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26 March 2008

Clerk to Bills Committee
(Attn : Ms. YUE Tin-po)
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms. Yue,

Buildings (Amendment) Bill 2007
Response to Bills Committee's Request at Meeting on 26 February 2008
and
Report on Discussions with Professional Institutes

At the Bills Committee meeting of the Buildings (Amendment) Bill 2007 held on 26 February 2008, the Administration was requested to provide information on the following matters, namely:

- (a) response to the views expressed by Friends of the Earth (LC Paper No. CB(1)878/07-08(01)) on light nuisance including measures which might be taken to help contain the problem of light nuisance under the minor works control system;
- (b) the mechanism for registered minor works contractors ("RMWCs") to notify the Building Authority ("BA") and the BA to confirm acceptance of the completed minor works as well as the instrument/channel to be used to promulgate the mechanism;
- (c) response to members' concern about the legal implications of implementing the Validation Scheme on possible title and

conveyance problems after consulting the Law Society of Hong Kong (“LSHK”) (LC Paper No. CB(1)785/07-08(02) Part A(VI) 6.3(a)); and

- (d) response to the query on the Administration's proposal to adopt different registration arrangements for partnerships and sole proprietorships operating as "firms" from that for "individual workers" and measures to help practitioners who were eligible for applying for registration as RMWCs either as firm-based or individual-based contractors to make informed decision on their preferred stream.

Our response is at ensuing paragraphs.

Views expressed by Friends of the Earth

Concerning the views expressed by Friends of the Earth, the Administration submitted a reply to the Bills Committee on 7 March 2008 (LC Paper No. CB(1)982/07-08(03)). Please refer to the letter for details. The letter was discussed at the Bills Committee meeting on 11 March 2008.

Completion of minor works carried out by RMWCs

The RMWCs have to submit completion certificates to the BA upon completion of all classes of minor works. The particular requirements under the three classes of minor works are described below:

Upon completion of Class I minor works, a RMWC appointed in respect of the works shall within seven days submit certification to the appointed building professionals (including the authorised person (“AP”) and registered structural engineer (“RSE”) and/or registered geotechnical engineer (“RGE”) as appropriate) for further action, and the appointed authorised person shall co-ordinate the submission of the required plans and certification to the Buildings Department (“BD”). If the building professional is satisfied with the RMWC’s certification, he shall submit the required plans and certification to BD within seven days after they received the certification from RMWCs.

Upon completion of Class II minor works, a RMWC appointed in respect of such minor works shall submit to the BA within 14 days a completion certificate in a specified form, certifying that the minor works have been completed in compliance with the provisions of the Buildings Ordinance (“BO”) and its regulations and the prescribed plans, as well as

details submitted before the commencement of the minor works. In case the minor works completed are different from the prescribed plans mentioned above, the RMWC shall submit record plans and photo(s) showing the minor works as completed and certify that the minor works have been completed in accordance with such record plans and record photo(s).

Similarly, upon completion of Class III minor works, a RMWC appointed in respect of such minor works shall submit to the BA within 14 days a completion certificate, certifying that the minor works have been completed in compliance with the provisions of the BO and its regulations with the plans attached or description of minor works filled in the certificate. The BD will provide a simple and straightforward form for Class III RMWCs to fill in to provide the information required above.

The detailed requirements on submission of documents and plans upon completion of different classes of minor works will be stipulated in the regulations to be made under the BO.

Upon receipt of the documents and plans submitted, the BD will decide whether or not to carry out an audit check of the completed works. If no audit check will be conducted, BD will issue an acknowledgement letter of receipt of the documentation to the RMWC and the building owners.

In case the BD decides to carry out an audit check, the Department will liaise with the RMWC and the building owners, informing them the arrangements of the inspection. If the minor works are found to be in order after inspection, the BD will issue an acknowledgement letter to the RMWC and the building owners, confirming that the works have been completed satisfactorily in compliance with the minor works requirements.

The timeframe for the issuance of the aforementioned acknowledgement letters will be determined and announced by BD in due course. Tentatively, for general cases, the Department aims to issue the letter within 14 days upon receipt of the documentations or completion of audit inspection. The BD will make the completion certificates and plans available for public inspection. Such records will be made available in the Department's Building Information Centre for viewing. Building owners as well as professionals can easily check the status of minor works present in a flat unit.

