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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Legislation Review Team
Occupational Safety and Health Branch
Labour Department
13/F, Harbour Building
38 Pier Road
Hong Kong

Dear Sirs,

Raising Penalties of Occupational Safety and Health Legislation

With reference to your invitation to consultation on 10 December 2020, we would like to offer our comments as follows:

1. Occupational Safety and Health (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/clients, architects/consultants, contractors, sub-contractors and workers have a shared responsibility for OSH. Employers/clients fix the budget and set the completion date; architects/consultants draw out the design, lay down detail requirements and approve work methods; while 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 is essential to improve OSH. We propose to review the entire supply chain with support from the Construction and Design system for all construction projects. Only through equitable allocation of responsibility in the design stage can a project be built safely. No single party should bear the bulk of burden in an unbalanced manner.

2. We believe improving OSH could only be achieved when adopting an approach that consists of incentives, training, qualifying, promotion among others than placing emphasis on penalties. We do not believe accidents can be reduced by raising fines and imprisoning the duty holders of those offending contractors of OSH. We fear that increased penalties may deter new entrants to our industry and in turn raise the already high construction cost of Hong Kong.

3. We support the initiative of realignment of seriousness categorisation of different provisions so as to promote better understanding of the seriousness of offence under the legislation to reduce administration effort and cost during execution.

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4. We disagree with the proposed extension of time-bar for issuing summonses from 6 months to one year. The proposed extension will exert unreasonably heavy burden on contractors in the administration of a frontline workforce of high mobility in the process of investigation and obtaining statements. Considering the high mobility of personnel in our industry, the extension of 6 more months in the pre-summonses stage will encourage late obtaining of evidence which may end up in the loss of track of some targeted frontline personnel. It will in turn defeat the original purpose of extension of time-bar.

5. Given the last amendment of penalties was enacted in 1994, we agree to review the level of fine. Yet the proposed ceiling of $50 million cannot be seen as a review but more like an introduction of a new set of rules camouflaged under the existing legislation. The proposed level of fine may kill the industry instead of improving OSH. We envisage that we will face the challenge of sourcing subcontractors should the proposed increase be adopted as many subcontractors may be forced out of business. We propose to adjust the fine in line with inflation.

6. We hardly understand the rationale of the proposed raising of maximum fine to $50 million when the Labour Department has already learnt and is aware of the strong objection from the business sector of maximum sum at 10% of business turnover (which was proposed to be capped at $6 million) under the previous consultation in 2019. We are even puzzled when the proposed maximum fine of $50 million is set at 16.7 folds of that of Singapore which is of similar size and culture of Hong Kong.

7. We also oppose to the extension of imprisonment provisions to duty holders of any offended contractors. Sentence to prison is already a very effective deterrent to employees of companies who perform their work duties. The threshold of conviction has already been well established in the decades enforced legislation, lengthening of imprisonment is only an extension to those who have supposedly been convicted under the existing legislation. We support to respect the Court to base on preceding cases to decide on conviction and sentencing. Improvement of OSH cannot be seen to be associated with any extension of imprisonment.

We are always standing by to reflect views from the MEP industry. Thank you for your attention.

Yours faithfully,

Gilbert TSANG
President

cc The Hon Ir Dr LO Wai-kwok
The Hon Abraham SHEK Lai-him
The Hon Tony TSE Wai-chuen

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