

(譯文)

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(中華人民共和國香港特別行政區立法會用箋)

本函檔號：LS/S/31/02-03

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香港花園道
美利大廈12樓1224室
環境運輸及工務局
環境運輸及工務局局長
(經辦人：助理秘書長(教育及訓練)3
林舜源先生)

林先生：

《 建造業工人註冊條例草案 》

關於本人於2004年5月19日收到閣下就上述條例草案提出的
委員會審議階段修正案，謹附上本人意見的手寫本。

助理法律顧問

(黎順和)

連附件

副本致：律政司副首席政府律師
彭士印先生

2004年5月20日



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

來函編號 YOUR REF :
本區編號 OUR REF : LS/S/31/02-03
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Secretary for Environment,
Transport and Works
Environment, Transport and Works Bureau
(Attn: Mr S Y LAM, AS (E&T)3)
Rm 1224, 12/F
Murray Building
Garden Road
Hong Kong

By Fax (2521 9682) and By Post

20 May 2004

Dear Mr LAM

Construction Workers Registration Bill

I refer to the Committee Stage amendments to the above Bill received by me on 19 May 2004 and enclose my comments in manuscript.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

Encl

c.c. Mr Lawrence PENG
Deputy Principal Government Counsel
Department of Justice

17C. 獲授權人員的其他權力

(1) 根據第 17B(1)或(5)條進入某建造工地的獲授權人員可 —

(a) 視察和查看該工地；

(b) 視察和查看任何在該工地發現的機械、設備或物質；

(c) 拍攝該工地或任何在該工地發現的機械、設備或物質的照片；

(d) 要求任何在該工地發現的人 —

(i) 表明他是否註冊建造業工人；及

(ii) (如該人表明他是註冊建造業工人)出示其註冊證；

(e) 就任何在該工地發現而該人員合理地懷疑是正在犯或已經犯本條例所訂罪行的人而言 —

?
in informing
the person of
the person's act or
omission that
constitutes the
offence

(i) 要求該人 —

(A) 向該人員提供該人的姓名、地址及電話號碼及該人員合理地需要的其他個人詳情；及

(B) 向該人員出示根據《人專登記條例》(第 177 章)發出的該人的身分證或該人的其他身分證明文件，以供查閱；及

(ii) 在該人員就該懷疑犯罪事件進行查訊時，於一段合理期間內扣留該人；

(f) 在第(2)款的規限下，要求任何在該工地發現的人提供可讓該人員能夠識辨以下人士的資料 —

(i) 該工地的總承建商；或

(ii) 在該工地親自進行建造工作的人或該人的僱主；

(g) 查看第 59(7)(a)條所提述的紀錄及為所有該等紀錄或該等紀錄的任何部分製備副本；及

(h) 要求該工地的總承建商或任何明顯是該承建商的僱員或代理人的人，向該人員提供為讓該人員能夠執行或行使其職能或權力而合理地需要的協助及設施。

^T (2) 獲授權人員除非合理地相信有關的人有有關的資料，否則不得行使第(1)(f)款下的權力。

(3) 就獲授權人員根據第 17B(1)(d)條檢取、扣留或從某建造工地移走的任何物品而言，該人員 —

(a) 可在一段合理地需要的期間內保留該物品；及

(b) 如合理地相信該物品屬於犯本條例所訂罪行的證據，則他可保留該物品直至就該罪行提起的法律程序已獲聆訊和最終裁定為止。

(4) 獲授權人員 —

(a) 可為製備第 59(7)(a)條所提述的紀錄的副本，將該等紀錄從有關建造工地移走，並在一段合理地需要的期間內保留該等紀錄；及

(b) 如合理地相信該等紀錄屬於犯本條例所訂罪行的證據，則他可將該等紀錄從有關建造工地移走，並保留該等紀錄直至就該罪行提起的法律程序已獲聆訊和最終裁定為止。

是否對該人的責任要求太苛刻

- (a) 符合指明格式；^{「長」}
- (b) 附同訂明費用^{「一」}；^{「及」}
- ^{「(c)」} 在以下期間內送達管理局 —
- (i) (如上訴屬第(1)款所指的針對某項決定提出的上訴)覆核委員會根據第 52(6)條將其就有關的人提出的覆核該項決定的要求所作的建議及作出該建議的理由通知該人後的 2 個星期；或
- (ii) (如上訴屬第(3)款所指的針對某項決定提出的上訴)該項決定作出後的 3 個工作日。

這通知是否影響上訴?

