

For information

**LEGISLATIVE COUNCIL PANEL
ON PLANNING, LANDS AND WORKS**

**Commencement of the
Buildings (Amendment) Ordinance 2004**

Purpose

This paper outlines the staged commencement for various provisions of the Buildings (Amendment) Ordinance 2004 (B(A)O 2004).

Provisions of the Buildings (Amendment) Ordinance 2004

2. The Buildings (Amendment) Bill 2003 was introduced into the Legislative Council in April 2003 and was passed on 23 June 2004. The B(A)O 2004 was then published in the Gazette on 2 July 2004. The minor works proposal in the original Bill has been excluded from the Bill with the agreement of the Bills Committee in order to allow more time for consultation with the industry. The Government has undertaken during the passage of the Bill to re-introduce the minor works proposal in the next legislative session.

3. The provisions of the B(A)O 2004 seek to :

(a) rationalize the building control regime by-

(i) broadening the composition of the Contractors Registration Committee and extending the registration period of authorized persons and registered structural engineers under the Buildings Ordinance(BO); and

(ii) providing for the registration and control of geotechnical engineers;

(b) strengthen safety requirements by mandating the provision of emergency vehicular access (EVA) for new buildings and requiring proper maintenance of existing EVAs;

- (c) facilitate law enforcement by-
 - (i) clarifying the responsible party on whom removal orders of unauthorized building works (UBW) including signboards should be served and providing for the registration of removal orders in the Land Registry;
 - (ii) empowering the Building Authority (BA) to issue warning notices against UBW and register the notices with the Land Registry;
 - (iii) providing for the prosecution of uncooperative owners who, without reasonable excuse, obstruct owners' corporations in complying with repair or removal orders in respect of common parts of a building;
 - (iv) reinstating the deterrent effect by increasing the fines for some serious building offences, including substandard and dangerous building works, carrying out UBW and failure to comply with UBW removal orders; and
- (d) improve the service to the public by empowering the BA to permit inspection and issue non-certified copies of building records and to charge fees accordingly; reducing fees for certified copies of building records; and revising the fee charging structure to suit different needs of customers, namely the general public and the building professionals.

4. The background and rationale of the provisions in the B(A)O 2004 are set out in detail at the **Annex**. These have been fully deliberated in the Bills Committee. Members have offered a lot of useful comments and advice, which we have duly taken on board.

Staged Implementation

5. Since the registration of geotechnical engineers is a new provision under the BO, it is necessary to allow time to build up a sufficient number of registered geotechnical engineers (RGE) in the

market prior to the coming into operation of the requirement for appointment of RGE for geotechnical works. In the circumstances, the B(A)O 2004 will come into operation in two stages.

6. We propose that all the provisions of the B(A)O 2004 shall come into operation on 31 December 2004, with the exception of the provisions on the requirement for appointment of RGE for the geotechnical aspects of building works and on the statutory duties and responsibilities and disciplinary sanction of the RGE so appointed, which shall come into operation one year later on 31 December 2005. It is envisaged that the one year interval will provide sufficient time for the pool of RGE to be built up in the market so that developers can appoint suitable RGE for carrying out the relevant geotechnical works. We have consulted the industry and the industry accepted the proposed implementation plan.

Proposed Legislative Timetable for the Commencement Notice

7. We propose the following legislative timetable in respect of the commencement notice:

Publication in the Gazette	5 November 2004
Tabling at the Legislative Council for negative meeting	10 November 2004
End of vetting period	28 December 2004
Commencement	31 December 2004/ 31 December 2005 (Para. 6 is relevant)

Way Forward

8. Members are invited to note the implementation plan and the legislative timetable for the commencement notice outlined in paragraphs 5 to 7 above.

Housing, Planning and Lands Bureau
October 2004

**Provisions in the
Buildings (Amendment) Ordinance (B(A)O) 2004
Background and Rationale**

(a) Rationalizing the Building Control Regime

(i) Registration matters

Under the Buildings Ordinance (BO), the Building Authority (BA) shall appoint a Contractors Registration Committee (CRC) to assist him in considering applications for inclusion in the registers of specialist contractors. There are five categories of specialist contractors. The composition of a CRC is the same for all these five categories. This does not sufficiently allow for persons having the most relevant experience to consider applications for registration under the different categories of specialist contractors. The B(A)O 2004 allows for an increase in the number of persons with relevant expertise who may sit on a CRC for considering applications for registration as registered specialist contractors.

2. The existing registration and renewal period for authorized persons and registered structural engineers under the BO is one year. To reduce the need for going through the time-consuming renewal process at frequent intervals, the registration period is to be extended to 5 years. On the other hand, registered contractors (RC) can opt for a registration period of one or three years at present. The one-year registration period is also deleted under the B(A)O 2004, such that the registration period for all RC is three years.

