

By post and by email at tracycheung@cic.hk

17 May 2022

Ms Tracy CHEUNG
38/F, COS Centre
56 Tsun Yip Street
Kwun Tong, Kowloon

Dear Ms CHEUNG

**Views from The Hong Kong Institution of Engineers
Regarding Raising Penalties of Occupational Safety and Health Legislation**

On behalf of the Institution, I am pleased to present to you our views and suggestions as set out in the enclosure for your consideration on the captioned subject.

The Institution welcomes the opportunity to work with the Government and offer our expertise and experience on the area of concern if and when it is needed.

Thank you.

Yours sincerely



Davis WONG (Mr)
Director

Enc

CKH/DW/SS

Enclosure

**Views from The Hong Kong Institution of Engineers
Regarding Raising Penalties of Occupational Safety and Health Legislation**

In response to the Labour Department's ("LD") proposed legislative amendment to raise penalties of occupational safety and health ("OSH"), The Hong Kong Institution of Engineers ("HKIE") would like to provide the following views and suggestions for the LD's consideration:

2. The Institution would like to emphasise that to minimise safety risks at work is a shared goal of all construction and engineering practitioners, and therefore, site safety should not be a burden to be borne by only one or two specific bodies. In order to successfully drive a positive change in safety culture, it should be a joint concern of all parties involved.
3. The Institution welcomes the proposal of taking out prosecutions by invoking provisions as indictable offences for extremely serious cases. However, we are of the view that the newly proposed maximum fines for indictable offences could be set higher than HK\$10 million which is the maximum fine in current Hong Kong laws applicable to the violation of some laws such as the *Protection of Endangered Species of Animals and Plants Ordinance*. The Institution reckons that the legislative amendment should be more reflective of the Administration's and the society's respect of the value of human life.
4. The objective of imposing penalties through legislation is to establish a deterrent effect to avoid irresponsible employers from taking inappropriate safety control measures. The LD may however consider demonstrating the rationality of reducing the proposed penalty and imprisonment levels with statistics of cases charged with disciplinary actions, the severity of those cases and the respective penalties. Moreover, the suggestion of reducing the maximum penalty and imprisonment term as proposed in 2020 might be seen as a compromise made due to industry pressure on the matter.
5. The HKIE concurs the proposal of adding new provisions to the legislation to require courts to take into account the convicted company's turnover. The Institution reckons 4% of the corporate income (or HK\$10 million, whichever is higher) similar to that as stipulated in the Europe's General Data Protection Regulation (GDPR) appropriate and that financial ability of the convict should also be considered before ruling. On the whole, the penalty should be set to achieve a significant deterrent effect to ensure the industry prioritises safety at all times.
6. The proposals of aligning and increasing the maximum fines of employer and employee GD provisions to HK\$3 million and HK\$150,000 respectively are agreed.
7. Similar to reasons stated above, the HKIE does not agree to reducing any of the maximum fine levels for minor offences, serious offences and very serious offences

comparing to the levels proposed in 2020. The earlier proposal was considered more capable of meeting social expectations.

8. For cases where prosecutions are taken out as summary offences, the proposal of extending the time-bar for issuing summonses from six months to one year is supported. The Institution also consider two years appropriate by aligning with the two-year duration as stipulated in Cap. 282.

9. Other than deploying penalty as deterrent effect, the Institution suggests the Administration to extend and enforce site safety encouragement measures such as the “Pay for Safety” scheme which has proven to be effective in significantly reducing accident rate. On the other hand, technological advancement could also help improve site safety. The Administration can consider introducing incentive measures to encourage industry’s adoption of risk reducing construction technologies and to provide education and promotion opportunities to industry to increase work safety awareness.