

HONG KONG SAFETY SNAPSHOTS: THE ROLE OF DIRECTORS

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Legal Briefings - By **Gareth Thomas, Tess Lumsdaine and Sophia Li**

Safety compliance is under increasing scrutiny in Hong Kong. As workplace accident rates remain high, the adequacy of Hong Kong's health and safety laws is under question and greater penalties are called for. At the same time, amendments to the Hong Kong Stock Exchange Environmental, Social and Governance Reporting Guide, make certain safety disclosures mandatory for listed companies. Accordingly, boards will need to take a more active role in ensuring strong safety governance as part of their broader mandate to oversee good governance and manage risk. This article highlights some recent developments and areas to watch.

PERSONAL LIABILITY FOR DIRECTORS AND OFFICERS

As noted in our previous [snapshot](#), employers are required to ensure the safety and health at work of all employees and, the failure to do so may result in criminal liability. Directors and officers must be aware of the company's obligations under safety laws and ensure the company's compliance with them. Otherwise, they may also be found personally liable where the company has committed an offence with their consent, connivance or, attributable to their neglect. Similar offences can be found in other statutes such as the Factories and Industrial Undertakings Ordinance.

PROPOSALS TO INCREASE PENALTIES

Although there have been no reported prosecutions of directors or officers under Hong Kong's safety laws to date, there has been much discussion that current penalties are inadequate and must be increased. It is anticipated that there will be a greater focus on the role of directors and officers in safety incidents, as has occurred in other common law jurisdictions such as England, Australia and New Zealand.

Penalties under Hong Kong safety laws have not been revised for over 20 years and the Government has expressed concern that the current penalties do not appropriately reflect the seriousness of the offences committed by duty holders nor act as an adequate deterrent. The Government has acknowledged that current penalties (the current maximum fine is HK\$500,000) are far lower than in many other common law jurisdictions. The Government has submitted proposals to raise penalties under safety legislation, particularly in cases of extremely high culpability or serious negligence. Preliminary proposals include increasing the maximum fine of the general duty provisions to HK\$6 million or 10% of the turnover of the convicted company, whichever is greater. Ongoing consultation with stakeholders is occurring and the amended legislation is anticipated to be finalised later this year.

SAFETY COMPLIANCE IN FOCUS

Companies in Hong Kong with a poor safety record are already coming under greater scrutiny in the media and from employees, unions and other stakeholders. For example, there have been campaigns against major employers in Hong Kong demanding that they account for workplace accidents and improve workers' safety.

Reputational concern is particularly important for listed companies. In December 2019, the Hong Kong Stock Exchange published amendments to the Listing Rules which implement changes to the Environmental, Social and Governance (**ESG**) Reporting guidance and which will apply to ESG reports for financial years commencing from 1 July 2020 onwards. Under the new requirements, listed companies will need to disclose matters related to workplace accidents, including:

the number and rate of work-related fatalities that have occurred in each of the last three years and the number of days lost due to work injury; and

health and safety measures adopted, and how they are implemented and monitored.

Such information was previously only a recommended area of disclosure whereas, going forward, listed companies will be required to report in detail or provide considered reasons for not disclosing. The Labour Department will also continue to issue work safety alerts giving accounts of workplace accidents.

With greater transparency, we expect that organisations who have poor safety records or inadequate safety measures in place will be subject to increased criticism from stakeholders and in the media.

WHAT SHOULD DIRECTORS DO?

As companies are faced with greater penalties and increased scrutiny of their safety records and response, boards should take a more active role in ensuring their organisations have adequate safety governance in place. As part of this directors should:

obtain up-to-date knowledge of work health and safety matters and ensure they are familiar with the specific hazards and risks in the operations of the company;

ensure that internal policies and processes are adequate for ongoing compliance with safety laws or that remedial measures are implemented promptly;

verify that employees have access to and use appropriate resources and tools to identify and eliminate safety risks at work and are provided with adequate and timely training on safety matters; and

review and analyse the causes of significant incidents to understand any systems or process failures and oversee the implementation of improvements to address such failings.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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