

Law Drafting Competition 2023

Second runner-up

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Topic 2: Homicide Offences

Proposed Bill — English text

A BILL

To

Amend the Offences against the Person Ordinance to codify the common law offence of corporate manslaughter, for the deterrence of unsafe corporate practices and operations and prevention of deaths arising from these practices, which protect the general public and apply universally to cases involving deaths.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Offences against the Person Ordinance (Amendment) Bill 2023.

2. Enactments amended

The enactments specified in Part 2 are amended as set out in that Part.

Part 2

Amendments to Offences against the Person Ordinance (Cap. 212)

3. Section 7A added

After section 7 —

Add

“7A Interpretation on the Offence of Corporate Manslaughter

Interpretation

In sections on the offence of corporate manslaughter —

Activities (活動) include —

- (a) any activities organised or managed under the name of the organisation;
- (b) any goods or services produced by the organisation;
- (c) any implementation of policy or system that undergo the decision-making process of the organisation;
- (d) any everyday operation of the organisation.

Organisations (組織) to which this Ordinance applies are corporations, public authorities and partnerships.

Corporation (法人) means a company or a group of companies authorised to act as a single entity, including the parent company.

Senior management (高層管理人員) means the persons who substantially —

- (a) take part in deciding the management or organisation of the whole or a substantial part of its activities; or
- (b) manage or organise the whole or a substantial part of the activities.

Negligence (疏忽) means the great falling short of the standard of care that a reasonable person would exercise in the circumstances.

Duty of care (謹慎責任) is the relevant duty to take reasonable care owed by the organisation under the law of negligence, including —

- (a) a duty of care owed to the employees or any other person working in the organisation;
- (b) a duty of care owed to participants in the activities managed or organised by the senior management of the organisation;
- (c) a duty of care owed to the buyers of the goods and services provided by the organisation;
- (d) a duty of care owed as an owner of the premise;
- (e) a duty of care owed as any party in a construction or maintenance operation;
- (f) a duty of care owed as a public servant.

Corporate policy (法人政策) means the official guidelines that govern all decision-making in an organisation.

Corporate system (法人系統) means the way an organisation operates, manages and controls its functioning.

Corporate culture (法人文化) means the shared beliefs and values that guide an organisation's management, interaction among personnel or the handling of business and transactions.

Statutory function (法定功能) means any duty imposed by or under any Ordinance conferred on public authorities.”.

4. Section 7AB added

After section 7A —

Add

“7AB The Offence

- (1) It is an offence if the activities managed or organised by the senior management of the organisation cause the death of another person; there is a gross breach of duty of care owed by the organisation to the deceased.”.
- (2) An organisation who commits an offence under this section is liable on conviction on indictment to a fine.”.

5. Section 7AC added

After section 7AB —

Add

“7AC Gross Breach

- (1) *Gross breach* under this section refers to an objective reasonable man standard, the breach of the duty by the defendant is capable of being characterised as gross

negligence and therefore a crime.

(2) **Gross breach** under this section can be construed by combining more than one state of mind.”.

6. Section 7AD added

After section 7AC —

Add

“7AD Negligence

(1) **Negligence** under this section may be evidenced by factors including —

(a) corporate policy;

(b) corporate system;

(c) corporate culture; or

(d) any accepted practice.

(2) **Negligence** may also be evidenced by the organisation’s failure to provide adequate systems or policies for conveying relevant information to relevant persons in the body corporate.”.

7. Section 7AE added

After section 7AD —

Add

“7AE Scope of Corporate

The scope of corporate’s liability extends to the parent company.”.

8. Section 7AF added

After section 7AE —

Add

“7AF No individual liability

- (1) Individual liability is not included under this offence.
- (2) An individual cannot be guilty of aiding, abetting, counselling or procuring, or being a part in, the commission of an offence of corporate manslaughter.”.

9. Section 7AG added

After section 7AF —

Add

“7AG Duty of care owed by public authorities

- (1) No duty of care is owed by a public authority in Schedule 2 in the exercise of —
 - (a) its decision made on matters of public policy;
 - (b) its statutory function; or
 - (c) inspections carried out in the exercise of a statutory function,except when such duty of care falls within Section 7A of this Ordinance.”.

10. Section 7AH added

After section 7AG —

Add

“7AH Exception on law enforcement operations

(1) Any duty of care owed by a law enforcement agency in subsection (4) in respect of

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- (a) law enforcement operations within subsection (2);
 - (b) activities carried on in preparation for, or in direct support of, the law enforcement operations within subsection (2); or
 - (c) training of hazardous nature, or training carried out in a hazardous way, which is needed to be carried out in such regard in order to improve or maintain the effectiveness of the members of the law enforcement authority with respect to the operations within subsection (2);

is not a duty of care within section 7A of this Ordinance.

