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A BILL

To

Amend the Buildings Ordinance and its subsidiary legislation to provide for matters relating to building works of a minor nature and the appointment, control and duties of persons who are allowed to deal with those works; to provide for a scheme under which demolition orders will not be made in respect of certain types of unauthorized structure or building works; to provide for matters relating to the projections outside buildings; to provide that certain designated works, and building works that do not bear additional loads, are exempt from the regulation of the Ordinance; to clarify the procedure for removal of names from registers; to provide for the recovery of costs of inquiry; to remove spent provisions and make minor textual amendments; and to provide for matters relating to public inspection of information kept by the Building Authority.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Buildings (Amendment) Ordinance 2007.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

PART 2

AMENDMENTS TO BUILDINGS ORDINANCE

3. Interpretation

(1) Section 2(1) of the Buildings Ordinance (Cap. 123) is amended—

(a) by repealing the definition of “contraventions of the provisions of this Ordinance” and substituting—

““contraventions of the provisions of this Ordinance” (違反本條例的條文) includes—

(a) failure to comply with any order given or any condition imposed by the Building Authority under this Ordinance;

(b) in the case of building works (other than prescribed requirement minor works), material divergence or deviation from any plan approved by the Building Authority under this Ordinance;

(c) in the case of prescribed requirement minor works, material divergence or deviation from any plan required to be submitted to the Building Authority under the prescribed requirements; and

(d) in the case of prescribed requirement minor works, failure to submit to the Building Authority any certificate required to be submitted under the prescribed requirements;”;

(b) by repealing the definition of “specialized works” and substituting—

““specialized works” (專門工程) means building works or street works designated as specialized works under section 2A;”;

(c) by adding—

““minor works” (小型工程) means building works designated in the regulations as minor works for the purposes of this definition;

“prescribed registered contractor” (訂明註冊承建商) means a registered general building contractor, registered specialist contractor or registered minor works contractor;

“prescribed requirement minor works” (訂明規定小型工程) means minor works in respect of which section 14(1), by virtue of section 14AA, does not or will not apply;

“prescribed requirements” (訂明規定) means any requirements prescribed in the regulations as prescribed requirements for the purposes of this definition;

“registered minor works contractor” (註冊小型工程承建商) means a person whose name is for the time being on the register or provisional register of minor works contractors maintained under section 8A;

“Secretary” (局長) means the Secretary for Development;”.

(2) Section 2 is amended by adding—

“(1A) Where this Ordinance refers to a person’s certifying prescribed requirement minor works, it means the certification by the person of anything that is required by the regulations to be certified in respect of such minor works.”.

4. Section added

The following is added immediately after section 2—

“2A. Designation of specialized works

(1) The Building Authority may designate any category of building works or street works as specialized works.

(2) The Building Authority shall notify in the Gazette a designation under subsection (1).

(3) The notification in subsection (2) is not subsidiary legislation.”.

5. Registers of authorized persons, structural engineers and geotechnical engineers

(1) Section 3(5CA) is repealed and the following substituted—

“(5CA) A Geotechnical Engineers Registration Committee consists of—

- (a) 3 registered geotechnical engineers nominated by the Engineers Registration Board;
- (b) 1 authorized person nominated by the Architects Registration Board from the list of architects in the authorized persons’ register;
- (c) 1 authorized person nominated by the Surveyors Registration Board from the list of surveyors in the authorized persons’ register;
- (d) 1 registered structural engineer nominated by the Engineers Registration Board;
- (e) 1 person nominated by the Building Authority as his representative;

- (a) whether he is, in relation to any matter connected with any activity under this Ordinance, dealing with a person registered under this section; and
 - (b) the particulars of a person so registered.
- (18) The information specified for the purposes of subsection (17) is the name, the registration number and the expiry date of the registration of any person registered under this section.”.

6. Appointment and duties of authorized person, registered structural engineer or registered geotechnical engineer

- (1) Section 4(1) is amended by repealing “Every” and substituting “Subject to subsection (1A), every”.
- (2) Section 4 is amended by adding—
 - “(1A) Subsection (1) does not apply in respect of prescribed requirement minor works.”.

