

ETWB (CR)(W)150/101 (2003) Pt.9

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By Post and by Fax (2877 5029)

Ms. Monna LAI
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms. LAI,

Construction Workers Registration Bill (“the Bill”)

Your letter dated 21 May 2003 refers.

Our response in the same order of the points raised by you is as follows:

Clause 2

Our policy intention is not to limit the definition of sub-contractor to the first two layers of sub-contractors. We have consulted the Law Drafter and he would work out a revised definition so as to include the sub-sub-contractor, sub-sub-sub-contractor and so on.

Clause 4

Our policy intention is not to restrict the number of registered construction workers that a registered skilled worker or a registered semi-skilled worker can supervise on a construction site.

The skill level of workers required to accomplish a given construction task depends on the work nature. For some construction works such as landslip preventive works and

drainage maintenance works etc., the majority of workers required are normally general workers and hence, a small number of skilled workers may lead a large team of general workers to perform the work.

Due to the wide variety of trades, nature of works and site conditions, there is no hard and fast rule as to the number of general workers that could be effectively supervised by a skilled or semi-skilled worker. It is for the contractor concerned to determine the right composition of the work team to complete the work on time, economically and meet the specifications and the requirements of the client. If workers not of the appropriate skill levels are intentionally employed to carry out the construction work, it is quite likely that the standard and the workmanship of the end product will fail to meet the requirements and be rejected by the client, resulting in rework and financial losses.

Clause 6

For your paragraph 1, please refer to our reply under Clause 2.

For your paragraph 2(a), clause 6(3) provides for a defence to a person charged under clause 6(2) for employing unregistered worker to personally carry out construction work on a construction site. A principal contractor will not be charged under clause 6(2) for any person employed by a sub-contractor (but not by the principal contractor). Thus, as far as a principal contractor is concerned, clause 6(3) has limited application. The test for an employer's defence is: whether the employer believed, and whether it was reasonable for the employer to believe, that the worker has the relevant registration. While it is reasonable to expect an employer to check a worker's registration before employing him, one does not expect a principal contractor to do so in relation to a worker to be employed by the principal contractor's sub-contractor.

For your paragraph 2(b), clause 6(5) provides for a defence for a principal contractor charged under clause 6(4). While one does not expect a principal contractor to check the registration of a worker to be employed by the principal contractor's sub-contractor, it is reasonable to ask the principal contractor to take reasonable steps, and exercise due diligence, to ensure the worker on the site to have the relevant registration.

For your paragraph 2(c), a principal contractor can cite various things that he has done to prove that he has taken reasonable steps, and exercised due diligence, to ensure the worker on the site to have the relevant registration. But if he proves that he has established a proper system to ensure the worker has the relevant registration and ensured the effective operation of the system, he has proved that he has taken reasonable steps, and exercised due diligence, to ensure the worker on the site to have the relevant registration. Clause 6(7) goes on to say a principal contractor has not established such a proper system unless he has done certain things.

Clause 46(3)

Please refer to our reply under clause 2.

Clause 47(9)

If a person is registered as a registered skilled worker for two trades, the person is still a registered skilled worker for the remaining trade if his registration for one of the trades was cancelled by the Construction Workers Registration Authority. Hence, he shall hand over his registration card to the Registrar for revision of data on the card to reflect the cancellation of one of the trades.

Yours sincerely,

(S.Y. LAM)

for Secretary for the Environment, Transport and Works

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