(2) Law enforcement operations are within this subsection if —

- (a) they are operations related to —
 - (i) an offence under Part IV of the Public Order Ordinance (Cap. 245);
 - (ii) an offence under the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (a translation of “《中華人民共和國香港特別行政區維護國家安全法》”);
 - (iii) an offence relating to endangering national security under an enactment or under the common law; or
 - (iv) an offence under Part 3A and Part 3B of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575);
- (b) the operations are of law-enforcement nature; and

(c) members of the law enforcement agency come under attack, or face the threat of attack or violent resistance, in the course of the operations.

(3) No duty of care is owed by a law enforcement agency in respect of other law enforcement operations, except when such duty of care falls within Section 7A of this Ordinance.

(4) In this section, *law enforcement agency* means —

(a) the Customs and Excise Department;

(b) the Hong Kong Police Force;

(c) the Immigration Department;

(d) the Independent Commission Against Corruption; or

(e) any other department of the Government any officer of which is empowered by any Ordinance to exercise a power of arrest.”.

11. Section 7AI added

After section 7AH —

Add

“7AI Exception on emergencies

(1) In this section, a *specified organisation* within this subsection is —

(a) The Fire Services Department established by section 3 of the Fire Services Ordinance (Cap. 95);

(b) The Auxiliary Medical Service established by section 3 of the Auxiliary Medical Service Ordinance (Cap. 517);

(c) The Civil Aid Service established by section 3 of the Civil Aid Service

Ordinance (Cap. 518);

(d) The Hong Kong St. John Ambulance established by section 3 of the Hong Kong St. John Ambulance Incorporation Ordinance (Cap. 1164);

(e) The Hospital Authority established by section 3 of the Hospital Authority Ordinance (Cap. 113); and

(f) The Government Flying Services established by section 3 of the Government Flying Services Ordinance (Cap. 322).

(2) Any duty of care owed by a specified organisation in subsection (1) in respect of the way which it responds to emergency circumstances in the exercise of its functions is not a relevant duty of care unless it falls within section 7A.

(3) For the purposes of subsection 2, emergency circumstances do not include the way in which —

(a) Medical treatment is carried out, and

(b) Decisions as to the carrying out of medical treatment.”.

12. Section 7AJ added

After section 7AI —

Add

“7AJ Factors for jury to consider

(1) This section applies where —

(a) it is established that an organisation owed a relevant duty of care to a person as a matter of law; and

(b) it falls to the jury to decide whether there was a gross breach of the duty of care.

(2) The jury must consider —

- (a) whether the evidence shows that the organisation’s failure to comply with health and safety legislation relates to the gross breach; and
- (b) how serious that failure was, and;
- (c) how much of a risk of death it posed.

(3) The jury may also consider —

- (a) any evidence that shows that there were culture, policies, systems or accepted practices within the organisations that were likely to have caused the gross breach, or to allowed the tolerance of such gross breach; and
- (b) any health and safety guidance that relates to the gross breach.

(4) This section does not prevent the jury from having regard to any other matters that they consider relevant in reaching their verdict.

(5) In this section, *health and safety guidance* means any publication that is concerned with health and safety matters and is made or issued by an authority responsible for the enforcement of any health and safety legislation under the powers conferred by a statutory provision.”.

13. Section 7AK added

After section 7AJ —

Add

“7AK Power to order conviction to be publicised

(1) Where an organisation is convicted of corporate manslaughter, the court by or before which the offender is convicted may on the conviction exercise the power to order the organisation to publicise the conviction in a specific manner (*a publicity order*), including —

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- (a) the fact that it has been convicted of the offence;
 - (b) the specified particulars of conviction;
 - (c) the amount of any fine imposed; and
 - (d) the terms of the remedial order made, if any.
- (2) When deciding on the terms of a publicity order that it is proposing to make, the court must—
- (a) ascertain the views of the enforcement authority or authorities as it considers appropriate, and
 - (b) have regard to the representations made by the prosecution and on behalf of the organisation.
- (3) When making the publicity order, the court —
- (a) must specify the period within which the requirements in subsection (1) are to be complied with;
 - (b) may require the organisation to report to the enforcement authority whose views have been ascertained under subsection (2) that the requirements of the publicity order have been complied with within the specified period.
- (4) Any organisation which fails to comply with a publicity order in subsection (1) shall be liable —
- (a) on conviction on indictment, to a fine of \$1,000,000; and
 - (b) on summary conviction, to a fine of \$200,000.”.

