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**7.3 Suggestion : All applications for renewal of registration shall be received by the Director not earlier than 4 months and not later than 30 days prior to the date of expiry of the relevant registration. This is to afford time for processing the renewal application which includes verifying the registration particulars and inspection of workshops.**

**7.4 If no application for renewal is received upon expiry of the aforesaid period, the Director of Fire Services shall remove the name of such FSIC from the register upon expiry of his registration.**

**7.5 If an application for renewal is received after the expiry of the period mentioned in para. 7.3 but before the expiry date of his registration, application for renewal will still be accepted. However, the FSIC concerned will not be permitted to undertake or complete FSI work after the expiry date of his registration until his renewal application is approved by FSD.**

**7.6 If an application for renewal is received after expiry of the registration, the application will be treated as a new application for registration as FSIC.**

**7.7 Suggestion : A prescribed fee is suggested to be charged for renewal of registration.**

**8. Legislative Amendments to the Existing Fire Service (Installation Contractors) Regulations**

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**8. Legislative Amendments to the Existing Fire Service (Installation Contractors) Regulations**

To reflect the proposed new classification scheme and matters discussed above, and to enhance the monitoring and control of FSIC, the two existing regulations

relating to FSIC (copy enclosed as **Appendix IV and V**) will be reviewed in this exercise. Proposed amendments to FS(IC) Reg. are as follows:

8.1 Qualified Persons (QP) shall be full time employees (under continuous contract\*) of the FSIC

8.1.1 Under the existing regulations, a qualified person of an FSIC may at the same time be employed by another contractor subject to the approval of the Director (r. 3(3) & (5) refers). With a view to ensuring availability and involvement of QPs in FSI works, the following is suggested:

**Suggestion :** It is suggested that a qualified person holding the required registration qualifications of an FSIC shall be working full time (under continuous contract) for the contractor, and can only work for one registered contractor.

\* Legal advice may need to be obtained on whether the use of "continuous contract" as defined in the Employment Ordinance, Cap. 57 is suitable for our purpose.

8.1.2 However, this does not limit a single registered contractor to register by virtue of the qualification of the same employee for more than one class of classification as long as such employee possesses the required qualification of the class under application.

8.2 Authorized Signatory in relation to the Signing and Issuing of Certificates under the Fire Service (Installation Contractors) Regulations (Regulation 3A), and the Fire Service (Installations and Equipment) Regulations (Regulation 9(2A) and 9(3)).

8.2.1 During the previous Working Group meetings, there was a suggestion that that Certificate of Fire Service Installation and Equipment (FS 251) should be signed by the QP holding the engineering qualifications and then countersigned by the contractor concerned. Criminal liability would be fixed on the contractor as it was only the contractor who could undertake FSI works. This was

to ensure that the certificate could be signed by the most qualified person while control could be exerted on such person by the contractor. Legal advice on such arrangement had been sought. According to legal advice, the proposal was considered "unreasonable or bad law if the authorized signatory incurs criminal liability by countersigning a false or misleading certificate while the qualified person who signs it may escape criminal liability".

8.2.2 **Suggestion** : In view of the legal advice, it is proposed to amend Reg. 3A, FS(IC)Reg. such that all certificates of an FSIC (other than Class 3 FSIC) are to be signed only by the authorized signatory who, as distinct from the existing arrangement, shall be the qualified person holding the engineering qualification (i.e. the RPE or the degree holder). This is to ensure the most competent and qualified person to sign an FS 251.

8.2.3 Upon a certificate is found to be false or misleading in material particulars, prosecution will be instituted against the FSIC for issuing such certificate. The existing due diligence defence for the FSIC under reg. 9(3)(b), FS(IE)Reg. will remain.

8.2.4 The existing reg. 9(2A) will be retained so that the authorized signatory of the FSIC commits an offence if he signs a certificate which is false or misleading in material particulars.

8.2.5 For Class 3 FSIC, all certificates are to be signed by the registered contractor personally.

8.2.6 In view of the significance of FS 251 in terms of fire safety, the following is suggested :

**Suggestion** : It is suggested that other than the authorized signatory of an FSIC, any unauthorized person who signs an FS 251 shall be guilty of an offence, irrespective of whether the certificate is false or misleading. A fine at Level 5 (\$50,000) under the Criminal Procedure Ordinance, Cap. 221 is suggested.



