

LCQ2: Protection of occupational safety and health

Following is a question by the Hon Adrian Ho and a reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (November 15):

Question:

While the Government amended the legislation in April this year to increase the penalties for occupational safety and health (OSH) offences, fatal industrial accidents still occurred successively in recent months, leading to queries from some members of the public about the existing regime being inadequate in protecting OSH and ineffective in terms of monitoring. In this connection, will the Government inform this Council:

(1) as there are views that the weak management culture of various stakeholders at construction sites has rendered them unable to properly fulfil their responsibilities to safeguard construction site safety, whether the authorities have plans to further amend the legislation to clarify the responsibilities of site owners and various stakeholders, so as to enhance the commitment of site owners to their responsibility for safeguarding construction site safety, thereby enhancing the overall monitoring of the day-to-day operations of construction sites;

(2) as it is learnt that under the existing mechanism, the authorities may take disciplinary actions against contractors involved in criminal prosecutions only after the conclusion of the cases, whether the authorities will revise the approach, such as instituting prosecutions and initiating studies on disciplinary proceedings simultaneously, so as to enhance the efficiency of case handling and minimise the chance for contractors to evade criminal liabilities; and

(3) whether the Government will set an example by taking the lead to step up regulation and law enforcement in respect of the safety of construction sites of the Government and public organisations, as well as promote the review of construction site safety and improve the tendering system on a pilot basis; if so, of the details; if not, the reasons for that?

Reply:

President,

The Labour Department (LD) has all along been attaching great importance to industrial safety, especially the occupational safety and health (OSH) of construction workers. Pursuant to the risk-based principle, the LD has been formulating and refining the strategies of inspection and enforcement, publicity and promotion, as well as education and training to enhance the OSH

level. At the same time, the Development Bureau (DEVB) and the Works Departments under its purview have put great emphasis on the safety supervision of government sites and have adopted a number of initiatives to enhance site safety.

Having consulted the DEVB, my consolidated reply to the questions raised by the Hon Adrian Ho is as follows:

(1) The Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Ordinance 2023 (the Ordinance) came into effect on April 28, 2023, after the third reading and passage of the relevant Bill by the Legislative Council on April 19, 2023.

According to current legislation, with regard to extremely serious cases, the LD may take out prosecutions by invoking the "employer general duty" provisions as "indictable offence", and the maximum fines and imprisonment terms have been pitched at \$10 million and two years respectively. The maximum fines for other summary offences have also been adjusted according to their seriousness so as to raise the penalties for OSH offences in general.

The Government will enhance publicity so that the industries and the public understand the new penalties of OSH offences. In addition, the LD will continue to co-operate closely with the Department of Justice to ensure that evidence collection and prosecution work will be properly and effectively done, with a view to striving for sentences to be handed down by the courts with stronger deterring effect that are commensurate with the seriousness of the offences.

The current OSH legislation already covers a variety of duty holders, such as site occupiers, main contractors, sub-contractors, employers and employees, etc, which clearly states the liability of different stakeholders. Therefore, it is not necessary to make further amendments to the OSH legislation for clarifying the responsibilities of site owners and all duty holders.

As a matter of fact, raising the penalties is only one of the strategies to improve the OSH performance of Hong Kong. Many Members pointed out that the said amendments to the Ordinance mark a new starting point instead of an end point. I completely concur with their views. To promote the OSH culture and reduce accidents, the LD will continue to adopt a multi-pronged approach, based on the risk-based principle and keeping close tabs on the OSH risk levels of various industries and the changes, to formulate and adjust the strategies of inspection and enforcement, publicity and promotion, as well as education and training in a timely manner.

(2) As regards private development projects, since end-2022 the Buildings Department (BD) has enhanced the procedures to strengthen the regulation of registered contractors (RC). If an RC is involved in a fatal incident related to building works, the application for renewal of registration will be referred to the Contractors Registration Committee (CRC) for interview and

assessment even if the RC has not yet been convicted. The contractor whose renewal application was rejected by the BD recently was processed in accordance with this arrangement.

To empower the BD to take enforcement actions more effectively so as to enhance the safety of building works, the Government will conduct a review of the Buildings Ordinance in the coming year and put forth amendment proposals. The scope of the review includes streamlining the procedures for making referrals to the disciplinary board, in particular how to expedite the processing of cases and to explore the feasibility of undertaking prosecution and disciplinary actions in parallel. The review will also consider increasing disciplinary penalties (e.g. duration of suspension, level of fines and terms of reprimand, etc.).

(3) The DEVB regulates contractors on the "List of Approved Contractors for Public Works" or "List of Approved Suppliers of Materials and Specialist Contractors for Public Works" ("Approved Lists") who have involved in serious incidents all along, regardless of whether the criminal proceedings have been completed or not. The DEVB will take regulating actions against those contractors as soon as possible, including suspension from tendering for public works contracts and even removal from the "Approved Lists".

In November 2022 and July 2023, the DEVB has successively enhanced the regulating regime, including:

(a) when a contractor in the "Approved Lists" is involved in a serious incident, the DEVB will immediately suspend the contractor from tendering for public works contracts in the relevant works category or categories for at least three months and request the contractor to conduct an independent safety audit;

(b) if the cause of a serious incident is due to a "systemic" deficiency in the contractor's safety management system, the regulating action against the contractor will also be extended to other relevant works categories in the "Approved Lists"; and

(c) as for the regulating action to suspend a contractor from tendering for public works contracts, it is not only confined to not accepting new tender submissions during the suspension period, but also extended to not accepting tenders which were submitted before.

On the tendering system of public works contracts, relevant departments do not adopt "the lowest bid wins" as the principle of tender assessment. Apart from considering the tender price, departments also consider the tenderer's technical capabilities and past performance, in which site safety is an important consideration. Assessment related to site safety contributes to about 30 per cent of the overall technical score. In order to further enhance contractors' awareness on site safety, the DEVB has introduced in this month a new tender evaluation mechanism to deduct the site safety related technical score of a contractor who has involved in a serious incident, although the incident did not occur in a public works site.

Regarding the enforcement of OSH legislation, the LD impartially upholds the same rigorous regulatory standards regardless the construction sites are under the Government, public organisations or private companies.