

New Occupational Safety and Health Law on the Way

The recently gazetted Occupational Safety and Health bill is making steady progress through the bills committee in the Legislative Council and is expected to be passed in March or April this year. This J. A. McInnis takes a look at the bill and some of its more notable features.

The stated purposes of the new Occupational Safety and Health bill pertain primarily to *improving* the overall safety and health of employees at work as well as their working environments. Up to now these issues have been governed primarily by the Factories and Industrial Undertakings (“FIU”) Ordinance and to a lesser degree the Occupiers Liability Ordinance. The scope of the FIU Ordinance is limited in nature. An estimate of the number of employees covered by it would be approximately 800,000. This leaves approximately 2 million employees unprotected. The result was political pressure to extend the legislation to non-industrial sectors. This, then, is one further purpose of the new bill: to dramatically increase coverage of employees in these sectors. As such, and while there are some very limited exceptions to the application of the bill, employers should assume that it will apply to them as a general rule.

A New Responsibility for Safety and Health

Part II of the Bill imposes a new responsibility on employers for safety and health at work. The responsibility extends to providing and maintaining: safe plant and systems of work; a safe environment; and all information, instructions and training which are necessary to ensure these obligations. Having imposed this responsibility though the bill then stops short of including a sanction for failing to comply with it. This is a very odd situation and suggests that the bill was perhaps “negotiated” more so than drafted, and that local employers may have had a larger say on this issue than employers have had in the other jurisdictions which were considered in preparing the bill.

Enforcement

The bill does include some general enforcement provisions in part III though. Thus an *improvement notice* may be served on an employer stating that either the bill (once in force) or the FIU Ordinance itself is being breached. A failure to comply with the *improvement notice* is itself an offence and carries the possibility of both a \$200,000. fine as well as 12 months imprisonment. Apart from the *improvement notice* a *suspension notice* may also be served on an employer stating that either the activities or else the condition or use of plant or equipment on the premises amounts to an imminent risk of death or serious bodily injury. Contravention of the *suspension notice* carries a fine of up to \$500,000. as well as the 12 months imprisonment. Subject to certain defences the bill also significantly imposes liabilities on officers of corporations and partners of firms. In addition to these offenses part VI also creates a number of less serious miscellaneous offenses.

Workplace Accidents and Occupational Diseases

Part IV imposes new obligations on persons responsible for the workplace to notify certain workplace accidents and occupational diseases to occupational safety officers designated under the legislation. The “person responsible” may be either the employer or the occupier of the premises depending upon the case. Similar obligations are imposed regarding dangerous occurrences that happen in the work place as well. Schedule 1 sets out a list of such dangerous occurrences while schedule 2 lists the notifiable occupational diseases.

Unfinished Business

The sanctions for breach of general responsibilities in part II of the bill will make an important contribution to the safety and health of Hong Kong employees. However, there is still much unfinished business to complete. It is understood that eventually five sets of regulations will be passed once the bill is enacted. Mr. H.K. Mak, a Chief Factory Inspector with the Labour Department and intimately involved with drafting the legislation, has said that the regulations will generally address: matters such as guarding, fencing and fire precautions; display screens; equipment and plant; personal protective equipment; and dangerous substances. In addition, with performance related standards so widespread, the use of approved codes of practice is expressly endorsed in part VIII of the bill. These codes, as well as the regulations themselves, will effectively set the standards that govern, whether or not they are strictly binding. Although the bill is expected to be passed soon

there is some debate going on as to when the legislation should be brought into force. At first it was thought that it would not occur for at least a year, but lately there appears to be more of a consensus developing to bring the legislation into force immediately and delay the passage of the regulations. At present this seems the most likely scenario. In fact it seems the regulations will not only be delayed but brought out in successive stages with delays as long as six months in between each stage or general set of regulations. If these delays occur then it could be too long given that employers new compliance measures would best be implemented with a prior knowledge of the regulations as well. Employers should watch this space.

J.A. McInnis teaches law at the Faculty of Law at the University of Hong Kong and is the author of Hong Kong Construction Law.

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APPOINTMENTS

New General Sales Manager

Colin Dane, General Manager of Ameron (Hong Kong) Limited, has announced the promotion of Philip Tong Kwun-Leung to the position of General Sales Manager. Ameron is a multinational manufacturer of engineered protective coatings for the construction, industrial, chemical and energy markets. Its presence in Southeast Asia is formidable, with one or more joint venture manufacturing and marketing agreements throughout the region.



PHILIP TONG KWUN-LEUNG

Having joined Ameron in 1993, 37-year old Tong was initially employed in a technical capacity before working with architects, consultants and developers. Some of the more prestigious projects in which Tong has been involved include the HACTL facility, the Repulse Bay Hotel, the

aviation fuel lines and tank linings for the new Chek Lap Kok airport and a number of MTRC contracts. As General Manager Tong is now responsible for marketing Ameron Products in Hong Kong, Macau and China.

Computer Graphics Head

Austin Gardner has been appointed Managing Director of ACN Digital Motion Ltd., a new leaf under the ACN Group. Austin brings with him artistic creativity together with technical ability that is essential in this up and coming industry.

Gardner came to Asia in 1993 for an assignment on the Tsing Ma Bridge. He was also the first computer animator to produce a scale 3D landscape model of an 18-hole golf course for the Shenzhen golf course and country club house, as well as the corporate video presentation and projective trajectory analysis.



AUSTIN GARDNER

Gardner formed ACN Digital Motion Ltd as he realised the demand for computer graphics and 3D Visualisation in the field of creative marketing; even before the completion of a particular project, 3D Visualisation can help create photo realistic images for the "complete" product.

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