

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

The Government published the Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Bill 2022 in the Gazette today (May 13).

The Bill seeks to amend the Factories and Industrial Undertakings Ordinance (Cap. 59) and the Occupational Safety and Health Ordinance (Cap. 509), as well as their subsidiary legislation, to increase the penalties for occupational safety and health (OSH) offences so as to enhance their deterrent effect for better protection of workers' OSH.

A spokesman for the Labour Department (LD) said, "Although the overall OSH situation of Hong Kong has been improving over the years, the improvement trend has tapered in recent years. The number of fatal industrial accidents has been hovering at some 20 cases per year for the past decade with no sign of going down. One of the major reasons is that the sentences of OSH offences are generally on the low side, which fails to pose sufficient deterrence. In the 2017 Policy Address, the Government made a commitment to review the maximum penalties of the relevant OSH legislation. After several rounds of extensive consultation and thorough consideration of views and comments received, we have stricken a balance between the interest of the employer and employee sides, and formulated the final amendment proposal. The Government has completed the drafting of the Bill and will introduce it into the Legislative Council for scrutiny on May 25."

The Bill proposes to make offences under the general duty (GD) provisions for employers, proprietors and occupiers of premises (employer GD provisions) of the relevant legislation triable as indictable offences so that extremely serious OSH offences can be tried at higher levels of court. The maximum fines and imprisonment terms of such extremely serious offences are proposed to be pitched at \$10 million and two years respectively. The Bill also proposes to require the courts to take into account the turnover of the convicted entities in determining the levels of fines.

In addition, the Bill also proposes to amend the above ordinances and their subsidiary legislation as follows:

- (i) increase the maximum fines for employer GD provisions prosecuted summarily and employee GD provisions to \$3 million and \$150,000 respectively;
- (ii) adjust the maximum fines for other summary offences and set the maximum fine levels for employer-related offences at \$25,000, \$100,000 and \$400,000 respectively according to their seriousness, and at \$10,000, \$50,000 and \$150,000 respectively for employee-related offences; and

(iii) extend the time limit for prosecution for offences triable summarily from six months to one year so as to allow sufficient time for the LD to conduct more in-depth investigations into serious cases and to provide the courts with sufficient evidence for considering whether to impose immediate imprisonment penalty upon convicted persons.

"Upon enactment of the amendment bill, it will come into operation once published in the Gazette," the spokesman added.