**Suggestion** : Other than the duties specified in Appendix I, a provision is suggested to empower the Director to authorize a particular class of FSIC to handle a specified type of fire service installation or prescribed fire safety measure / work.

8.3.3 **Suggestion** : A new provision is suggested such that the Director shall issue a certificate of registration to the FSIC upon initial or renewal of registration.

8.3.4 **Suggestion** : In order to enable the Director in obtaining relevant documents for processing application for registration or renewal of registration, it is proposed that the Director may require the applicant to submit relevant information and documentary evidence to support a claim to qualifications, competence and experience. Failing which the Director may discontinue the processing of such application.

8.3.5 **Suggestion** : It is suggested that the FSIC shall display in a prominent place at his principal place of business the original copy of the Certificate of Registration and a copy of this Certificate issued by the Director at each of his workshop. In case the workshop is also used as the registered address or principal place of business of the FSIC, the original copy of the certificate will suffice.

8.3.6 **Suggestion** : It is suggested that if the registration is suspended or removed from the register or the FSIC ceases to conduct business, the FSIC shall return his registration certificate and all issued copies to the Director within 1 week after the date shown on the notification of suspension or removal. Failing which shall be guilty of an offence and a fine at Level 3 (\$10,000) is suggested.

8.3.7 A comment was received from an existing Class 3 FSIC that there should be clear provision in the regulations that Class 3 FSIC shall carry out the inspection, maintenance and repair work of portable equipment personally. Besides, he considered that there might be

possible conflict of laws in that "Installation" was omitted in the duties of Class 3 FSIC under regulation 4(1).

8.3.8 Under the existing regulations, registration of a Class 3 FSIC is issued to a person. It is expected that the inspection, repair and maintenance of portable equipment have to be carried out by the contractor personally or under his direct on site supervision. However, the regulation does not restrict the FSIC in having any person to assist him in carrying out such work.

8.3.9 **Suggestion** : In view of the above, we suggest to add a provision clarifying that a person may do the work of portable equipment under the oral or written instruction, and on site supervision of a registered Class 3 FSIC. In addition, before the issue of FS 251 for the work done on portable equipment, the Class 3 FSIC shall personally check the concerned portable equipment to ensure satisfactory completion of the required work and that the equipment is in efficient working order.

8.3.10 Portable equipment is a self-contained product which is ready to use. Fixing bracket for holding portable equipment as quoted by the above Class 3 FSIC should not be regarded as "installation".

8.4 New Workshop Inspections (Regulation 4C) and Removal of Name from the Register (Regulation 8)

8.4.1 The existing regulation 4 only caters for new workshop inspections. Regulation 8(ba) specifies that after failure of a new workshop inspection for the second time in a row, the Director can remove the name of the FSIC from the register.

8.4.2 Apart from new workshop inspection, FSD will also carry out random inspections to workshops of FSIC. In order to give similar legal effect with that of new workshop inspection, the following is suggested :

**Suggestion** : A new provision is suggested so that if a workshop of an FSIC is found unsatisfactory during random inspection by

FSD, and it failed in the subsequent re-inspection, the Director may suspend the registration of the FSIC concerned until the workshop is remedied to the satisfaction of the Director. If the workshop is still considered not acceptable during re-inspection after the suspension, the Director may remove the name of the FSIC from the registers.

8.4.3 Suggestion : For avoidance of doubt, it is suggested that a provision is to be added to clarify that in case the approved workshop of the FSIC ceases operation for whatever reason (e.g. unable to find a new workshop), the FSIC shall not undertake or complete any FSI work until a new workshop is inspected to the satisfaction of the Director. If a replacement cannot be provided within 30 days from the cessation of operation of the workshop, the Director can remove the name of such FSIC from the Register.

8.4.4 Regulation 3(2)(b) specifies that an applicant should submit the address of every workshop to FSD along with the initial application for registration. In this connection, regulation 3(4)(d) requires FSD to inspect every workshop. Regulation 4C specifies provisions relating to new workshop inspection. However, there is no provision on the subsequent addition or deletion of workshop. Therefore :

Suggestion : A provision requiring the FSIC to report any subsequent addition or deletion of workshop is suggested to be added to the regulation.

8.4.5 Suggestion : In regulation 8(a)(ii), it is suggested to add “ or ceases business for any reason” to capture other scenarios that the FSIC stop to perform the role of FSIC, e.g. cessation of business due to bankruptcy.