7. Sections added

The following are added—

“4A. Appointment of authorized person, registered structural engineer or registered geotechnical engineer: prescribed requirement minor works

- (1) Where any minor works are to be commenced or carried out without the approval and consent of the Building Authority under section 14(1), the person for whom the minor works are to be carried out shall appoint in respect of the minor works one or more of the persons specified in subsection (2) as required by the regulations.
- (2) The persons specified for the purposes of subsection (1) are—
 - (a) an authorized person;
 - (b) a registered structural engineer; and
 - (c) a registered geotechnical engineer.
- (3) Subject to subsection (4), if an authorized person, a registered structural engineer or a registered geotechnical engineer appointed under subsection (1) is unable to act, whether by reason of the termination of his appointment or for any other reason, or is unwilling to act, the person for whom the minor works are to be carried out shall appoint in his place another authorized person, registered structural engineer or registered geotechnical engineer (as the case may be).

(4) Where an authorized person, a registered structural engineer or a registered geotechnical engineer appointed under subsection (1) is temporarily unable to act by reason of his illness or absence from Hong Kong, he may nominate another authorized person, registered structural engineer or registered geotechnical engineer (as the case may be) to act in his place for the period of such illness or absence.

4B. Duties of person appointed or nominated under section 4A

(1) A person appointed or nominated under section 4A(1), (3) or (4) shall, in relation to the prescribed requirement minor works for which he is appointed or nominated, comply with the prescribed requirements.

(2) Without affecting the generality of subsection (1), the person shall also—

- (a) supervise in accordance with the supervision plan the carrying out of the prescribed requirement minor works;
- (b) supervise in the manner prescribed in the prescribed requirements the carrying out of the prescribed requirement minor works;
- (c) notify the Building Authority of any contravention of the regulations which would result from the carrying out of any works shown in the plan required to be submitted to the Building Authority in respect of the prescribed requirement minor works under the prescribed requirements;
- (d) ensure that—
 - (i) fire service installations or equipment in relation to the prescribed requirement minor works are provided in accordance with the Code of Practice referred to in section 16(1)(b)(ii); and
 - (ii) the carrying out of the prescribed requirement minor works does not result in the relevant minimum requirements under the Code not being complied with in respect of the fire service installations or equipment;
- (e) ensure that the carrying out of the prescribed requirement minor works would not contravene—
 - (i) any enactment; and
 - (ii) any approved or draft plan prepared under the Town Planning Ordinance (Cap. 131);
- (f) if the prescribed requirement minor works are carried out within a comprehensive development area of an approved or draft plan prepared under the Town Planning Ordinance (Cap. 131), ensure that the carrying out of the prescribed

- requirement minor works would not contravene the master lay-out plan approved by the Town Planning Board under section 4A(2) of that Ordinance; and
- (g) comply generally with this Ordinance.”.

8. Appointment and powers of disciplinary board

Section 5(1) and (3A) is amended by repealing “for Development”.

9. Disciplinary proceedings for authorized person, registered structural engineer or registered geotechnical engineer

(1) Section 7(1) is amended—

(a) in paragraph (b), by repealing “or”;

(b) by adding—

“(ba) render the person unfit for certifying any prescribed requirement minor works;

(bb) make further certification of prescribed requirement minor works by him prejudicial to the due administration of this Ordinance; or”.

(2) Section 7(1A) is amended—

(a) in paragraph (e), by repealing the full stop and substituting a semicolon;

(b) by adding—

“(f) has certified prescribed requirement minor works that have been carried out in contravention of this Ordinance;

(g) has supervised prescribed requirement minor works that have been carried out in such a manner that they have caused injury to a person (whether or not while under such supervision);

(h) has certified in respect of building works that are not prescribed requirement minor works, anything that is required to be prescribed in respect of prescribed requirement minor works;

(i) has supervised building works (other than prescribed requirement minor works) that have been carried out in contravention of section 14(1); or

(j) has not carried out his duties under section 4B(2)(d), (e) or (f) in respect of prescribed requirement minor works.”.

