200,000	\$150,000	<b>To retain the current level (i.e. \$200,000)</b> to maintain the deterrent effect and convey a clear message to the public that these are very serious offences

<sup>2</sup> The level of fines for offences are prescribed in Schedule 8 to the Criminal Procedure Ordinance (Cap. 221).

Drafting amendments

**Clauses 7, 13 and 86**

- To make minor drafting amendments to the above clauses.

- Voting order** :
1. Clauses (i.e. clauses 2 to 6, 8 to 11, 17 to 19, 21 to 27, 29, 31, 33, 36 to 57, 59, 61 to 63, 65 to 84, 89 to 99, 101, 102 and 104 to 116) with no amendment standing part of the Bill
  2. SLW's amendments (to amend clauses 1, 7, 12, 13, 15, 16, 20, 28, 32, 34, 35, 58, 64, 85, 86, 88 and 103, and to delete clauses 14, 30, 60, 87 and 100)
  3. Clauses with or without amendments standing part of the Bill

**SLW's amendments**

(set out in LC Paper No. CB(3)236/2023(01) issued on 29 March 2023)

Council Business Division 3  
Legislative Council Secretariat  
17 April 2023