THE HONG KONG E&M CONTRACTORS' ASSOCIATION

The Hong Kong E&M Contractors' Association Limited
香港機電工程商協會有限公司

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Our ref: EMCA-2020-HS-009/GT

14 December 2020

Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

For the attention of Hon. LUK Chung-hung, JP
Chairman of LegCo Manpower Committee
and all LegCo Manpower Committee Members

(By post, Fax: 2509 9092 &
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Dear Sir

Penalties of Occupational Safety and Health Legislation

We understand that the captioned matter will be discussed in the Panel of Manpower on 15 December 2020 and would like to share our views on occupational safety and health (OSH) in the electrical and mechanical contracting industry.

OSH is the responsibility of every stakeholder concerned and zero accident is the common goal of our industry. We believe that all stakeholders including employers, consultants, contractors, sub-contractors and workers have a shared responsibility for OSH. Employers place the investment, fix the budget and set the completion date, design from Consultants and Architecture, spell out detail requirements and approve work methods. Contractors manage and execute the project in accordance with contractual conditions with the support of sub-contractors and workers. In our view, an approach to address all stakeholders fairly in the entire supply chain may be more effective to improve OSH in Hong Kong. No single party should bear the bulk of burden in an unbalanced manner. We believe improving OSH with a combination of incentives and penalties may be more effective than the emphasis on penalties.

The proposed directions as put forward to the Panel focus on penalties including the raising of fines and imprisonment. Whilst these initiatives may be seen as actions to be taken by the Administration to address OSH, the proposed initiatives can never be justified and coined as a solution to the issues of OSH in Hong Kong. We do not believe accidents can be reduced by raising fines and imprisoning the duty holders of those offending contractors for OSH.

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Given the last amendment of penalties was enacted in 1994, we agree to review the level of fine. Yet any linkage of the level of fine with turnover may kill the industry instead of bringing fairness to the concerned party in the supply chain. Business turnover may be interpreted as the amount of risk exposure faced by a company because turnover could bring in profit but, in some occasions, result in loss. Any penalty that is linked with turnover will increase the business risk of any company and will surely deter most contractors from undertaking projects. We envisage that some small sized contractors may be forced out of business should turnover linked penalties be introduced. We strongly object to any penalties that are linked with turnover.

We also oppose to the extension of imprisonment provisions of duty holders of any offended contractors. We believe that sentencing to prison should be left to the courts to base on preceding cases to decide. We wish to point out that most duty holders are paid employees who are bound to follow company directions and procedures.

In conclusion, we believe that all stakeholders in the supply chain should be treated fairly. The proposed predominant focus on contractors, without addressing the culpability of employers, consultants, sub-contractors and workers are not equitable.

The proposal to institute fines linked to the turnover of contractors will jeopardise the sustainability of all contractors especially small sized companies. We support to continue the existing provisions for imprisonment of duty holders and respect the sentencing based on preceding cases.

We would like to stress that contractors should not bear the bulk of burden of poor OSH performance. A holistic approach should be taken to evaluate court's decision on the roles of OSH of different stakeholders in the supply chain for OSH. Penalties including fine and imprisonment cannot address the root causes of poor OSH performance. A combination of incentives and penalties may be the way ahead.

Yours faithfully

Gilbert TSANG
President
The Hong Kong Electrical & Mechanical Contractors' Association

cc Legco – The Hon Abraham SHEK Lai-him
Legco – The Hon Ir Dr LO Wai-kwok
Commissioner for Labour Department – Mr CHAN Ka Shun, Carlson, JP
CIC Chairman – Mr K K CHAN, SBS, JP

About The HKEMCA

The HKEMCA has been playing a leading role in the electrical & mechanical contracting sector to deal with all major issues with the Government and all stakeholders. Members of The HKEMCA are sizable companies which collectively undertake about 60% of the total contract value of the entire industry in Hong Kong and are the major holders of electrical & mechanical contracts outside the territory.

The HKEMCA is one of the three Association Members of the Real Estate and Construction Functional Constituency which also consists of The Real Estate Developers Association of Hong Kong and The Hong Kong Construction Association.