(3) Section 7(2) is amended—

- (a) by repealing everything before “the disciplinary board may” and substituting—
 - “(2) Where, after due inquiry, the disciplinary board is satisfied that the authorized person, the registered structural engineer or the registered geotechnical engineer has been convicted as described in subsection (1A)(a) or done an act described in subsection (1A)(b), (c), (d), (e), (f), (g), (h) or (i) or has not carried out the duties mentioned in subsection (1A)(j) in respect of prescribed requirement minor works,”;
- (b) in paragraph (b), by repealing “or”;
- (c) by repealing paragraph (ba) and substituting—
 - “(ba) order that the authorized person, registered structural engineer or registered geotechnical engineer be fined—
 - (i) in the case of building works (other than minor works), a sum not exceeding \$250,000; or
 - (ii) in the case of minor works, a sum not exceeding \$150,000; or
 - (bb) order that the authorized person, registered structural engineer or registered geotechnical engineer be prohibited from certifying any prescribed requirement minor works, either permanently or for such period as the disciplinary board thinks fit.”.
- (4) Section 7 is amended by adding—
 - “(3A) The amount referred to in subsection (2)(ba) and any costs of inquiry ordered to be paid under subsection (3) are recoverable as a debt due to the Government.”.

10. Registers of contractors, etc.

- (1) Section 8A(1) is amended—
 - (a) in paragraph (a), by repealing “and”;
 - (b) in paragraph (b), by repealing the full stop and substituting “; and”;
 - (c) by adding—
 - “(c) a register or provisional register of minor works contractors who are qualified to carry out minor works belonging to the class, type and item specified in the register in which they are registered.”.
- (2) Section 8A(4) is amended—
 - (a) in paragraph (b), by repealing the full stop and substituting “; and”;

(b) by adding—

“(c) the register or provisional register of minor works contractors the name of a registered minor works contractor who ceases, for any reason, to carry out minor works belonging to the class, type and item specified in the register in which he is registered.”.

(3) Section 8A(5) is amended by repealing “or a registered specialist contractor” and substituting “, a registered specialist contractor or a registered minor works contractor”.

(4) Section 8A is amended by adding—

“(6) The Building Authority shall make available the information specified in subsection (7) for public inspection at any reasonable time to facilitate any member of the public to ascertain—

(a) whether he is, in relation to any matter connected with any activity under this Ordinance, dealing with a contractor registered under this Ordinance; and

(b) the particulars of a contractor so registered.

(7) The information specified for the purposes of subsection (6) is—

(a) the name, registration number and the expiry date of the registration of any registered general building contractor, registered specialist contractor or registered minor works contractor; and

(b) the name of the person appointed by a registered contractor referred to in paragraph (a) to act on the registered contractor’s behalf for the purposes of this Ordinance.”.

11. Renewal of registration as a contractor

(1) Section 8C(6) is repealed and the following substituted—

“(6) Subject to subsection (6A), the Building Authority shall remove the name of a person from a register if the Building Authority—

(a) does not receive an application made by the person for renewal of registration made in accordance with subsection (2); or

(b) has refused an application made by the person under subsection (5) and sent a notice by registered post to his last known address notifying him of the refusal.”.

(2) Section 8C is amended by adding—

“(6A) The removal of a name under subsection (6)(a) becomes effective immediately after the date of expiry of the existing registration.

(6B) A notice under subsection (6)(b) shall specify the effective date of removal, which shall not be earlier than the date of expiry of the existing registration.”.

12. Appointment and duties of registered contractors

(1) Section 9(1) is amended by repealing “specialized works.” and substituting—

“—

- (a) specialized works; and
- (b) minor works.”.

(2) Section 9(2) is amended by adding “(other than the specialized works designated as minor works)” after “specialized works”.

13. Section added

The following is added immediately before section 9A—

“9AA. Appointment and duties of prescribed registered contractors: minor works

(1) A person for whom minor works are to be commenced or carried out shall appoint a prescribed registered contractor as required by the regulations to carry out the works.

(2) If a prescribed registered contractor appointed to carry out minor works is unwilling or unable to act, the person for whom the minor works are to be carried out shall appoint in his place another prescribed registered contractor who is qualified to be appointed under subsection (1).

(3) A prescribed registered contractor appointed to carry out minor works (other than prescribed requirement minor works) shall—

- (a) provide continuous supervision in relation to the carrying out of the minor works in accordance with his supervision plan;
- (b) notify the Building Authority of any contravention of the regulations which would result from the carrying out of the works shown in the plan approved by the Building Authority for the minor works; and
- (c) comply generally with this Ordinance.