(ii) Registration of geotechnical engineers

3. Many developments in Hong Kong stand on steep hillsides and man-made slopes. Such building works call for expertise in geotechnical works. The BO requires an AP or RSE to be responsible for such highly specialized works, but geotechnical engineers who are actually involved in the design and supervision of geotechnical works do not have any statutory role to play. This is not satisfactory. The B(A)O 2004 provides for the registration of geotechnical engineers, and for registered geotechnical engineers to be appointed to undertake the investigation, design and supervision of geotechnical works and be statutorily responsible for their works.

(b) Provision of Emergency Vehicular Access

4. Under the existing BO, there is no statutory requirement that emergency vehicular access (EVA) should be provided for building developments. This is clearly unsatisfactory given the importance of EVA to enable fire services vehicles to access a building in case of fire or other calamities. The B(A)O 2004 contains provisions -

- (a) to require the provision of EVA for all new buildings;
- (b) to provide that the BA may grant exemptions in exceptional cases, subject to provision of other appropriate fire safety measures;
- (c) to promulgate design and construction standards for EVA according to the intended use of the new buildings; and
- (d) to empower the BA to issue orders to the owner of an EVA to repair and maintain the EVA.

(c) Facilitating Law Enforcement

(i) Responsible party for removal of unauthorized building works (UBW)

5. Under the BO, the BA may serve an order requiring removal of UBW. In case of non-compliance, the BA may carry out all necessary building works required under its order and recover the cost from the person served with the order afterwards. Under section 24 of the BO, a removal order shall be served on the owner of UBW. However, the Buildings Department (BD) sometimes encountered difficulties in identifying the owners of the subject UBW, especially when the UBW was erected in common parts of buildings (e.g. an unauthorized structure on a common roof). There were also delays in enforcement work in case of change of ownership because of the need to serve orders on the new owners.

6. To address such difficulties, the B(A)O 2004 introduced the following arrangement-

- (a) to provide that a removal order made under the BO may be served on-

- (i) the owner of the unit in which the UBW is erected; or
 - (ii) if the UBW erected in one unit (usually in a common part) is connected to another unit and the UBW is used by the owner or occupier of the latter unit, the owner of the latter unit;
- (b) to provide for the registration of removal orders issued under the BO in the Land Registry; and
 - (c) to enable the BA to recover the cost of removal work from any person who at the date of completion of the work is the owner of the unit involved.

These provisions clearly specify the person responsible for the removal of UBW and reduce the number of superseding orders that need to be issued, thus expediting enforcement work against UBW.

(ii) Warning notices

7. Given the large number of UBW, BD normally only issues removal orders against UBW that present imminent danger to the public or cause serious environmental or health hazards. In other cases, BD issues advisory letters to owners, asking them to remove the UBW voluntarily. Experience shows that these advisory letters have had limited effect.

8. To increase the deterrent effect and to encourage owners to remove UBW voluntarily, the B(A)O 2004 introduced a new provision to empower the BA to issue a warning notice on UBW where a removal order is not issued, and to register the notice in the Land Registry if the UBW is not removed within a specified period. The BA may lift the registration when contraventions referred to in the warning notice have been rectified. Issuing warning notices will have the added advantage of providing a measure of consumer protection to prospective property buyers, who will become aware of the existence of UBW in the premises through a search in the Land Registry.

(iii) Increasing penalties

9. Previously under the BO, penalties for serious offences involving substandard building works or construction dangers were fines ranging from \$50,000 to \$250,000 and imprisonment terms ranging from one to three years. These fines have not been reviewed for some 20 years and their deterrent effect had been eroded. The B(A)O 2004 introduces an

increase in the maximum fines for serious offences by three to four times their current levels in accordance with the change of composite consumer price index over the years. There is no change to the imprisonment terms. The only exception is the offence concerning failure of the building professionals and registered contractors concerned to notify BA of any contravention of the regulations that would result from carrying out the works shown in the approved plans. The fine for this offence is maintained at \$250,000, and the imprisonment penalty is deleted.

(iv) Uncooperative owners

10. The owners' corporation (OC) of a building is responsible for complying with statutory orders for repair works and removal of UBW in common parts of the building. Sometimes the OC concerned may have difficulty in complying with the orders and may be prosecuted for non-compliance, but the non-compliance was actually due to some uncooperative individual owners obstructing the execution of the works required or refusing entry to their individual properties for the execution of such works. Since individual building owners should bear the ultimate responsibility to carry out the necessary repair and removal works, a new provision is introduced in the BO to provide that owners who without reasonable excuse obstruct their OC in complying with an order served by the BA may be prosecuted. This provision will enable OCs to comply with statutory orders more easily. BD will ensure that this provision will only be resorted to when the owners continue to refuse to cooperate without reasonable excuse.

(d) Facilitating the provision of copies of building records

11. The BO provides that the BA may issue, and charge a fee for issuing certified true copies of building plans and documents. There is however no corresponding power to issue and charge a fee for non-certified copies, nor for the inspection of such plans and documents.

12. The B(A)O 2004 will enable the BD to provide more efficient services for the inspection and copying of building plans and documents on a cost recovery basis. The fee for issuing certified true copies is also reduced and the fee charging structure revised to suit different types of customers, namely the general public and the building professionals.