

立法會
Legislative Council

LC Paper No. CB(1)1868/07-08

Ref : CB1/BC/1/07

Report of the Bills Committee on Buildings (Amendment) Bill 2007

Purpose

This paper reports on the deliberations of the Bills Committee on Buildings (Amendment) Bill 2007 (the Bill).

Background

2. Under the existing Buildings Ordinance (Cap. 123) (the Ordinance), most building works, with the exception of exempted works, are under the control of one single regime, irrespective of their scale and complexity. Even building works which are minor in nature (e.g. erection of supporting frames for air conditioners and drying racks, etc.) have to comply fully with the statutory requirements, including the prior approval of building plans and consent for commencement of building works by the Building Authority (BA), and the appointment of building professionals to design, co-ordinate and supervise the works as well as the appointment of registered contractors to carry out the works. The cost and time involved in complying with the requirement are disproportionate to the scale of minor works. As a result, the provisions in the Ordinance are very often not complied with in relation to many of these minor works, rendering a large number of such works unauthorized. The Administration therefore sees the need to devise a set of simplified statutory requirements by way of amendments to the Ordinance for the carrying out of minor works, so as to improve efficiency and flexibility, enhance building safety and increase the user-friendliness of the building control regime, thus facilitating compliance.

The Bill

3. The Bill aims at introducing a minor works control system providing a simplified control mechanism with associated penalties for offences relating to minor works, as well as providing a validation scheme for three specific types of unauthorized building works (UBWs) which have been completed before the commencement of the minor works control system.

The Bills Committee

4. At the House Committee meeting held on 7 December 2007, Members agreed to form a Bills Committee to study the Bill. Hon KWONG Chi-kin and Ir Dr Hon Raymond HO Chung-tai were elected Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee has held 12 meetings with the Administration and received views on the Bill from the trade and related sectors. A list of organizations which have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

5. Members in general support the policy intent of the Bill to introduce a minor works control system which will streamline the existing buildings control regime in respect of minor works, facilitate the general public to carry out minor works in a more convenient and economical manner as well as enable more efficient use of Government resources. In the course of deliberation, members have raised concerns about the classification of minor works, the schedule of minor works, the notification procedures on completion of minor works carried out by registered minor works contractors (RMWCs), the change of class of minor works in the course of works implementation, the registration system, provisional registration arrangement and top-up courses for RMWCs, interface with the Construction Workers Registration Ordinance (Cap. 583), validation scheme, penalties for offences relating to minor works, and also the publicity of the new system.

Minor Works Control System

6. The Bills Committee notes that apart from the existing regime under which prior approval and consent of the BA have to be sought for carrying out building works, a set of simplified requirements for carrying out minor works will be added to the Ordinance. A new category of building works, namely, "minor works", will be introduced. The minor works control system will dispense with the existing requirements of approval and consent by BA before commencement of works. The Administration has also provided a preliminary draft of the Building (Minor Works and Related Matters) Regulation (the Regulation) which sets out the detailed modus operandi of the minor works control system, for information of the Bills Committee.

7. Members questioned whether the introduction of a new category of building works of "minor works" in the existing Ordinance may cause confusion to the public. The Administration has explained that the existing building control system as specified under the Ordinance applies to most private building works, with the exception of exempted works. There is a need to devise a set of simplified statutory requirements by way of amendment to the Ordinance for the carrying out of building works of a smaller scale and to provide legal backing for the implementation of this new concept. The Administration will issue pamphlets and technical guidelines to provide guidance to the public and members of the construction industry respectively. Extensive public

education campaign to facilitate public to understand the new legislation will also be conducted.

8. The Bills Committee notes that the Administration has taken on board the suggestion of Hong Kong Institute of Surveyors (HKIS) on the improvement of certain proposed wordings, and will move Committee Stage Amendments (CSAs) to change the term "prescribed requirements" originally used in the Bill to "simplified requirements", to delete the term "prescribed requirement minor works" and its definition, and to introduce a new section to provide for the meaning of minor works commenced under the simplified requirements.

