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26 May 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

At the Bills Committee meeting of the Buildings (Amendment) Bill 2007 (“the Bill”) held on 22 May 2008, the Administration was requested to further consider in response to a Member’s request whether the proposed sections 4A(2A) and 9AA(2A) would create a situation where a person knowingly appointing unqualified building professionals and/or contractors can avoid criminal liabilities by simply appointing another person to make the appointment.

To recapitulate, it is the Administration’s original proposal that in respect of minor works commenced or carried out, any person who knowingly appointed unqualified building professionals and/or contractors would have committed an offence. However, many members of the Bills Committee considered that the proposed criminal liabilities of parties involved in the carrying out of minor works should be more clearly defined. In particular, Members were of the view since it was not uncommon in practice for owners/tenants to order for the carrying out of such minor works through an agent (e.g. an interior design company or an electrical appliance company), further safeguards should be provided for owners/tenants ordering the minor works. In response to Members’ view, the Administration has proposed to include new sections 4A(2A) and 9AA(2A) in the Bill.

As regards whether the new sections would then provide a loophole to be exploited by owners/tenants who deliberately violate the minor works control regime but manage to get away by appointing an agent to arrange the works concerned, we wish to point out that any person who conspire with another person to knowingly appoint unqualified building professional and/or contractors to undertake minor works which otherwise would require the appointment of qualified building professionals and/or contractors under the proposed minor works control system would still be liable to criminal prosecution as such acts would constitute the offence of conspiracy and the Administration would pursue such persons under this route. Besides, subject to the facts of the case, the offence of aiding, abetting, counselling, or procuring the commission by another person of the offence, or the offence of inciting the commission by another person of the offence, may also be applicable.

The Administration therefore considers no further amendments to the proposed sections 4A and 9AA attached at Annex are necessary.

Yours sincerely,



(Jerry Cheung)

for Secretary for Development

c.c.	DB	(Attn : Mr H W Cheung/ Mr S T Lam)	[Fax : 2840 0451]
	DoJ	(Attn : Mr Allen Lai/ Miss Selina Lau/ Ms Carmen Chu)	[Fax : 2869 1302] [Fax : 2536 8137]

Buildings (Amendment) Bill 2007
Proposed amendments to Sections 4A and 9AA

1. Section 4A

The existing subsection (1) and (2) is to be deleted and the following substituted (further consequential amendments will be made to other provisions) –

“(1) This section applies to minor works -

- (a) that are commenced or carried out without the approval and consent of the Building Authority under section 14(1); and
- (b) in respect of which one or more prescribed building professionals are required to be appointed by the regulations.

(2) If minor works to which this section applies have been commenced or carried out and the person who arranged for the works to be commenced or carried out has knowingly failed to appoint the prescribed building professional or the prescribed building professionals (as the case may be) required by the regulations to be appointed in respect of the minor works concerned, that person commits an offence.

(2A) For the purposes of subsection (2), a person who has appointed another person to arrange for the commencement or carrying out of minor works is not to be regarded as a person who arranged for the commencement or carrying out of minor works.”

2. Section 9AA

The existing subsection (1) and (2) are to be deleted and the following substituted (further consequential amendments will be made to other provisions) –

“(1) This section applies both to minor works commenced or carried out with the approval and consent of the Building Authority under section 14(1) and to minor works that are commenced or carried out without that approval and consent.

(2) If minor works to which this section applies have been commenced or

carried out and the person who arranged for the works to be commenced or carried out has knowingly failed to appoint a prescribed registered contractor required by the regulations to be appointed in respect of the minor works concerned, that person commits an offence.

(2A) For the purposes of subsection (2), a person who has appointed another person to arrange for the commencement or carrying out of minor works is not to be regarded as a person who arranged for the commencement or carrying out of minor works.”

-END-