(4) A prescribed registered contractor appointed to carry out prescribed requirement minor works shall, in relation to the prescribed requirement minor works, comply with the prescribed requirements.

(5) Without affecting the generality of subsection (4), a prescribed registered contractor appointed to carry out prescribed requirement minor works shall also—

- (a) provide continuous supervision in relation to the carrying out of the prescribed requirement minor works under the prescribed requirements;
- (b) notify the Building Authority of any contravention of the regulations which would result from the carrying out of the works shown in the plan required to be submitted to the Building Authority in respect of the minor works under the prescribed requirements; and
- (c) comply generally with this Ordinance.”.

14. Appointment and powers of disciplinary board

(1) Section 11(1) is amended by repealing “for Development”.

(2) Section 11 is amended by adding immediately before subsection (3A)—

“(3AA) Every board appointed to hear and determine any proceedings against a registered minor works contractor shall consist of—

- (a) 2 persons who are members of the Registered Contractors’ Disciplinary Board Panel appointed under section 11A;
- (b) 2 persons who are members of the Authorized Persons’, Registered Structural Engineers’ and Registered Geotechnical Engineers’ Disciplinary Board Panel appointed under section 5A; and
- (c) 1 person selected from among the persons nominated in accordance with subsection (4A).”.

(3) Section 11(3B) is amended by repealing “or a registered specialist contractor” and substituting “, a registered specialist contractor or a registered minor works contractor”.

(4) Section 11(4A) is amended—

- (a) by repealing “and (3)(c)” and substituting “, (3)(c) and (3AA)(c)”;
- (b) by repealing “for Development”.

15. Disciplinary proceedings for contractors

- (1) Section 13(1) is amended—
 - (a) by repealing “or a registered specialist contractor” and substituting “, a registered specialist contractor or a registered minor works contractor”;
 - (b) in paragraph (b), by repealing “or”;
 - (c) in paragraph (c), by repealing the full stop and substituting a semicolon;
 - (d) by adding—
 - “(d) render the contractor unfit for certifying or carrying out prescribed requirement minor works;
 - (e) make further certification of or carrying out prescribed requirement minor works by the contractor prejudicial to the due administration of this Ordinance; or
 - (f) render the contractor deserving of suspension from certifying or carrying out prescribed requirement minor works.”.
- (2) Section 13(2) is amended—
 - (a) in paragraph (e), by repealing the full stop and substituting a semicolon;
 - (b) by adding—
 - “(f) has certified prescribed requirement minor works that have been carried out in contravention of this Ordinance;
 - (g) has supervised prescribed requirement minor works that have been carried out in such a manner that they have caused injury to a person (whether or not while under such supervision);
 - (h) has carried out prescribed requirement minor works in such a manner that they have caused injury to a person;
 - (i) has carried out building works (other than prescribed requirement minor works) in contravention of section 14(1); or
 - (j) has certified in respect of building works that are not prescribed requirement minor works anything that is required to be prescribed in respect of prescribed requirement minor works.”.
- (3) Section 13(4) is repealed and the following substituted—
 - “(4) Where, after due inquiry, the disciplinary board is satisfied that the registered contractor or the director or officer or the person appointed by the registered contractor to act on his behalf for the purposes of this Ordinance has been convicted as described in

subsection (2)(a) or done an act described in subsection (2)(b), (c), (d), (e), (f), (g), (h), (i) or (j), the disciplinary board may—

- (a) order that the name of the registered contractor or the name of the director, officer or person be removed from the relevant register, either permanently or for such period as the disciplinary board thinks fit;
 - (b) order that the registered contractor or the director, officer or person be fined—
 - (i) in the case of building works (other than minor works), a sum not exceeding \$250,000; or
 - (ii) in the case of minor works, a sum not exceeding \$150,000;
 - (c) order that the registered contractor or the director, officer or person be reprimanded; or
 - (d) in the case of a registered contractor who is a registered general building contractor or a registered specialist contractor, order that he be prohibited from certifying or carrying out any prescribed requirement minor works, either permanently or for such period as the disciplinary board thinks fit.”.
- (4) Section 13 is amended by adding—
- “(6A) The amount referred to in subsection (4)(b) and any costs of inquiry ordered to be paid under subsection (6) are recoverable as a debt due to the Government.”.

16. Section added

The following is added—

“14AA. Approval and consent not required for minor works

Section 14(1) does not apply in respect of minor works commenced or carried out without the approval and consent of the Building Authority under that section if sections 4A(1) and 9AA(1) have been complied with in respect of the works.”.

17. Provision for urgent work

Section 19(4)(c) is amended by adding “the registered minor works contractor,” after “specialist contractor,”.

18. Occupation of new building

Section 21(6) is amended by adding—

- “(da) in the case of a building the prescribed plans and details of which have been submitted to the Building Authority under the prescribed requirements, any fire service installations or equipment required to be provided in accordance with the Code of Practice referred to in section 16(1)(b)(ii) has not been provided;
- (db) in the case of a building the prescribed plans and details of which have been submitted to the Building Authority under the prescribed requirements, it was erected in contravention of an approved or draft plan prepared under the Town Planning Ordinance (Cap. 131) or any relevant master lay-out plan approved by the Town Planning Board under section 4A(2) of that Ordinance;”.

19. Powers of Building Authority

Section 22(2)(a) is repealed and the following substituted—

- “(a) access to every part of any building works or street works shall be provided by the registered general building contractor, registered specialist contractor or registered minor works contractor; and”.

20. Building works, etc. to cease on order of Building Authority

(1) Section 23(1) is amended by repealing “or registered specialist contractor” and substituting “, registered specialist contractor, registered minor works contractor”.

(2) Section 23(2) and (3) is amended by adding “, registered minor works contractor” after “registered specialist contractor”.

21. Order for demolition, removal, or alteration of building, building works or street works

(1) Section 24 is amended, in the heading, by adding “(other than prescribed requirement minor works)” after “building works”.

(2) Section 24 is amended by adding—

“(1A) Subsection (1) does not apply in respect of prescribed requirement minor works.”.

22. Section added

The following is added immediately after section 24A—

“24AA. Order for demolition, removal, or alteration of prescribed requirement minor works

(1) The Building Authority may, by order in writing served according to subsection (4), require a person to take the action described in subsection (2) in respect of any prescribed requirement minor works, if the minor works have been or are being carried out in contravention of—

- (a) any provisions of this Ordinance;
- (b) any approved or draft plan prepared under the Town Planning Ordinance (Cap. 131); or
- (c) any relevant master lay-out plan approved by the Town Planning Board under section 4A(2) of the Town Planning Ordinance (Cap. 131).

(2) The action that the Building Authority may require a person to take under subsection (1) is—

- (a) the demolition of the minor works; or
- (b) such alteration of the minor works as may be necessary to cause the same to comply with the provisions of this Ordinance, the approved or draft plan or the master lay-out plan (as the case may be), or otherwise to put an end to the contravention referred to in subsection (1)(a), (b) or (c).

(3) The Building Authority shall specify in the order the time within which the action required by the order must be commenced and completed.

(4) An order made under subsection (1) shall be served on—

- (a) where the subject matter of the minor works is not a signboard—
 - (i) the person for whom the minor works have been or are being carried out; or
 - (ii) if that person is not the owner of the land or premises on which the minor works have been or are being carried out and cannot be found, subject to subsection (5), the owner of such land or premises; or
- (b) where the subject matter of the minor works is a signboard—
 - (i) the person for whom the signboard has been or is being erected;
 - (ii) if that person cannot be found, the person who would receive any rent or other money consideration if the signboard were hired out or the person who is receiving such rent or money consideration; or

- (iii) if the persons referred to in subparagraphs (i) and (ii) are not the owner of the land or premises on which the signboard has been or is being erected and cannot be found, the owner of such land or premises.

(5) Where the place on which the minor works referred to in subsection (4)(a)(ii) are carried out is—

- (a) connected to land or premises (in this section referred to as “other land or premises”) other than the land or premises on which the minor works have been or are being carried out; and
- (b) occupied or used by the owner or occupier of that other land or premises,

subsection (4)(a)(ii) does not apply, and in such a case, the Building Authority shall serve the order made under subsection (1) on the owner of that other land or premises.

(6) The Building Authority may cause an order served under subsection (4)(a)(ii) or (b)(iii) or (5) to be registered in the Land Registry against—

- (a) if the order has been served on the owner of any land or premises in accordance with subsection (4)(a) or (b), the land or premises; or
- (b) if the order has been served on the owner of other land or premises in accordance with subsection (5), that other land or premises.

(7) If an order made under subsection (1) is not complied with, the Building Authority may demolish or alter or cause to be demolished or altered the minor works.

(8) Subject to subsection (9), the cost of any demolition or alteration under subsection (7) in relation to the minor works to which the order relates shall be recoverable as a debt due to the government from—

- (a) if the order had been served on a person in accordance with subsection (4)(a)(i) or (b)(i) or (ii), that person;
- (b) if the order had been served on the owner of any land or premises in accordance with subsection (4)(a) or (b), that owner; or
- (c) if the order had been served on the owner of other land or premises in accordance with subsection (5), that owner.

(9) Where the order has been registered with the Land Registry in accordance with subsection (6), the cost of any demolition or alteration under subsection (7) in relation to the minor works to which the order relates is recoverable from—

- (a) if the order had been served on the owner of any land or premises in accordance with subsection (4)(a) or (b), the person who, as at the date of completion of the demolition or alteration, is the owner of that land or premises;
- (b) if the order had been served on the owner of other land or premises in accordance with subsection (5), the person who, as at the date of completion of the demolition or alteration, is the owner of that other land or premises.

(10) A certificate purporting to be under the hand of the Building Authority and stating the date of completion of the demolition or alteration under subsection (7) is prima facie evidence of that fact.”.

23. Projections on or over streets

Section 31(1) is amended—

- (a) in paragraph (a), by repealing “; or” and substituting a semicolon;
- (b) by adding—
 - “(aa) the building or other structure is a signboard and its location and dimensions do not constitute—
 - (i) a danger to the structure of any building;
 - (ii) a hazard to traffic;
 - (iii) a fire hazard;
 - (iv) an obstruction of any traffic signs, traffic light signals, road markings, or any other equipment or facilities for the monitoring or control of traffic condition;
 - (v) an obstruction or reduction of the width or height of any means of escape or means of access for fire fighting and rescue;
 - (vi) an obstruction of the lighting or ventilation of any building in such a manner as to reduce the quality of light and air available to the building below that required under the regulations; or
 - (vii) a danger to the public; or”.

24. Regulations

(1) Section 38(1) is amended—

- (a) by repealing “for Development”;
- (b) in paragraph (a), by adding—
 - “(vii) registered minor works contractors;”;

- (c) by adding—
 - “(aa) restoration to and removal from the register of any person referred to in paragraph (a);”;
- (d) by adding—
 - “(ka) matters relating to minor works, including—
 - (i) the designation of any building works as minor works for the purposes of the definition of “minor works” in section 2(1);
 - (ii) the classification of minor works into different classes, types or items;
 - (iii) the appointment of an authorized person, a registered structural engineer and a registered geotechnical engineer in respect of different classes, types or items of minor works; and
 - (iv) the appointment of prescribed registered contractors to carry out different classes, types or items of minor works; and
 - (kb) the prescription of any requirements as prescribed requirements for the purposes of the definition of “prescribed requirements” in section 2(1), including—
 - (i) the duties of any authorized persons, registered structural engineers and registered geotechnical engineers, and any prescribed registered contractors, appointed in respect of prescribed requirement minor works (whether to be carried out before or after the commencement of the prescribed requirement minor works);
 - (ii) the requirements for the commencement, carrying out, completion and certification of prescribed requirement minor works; and
 - (iii) the requirements for the submission or delivery of prescribed plans, certificates, notices or other documents to the Building Authority or other persons;
 - (kc) matters relating to the enforcement of or other matters concerning the prescribed requirements;
 - (kd) matters relating to section 39C, including matters relating to—
 - (i) the appointment of persons including a registered minor works contractor to inspect any building or building works for the purposes of that section;
 - (ii) the prescription of any building or building works for the purposes of the definition of “prescribed building or building works” in section 39C(6)(b); and

(iii) any plans, certificates, notices or other documents that are required to be submitted or delivered to the Building Authority or other persons;

(*ke*) the designation of any building works as designated exempted works for the purposes of section 41(3B);”.

(2) Section 38 is amended by adding immediately before subsection (1A)—

“(1AA) Without limiting the generality of subsection (1), the Secretary may by regulation provide for the registration of persons as registered minor works contractors in the provisional register (whether or not as supplemental or transitional arrangements).”.

(3) Section 38(5) is amended, in the proviso, by repealing “for Development”.

25. Technical memorandum

Section 39A(1) is amended—

(a) by repealing “for Development”;

(b) in paragraph (f), by repealing “or registered specialist contractor” and substituting “, registered specialist contractor or registered minor works contractor”.

26. Section added

The following is added immediately after section 39B—

“39C. Building Authority shall not serve order under section 24 or notice under section 24C

(1) Notwithstanding sections 24 and 24C, if the requirements in subsections (2), (3) and (4) have been complied with in respect of a prescribed building or building works that have been completed or carried out before the date of commencement, the Building Authority shall not serve an order under section 24 or a notice under section 24C in respect of that building or building works on the ground that they have been completed or carried out in contravention of section 14(1).

(2) An authorized person, a registered structural engineer, a registered general building contractor, a registered specialist contractor or a registered minor works contractor as required by the regulations is to be appointed to inspect the prescribed building or building works.

(3) The person appointed under subsection (2) is to submit or deliver to the Building Authority or other persons prescribed plans, certificates, notices and other documents as required by the regulations.

(4) Where the person appointed under subsection (2) considers that for the safety of the prescribed building or building works, it is necessary to carry out alteration, rectification or reinforcement works on the prescribed building or building works, such works are to be carried out by him.

(5) Nothing in this section affects the power of the Building Authority to serve an order under section 24 or a notice under section 24C on the grounds other than those referred to in subsection (1).

(6) In this section—

(a) “date of commencement” (生效日期) means the date of commencement of section 26 of the Buildings (Amendment) Ordinance 2007 (of 2007);

(b) “prescribed building or building works” (訂明建築物或建築工程) means a building or building works prescribed in the regulations as prescribed building or building works for the purposes of this definition.”.

27. Offences

(1) Section 40(1AA) is repealed and the following substituted—

“(1AA) Any person who knowingly contravenes section 14(1) shall be guilty of an offence and shall be liable on conviction—

(a) in the case of building works (other than minor works) or street works—

(i) to a fine of \$400,000 and to imprisonment for 2 years; and

(ii) to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued; or

(b) in the case of minor works—

(i) to a fine at level 6 and to imprisonment for 6 months; and

(ii) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.”.

(2) Section 40(1)(a) is amended by repealing “of \$100,000” and substituting “at level 6”.

(3) Section 40(1A) is amended by repealing “of \$5,000” and substituting “at level 2”.

(4) Section 40(1B)(i) is amended by repealing “of \$50,000” and substituting “at level 5”.

(5) Section 40 is amended by adding—

“(1BB) Any person who, without reasonable excuse, fails to comply with an order served on him under section 24AA(1) shall be guilty of an offence and shall be liable on conviction—

(a) to a fine at level 5 and to imprisonment for 3 months; and

(b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.”.

(6) Section 40(1C) is amended by repealing “of \$2,000” and substituting “at level 1”.

(7) Section 40(1D) is amended by repealing “of \$10,000” and substituting “at level 3”.

(8) Section 40(1E) is amended by repealing “of \$50,000” and substituting “at level 5”.

(9) Section 40(2A) is amended—

(a) by repealing “or registered specialist contractor” and substituting “, registered specialist contractor or registered minor works contractor”;

(b) in paragraph (b), by repealing “; or” and substituting a semicolon;

(c) by adding—

“(ba) diverges or deviates in any material way from any works shown in a plan relating to minor works that is required to be submitted to the Building Authority under the prescribed requirements; or”;

(d) by repealing everything after “conviction” and substituting—

“—

(d) in the case of building works (other than minor works) or street works, to a fine of \$1,000,000 and to imprisonment for 3 years; or

(e) in the case of minor works, to a fine of \$500,000 and to imprisonment for 18 months.”.

(10) Section 40 is amended by adding immediately after subsection (2AA)—

“(2AAAA) Any authorized person, registered structural engineer or registered geotechnical engineer who contravenes section 4B(2)(c), or any registered general building contractor, registered specialist contractor or registered minor works contractor who

contravenes section 9AA(3)(b) or (5)(b), shall be guilty of an offence and shall be liable on conviction to a fine at level 5.

