

18 July 2022

The Hon Luk Chung-hung, JP
Chairman
Bills Committee on Occupational Safety and Occupational
Health Legislation (Miscellaneous Amendments) Bill 2022
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr Luk,

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

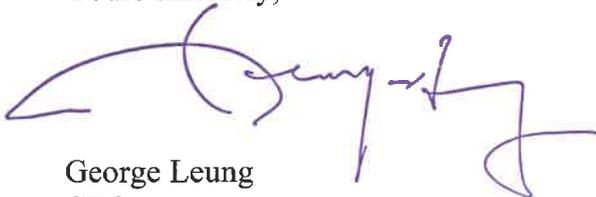
The Hong Kong General Chamber of Commerce is pleased to submit our views in response to the Bills Committee's consultation on the Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Bill 2022.

Although the Chamber supports the Government's policy objective of improving health and safety at work, we do not believe this can be achieved by significantly raising penalties, and doubling the period for summons from six months to one year as proposed.

As noted in government documents, existing measures have contributed substantially to a reduction in workplace accidents. Unless there are valid reasons to believe these are no longer effective, there is no justification for the introduction of harsher penalties. These would however have a chilling effect on businesses, which are already beset by extremely challenging operating conditions.

We hope you will take into account our views in your deliberations.

Yours sincerely,



George Leung
CEO

Encl.

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

Submission by the Hong Kong General Chamber of Commerce (HKGCC)

● *Introduction*

1. HKGCC welcomes this opportunity to present its submission to the Bills Committee.
2. HKGCC agrees with the policy objective of the Government's proposals, namely to improve health and safety at work. However, we do not agree that the Government's policy objective will be achieved by its proposals to (a) increase the level of penalties under the legislation by such significant amounts; and (b) double the period within which a summons may be issued, from six months to one year. We believe that the Government's objective can be achieved more effectively by different means, as explained below.

● *Effectiveness of the Existing "Three-Pronged Approach"*

3. The Government's existing "three-pronged approach" to tackling health and safety at work (as described in some detail in Annex B of the Legislative Council Brief ("the Brief")) consists of:
 - inspection and enforcement (of the existing rules);
 - publicity and promotion; and
 - education and training.
4. The Brief itself has recognised that this approach is working - the accident rate per 1000 workers has dropped by more than 75 per cent between 2000 and 2020.¹ There is no reason to believe that it will not continue to deliver positive results.
5. With this success, a serious question is whether there is any need for more stringent regulatory intervention in the form of the substantially increased penalties that the Government is proposing. Changing the approach in this way would substantially increase the costs of doing business in Hong Kong, particularly for SMEs, which account for 98 per cent of our businesses,² at a challenging economic time when they can least afford it. At the same time, the Brief has produced no evidence to prove, or even suggest, that increasing costs in this way would produce any benefit, let alone a benefit that would outweigh the extra costs for businesses of the Government's proposals. We deal further with the costs and benefits of the Government's proposals below.

● *Costs of the Proposals*

6. One of the Government's proposals is to increase the maximum level of financial penalty for an indictable offence by *20 times* its existing level, namely to HK\$10 million. Although it is unlikely that a court would ever impose the maximum level, except in the most egregious cases, businesses will have to make provision for the possibility of very substantially higher fines, thereby increasing their costs, which may ultimately have to be passed onto consumers in the form of higher prices. At the same time, such increased risks may deter new entry by businesses, particularly in high-risk industries such as construction, at a time when Hong Kong can ill afford to dampen economic growth, thereby potentially damaging its international competitiveness. So what would such inflated penalty levels achieve which would outweigh these risks?

¹ Brief para 2.

² Footnote 8 p 6 of the Brief.

● *Alleged Benefits of Substantially Increased Penalty Levels*

7. The Brief asserts in various places that such increased penalty levels are necessary to reduce industrial accidents.³ The theory is that by dramatically increasing the maximum penalty levels, businesses will be driven into complying with the rules more than they are currently doing, which will in turn thereby reduce industrial accidents. But this is precisely that - theory. The Brief produces no evidence that substantially increasing penalty levels will result in fewer industrial accidents.
8. The Government appears to believe that its proposal to substantially increase potential penalties will be particularly effective in this regard, given that the majority of the businesses that would be targeted are SMEs:

*“As the OSH legislation regulates a wide range of Hong Kong’s industries and trades which mostly operate in small and medium-sized enterprises (“SMEs”), the proposed maximum fine of \$10 million, being 20 times of the current 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”.*⁴

9. While no evidence is produced that substantially increasing penalties will reduce industrial accidents, the Government does produce evidence that its existing “three-pronged” approach, with a strong emphasis on education and training, is producing remarkably positive results.⁵ Logic would suggest that the best way forward is to continue this approach, rather than dramatically increasing maximum penalty levels in the way that the Government is proposing, with the added costs to Hong Kong businesses and its economy that this would cause. This would be particularly beneficial to SMEs, which as the Brief acknowledges comprise the vast majority (98 per cent) of businesses in Hong Kong. In other words, the focus should be on prevention (tackling the problem at root cause) rather than punishment.

● *The Relevance of Turnover in Assessing the Amount of Penalty*

10. The Government proposes that the courts be required to take into account the convicted company’s turnover (or “financial capacity”) in assessing the appropriate level of penalty.⁶ However, it is not entirely clear whether the relevance of turnover in this respect is just about financial capacity, or whether it is also about setting a level commensurate with turnover to ensure compliance. The Brief states that the Government is proposing to introduce this provision:

*“...with a view to facilitating the courts to assess the defendant’s scale of operation and financial capacity, and hence impose a fine that is sufficiently deterrent and commensurate with the seriousness of the offences”.*⁷

11. In our view the only objective of taking turnover into account should be to act as a safety mechanism, to ensure that the business in question is not driven into bankruptcy as a result of the level of the fine imposed, which would be counter-productive to competition and the economy.

³ See for example the Brief paras 6, 7, 11, 14.

⁴ The Brief para 11.

⁵ The Brief at para 2.

⁶ The Brief para 12.

⁷ Note 5 above.

- *Doubling the Period for Issuing Summonses*

12. The rationale for the Government's proposal for doubling the permitted period for the authorities to issue a summons, from six months to one year, is not clear from the Brief. We can see clear downsides in doing so. Notably, victims (if alive) or their families wish to see a resolution to their case as soon as possible, as do the businesses that are accused of contraventions. If the reason for the proposed extended period is lack of resources, we suggest that the appropriate solution is to devote more public resources to ensuring that the current six-month deadline can be met, rather than extending it to one year.

- *Conclusion*

13. We would be happy to elaborate on our views to, or answer any questions from, Bills Committee members on this submission.

HKGCC Secretariat
July 2022