## 8.5 Register

8.5.1 The Register of registered FSIC contains personal particulars of FSIC, such as detailed address for Class 1 and 2 FSIC, personal

person cannot be found within 30 days from his/her termination, the Director can remove the name of the FSIC from the register.

8.7 Appointment of disciplinary board (Regulation 9)

8.7.1 Under this existing provision, legal adviser appointed by the Director is a member of the disciplinary board who has voting right in the decision of the board. This arrangement is considered not satisfactory as the neutral role of legal adviser may be affected.

8.7.2 Suggestion : We propose that the legal adviser should cease to be a member of the board. Instead, a new provision is suggested such that the Chairman can appoint a legal adviser who may be present at a proceeding of the disciplinary board to advise the Chairman on any matter.

8.7.3 Suggestion : In view of the enhancement of academic qualifications of FSIC, it is suggested to add a new member to the board who should possess expertise on engineering aspects relating to FSI industry. It is therefore proposed that an engineer in relevant discipline should be nominated by, for example HKIE, as member of the board.

**Comment Requested** : May members and HKIE please indicate your views on this issue.

8.8 Disciplinary proceedings (Regulation 10)

8.8.1 The existing 10(1) specifies that only the contractor is subject to disciplinary action. In order to have a more comprehensive control mechanism, the following is suggested :

Suggestion : It is suggested that the power of disciplinary action be extended to cover all the qualified persons and authorized signatories of the FSIC.

8.8.2 Suggestion : For the punishment which the Board may order under regulation 10(2), it is proposed to add a new level of



punishment such that the Board may direct a warning letter be served by the Director of Fire Services on the contractor or relevant parties proposed above.

8.8.3 Suggestion : In addition to the same types of punishment available to the FSIC in accordance with the existing regulation 10(2)(a) & (b) (and the above proposed warning letter), it is suggested to empower the disciplinary board to order that the right of such person to be qualified person of any FSIC be suspended or cancelled for a specified period of time or even permanently.

8.8.4 Suggestion : In parallel with the above proposal, we suggest that separate registers of Qualified Persons be kept by the Director. Registration status of QP and decision of the disciplinary board on them will be recorded in the relevant register. The registers of Qualified Persons are only intended for administrative purposes to maintain better control on the conduct and performance of all qualified persons.

8.8.5 Suggestion : In addition to the existing practice of publication of the order of the disciplinary board in the Gazette, it is suggested to follow the practice of some of the disciplinary tribunals of professionals in that the Director shall publish a copy of the order or the order as varied on appeal in one English and one Chinese newspaper circulating in Hong Kong. This is to enable the public to know more readily the order of the disciplinary board.

8.9 Registered contractor undertaking work outside his class (Regulation 14)

Suggestion : To strengthen the provisions under this regulation, it is suggested to add that if an FSIC :

- (i) issues a certificate on FSI work not in its own class, irrespective of whether or not the certificate is false or misleading in material particulars; or

(ii) undertakes any FSI work not in its own class,

it shall be guilty of an offence.

#### 8.10 Penalties

All penalties provisions will be revised as proposed under the Proposed Amendment to Fire Services Ordinance which had been brought to the attention of all members of the Working Group during the 1<sup>st</sup> Stage of the Review. Members had been requested to comment on the proposed amendment but no adverse comment was received. The proposed increase of fines is enclosed as **Appendix VI**.

#### 8.11 Production of record, plan, document for inspection by officers of FSD

**Suggestion :** To enhance the monitoring of performance and conduct of FSIC, it is suggested to empower the Director in requiring an FSIC to produce any records (including copies of FS 251 issued to their customers), plans, or document in his possession or under his control in relation to all FSI works carried out by such FSIC for inspection by the Director.

#### 8.12 Keeping of Records

**Suggestion :** It is suggested that an FSIC shall keep all relevant records, including copies of FS 251 counting from the last certificate issued to their customers, plans, or document in his possession or under his control in relation to all FSI works carried out by him for at least 5 years.

The above proposal is to facilitate FSD officers in enforcing the relevant provisions under the Regulations. Presently, FSIC have to purchase a book of FS 251 which is serially numbered from the Government for use in connection with FSI works. Under this proposal, any book of Certificate of Fire Service Installations and Equipment shall be preserved by the FSIC for at least 5 years.

