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By Fax (2544 3497) and By Post

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Dear Mr Tso,

Proposed Resolution under Section 7 of Cap. 59

I refer to the Administration's proposed amendments under the above resolution which is to be moved by the Secretary for Economic Development and Labour. With regard to the drafting and legal aspects of the proposed amendments, I wonder if the Administration could clarify the following questions:-

Regulation 33

New regulation 33 provides that "[t]he contractor responsible for a hoist, which is operated by means of a winch, and any contractor who has direct control over any construction work which involves the use of *the hoist* shall ensure ...".

Since the object "a hoist" is qualified by the phrase "which is operated by means of a winch", do you think that the reference of "the hoist" should be replaced by "such hoist" to improve clarity of the provision? Similar examples are also found in regulations 35 and 39.

Regulation 38A

The existing regulation 38A(3) provides that "the contractor responsible for any construction site shall *take suitable and adequate steps* to ensure that, so far as is reasonably practicable, no person gains access to any unsafe place on the site". Similar duty is imposed on other contractors in the proposed

regulation 38AA(4) in that "[a]ny contractor who has direct control over any construction work shall ensure that, so far as is reasonably practicable, no person gains access to any unsafe place which is within the place of work where the construction work is being carried out".

Does the phrase "take suitable and adequate steps to" make any difference in the nature of the duty of a contractor and that of the duty of the contractor who has direct control over any construction work?

Regulation 38D

New regulation 38D provides that "[t]he contractor responsible for any scaffold, ladder or other means of support *referred to in regulation 38C* and any other contractor who has direct control over any work which involves the use of the scaffold, ladder, or other means of support shall ...".

I guess the intention of the proposed amendments is to hold any other contractor liable for the same duty of the contractor. If this is the case, do you think that the qualifier "referred to in regulation 38C" should be added after the phrase "or other means of support" when it appears the second time?

Regulation 38F

Under the proposed new arrangements, a scaffold inspection report shall be made and delivered forthwith by the competent person who prepares the report to the contractors concerned (regulation 38F(3)). Under regulation 38F(4), the contractors to whom a report is delivered shall at all times keep the report or a copy thereof on the construction site on which the scaffold to which the report relates is located and shall at all reasonable times make that report or copy available for inspection.

Please clarify whether it is a joint duty of all contractors concerned to arrange for the preparation of one single inspection report, or it is the duty of each contractor to arrange for the preparation of his own report.

Is it a joint duty for all the contractors concerned to keep one copy of the report on the construction site or, is it a separate and distinct duty for each contractor to keep a copy of the report on the construction site?

Please also clarify the duties of respective contractors in the similar situation where report(s) on the safety of excavations and earthworking operations is(are) required under regulation 39.

Regulations 40 and 41

Under new regulation 40(1), "[t]he contractor responsible for any construction site where there is an excavation, shaft, pit, or opening *in the ground into or down the side of which a workman or other person lawfully on the site is liable to fall a distance of more than 2 metres* and any contractor who has direct control over the excavation or any construction work in the shaft, pit or opening", shall so far as practicable ensure that either a suitable barrier is erected or the excavation, shaft, pit or opening is securely covered.

Does the phrase "*in the ground into or down the side of which a workman or other person lawfully on the site is liable to fall a distance of more than 2 metres*" which qualifies "any construction site" refers to the shaft, pit or opening which is the responsibility of a contractor, or, to the responsibility of both a contractor and any other contractor? Please also consider the issue in the light of the similar provisions of regulation 41A.

It is noted that new regulation 41 provides that where the statutory duty of a contractor responsible for any construction site at which there is an excavation, shaft, pit or opening in the ground (which, unlike regulation 40(1), is not confined to excavation, shaft, pit, or opening in the ground into or down the side of which a workman or other person lawfully on the site is liable to fall a distance of more than 2 metres), the same drafting formula in regulation 40(1) is adopted for a contractor who has direct control over the excavation or any construction work in the shaft, pit or opening.

Regulation 45

New regulation 45(1) and regulation 45(2) provide that "[t]he contractor responsible for *any mechanical equipment* and any contractor who has direct control over any construction work which involves the use of *the equipment* shall ensure that ...". In order to avoid ambiguity, do you think that "the equipment" should be replaced by "such mechanical equipment" or "such equipment"? It is noted that the Chinese text also makes specific reference to "mechanical equipment" in the case of other contractors.

You may recall that at the Sub-committee meeting held on 16 July 2003, Hon. Cyd Ho has rightly pointed that the duties of respective contractors (i.e. main contractor and sub-contractors) are sometimes provided in separate paragraphs and sometimes in the same paragraphs of the new regulations. In view of the above drafting difficulties that we have identified, I wonder if the Administration would review the proposed amendments and consider setting out the duties of respective contractors in separate paragraphs?

I would be most grateful if you could let me have a reply in bilingual form at your earliest convenience.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

c.c. Legal Adviser
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