The mandatory top-up training courses for individual Class III RMWCs and the technical guidelines tailor-made for them will clearly explain the above statutory procedures for completion of minor works. If a RMWC

has any enquires concerning the statutory procedures, he can easily seek advice and assistance from the BD and the Property Management Advisory Centres of the Hong Kong Housing Society.

Validation Scheme

The Administration met with LSHK on 4 March 2008 and the Hong Kong Bar Association (“HKBA”) on 8 March 2008 and explained the details of the validation scheme. We clarified that the scheme would only cover three types of household minor works but not all kinds of unauthorized building works (“UBWs”). We also emphasized that similar to other kinds of minor works, certificates would be issued by building professionals and contractors upon completion of the validation process and such certificates would be deposited with the BA and made available for public inspection. Similar arrangements to make information available for public inspection will also be made for certificates and plans submitted to the BA upon completion of all kinds of minor works. The LSHK has confirmed that they have no further comments on our proposals, whilst the HKBA would further examine our proposal and revert further to us on any further views they might have.

As pointed out by the Administration at the meeting of the Bills Committee on 26 February 2008, under the existing BO, the carrying out of all building works should go through the established procedures of appointing building professionals (including APs, RSEs and/or RGEs) to design and supervise the building works, as well as obtaining the approval of the BA and appointing registered contractors to carry out and supervise such works. The buildings works will become unauthorised under the law if they fail to go through the aforementioned procedures. Any proposal to legalize works which have not been constructed according to the proper procedures will have an adverse effect on the integrity of the control system. We cannot make previous building works constructed without proper approval legal as this will undermine the established practice and also have a negative impact on public safety.

Registration of RMWCs that are “firms” and “individual workers”

At present, all the contractors registered under the BO are operating as “firms”, being sole proprietorships, partnerships or corporations. This is because only contractors operating with such a setup can mobilize adequate manpower and resources to undertake large-scale building works. The proposed registration system for RMWCs is similar to the approach adopted for registration of contractors under the existing BO, i.e. any firms, being sole proprietorships, partnerships or corporations, can apply for registration as

RMWCs. For those RMWCs who intend to register in this manner, they should satisfy the BA the ability of their authorized representatives (“ARs”) in terms of academic qualifications, work experience in managing and supervising minor works and understanding of the statutory requirements under the BO and its regulations. The applicants shall also satisfy the BA their ability to gain access to plants, equipment and other resources for the carrying out of minor works. The BA will also examine the financial capability of the applicants. For a sole proprietorship, the AR shall be the sole proprietor himself. For a partnership, the AR shall be one of the partners.

For small-scale Class III minor works, apart from the aforementioned mode of registration, we propose to provide another route for registration of individuals. This is to accommodate practitioners in the minor works sector who do not operate in the mode of a “firm” but as “individual workers” and possess the skills to personally carry out the minor works. On application, the BA will assess their ability to personally carry out the minor works that they intend to register. The detailed registration requirements have been stipulated in LC Paper No. CB(1)882/07-08(1) dated 25 February 2008.

The requirements on registration of RMWCs will be stipulated in regulations whilst detailed qualifications will be promulgated in practice notes to be issued by BD. Minor works practitioners should choose to register as “firms” or “individuals” in accordance with their own modes of operation. As mentioned above, the assessment criteria for the two modes are different. In our extensive publicity campaign, we will clearly explain the registration system to the industry, in particular the frontline practitioners for Class III minor works, to ensure their understanding. We will also provide advice and assistance to the workers should they have any questions about the registration system.

Comments of the Hong Kong Institute of Surveyors (“HKIS”)

At the previous Bills Committee meetings, the Administration committed to further consult the relevant professional institutes in the building industry on the comments made by the HKIS on the Bill. The Administration has met with the HKIS, the Hong Kong Institution of Engineers and the Hong Kong Institute of Architects to further exchange views on the proposals. The institutes agreed that minor works should not comprise works that require the issuance of occupation permits. Regarding exempted works, the existing wordings for the description of loading of building works in section 41(3) of the BO should be retained. Besides, it was agreed that registered geotechnical engineers are eligible and could be

involved in the carrying out of minor works. The Administration will prepare the necessary committee stage amendments to the Bill to reflect the above.

Yours sincerely,



(Jerry Cheung)

for Secretary for Development

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