(5) 除非管理局另有決定，否則第(1)款所指的針對某項決定提出的上訴，並不令該項決定暫緩執行。

(6) 管理局須在接獲上訴通知書後，在切實可行範圍內盡快將該通知書的文本一份送交局長。

54. 上訴委員團

(1) 在不抵觸第(2)款的情況下，局長須委任由不少於 49 名成員組成的上訴委員團，其中 —

- (a) 不少於 16 名是 The Hong Kong Institution of Engineers 提名的該會會員；
- (b) 不少於 8 名是香港建築師學會提名的該會會員；
- (c) 不少於 5 名是香港測量師學會提名的該會會員；
- ~~(d) 不少於 5 名由香港建造商會有限公司提名；~~
- ~~(e) 不少於 5 名由 The Hong Kong E&M Contractors' Association Limited 提名；~~
- ~~(f) 不少於 5 名由香港建造業總工會提名；~~
- ~~(g) 不少於 5 名由香港機電業工會聯合會提名。~~

(5) For the purposes of ascertaining whether the provisions of this Ordinance have been or are being complied with, an authorized officer may enter a construction site at all reasonable times.

(6) This section does not prejudice any power of entry and search conferred on police officers under any other law.

17C. Other powers of authorized officers

(1) An authorized officer who has entered a construction site under section 17B(1) or (5) may –

(a) inspect and examine the site;

(b) inspect and examine any plant, equipment or substance found on the site;

(c) take photographs of the site or of any plant, equipment or substance found on the site;

(d) require any person found on the site –

(i) to state whether he is a registered construction worker; and

(ii) if the person states that he is a registered construction worker, to produce his registration card;

(e) in relation to any person found on the site whom the officer reasonably suspects of committing or having committed, an offence under this Ordinance –

(i) on informing the person of the person's act or omission that constitutes the offence, require the person –

(A) to give to the officer the person's name, address and telephone number and such other personal particulars as the officer may reasonably require; and

(B) to produce to the officer for inspection the person's identity card issued under the Registration of Persons Ordinance (Cap. 177) or the person's other documentary evidence of identity; and

(ii) detain the person for a reasonable period while the officer inquires about the suspected commission of the offence;

(f) ^T subject to subsection (2), require any person found on the site to provide information that may enable the officer to identify -

(i) the principal contractor for the site; or

(ii) any person who personally carries out on the site construction work or the employer of such person;

(g) examine the records referred to in section 59(7)(a) and make copies of all or any part of those records; and

(h) require the principal contractor for the site, or any person who is apparently an employee or agent of that contractor, to provide the officer with such assistance and facilities as are reasonably necessary to enable the officer to perform or exercise his functions or powers.

obligation on the person too narrow?

(2) An authorized officer shall not exercise the power under subsection (1)(f)

unless he reasonably believes that the person has the information.

(3) An authorized officer may, in relation to anything that the officer seizes, detains or removes from a construction site under section 17B(1)(d) -

(a) retain the thing for such period as may be reasonably necessary; and

(b) if he reasonably believes that the thing is evidence of the commission of an offence under this Ordinance, retain the

~~(1) Subject to subsection (2), a person who is~~

~~(a) the complainant of a complaint in relation to which the Authority decides under section 50(4) that the matter complained of has not been substantiated; or~~

~~(b) the subject of an order under section 50(6)(a) or a decision under section 38(1), 39(1), 41(1)(a), 42(1), 47(1) or 50(4),~~

~~may appeal against the decision or order by serving the Authority, within 4 weeks after the decision or order, a notice of appeal stating the substance of the matter and reasons for the appeal.~~

(2) A person shall not appeal against a decision under subsection (1) ~~of the Registrar under subsection (1)(b)~~ unless -

(a) the person has requested the Review Committee to review the decision under section 52; and

(b) the Review Committee has notified the person of its recommendation in respect of the request.

(3) A person who is the subject of a decision under section 59(4)(b) may appeal against the decision by serving on the Authority ~~the Authority, within 3 business days after the decision,~~ a notice of appeal stating the substance of the matter and reasons for the appeal.

(4) A notice of appeal shall be -

(a) in the specified form; [↑] and _↓

(b) accompanied by the prescribed fee; [↑] and _↓

[↑] (c) served on the Authority -

(i) in the case of an appeal against a decision under subsection (1), within 2 weeks after the Review Committee notifies the person under section 52(6) of its recommendation, and the reasons for the recommendation, in respect of his request for review of the decision; or _↓

Is the recommendation relevant to the appeal?

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