#### 8.13 Service of notices and orders



**Suggestion :** It is suggested that any notice, order or certificate required to be served under this Ordinance may be served by serving a copy personally or by registered post addressed to the last known place of business or workshop of the FSIC, or residence of the person to be served.

#### 8.14 Limitation Period

**Suggestion :** In the past, FSD was sometimes unable to initiate prosecution action against an FSIC as the offence was committed a considerable time ago and that the 6 months time bar had been exceeded before the matter is being known to the Director. To remedy this shortcoming, it is suggested to introduce a provision similar to Section 57 of the Electricity Ordinance which reads:

**“A prosecution under this Ordinance shall be commenced within 6 months after the offence becomes known to the Director”.**

- 8.15 For the sake of consistency with other ordinances, the terms such as “firm”, “company” as appeared in the Regulations may need to be revised. Department of Justice will be consulted in this regard to see if it is required.

#### 8.16 Chinese Text of the Regulations

The Chinese text of the existing regulation 10 does not correspond with the English text. Opportunity should be taken to remedy such discrepancy.

#### 8.17 Offence for falsely holding oneself out as a registered contractor

**Suggestion :** A new provision is suggested such that no person shall advertise or otherwise hold himself out as a registered FSIC if he is not a registered FSIC, or a registered FSIC certified to do FSI work for which he is not certified.

### 9. Proposed amendments to Fire Service (Installations and Equipment) Regulations

#### 9.1 Approval of sale and supply of FSI

In view of the technological advancement in fire service installation and equipment, FSD is now considering the need of a review on the sale and supply of the fire service installation and equipment in Hong Kong. Issues like the need of more explicit provisions on the standard of FSI, validity of approval of sale and supply, etc. will be considered. As the approval of sale and supply of FSI exceeds the scope of this review, Fire Services Department will deal with this part of the amendments separately. Notwithstanding that, any comment on this subject is welcome.

## 9.2 Duty of owners of fire service installations or equipment (Regulation 8)

**Suggestion : A new provision is proposed to require the owner of any FSI to display the FS 251 on annual maintenance of FSI on a conspicuous location of the FSI concerned.**

## 9.3 Issues of certificates by registered contractors (Regulation 9)

9.3.1 Owing to technological advancement, highly sophisticated fire extinguishing or protection equipment has been introduced into the market from time to time. In accepting the use of these new types of equipment which may sometimes be proprietary, or highly technical in nature, special endorsement by a qualified person may be required.

9.3.2 **Suggestion : In order to have greater guarantee on the installation, maintenance, repair and inspection of these special equipment, it is proposed to empower the Director of Fire Services in requiring all work on a special equipment be endorsed by a professional (such as an RPE in relevant disciplines, or a professional recognized by the manufacturer, etc.) whose qualifications should be acceptable to the Director. In addition, endorsement is also required on the related FS 251 issued by an FSIC. The person making such endorsement shall also be subject to offence provision if the certificate is found to be false or misleading in material particulars, or there is any misconduct or negligence on the part of such person in endorsing the work or certificate.**



**9.3.3 In our enforcement action, FSD has come across some cases that the FSIC purported to have issued the copy of FS 251 to this Department, but in fact FSD had no record of such. In order to address this problem, a suggestion is raised in that prior to the issue of FS251 to the owner of FSI, the concerned FS 251 shall have to be endorsed by FSD first.**

**Members are invited to comment on the above proposal.**

#### **9.4 Limitation Period**

**Suggestion : The same proposal as in para. 8.14 is also suggested to be added in this regulation.**

#### **9.5 Penalties**

All penalties provisions will be revised as proposed under the "Proposed Amendment to Fire Services Ordinance" which had brought to the attention of all members of the Working Group in the 1<sup>st</sup> Stage of the Review. Members had been requested to comment on the proposed amendment and no adverse comment was received. The proposed increase of fines is enclosed as **Appendix VI**.

#### **10. Manpower Resources to Implement the New Scheme**

To implement the new classification scheme, transitional measures, renewal of registration, extension of disciplinary power to include all qualified persons, and the proposed extension of approval mechanism for all FSI, additional manpower of FSD including uniformed, technical and clerical staff may be required. This should be studied separately when the amendment proposals are finalized.

#### **11. Request Comments from Members**

Members are requested to forward their views and suggestions on the above issues for discussion in the Sub-Working Group Meeting.

**Fire Services Department  
March 2002**