Classification of minor works

9. The Bill proposes to classify minor works into three classes according to their scale, complexity and safety requirements --

- (a) Class I minor works comprise those relatively more complicated minor works (e.g. installation of internal staircases connecting two floors) which shall be designed and supervised by authorized persons (APs) (with the assistance of registered structural engineers (RSEs) and/or registered geotechnical engineers (RGEs) as appropriate) (referred to as "building professionals" hereafter) and carried out by registered contractors (including registered general building contractors (RGBCs), registered specialist contractors and RMWCs);
- (b) Class II minor works comprise works of a comparatively lower complexity (e.g. repair of external walls) which can be carried out by registered contractors without the involvement of APs; and
- (c) Class III minor works covers small-scale minor works, mostly carried out in household settings (e.g. erection of supporting frames for air-conditioners), which can be carried out by registered contractors without the involvement of APs.

10. Under each class of minor works, works will be further classified into types and items that correspond to the specialization of works in the industry. Each item of minor works will be precisely defined with their dimensions, locations and other relevant measurements.

11. The Bills Committee notes the view of HKIS that all works with geotechnical implications should not be classified as minor works. The appointment of RGEs for carrying out minor works is therefore not necessary. In this connection, members have discussed whether works requiring the appointment of RGEs should be classified as minor works. The Administration has explained that some Class I minor works involving geotechnical implications can be carried out under the simplified procedures under the supervision and coordination of APs and RGEs, because of the relatively lower complexity and safety requirements of the works. Following further

consultation with the three professional institutions (namely, HKIS, Hong Kong Institution of Engineers (HKIE) and Hong Kong Institute of Architects (HKIA)), it was agreed that RGEs should be retained in the legislation for the carrying out of certain minor works.

12. The Bills Committee shares HKIS' view that works which require the issuance of occupation permits (OPs) should not be classified as minor works. The Administration has advised that there is, however, a chance that some minor works involve additions to existing buildings and may require the issuance of OPs. It is therefore necessary to amend section 21 of the Ordinance to cater for such situation. In view of the Bills Committee's concern, the Administration has further consulted HKIS, HKIE and HKIA on the proposal. It is agreed that minor works should not comprise works which require the issuance of OPs. The Administration will move CSAs to delete clause 18 of the Bill to this effect.

Schedule of minor works

13. The Bills Committee has discussed the means to promulgate the classification of minor works. The Administration's plan is to promulgate the list of minor works as a schedule to the Regulations. For reference by the Bills Committee, the Administration has provided a draft schedule of minor works with the specifications and detailed definitions of 114 minor works items which were formulated after extensive consultation with the trades. The list is subject to refinements as a result of further consultation with the trades in the future. Members share the deputations' view that consideration should be given to allowing flexibility for future amendments to the schedule of minor works through practice notes or codes of practice so as to cope with the technological advancement and development of the construction industry in the light of implementation experience. Having further considered the suggestion in consultation with the Department of Justice, the Administration advises that as the classes, types and items of the minor works would need to be clearly defined and referenced to in certain provisions of the Regulation, the schedule of minor works will be included as part of the subsidiary legislation.

14. Members are concerned that the specifications for the proposed minor works, such as size, height and material used, are too technical for comprehension of general members of the public. The Administration has explained that the specifications for the proposed minor works are drawn up after consulting the trades and having regard to the specialization of works in the industry. Under the Ordinance, the precise definitions of each item of the minor works in respect of dimensions, weights, locations and other relevant measurements will be necessary to help ensure compliance with other relevant requirements, such as plot ratio, positional requirements, fire safety and hygiene. The Administration plans to publish user-friendly pamphlets with easy-to-follow procedural guides for the average households and building owners upon passage of the Bill and prior to the implementation of the minor works system. Tailor-made technical guidelines will also be produced for minor works practitioners, building managers and business operators to cater for their specific needs. The Administration intends to emphasize in the publicity materials the modus operandi of

the new system and the obligations and responsibilities of individual stakeholders. The Administration will also set up advisory services for building owners, contractors and workers to facilitate their compliance with the law in conjunction with the Hong Kong Housing Society (HKHS). The Administration and HKHS will work in close liaison to ensure that useful and timely technical and operational advice will be provided for the users.

15. Members have raised concern whether common household minor works, such as the installation of household air-conditioners, will be undertaken by a number of RMWCs under the control system due to demarcation of duties among the 114 works items. As explained by the Administration, the installation of household air-conditioner and the related associated works will be classified as a Class III minor works item and can be undertaken by a Class III RMWC. There is no need to appoint several RMWCs for the installation works.

Designated exempted works

16. Members are of the view that the criteria for exemption of building works, viz. works located and carried out in buildings, works not involving the structure of buildings as well as the requirements (such as, dimensions, specifications and positions) of the "designated exempted works" are too technical for the general public to understand. The Administration has explained that the general criteria for exemption of buildings works has already been provided for under the existing Ordinance, and a list of "designated exempted works", which are small-scale, simple and of low risk (e.g. water tanks and small-sized signboard works), will be drawn up in future based on these criteria. Detailed descriptions will also be set out for each of the items in the list of "designated exempted works". The list will be updated from time to time to take into account latest developments of the technical requirements of the works in the industry. The public education campaign mentioned above will also enable the public to make beneficial use of the minor works control system.

17. As regards the proposed exemption of building works which do not "bear any imposed load or dead load other than that due to their own weight" from the statutory control of the Ordinance, Ir Dr Hon Raymond HO and Prof Hon Patrick LAU and HKIS consider that some of these exempted works, such as the installation of hanging cabinets or hanging rails within buildings, will likely be required to bear imposed loads. These members are concerned that the drafting of the proposed section 41(3)(b) of the Bill cannot clearly reflect the policy intent. The Administration, having further consulted the professional institutions, proposes to retain the original exemption criteria in section 41(3) of the Ordinance and will propose CSAs to address members' concern.

Notification procedures upon completion of minor works carried out by RMWCs

18. The Bills Committee has examined the mechanism for RMWCs to notify BA, BA's confirmation of acceptance of the completed minor works as well as the instrument/channel to be used to promulgate the mechanism. Under the Bill, building

professionals and registered contractors will be required to notify BA before the commencement of Classes I and II minor works, but notification of the commencement of Class III minor works will not be required. According to the Administration, 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 AP, RSE or RGE as appropriate) for further action. If the building professionals are satisfied with the RMWC's certification, the appointed AP shall submit the required plans and certification to the BA within seven days after they received the certification from RMWCs. Upon completion of Classes II and III minor works, a RMWC appointed in respect of such minor works shall submit to BA, within 14 days, a completion certificate certifying that the minor works have been completed in compliance with the provisions of the Ordinance and the Regulation as well as the prescribed plans. Detailed requirements on submission of documents and plans upon completion of different classes of minor works will be stipulated in the Regulation to be made under the Ordinance. Upon receipt of the documents and plans submitted, Buildings Department (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 of receipt of the documentation to the RMWC and the building owner. If BD decides to carry out an audit check, BD will liaise with the RMWC and the building owner informing them the arrangements of the inspection. Follow-up action will be taken if audit result is not satisfactory. If the minor works are found to be in order after inspection, BD will issue an acknowledgement letter to the RMWC and the building owner, confirming that the works have been completed satisfactorily in compliance with the minor works requirements. The time frame for the issuance of the acknowledgement letters will be announced by BD in due course. For general cases, BD aims to issue the letter within 14 days upon receipt of the documentation or completion of audit inspection.

19. The Bills Committee notes the Law Society of Hong Kong (LSHK)'s and the Hong Kong Bar Association (HKBA)'s suggestion that to avoid title problems, a simple form should be devised for RMWCs to notify BA upon completion of minor works, and such document should be registered with the Land Registry. The Administration agrees that completion certificates will be in specified form, the design of which will be as simple as possible to facilitate RMWCs in completing the forms. The information provided by the RMWCs in the certificates will be scanned and made available for public inspection in BD's Building Information Centre. This includes plans or brief description and photos of the completed works and certification that the minor works have been done to the contractor's satisfaction and in accordance with the Ordinance. In the long run, the information will be uploaded onto the Internet and maintained by BD on a regular and permanent basis. To this end, the Administration will move CSAs to empower BA to make available building plans/documents in an electronic form via the Internet for public inspection.

Change of class of minor works in the course of works implementation

20. Members are concerned about the obligations and responsibilities of building owners and registered contractors under the proposed minor works control system in dealing with circumstances arising during the course of works implementation; for example, the progress of implementation can be adversely affected when a contractor advises the property owner that incidental minor works within the meaning of Class I or II works are deemed necessary after commencement of certain Class III minor works. As prior approval by BA before commencement of Class III minor works is not required, BD cannot exercise regulatory control over these minor works, and possible abuse can arise. In this connection, members have examined whether the liabilities of the registered contractor concerned will only be limited to advising the building owner of the class, type and item of the incidental minor works when they are consulted by building owners.

21. According to the Administration, a schedule of minor works form part of the Regulation and the Regulation will specify the corresponding registered contractors required for undertaking certain minor works. Although prior approval by BA is not required before commencement of Class III minor works, registered contractors should, before the commencement of works, provide accurate advice to building owners concerning the works, for example, the classification of the minor works to be conducted and the types of contractor they have to be engaged. It will be an offence for a RMWC carrying out an item of minor works he is not registered for. It is unlikely that the class of minor works will change during the course of carrying out the works. Nevertheless, if a building owner decides to alter the scope of works during the course of the project resulting in a change in the class of minor works, for example, from Class III to Class II, the registered contractor responsible for such works should submit to the BA the required documentations concerning the Class III minor works completed so far. At the same time, the registered contractor (assuming he is eligible to carry out the Class II item concerned) should submit a notice of commencement of works with relevant supporting documents for the proposed Class II minor works in accordance with the requirements to be stipulated in the Regulation. If the registered contractor is not eligible to carry out the said Class II item, he should advise the building owner to employ a suitable contractor to carry out the works.

Registration system for minor works contractors

22. There will be a registration system for qualified RMWCs. The contractors who apply for registration as RMWCs may be body corporate, partnerships, sole proprietorships or individuals (Class III only), and they have to satisfy BA that their personnel possess the necessary technical qualifications and work experience before they can be registered under the Ordinance. For practitioners who apply for registration as RMWCs operating as firms, their applications will be assessed based on their representatives' formal qualifications and/or relevant experience, comprehension of the statutory requirements, as well as professional experience in the management and supervision of works projects. The regulatory framework for RMWCs, operating

as firms, will be the same as that adopted for the regulation of other contractors, such as the RGBCs, under the existing Ordinance.

23. For a sole proprietor, he himself will be the representative to be registered. For partnership, one of the partners can be the representative. Individual workers who are competent in carrying out Class III minor works can be registered as Class III RMWCs. Practitioners who apply for registration as Class III RMWCs operating as individuals will be required to prove their formal qualification (such as trade test certificates and apprentice certificates) and/or relevant experience (such as employment certificates, works vouchers, reference letters furnished by trade associations/unions/employers/contractors/building professionals). Appropriate top-up courses will be provided to apprise RMWCs of the statutory requirements and basic safety relating to the carrying out of minor works. A RMWC's registration will be valid for three years. In general, RMWCs will not be required to attend top-up courses for the purpose of renewal of registration.

24. The Bills Committee considers that the Administration should devise measures to help eligible practitioners to understand the registration system and apply for registration according to their need and preference. According to the Administration, the registration requirements for RMWCs will be specified in the Regulation, 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. The Administration will step up publicity effort to clearly explain the registration system to the industry, in particular the frontline practitioners for Class III minor works.

25. Members have raised concern whether existing large-scale contractors will be eligible for registration as RMWCs and what measures would be taken to ensure the sustainability of small-scale minor works practitioners or those operating as sole proprietors. The Administration has advised that the existing large-scale contractors, who are registered as RGBCs, will be eligible for undertaking minor works without the need to register as RMWCs, since they already possessed the required technical expertise. Although, in reality, minor works is usually not the core business of such contractors, the proposed registration of small-scale minor works contractors will bring in competition and avoid market monopolization by major players.

26. Members have raised concern that individual practitioners applying for registration will have difficulties in providing documentary proof of their experience, as in the case of registration of Chinese medicine practitioners and construction workers. According to the Administration, individual workers can apply for registration as Class III RMWCs by proof of their relevant experience, which will vary from three to six years depending on the type and item of minor works. As the industry has expressed concern that they may not be able to provide such evidence, flexibility will be exercised in verifying the applicants' experience. For instance, the applicant can certify certain part of their experience by way of statutory declaration. Alternatively, individual workers with the relevant formal qualifications will be

eligible for registration as Class III RMWCs. They can attend the relevant trade tests to obtain the formal qualification.

27. Members are concerned that the requirement for RMWCs to possess multi-task registration in order to undertake simple minor works (e.g. the installation of air-conditioners) will exert unnecessary burden on the self-employed practitioners and property owners. Some existing practitioners will be forced out of the market if they fail to register for a certain works item which constitutes an integral part of household minor works. Moreover, the requirement for RMWCs to apply for multi-task registration will increase their operation cost.

28. The Administration has advised that the registration system for minor works contractors will mirror the existing operation of the industry, i.e. practitioners possessing unique or multi-qualifications can apply for registration RMWCs qualified for a single item or multiple items of minor works respectively. For registration, in addition to the submission of proof of experience or formal qualification, practitioners operating as individuals will only be required to attend a one-day top-up course before registration. Their eligibility for undertaking respective type/item(s) of minor works will be clearly specified in their registration certificates. It is expected that the cost implication on existing practitioners due to the introduction of the minor works control system will be small.

29. Members hold the view that as there will be 114 items of minor works under the proposed system, consideration should be given to streamlining the registration system of RMWCs to facilitate their operation. According to the Administration, the delineation of duties among works items is to cater for the different types of operation of the trades. RMWCs may choose to register for individual items of Class III minor works or a type or whole class of works items. To reduce inconvenience to multi-task RMWCs, consideration will be given to issuing smart cards to facilitate identification of their eligibility to carry out minor works. In this connection, the Administration has agreed to consider in consultation with the trade members' suggestion that the requirement for RMWCs to show their registration numbers and relevant details should be clearly reflected in the publicity materials. The Administration will map out detailed requirements in the regulations to be made in consultation with the industry. For this purpose, a CSA will be moved to amend section 38 to refine the regulation making power in the Ordinance.

Provisional registration arrangement

30. The Bills Committee notes that a transitional period and a two-year provisional registration arrangement will be put in place to allow time for the existing minor works practitioners to prepare for registration. In this connection, members have raised concern that as provisional registration will not be provided for individual workers, they will not be able to continue their business after the introduction of the proposed minor works control system. Members consider that the Administration should ensure a smooth transition in view that building owners are used to engaging individual workers to undertake household minor works.

31. The Administration has advised that the minor works industry is characterized by the presence of many individual workers who are competent in carrying out Class III minor works, and they will be allowed to register as Class III RMWCs. The provisional registration will only be available to applicants operating as firms. As for individual applicants, provisional registration is not required because such individual applicants can obtain the registration by virtue of either qualifications or experience and after attending a one-day top-up course. It is anticipated that most of the existing practitioners will be able to register as Class III minor works contractors.

32. Members have raised concern that while a provisional registration will be introduced only for RMWCs operating as firms, building owners and enforcement agents will encounter difficulty in verifying the eligibility of contractors carrying out minor works. For instance, a RMWC operating as firm can be provisionally registered but RMWC operating as individual practitioners can only be formally registered.

33. The Administration has explained that the provisional registration system will ensure that there will be continuation during the transitional period and sustain an adequate supply of RMWCs in the market to carry out minor works. Registration certificates will be issued to the RMWCs specifying the items of minor works that they are registered for. The Administration will also issue identification documents to RMWCs to facilitate verification of contractors' eligibility by building owners. As the proposed legislation will require the technical directors and authorized signatories of the company-based contractors to supervise and coordinate the carrying out of the minor works, there will be no statutory requirements for the RMWCs, operating as firms, to employ RMWCs, operating as individual practitioners, to carry out minor works.

Top-up courses

34. According to the Administration, top-up courses will be provided to upgrade the applicants' standards and enhance their knowledge of the statutory requirement, such as the theories and familiarization of the technical requirements and standards stipulated in the technical guidelines to be issued by the BD (e.g. standard design for supporting frames for air-conditioners). Members have enquired the fees for these top-up courses, the institutions providing such courses and the estimated number of course participants. The Administration has advised that top-up courses will be provided by the Construction Industry Training Authority and training institutes, and the courses will commence shortly after enactment of the Bill to facilitate practitioners to apply for registration under the minor works control system. The estimated number of participants (who are mainly class III contractors) is about 10 000. The course fees will not be expensive, for example it will only be about \$100 for one day course.

35. Some members have raised concern that as not all RMWCs will be required to attend top-up courses, there is inadequate assurance that minor works will be undertaken by trained and qualified workers in future. This will defeat the purpose of introducing the proposed control regime which is intended for enhancing building safety. The Administration has explained that all Class III RMWCs, operating as individual practitioners, are required to participate in top-up courses before registration. Besides, the Ordinance has already provided for the regulation of firm-based contractors whereby technical directors and authorized signatories are required to supervise and coordinate building works. The BA will scrutinize the qualifications of such directors and signatories before their registration.

Interface with the Construction Workers Registration Ordinance

36. Noting that registration under the Construction Workers Registration Ordinance (Cap. 583) (CWRO) is required for workers involved in the carrying out of minor works, the Bills Committee has queried the rationale for creating another registration system under the proposed minor works control system. The Administration has explained that the registration system for RMWCs was originally intended for the registration of contractors, operating as firms. Noting that the industry is characterized by the presence of many individual practitioners who are competent in carrying out Class III minor works, the Bill provides for their registration as Class III RMWCs. RMWCs operating as firms will be regulated under a mechanism similar to the existing mechanism for contractors registered under the BO, e.g. RGBCs, while workers employed by the contractors are subject to the registration requirements under CWRO. As regards RMWCs operating as individual practitioners, they will personally undertake the items of Class III minor works which they are registered under the BO. In addition, they are subject to the registration requirements under CWRO if the items of Class III minor works are also construction works under the CWRO.

37. The Bills Committee has examined the feasibility of streamlining the proposed minor works registration system with the construction workers registration system under CWRO, to facilitate compliance by practitioners. According to the Administration, there are difficulties for Class III minor works practitioners to register as skilled workers according to the trades designated in the existing Schedule 1 of the CWRO as most of them are involved in multiple trades designated under CWRO, and the skill level required in each trade to fulfill their job assignment is normally less comprehensive and demanding than that required for registration as skilled workers under CWRO. As such, the Administration will consider acceding to the practitioners' request that a separate category of trades be established under the CWRO for minor works. The Administration will put in place a simplified procedure to facilitate certain skilled workers of relevant designated trades registered under CWRO as well as holders of other relevant trade test certificates or apprentice certificates to obtain registration as RMWCs under the Ordinance for carrying out Class III minor works items.

38. The Bills Committee has examined whether practitioners should be required to register under CWRO before applying for registration as RMWCs. Ir Dr Hon Raymond HO and Hon LI Fung-ying consider that efforts should be made to ensure the compatibility of the minor works control system and CWRO. According to the Administration, workers conducting "construction works" in "construction sites" are required to register as "general workers", "skilled/semi-skilled workers" or "skilled/semi-skilled workers (provisional)" under CWRO for carrying out works of any trade. Phase I Prohibition of CWRO which commenced on 1 September 2007 prohibits workers from carrying out construction works on construction sites unless they are registered workers under CWRO. The minor works trade has indicated no major difficulty in complying with the requirements in this phase. Regarding the remaining phase of prohibition requiring registration of skilled workers according to their specific areas of expertise, the Administration will make reference to the classification of works items under the minor works control system in consultation with the trade before the implementation, with a view to facilitating practitioners' registration under the two registration systems. Consideration will be given to streamlining the procedures for registration as RMWCs and under CWRO.

Validation scheme

39. Under the Bill, a validation scheme will be introduced to rationalize the existence of three types of UBWs, namely works relating to supporting frames for air conditioners, drying racks and small canopies completed before the commencement of the minor works control system. Building owners will have to appoint building professionals or registered contractors to certify on inspection that such works meet the safety requirements. Depending on the circumstances, alteration, improvement and/or reinforcement works may be required to meet the safety standards before the concerned works can be certified. Similar to other kinds of minor works, certificates will be issued by registered contractors upon completion of the validation process, and such certificates will be deposited with the BA and made available for public inspection. Upon validation, the BA will not take enforcement action against the concerned works unless they are found to be dangerous. No time limit will be imposed under the scheme as inspection of the three specific types of UBWs can be carried out in tandem with other buildings maintenance works.

40. The Bills Committee has raised concern on the legal implications of the proposed minor works control system on existing UBWs which are minor in nature. The Administration's explanation is that under the existing Ordinance, most building works, with the exception of exempted works, should comply fully with the statutory requirements, including prior approval of plans and consent for commencement by BA, appointment of APs and building professionals to design and supervise the building works, as well as the appointment of registered contractors to carry out and supervise such works. The building works will become unauthorized 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. It is not possible to legalize previous building works which were constructed without proper approval, as this will

undermine the established practice and pose a negative impact on public safety. As such, existing unauthorized supporting frames for air-conditioners, drying racks and small canopies will still be regarded as UBWs even if they have been validated under the proposed validation scheme. At the request of the Bills Committee, the Administration has sought the views of LSHK and the HKBA on the proposed scheme. Both LSHK and HKBA have not raised any objection to the proposals upon further clarification of the details by the Administration.

Penalties for offences relating to minor works

41. HKIS has suggested deletion of the provision which makes it an offence for diverging or deviating from submitted plans of minor works as stated in the proposed section 40(2A)(ba), as the plans submitted with the notice to carry out minor works are not definitive and do not constitute sanction. The Administration has advised that minor works should be carried out according to the plans submitted to the BA making reference to technical guidelines provided by BD under the minor works control system. It will be an offence for the RMWC to carry out works which significantly deviate or diverge from the works shown in the plans submitted to BA.

42. In this connection, members have raised concern about the objective criteria to be used for determining whether a completed minor works item has significantly deviated or diverged from the works plans. The Administration has advised that, in general, whether the completed minor works will meet the prescribed safety standards and requirements will be used as the criteria for assessment in the audit inspections. In enforcing the provision, BD will collect evidence including the material deviation of the minor works and whether such deviation will prejudice structural safety, etc. BD will take into account all relevant factors to determine whether the RMWCs concerned or other relevant parties have committed an offence under the Ordinance. The professional institutes noted the Administration's response and have no further comments.

43. The Bill proposes that if a person intends to carry out minor works under the simplified requirements, he should appoint registered professionals (i.e. AP (with RSE or RGE as appropriate)) in accordance with the regulations to be made under the Ordinance, and registered contractors in accordance with the new sections 4A under clause 7 and 9AA under clause 13 of the Bill. The names and details of all the above parties will be recorded in the specified forms submitted to the BA confirming such appointment and commencement/completion of the minor works. The persons so appointed must comply with the statutory requirements, particularly the safety provisions, in performing their duties, failing which disciplinary sanction or other penalties, including fines and imprisonment, may be imposed. The Bills Committee notes that the maximum levels of sanction proposed for minor works are mainly set at 25% to 50% of those for major building works under the existing Ordinance, because of the lower safety risk of minor works.

44. In respect of the legal responsibility of the person for whom minor works are to be carried out, the Administration advises that any person who knowingly contravenes the proposed section 4A or 9AA shall be guilty of an offence and shall be liable on conviction to a fine at level 6 and to imprisonment for six months, in accordance with the proposed section 40(1AB) to be added by CSA to clause 27(1) of the Bill. The Bills Committee notes that new sections 4A and 9AA of the Bill do not specify building owner as the person for whom minor works are to be commenced or carried out. Members consider that the proposed criminal liabilities of parties involved in the carrying out of minor works should be more clearly defined. In particular, members are of the view that it is not uncommon in practice for building owners/tenants to order for the carrying out of such minor works through an agent (such as a property management company commissioned by the co-owners of a building to carry out repair works for the common parts or an air-conditioning retailer providing installation service of the air-conditioners). They consider that further safeguards should be provided for building owners/tenants ordering the minor works.

45. To address members' concern, the Administration has revised the relevant provisions and proposed new sections 4A(2A) under clause 7 and 9AA(2A) under clause 13 in the Bill to the effect that the person who arranged for the carrying out of minor works will commit an offence if he has knowingly failed to appoint the prescribed building professionals or the prescribed registered contractors. Besides, if a person has appointed another person (for example, when a building owner purchases an air conditioner and the electrical appliance company undertakes to arrange for the installation of the machine at the owner's apartment) to arrange for the carrying out of minor works, such appointed person (i.e. the electrical appliance company) will be regarded as the person who arranged for the carrying out of minor works and the first-mentioned person (i.e. the building owner) will not be held responsible for the carrying out of such works. The revised provisions also clearly state that if a person has merely appointed an unqualified building professional/contractor but the minor works have not yet been actually carried out, that person will not commit an offence.

46. Members consider that the Administration should delete the proposed term of imprisonment imposed on the person for whom minor works are to be carried out, in particular building owners, for non-compliance of the proposed control regime under Class III, taking into account the simple nature of minor works and the insignificant offence. Having considered members' view, the Administration agrees to delete the term of imprisonment under the relevant provisions.

47. The Bills Committee notes that consequential to the proposed amendments to proposed new sections 4A and 9AA, new sections 2(1B) and 40(1AB) will be proposed, and proposed new section 14AA will be refined to preserve the consistency of the various provisions constituting the minor works control system in the Bill. The Administration will also amend section 40(1AA) to remove the application of the penalty provision for minor works contained therein.

48. As regards the proposed new sections 4A(2A) and 9AA(2A), members have raised concern whether these will create loophole that building owners/tenants who deliberately violate the minor works control system can evade responsibility by appointing an agent to arrange the works concerned. The Administration has responded that any person who conspires with another person to knowingly appoint unqualified building professionals and/or contractors to undertake minor works which otherwise will require the appointment of qualified building professionals and/or contractors under the control system will still be liable to criminal prosecution. The Administration can still take actions against such persons for conspiracy. 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 be applicable.

Publicity

49. Members have raised concern about measures to enhance building owners' understanding of the division of duties among the professional streams of the building industry and channels to help aggrieved building owners. Members consider that publicity materials, in the form of pamphlets or codes of practice, should be provided to the public and practitioners to enhance their understanding of the implementation details of the control system. According to the Administration, extensive publicity and public education campaigns will be conducted to raise public awareness of the control system after passage of the Bill. User-friendly pamphlets and tailor-made technical guidelines, with illustration of diagrams and charts, will be produced to facilitate the understanding of various trades in the industry (such as catering and advertising), and stakeholders (such as building owners and owners' corporations), on the implementation details of the control system. Adequate enquiry services will be provided by BD, in collaboration with the Home Affairs Department and the Property Advisory Centres operated by the HKHS, on matters relating to compliance with the new requirements.

Other issues

50. The Bills Committee has raised concern on the availability of insurance plans to cover the legal liabilities of the RMWCs. The Administration has advised that it will continue discussion with practitioners of the construction industry and the insurance industry on ways to facilitate subscription to insurance plans by minor works practitioners at a reasonable premium.

Committee Stage amendments

51. The Bills Committee has examined the proposed CSAs to be moved by the Administration and raised no objection. The Bills Committee will not move CSAs to the Bill.

Resumption of Second Reading debate on the Bill

52. The Bills Committee supports the resumption of Second Reading debate on the Bill at the Council meeting on 18 June 2008.

Consultation with the House Committee

53. The Bills Committee consulted the House Committee on 6 June 2008 and obtained its support for the Second Reading debate on the Bill to be resumed at the Council meeting on 18 June 2008.

Council Business Division 1
Legislative Council Secretariat
11 June 2008

Bills Committee on Buildings (Amendment) Bill 2007

Membership List

| | |
|------------------------|--|
| Chairman | Hon KWONG Chi-kin |
| Deputy Chairman | Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP |
| Members | Hon James TO Kun-sun |
| | Hon Jasper TSANG Yok-sing, GBS, JP |
| | Hon Miriam LAU Kin-yee, GBS, JP |
| | Hon Abraham SHEK Lai-him, SBS, JP |
| | Hon LI Fung-ying, BBS, JP |
| | Hon Audrey EU Yuet-mee, SC, JP |
| | Hon LEE Wing-tat |
| | Hon LI Kwok-ying, MH, JP |
| | Hon Daniel LAM Wai-keung, SBS, JP |
| | Hon CHEUNG Hok-ming, SBS, JP |
| | Prof Hon Patrick LAU Sau-shing, SBS, JP |
| | (Total : 13 members) |
| Clerk | Ms YUE Tin-po |
| Legal Adviser | Mr Stephen LAM |

Bills Committee on Buildings (Amendment) Bill 2007

List of organizations which have given views to the Bills Committee

1. Minor Works Concern Group
2. Hong Kong Construction Industry Employees General Union
3. Hong Kong Bar-bending Contractors Association Limited
4. Hong Kong Marble & Granite Merchants Association
5. The Association of Plastering Subcontractors Limited
6. Hong Kong Construction Sub-contractors Association
7. The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions
8. Hong Kong Licensed Plumbers Association Limited
9. Hong Kong General Building Contractors Association Limited
10. Sign Association of Hong Kong
11. Hong Kong Professional Sign Maker Association Limited
12. Hong Kong Construction Association
13. Hong Kong Water Works Professionals Association Limited
14. The Hong Kong Institute of Architects
15. The Hong Kong Institute of Surveyors
16. The Hong Kong Institution of Engineers
17. Hong Kong Owners Club
18. The Democratic Party
19. The Hong Kong Association of Property Management Companies
20. Hong Kong Institute of Real Estate Administrators
21. The Hong Kong Institute of Housing
22. Consumer Council
23. The Law Society of Hong Kong
24. Hong Kong Bar Association
25. Friends of the Earth (HK)