



Hong Kong General Chamber of Commerce
香港總商會 1861

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17 December 2020

Dr. Law Chi-kwong, GBS, JP
Secretary of Labour and Welfare
Labour and Welfare Bureau
10/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Dr. Law,

**Response to the Government's Revised Amendment Proposal on Raising Penalties
of Occupational Safety and Health Legislation**

Following up on our submission on the Government's previous proposal in 2019 on raising penalties of occupational safety and health legislation, the Hong Kong General Chamber of Commerce (HKGCC) would like to provide the Government with our members' views on your recently revised proposal.

We would like to reiterate that the HKGCC, in principle, agrees with the Government's objective of reducing the number of accidents at work. Nevertheless, we are doubtful if both the original and revised proposals help achieve this objective, especially when the points raised in our previous submission are mostly not addressed in the revised proposal.

In particular, there is no evidence that a substantial increase in the maximum statutory level of penalties results in fewer industrial accidents. Therefore, we cannot agree with the Government's proposal, for an indictable offence, to raise the maximum fine to \$50 million, and for a general duty offence, to raise the maximum fine to \$3 million.

We have already pointed out the economic downsides associated with a dramatic raise in fines, such as higher insurance premiums, increased business costs, raised market entry barriers and reduced competitiveness, in our previous submission, and thus we shall not repeat them here.

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As to the proposed requirement for the courts to consider the company's turnover in determining the fine level, we set out in our previous submission that – unlike in competition law, where breaking the law can be profitable if it goes unpunished – in health and safety legislation, a business does not set out to cause industrial accidents in order to boost its profits. As such, the link with turnover is inappropriate and not justified in preventing companies from engaging in the undesirable conduct. Moreover, in most other jurisdictions, penalties for breach of similar legislations are set at a fixed sum. Yet under the revised proposal, for extremely serious cases, the Government may prosecute duty holders by invoking the general duty provisions for employers as indicatable offences, and the proposed fines are much higher than those prevailing in other jurisdictions.

Regarding the proposed doubling of the time limit for issuing summonses from six months to one year, HKGCC remains of the view that the extension of the time limit would only prolong the suffering of those subject to industrial accidents and their families, as well as legal uncertainty for the companies in question, but not help resolve the cases. Therefore, we will not support this proposal either.

All in all, HKGCC believes that the Government should tackle the problem at source. The focus should be on prevention instead of punishment, which means that education and training are key in preventing industrial accidents. Maintaining a safe and healthy work environment is a shared responsibility among employers, employees and the Government. The Chamber is willing to work hand-in-hand with the Government on finding solutions to reduce industrial accidents.

We hope the Government will take our views into consideration when amending the health and safety legislation.

Yours sincerely,



George Leung
CEO

cc: Hon Luk Chung-hung, JP, Chairman of LegCo Manpower Panel