

By post and email at [lrt@labour.gov.hk](mailto:lrt@labour.gov.hk)

15 March 2021

Legislation Review Team  
Occupational Safety and Health Branch  
Labour Department  
13/F, Harbour Building  
38 Pier Road, Central, H.K.

Dear Sir/Madam

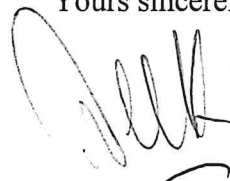
**Views from The Hong Kong Institution of Engineers  
on Raising Penalties of Occupational Safety and Health Legislation**

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

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

Thank you.

Yours sincerely



Ir C K HON  
Chief Executive and Secretary

CKH/SS

**Enclosure**

**Views from the Hong Kong Institution of Engineers  
regarding the Consultation on Raising Penalties of Occupational Safety and  
Health Legislation**

The Hong Kong Institution of Engineers (HKIE) would like to provide the following suggestions and views regarding the consultation on Raising Penalties of Occupational Safety and Health Legislation for the Labour Department's consideration:

2. It is the common goal for all construction practitioners to improve safety at work and reduce accident rate particularly at construction sites. Engineer, being a key member of such practitioners, agrees that the legal regime together with the relevant enactments should be reviewed regularly and amended where appropriate in order to assist in achieving the said purposes.

3. However, the proposed maximum fine of HK\$50M for extremely serious offences appears to be disproportional to the business nature of the construction industry nowadays. With the ever-growing competitiveness in the market, the profit margin of construction business is usually very slim with light asset, thus the imposing of such heavy penalties would cause most of small to medium size construction companies to collapse once an unfortunate accident occurs. From business point of view, the low rate of return with such a high penalty would deter contractors from investing and expanding their business in construction. As an additional protection in commercial perspective, contractors would seek for additional insurance coverage to protect them from the potential risk. The expensive insurance premium would be further escalated, and it will be reflected in the tender price and eventually be borne by our society.

4. The consultation paper has tried to compare that the current maximum fines for OSH offences in Hong Kong with the counterparts of other developed countries/regions. It is believed that such comparisons are inappropriate, because mostly in these developed countries, the workforces are protected (and controlled) by the unions, where the unions usually have the power to enforce more frequent safety monitoring, to restrict the labourers from exposing to potential risks, and to request more safety welfare for the labourers (including limited working hours and safety equipment). As such, higher penalties for OSH offences in these countries seem appropriate, but that is not the same case in Hong Kong.

5. In the past, the burden of site safety in Hong Kong was mostly shouldered by the contractor, until the introduction of the "Pay for Safety" scheme for public works in the 90's. Since its implementation, the scheme helped significantly lower the accident rate by 85% ((LC Paper No. CB(1)291/16-17(01) (issued on 16.12.2016) for Panel on Development, Legislative Council). In view of its effectiveness, it is

proposed to extend and enforce by law the “Pay for Safety” scheme in all private projects, with the contract sum of over HK\$1M. It is believed that with the project proposer sharing the risk and cost of site safety, the contractor would have the necessary resources and incentive to implement more quality safety management at construction sites.

6. Imposing higher penalties (which is considered an adversarial approach) are difficult to achieve the anticipated improvements in site safety in the current social atmosphere. Instead, promotion of collaborative contract (such as the NEC) is encouraged in order for all project stakeholders (including the client, consultants, contractor, and even the subcontractors) to sit down and review the practicality for enhancing site safety. Furthermore, industrialisation of construction by means of DfMA/MiC can effectively transfer the potentially risky activities at the construction sites to a more manageable factory environment. Rather than imposing more penalties, the Government can consider to give more incentive for contractors to explore and develop in technological construction.

7. In addition, The Labour Department’s attention should also be drawn to the Construction (Design and Management) Regulations 2015 in the UK. The industry should address the safety issue as early as possible instead of at the bitter end when it would be too late or too expensive to change. Risk identification and control should run through the whole life cycle starting from project planning and design stage instead of leaving it to the construction stage.