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Secretary for the 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

21 May 2003

Dear Mr LAM

**Construction Workers Registration Bill ("the Bill")**

I am scrutinising the legal and drafting aspect of the Bill and have the following comments:

Section 2

"Sub-contractor" is defined, in relation to a principal contractor, to mean:

- (a) a person who enters into a contract with the principal contractor to undertake all or any part of the construction work that the principal contractor has undertaken; or
- (b) any other person who enters into a contract with a sub-contractor within the meaning of paragraph (a) to undertake all or any part of the construction work that such a sub-contractor has undertaken.

This definition includes:

- (a) a sub-contractor who has contractual relationship with the principal contractor ("Sub-contractor"); and

- (b) a sub-contractor of the Sub-contractor who has contractual relationship with the Sub-contractor ("Sub-sub-contractor").

If a Sub-sub-contractor further sub-contracts and the sub-sub-sub-contractor have no direct contractual relationship with the principal contractor and the Sub-contractor ("the Sub-sub-sub-contractor"), it seems that the Sub-sub-sub-contractor does not fall within this definition. Please clarify.

#### Section 4

Under section 4, a registered construction worker may personally carry out on a construction site such construction work, which he is otherwise prohibited to do so, if he is under the instruction and supervision of a registered skilled worker or a registered semi-skilled worker for the trade. Is there any restriction on the number of registered construction workers that a registered skilled worker or a registered semi-skilled worker can supervise on a construction site?

#### Section 6

1. Section 6(4) provides that a principal contractor commits an offence if it or its Sub-contractor employs persons other than registered construction workers to carry out construction work on a construction site in contravention of section 3. If there is a few layers of sub-contracting, will a principal contractor commit an offence if persons other than registered construction workers are employed to carry out construction work on a construction site in contravention of section 3 by a Sub-sub-sub-contractor?

2. Section 6 stipulates that a principal contractor commits an offence if it employs persons other than registered construction workers to carry out construction work on a construction site in contravention of section 3 and provides the following defences to the principal contractor under different subsections:

- (a) the defendant proves that he believed, and that it was reasonable for him to believe, the relevant matter set out in section 6(8) is true;
- (b) the defendant proves that he took reasonable steps, and exercised due diligence, to ensure the relevant matter set out in section 6(8); or
- (c) the defendant proves that he had established a proper system to ensure the relevant matter set out in section 6(8) and ensured the effective operation of the system.

Please clarify the difference(s) between these defences and their applications.

Section 46(3)

Section 46(3) requires a registered construction worker employed by a principal contractor for a construction site or a sub-contractor of such a principal contractor to produce his registration card on demand by that principal contractor or its authorised agent. If there is a few layers of sub-contracting, is a registered construction worker employed by a Sub-sub-sub-contractor required to produce his registration card to the principal contractor or its authorised agent under this section?

Section 47(9)

Section 47 provides for cancellation of registration of construction workers. Section 47(9) stipulates that if the person is still a registered construction worker after the cancellation, he shall hand over his registration card to the Registrar for revision of data on the card to reflect the cancellation. Please clarify the meaning of "the cancellation" for "the person who is still a registered construction worker after the cancellation".

It will be appreciated if your reply, in both Chinese and English, could reach us by close of play of 28 May 2003.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser