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9 May 2017

Mr Vitus NG  
Prin AS (Works)3  
Development Bureau  
15/F, West Wing  
Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Mr NG,

**Waterworks (Amendment) Bill 2017**

We are scrutinizing the legal and drafting aspects of the Bill.

Please find attached a schedule listing our observations on the Bill.  
We would be grateful if you could let us have your response in bilingual form as soon as possible.

Yours sincerely,

(Wendy KAN)  
Assistant Legal Adviser

Encl.

c.c. DoJ (Attn: Miss Selina LAU and Miss Wendy HO) (By Fax: 3918 4613)  
Clerk to Bills Committee  
LA  
SALA3

## Schedule

### Part I: Legal Issues

#### Clause 6(4) of the Bill

1. It is an offence under the proposed section 14(4) of the Waterworks Ordinance (Cap. 102) for contravening the requirements relating to certain works under the current section 14(3) of Cap. 102. Under the new section 14(5)(a) of Cap. 102, a statutory defence for the offence is provided to both the person who instructs and supervises another person in carrying out the works ("Instructing Supervisor") and the relevant licensed plumber. The scope of that statutory defence is, however, subject to the new section 14(6) of Cap. 102 which only applies with respect to the Instructing Supervisor but not the relevant licensed plumber. Please explain the reason(s) for excluding the relevant licensed plumber in the new section 14(6) of Cap. 102.
2. Under the new section 14(6) of Cap. 102, the Instructing Supervisor must not be regarded as having taken all reasonable steps if the Instructing Supervisor did not, having regard to the prescribed matters, inspect the carrying out of the works as often as was reasonable to ensure that the works were carried out in compliance with Cap. 102. Please clarify the reason(s) for making compliance with Cap. 102 as the threshold, instead of compliance with section 14(3) of Cap. 102, as the offence in question deals with contravention of section 14(3) of Cap. 102 only.

#### Clause 7(3) of the Bill

3. Under the existing section 15(1) of Cap. 102, fire service or inside service may only be constructed, installed, maintained, altered, repaired or removed by prescribed persons. The current section 15(2) of Cap. 102 provides for certain exceptions, namely, alterations or repairs to a fire service or inside service which are considered by the Water Authority to be of a minor nature and the rewashing of a tap. Please explain the reason(s) for repealing "rewashing of a tap" from the current section 15(2) of Cap. 102.
4. To assist compliance with the proposed section 15(1) of Cap. 102 after the provision and the proposed section 15(2) of Cap. 102 come into operation, would the Water Authority compile a list, to be updated from time to time and be made available to the public, of the minor alterations or repairs for the purposes of the proposed section 15(2) of Cap. 102?

Clause 7(4) of the Bill

5. Under the current section 15(3)(b) of Cap. 102, a person who employs or permits a person other than any of the prescribed persons to construct, install, maintain, alter, repair or remove a fire service or inside service commits an offence. However, if the works in question are those referred to in the current section 15(2) of Cap. 102 (including certain works of a minor nature), the offence will not be committed. Under the proposed regime in the Bill, the offence, as provided for in the new section 15(4) of Cap. 102, will be committed even if the works in question are equally those works of a minor nature under the proposed section 15(2) of Cap. 102. Please explain the reason(s) for proposing such a change.

Clauses 7 and 8 of the Bill

6. Pursuant to the proposed section 15(1) of Cap. 102, a person ("Worker") may carry out specified plumbing works under the instruction and supervision of a licensed plumber or registered plumbing worker. In order to avoid committing the offence under the proposed section 15(3) of Cap. 102, please explain how a Worker could ascertain whether the Worker's Instructing Supervisor is in fact a licensed plumber or registered plumbing worker during the relevant time.
7. Under the new section 15A(4) of Cap. 102, a person commits an offence if the person, in purported compliance with the relevant requirement, makes or provides any statement or information that is false or misleading in a material particular. A statutory defence is provided under the new section 15A(6) of Cap. 102 for a person charged with the offence if the person establishes that at the time of the alleged offence, the person did not know, had no reason to suspect, and could not with reasonable diligence have ascertained, that statement or information concerned was false or misleading in a material particular.

Please illustrate, by providing a few examples, the matters required to be proved by the Worker charged with the offence in order to establish that the Worker "had no reason to suspect, and could not with reasonable diligence have ascertained". Please also consider a situation where a Worker made or provided such a false or misleading statement or information based on an allegation made by the Instructing Supervisor that the Instructing Supervisor was a licensed plumber or registered plumbing worker with the plumber's

licence or registration card produced which was later found out to be forged or without the plumber's licence or registration card produced and claimed that the licence or card had expired or had been lost or destroyed pending renewal or replacement. Could the Worker still establish, for the defence, that at the time of the alleged offence the Worker "had no reason to suspect, and could not with reasonable diligence have ascertained" that the statement or information concerned was false or misleading in a material particular?

#### Clause 8 of the Bill

8. Under the new section 15A(2)(b), (d) and (e) of Cap. 102, a person found on the premises may be required by an authorized officer to answer questions or provide information as prescribed. It is an offence under the new section 15A(3) of Cap. 102 for failure to comply with such a requirement. Please explain whether the new section 15A(2)(b), (d) and (e) of Cap. 102 infringes the privilege against self-incrimination. Further, would the answers or information given by the person be used by the prosecution against him or her subsequently in criminal proceedings under Cap. 102? Please also clarify whether the exercise of the right to silence would be regarded as a reasonable excuse for failing to comply with such a requirement for the purposes of the defence under the new section 15A(5) of Cap. 102.
9. Pursuant to the new section 15A(2)(f) of Cap. 102, if the authorized officer reasonably suspects that a person found on the premises is contravening or has contravened the proposed section 15 of Cap. 102, the officer has to inform, before exercising the prescribed powers, the person of the act or omission that may constitute the suspected contravention. However, in the case of the new section 15A(2)(b), (d) and (e) of Cap. 102, the authorized officer is not required to do so before exercising the powers to require the person to answer questions or provide information as prescribed even if the officer has the same suspicion. Please explain the rationale for the disparity between these provisions.

#### Clause 12 of the Bill

10. Under section 3A of, and Schedule 1A to, the Construction Workers Registration Ordinance (Cap. 583), a registered skilled worker for the fire service mechanic (master) trade division or the fire service mechanical fitter trade division (collectively referred to as "FSTD") may personally carry out on a construction site construction work that involves any required skills of the plumber trade division

involving metal pipe work. Under the proposed section 15 of, and section 2 of Parts 1 and 2 of the new Schedule to, Cap. 102, a registered skilled worker for either of FSTD is not permitted to carry out the prescribed works on an inside service. However, the prescribed works on inside service appear to involve such required skills of the plumber trade division. Please clarify whether there is any difference in the approach under Cap. 583 and the proposed regime of the Bill in respect of the prescribed works on inside service to be carried out by a registered skilled worker for either of FSTD.

## **Part II: Drafting Issues**

### Clause 4 of the Bill

11. Under the proposed section 10(f) of Cap. 102, the Water Authority may disconnect a fire service or inside service if the Water Authority, or any person authorized by him in writing, is obstructed from entering the premises or carrying out any function under section 12 or 15A of Cap. 102. Given that the new section 15A of Cap. 102 confers certain powers, not functions, to the Water Authority or an authorized public officer, please amend the proposed section 10(f) of Cap. 102 to reflect the provisions under the new section 15A of Cap. 102.

### Clause 6(4) of the Bill

12. The new section 14(6) of Cap. 102 prescribes a scenario under which an Instructing Supervisor must not be regarded as having taken all reasonable steps for the purposes of the defence of having taken all reasonable steps under the new section 14(5)(a) of Cap. 102. The new section 14(6) of Cap. 102 therefore "limits" the new section 14(5)(a) of Cap. 102, instead of "without limiting" the new section 14(5)(a) of Cap. 102 as it is presently stated. Please amend the new section 14(6) of Cap. 102. Should the provision contained in the new section be recast as two propositions such that an Instructing Supervisor must not be regarded as having taken all reasonable steps if the prescribed conditions are met for the purposes of the new section 14(5)(a) of Cap. 102, but this does not restrict what may otherwise be regarded as having taken all reasonable steps under the new section 14(5)(a) of Cap. 102?

Clause 9 of the Bill

13. Please confirm whether it is the policy intention that the new section 18A of Cap. 102 only applies in respect of the statutory defence provided for the offences under Part III of Cap. 102. If so, please amend the new section 18A of Cap. 102 to reflect such policy intention.

Clause 12 of the Bill

14. The proposed regulation 26(2A)(b) of the Waterworks Regulations (Cap. 102A) allows a licensed plumber, registered plumbing worker or registered plumbing worker (provisional) to install a meter on a fire service or inside service in the manner specified by the Water Authority. It is noted that the reference to "the installation of a meter" is only contained in section 1 of both Parts 1 and 2 of the new Schedule to Cap. 102 that deals with a fire service, but not in section 2 of both Parts 1 and 2 of the new Schedule to Cap. 102 that deals with an inside service. Should such reference be made in section 2 of both Parts 1 and 2 of the new Schedule to Cap. 102 as well?