14. Section 7AL added

After section 7AK —

Add

“7AL Power to order breach to be remedied

- (1) Where an organisation is convicted of corporate manslaughter, the court by or before which the offender is convicted may on the conviction make an order (*a remedial order*) requiring the organisation to take specified steps to remedy —
 - (a) the breach provided in section 7AB (*the relevant breach*);
 - (b) any matter that appears to the court to have resulted from the relevant breach and therefore to have been a cause of the death; and
 - (c) any deficiency related to health and safety matters in the organisation’s policies, systems, cultures or practices that appears to be an indication of the relevant breach to the court.
- (2) The Prosecution, after having consulted the enforcement authority or authorities as it considers appropriate having regard to the nature of the relevant breach, may request the court to make a remedial order.
- (3) The Prosecution must specify the terms of the proposed order in the request. A remedial order must be on such terms as the court considers appropriate after having regard to —
 - (a) any representations made; and
 - (b) any evidence adduced by the Prosecution or that on behalf of the organisation.
- (4) When making the remedial order, the court —
 - (a) must specify the period within which the remedial steps in subsection (1) are to be taken, and
 - (b) may require the organisation to supply evidence that those steps have been taken

to the enforcement authority consulted in subsection (2).

(5) An organisation that fails to comply with a remedial order in subsection (1) is guilty of an offence, and shall be liable —

(a) on conviction on indictment, to a fine of \$1,000,000; and

(b) on summary conviction, to a fine of \$200,000.”.

15. Schedule 2 added

After Schedule Article II of Genocide Convention —

Add

“Schedule 2 List of Public Authority under “Organisation” of Section 7A

- (1) Administration Wing;
- (2) Architectural Services Department;
- (3) Agriculture, Fisheries and Conservation Department;
- (4) Audit Commission;
- (5) Auxiliary Medical Service;
- (6) Buildings Department;
- (7) Census and Statistics Department;
- (8) Civil Aid Service;
- (9) Civil Aviation Department;
- (10) Civil Engineering and Development Department;
- (11) Civil Service Bureau
- (12) Commerce and Economic Development Bureau;
- (13) Companies Registry;

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Clause 15

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- (14) Constitutional and Mainland Affairs Bureau;
 - (15) Correctional Services Department;
 - (16) Culture, Sports and Tourism Bureau;
 - (17) Customs and Excise Department;
 - (18) Department of Justice;
 - (19) Development Bureau;
 - (20) Drainage Services Department;
 - (21) Education Bureau;
 - (22) Efficiency Office;
 - (23) Electrical & Mechanical Services Department;
 - (24) Environment and Ecology Bureau;
 - (25) Environmental Protection Department;
 - (26) Financial Services and the Treasury Bureau;
 - (27) Fire Services Department;
 - (28) Food and Environmental Hygiene Department;
 - (29) Government Flying Service;
 - (30) Government Laboratory;
 - (31) Government Logistics Department;
 - (32) Government Property Agency;
 - (33) Health Bureau;
 - (34) Highways Department;
 - (35) Home Affairs Department;
 - (36) Home and Youth Affairs Bureau;

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- (37) Hong Kong Economic and Trade Offices (Overseas);
 - (38) Hong Kong Monetary Authority;
 - (39) Hong Kong Observatory;
 - (40) Hong Kong Police Force;
 - (41) Housing Bureau;
 - (42) Housing Department;
 - (43) Immigration Department;
 - (44) Independent Commission Against Corruption;
 - (45) Information Services Department;
 - (46) Innovation and Technology Commission;
 - (47) Innovation, Technology and Industry Bureau;
 - (48) Inland Revenue Department;
 - (49) Intellectual Property Department;
 - (50) Invest Hong Kong;
 - (51) Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service;
 - (52) Labour and Welfare Bureau;
 - (53) Labour Department;
 - (54) Lands Department;
 - (55) Land Registry;
 - (56) Legal Aid Department;
 - (57) Leisure and Cultural Services Department;
 - (58) Marine Department;

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- (59) Offices in the Mainland and Taiwan;
 - (60) Office of the Communications Authority;
 - (61) Office of the Government Chief Information Officer;
 - (62) Office of the Government Economist;
 - (63) Office of The Ombudsman;
 - (64) Official Receiver's Office;
 - (65) Planning Department;
 - (66) Post Office;
 - (67) Public Service Commission;
 - (68) Radio Television Hong Kong;
 - (69) Rating and Valuation Department;
 - (70) Registration and Electoral Office;
 - (71) Security Bureau;
 - (72) Social Welfare Department
 - (73) Tourism Commission;
 - (74) Trade and Industry Department;
 - (75) Transport and Logistics Bureau;
 - (76) Transport Department;
 - (77) Treasury;
 - (78) University Grants Committee Secretariat;
 - (79) Water Supplies Department;
 - (80) Working Family and Student Financial Assistance Agency".