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3 April 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 27 March 2008**

At the Bills Committee meeting of the Buildings (Amendment) Bill 2007 ("the Bill") held on 27 March 2008, the Administration was requested to provide information on the legal responsibilities of various parties that may be involved in the carrying out of minor works, namely:

- (1) the person intending to carry out minor works (the owner or tenant of a premises);
- (2) the agent, if any, who helps the above-mentioned person to engage the registered professional/contractor to carry out the minor works;
- (3) the registered professional/contractor; and
- (4) the workers employed by contractors.

Besides, Members also asked for the Administration's response to members' concern about the unnecessary burden to be imposed on building owners for compliance with the proposed minor works system, i.e. the appointment of qualified persons to carry out the minor works as prescribed under new sections 4A and 9AA of the Bill. Our response is at ensuing paragraphs.

The person intending to carry out minor works and the agent

If a person intends to carry out minor works under the simplified requirements, he should appoint registered professionals (authorized person (and registered structural engineer and/or registered geotechnical engineer as appropriate)) in accordance with the regulations to be made under the Buildings Ordinance ("BO"), and/or registered contractors as stipulated in the proposed sections 4A and 9AA of the BO. The names and details of all the above parties will be recorded in the specified forms submitted to the Building Authority ("BA") confirming such appointment and commencement/completion of the minor works. There is no restriction on the identity or capacity of the person for whom minor works are to be carried out. He may be the owner or tenant of the subject land or premises, or the agent of such owner or tenant. In case where the person is an agent, he will have a role under the BO if he directly employs the registered professionals/contractors and his name is contained in the specified form as the one for whom minor works are to be carried out. The contractual relationship between such agent, the owner/tenant and the registered professionals and contractors is a private matter and is outside the purview of the BO.

In respect of the legal responsibility of the person for whom minor works are to be carried out, any person who knowingly contravenes the proposed sections 4A or 9AA of the BO shall be guilty of an offence in accordance with the proposed section 40(1AB) of the Ordinance. As explained above, any person may hire professionals/contractors to carry out minor works. We expect that for cases of a contravention of section 4A or 9AA, the person for whom minor works are to be carried out will unlikely follow any statutory procedures and so no specified forms for appointment of registered professionals or contractors will be submitted. The BA will need to gather evidence to identify the person(s) who has carried out or commissioned to carry out minor works illegally. Moreover, the BA should prove that the culprit has "knowingly" contravened BO sections 4A or 9AA.

The burden of proof will be on the prosecution. Similar provisions can be found in other legislation such as the Electricity Ordinance (Cap. 406), Lifts and Escalators (Safety) Ordinance (Cap.327) and Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap.51D). Details of the relevant provisions are summarized in Annex.

We should bear in mind that such sanctions are imposable on whoever the person for whom minor works are to be carried out and not only on building owners. Moreover, minor works do contain building works that are of a moderate complexity and scale (e.g. internal staircases under Class I). As such, it is necessary to establish a suitable maximum level of sanction to provide a deterrent effect. Under the current proposal, the maximum level of sanction is set at 25% of that for major building works under the existing BO.

Apart from the offence provisions mentioned above, the BA may invoke sections 24 or 24 AA of the BO and serve an order on the owner of the subject land or premises requiring the removal of any unauthorized minor works.

The registered professionals/contractors

The duties of the registered professionals and contractors in carrying out minor works are stipulated under the proposed sections 4B and 9AA of the BO respectively. Other detailed requirements including the statutory procedures under the simplified requirements will be stipulated in the Regulations to be made under the BO. In case of any misconduct, the professionals/contractors may be subject to disciplinary proceedings as stipulated in the amended sections 7 and 13 of the BO (clauses 9 and 15 of the Bill refer). For a registered professional or a registered contractor, subject to the decision of the relevant disciplinary board, he may be reprimanded; subject to a fine not exceeding \$150,000; be prohibited from certifying/carrying out any minor works under the simplified requirements, either permanently or for such period as the disciplinary board thinks fit; or be removed from the register permanently or for such period as the disciplinary board thinks fit.

Apart from disciplinary proceedings, registered contractors will be liable to further offences due to malpractice. Under the proposed section 40(2E), any registered contractor who has certified or carried out any class, type or item of minor works that he is not registered for shall be guilty of an offence. Under the proposed sections 40(2F) and (2G), any person not being a registered professional or registered contractor who, without reasonable excuse, has certified or carried out minor works shall be guilty of an offence.

As mentioned before, the procedural requirements for the carrying out of minor works will be stipulated in the Regulations to be made under the BO. There will be offence provisions against the registered professionals and registered contractors who fail to comply with such procedures.

Workers employed by contractors

Under the existing BO, registered general building contractors are responsible for the carrying out and quality of building works. They have to hire personnel they consider competent and properly supervise them to conduct the works in accordance with the requirements of the BO. Such workers who personally carry out building works under the supervision of the registered contractors are not required to be registered under the BO. The registered minor works contractors will generally operate under the same arrangements in carrying out minor works. Nevertheless, to cater for frontline workers who possess the technical skills to personally carry out certain small-scale minor works but may not operate as large-scale contractors, we allow the registration of such workers as minor works contractors to conduct Class III minor works. They bear the same statutory liabilities as the other registered Class III minor works contractors although they would carry out the Class III minor works personally.

Carrying out minor works under the current approval and consent procedures

A person may also opt to carry out minor works under the existing "approval and consent" procedures. In such case, he should appoint the registered professionals in accordance with section 4 and registered contractors in accordance with the proposed section 9AA of the BO respectively. In accordance with section 14(1), prior approval and consent from the BA will be required for the carrying out of such works. A piece of minor works will only be regarded as commenced under the simplified requirements when registered professionals (as applicable) and registered

contractors are appointed in accordance with the proposed sections 4A and 9AA. Otherwise, such minor works will be subject to the control of section 14(1).

Yours sincerely,



(Jerry Cheung)
for Secretary for Development

c.c.	DB	(Attn : Mr H W Cheung/ Mr S T Lam)	[Fax : 2840 0451]
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Buildings (Amendment) Bill 2007
Reference on provisions under other legislations

Item	Legislation	Extract of the Provisions	Fine	Imprisonment
1	Electricity Ordinance (Cap.406)	Section 35(1) – No person shall employ a person other than a registered electrical contractor to carry out electrical works		
		Section 56 (1) and (9) - A person who contravenes section 35(1) commits an offence	\$50,000 / \$100,000 (which is imposed on subsequent conviction for the same offence)	6 months

Item	Legislation	Extract of the Provisions	Fine	Imprisonment
2	Lifts and Escalators (Safety) Ordinance (Cap.327)	<p>Section 29A –</p> <p>No person other than a registered lift/escalator engineer or registered lift/escalator contractor shall carry out lift/escalator work</p>		
		<p>Section 28(1C)(b) –</p> <p>Any person who knowingly employs or permits any other person to carry out any lift works or escalator works in contravention of section 29A shall be guilty of any offence</p>	\$5,000	6 months
3	Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap.51D)	<p>Regulation 12(2) –</p> <p>No person shall employ a person other than a registered gas contractor to carry out any gas installation work</p>		
		<p>Regulation 35(4) –</p> <p>Any person who knowingly contravenes regulation 12(2) commits an offence</p>	\$10,000	-