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LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2868 9159)

15 February 2016

Mr CHAN Yuen Tak, Alex
Prin AS for Security (B)
Security Bureau
9/F, East Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Mr CHAN,

Fire Services (Amendment) Bill 2015

We are scrutinizing the legal and drafting aspects of the captioned Bill and should be grateful if you could clarify the following matters:-

Clause 5 – Power to make regulations

It is noted that the Bill seeks to amend the Fire Services Ordinance (Cap. 95) to expand the scope of Cap. 95 to provide for registered fire engineers (RFEs) and a scheme for the fire safety risk assessment and certification on compliance with fire safety requirements by RFEs for prescribed premises (RFE scheme). For the implementation of the RFE scheme, it is proposed in clause 5 of the Bill to empower the Chief Executive in Council (CE in C) to make regulations, amongst others, for the registration, de-registration and duties of RFEs; the establishment, powers and procedure of a registration committee; the establishment of an interview board panel, a disciplinary board panel and an appeal board panel, as well as the appointment, powers and procedure of interview boards, disciplinary boards and appeal boards in relation to RFEs; the acts or omissions that constitute a disciplinary offence on the part of an RFE; the grounds on which appeals may be lodged in relation to the registration of persons as RFEs as well as in relation to RFEs.

What are the justifications for providing for the regulation of the above matters which are pertinent to the RFE scheme by way of subsidiary legislation instead of under the primary legislation of Cap. 95?

Clause 7 – Regulation 7 of the Fire Service (Installations and Equipment) Regulations (Cap. 95B) (maintenance or repair of fire service installations or equipment)

Under regulation 7(1) of Cap. 95B, no person other than a fire service installation contractor registered under the Fire Service (Installation Contractors) Regulations (Cap. 95A) (registered contractor) shall maintain, inspect or repair any fire service installation or equipment which is installed in any premises. Regulation 9(1) of Cap. 95B provides that a registered contractor who installs, maintains, repairs or inspects any fire service installation or equipment in any premises is required to, within 14 days after completion of the work, issue to the person on whose instructions the work was undertaken a certificate (which shall state information including the nature of the work carried out and whether or not the fire service installation or equipment is in efficient working order) and forward a copy thereof to the Director of Fire Services (DFS). Any registered contractor who fails to do so or issues or forwards a certificate or a copy thereof which is false or misleading in a material particular commits an offence and is liable on conviction to a fine at level 5 (i.e. \$50,000).

It is proposed in clause 7 of the Bill to amend regulation 7 of Cap. 95B to enable an RFE (fire service installation) to inspect and test any fire service installation or equipment installed in prescribed premises (proposed regulation 7(3)) and enable DFS or a person authorized by DFS in writing to inspect and test any fire service installation or equipment installed in any premises for checking its safety and the efficiency of its working order (proposed regulation 7(4)).

- (a) Will a similar mechanism for the issue of certificates by registered contractors as provided in regulation 9 of Cap. 95B be applicable to an RFE (fire service installation) who has inspected and tested any fire service installation or equipment installed in prescribed premises under the proposed regulation 7(3) of Cap. 95B? If so, please consider whether amendments should be made to Cap. 95B to that effect or such mechanism for the issue of certificates by RFEs (fire service installation) be spelt out in the regulations to be made by CE in C.

- (b) Please clarify whether a person authorized by DFS in writing to inspect and test any fire service installation or equipment installed in any premises for checking its safety and the efficiency of its working order under the proposed regulation 7(4) would include an RFE (fire service installation).

Licensing process

Pursuant to paragraph 6 of the Legislative Council Brief on the captioned Bill (File Reference: SBCR 1/2361/14) issued on 2 December 2015, the Administration proposed to implement the RFE scheme in the licensing process for the prescribed premises. Please clarify whether the said licensing process includes applications for renewal and transfer of licences (apart from the initial grant or issue of the licences) in which the licence applicants may engage RFEs to provide the services of fire safety risk assessment and certification to licence applicants.

Consequential amendments

Please consider whether related and consequential amendments should be made to the following provisions to enable the licensing authorities or the licence applicants of the prescribed premises to accept the fire safety requirements issued by the relevant class of RFEs or to enable RFEs to conduct the compliance inspection in view of the implementation of the RFE scheme :-

- (i) paragraphs 1(c), 2(1), 2(2), 2(3)(c), 2(4) and 2(5) of Schedule 1 to the Karaoke Establishments (Licensing) Regulation (Cap. 573A);
- (ii) section 30 of the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613A);
- (iii) section 29 of the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A);
- (iv) section 7(1)(g) of the Places of Public Entertainment Ordinance (Cap. 172);
- (v) regulations 53 and 169 of the Places of Public Entertainment Regulations (Cap. 172A);

- (vi) sections 100 and 101 of the Public Health and Municipal Services Ordinance (Cap. 132);
- (vii) sections 4(1)(c)(i), 4(1)(g)(v), 4(1)(j) of the Ventilation of Scheduled Premises Regulation (Cap. 132CE); and
- (viii) regulations 4(1)(c)(i), 4(1)(e)(iv), 4(1)(h), 6 and 7(b) of the Building (Ventilating Systems) Regulations (Cap. 123J).

Offence

Please clarify whether a person, who without reasonable excuse, resists, obstructs or delays the RFEs acting in the discharge of his duties conferred by the regulations to be made would commit an offence, and if so, what would be the level of penalties.

I should appreciate your reply in both English and Chinese **by 25 February 2016.**

Yours sincerely,


(Vanessa CHENG)
Assistant Legal Adviser

c.c. DoJ (Attn.: Ms Rayne CHAI (SALD (Atg)) (By Fax: 3918 4613))
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