(2AAAB) It is a defence in any prosecution for a contravention of any section referred to in subsection (2AAAA) for the person charged to prove that he had no knowledge of, and could not have reasonably discovered, the contravention referred to in the charge.

(2AAAC) Any person who contravenes an order made by a disciplinary board under section 7(2)(bb) or 13(4)(d) shall be guilty of an offence and shall be liable on conviction—

- (a) to a fine at level 6 and to imprisonment for 6 months; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.”.

(11) Section 40(2AB) is amended—

- (a) by repealing “or a registered specialist contractor” and substituting “, a registered specialist contractor or a registered minor works contractor”;
- (b) by repealing everything after “conviction” and substituting—
 - (a) in the case of building works (other than minor works) or street works, to a fine of \$150,000 and to imprisonment for 1 year; or
 - (b) in the case of minor works, to a fine of \$35,000 and to imprisonment for 3 months.”.

(12) Section 40(2AC) is amended—

- (a) by repealing “or a registered specialist contractor” and substituting “, a registered specialist contractor or a registered minor works contractor”;
- (b) by repealing everything after “conviction” and substituting—
 - (a) in the case of site formation works, piling works, excavation works or foundation works (other than minor works), to a fine of \$750,000 and to imprisonment for 3 years; or
 - (b) in the case of site formation works, piling works, excavation works or foundation works that are minor works, to a fine of \$350,000 and to imprisonment for 18 months.”.

(13) Section 40(2B) is amended—

- (a) by repealing “or a registered specialist contractor” and substituting “, a registered specialist contractor or a registered minor works contractor”;
 - (b) by repealing everything after “conviction” and substituting—
 - (c) in the case of site formation works, piling works, foundation works or other form of building works (other than minor works), to a fine of \$1,000,000 and to imprisonment for 3 years; or
 - (d) in the case of site formation works, piling works, foundation works or other form of building works that are minor works, to a fine of \$500,000 and to imprisonment for 18 months.”.
- (14) Section 40(2C)(a) and (b) is repealed and the following substituted—
- “(a) in the case of building works (other than minor works) or street works—
 - (i) to a fine of \$1,000,000 and to imprisonment for 3 years; and
 - (ii) to a fine of \$200,000 for each day during which it is proved to the satisfaction of the court that the offence has continued; or
 - (b) in the case of minor works—
 - (i) to a fine of \$500,000 and to imprisonment for 18 months; and
 - (ii) to a fine of \$100,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.”.
- (15) Section 40 is amended by adding—
- “(2E) Where a registered minor works contractor or a registered specialist contractor certifies or carries out minor works belonging to a class, type or item for which he is not registered, he shall be guilty of an offence and shall be liable on conviction—
 - (a) to a fine at level 6 and to imprisonment for 6 months; and
 - (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
 - (2F) Any person other than an authorized person, a registered structural engineer and a registered geotechnical engineer, who, without reasonable excuse, certifies minor works shall be guilty of an offence and shall be liable on conviction—
 - (a) to a fine at level 6 and to imprisonment for 6 months; and

(b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

(2G) Any person other than a registered general building contractor, a registered specialist contractor or a registered minor works contractor or a person acting under the supervision of any such contractor, who, without reasonable excuse, certifies or carries out minor works shall be guilty of an offence and shall be liable on conviction—

(a) to a fine at level 6 and to imprisonment for 6 months; and

(b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.”.

(16) Section 40(3) is amended by repealing “of \$50,000” and substituting “at level 5”.

(17) Section 40(3A) is amended by repealing “of \$50,000” and substituting “at level 5”.

(18) Section 40(4) is amended by repealing “of \$50,000” and substituting “at level 5”.

(19) Section 40(4A) is amended by repealing “of \$50,000” and substituting “at level 5”.

28. Exemptions

(1) Section 41(3) is repealed and the following substituted—

“(3) Building works (other than drainage works, ground investigation in the scheduled areas, site formation works or minor works) in any building are exempt from sections 4, 9, 9AA, 14(1) and 21 if the works do not—

(a) alter the structural elements of the building; and

(b) bear any imposed load, wind load or dead load other than that due to their own weight.”.

(2) Section 41(3A) is repealed.

(3) Section 41 is amended by adding—

“(3B) Designated exempted works are exempt from sections 4, 9, 9AA, 14(1) and 21.

(3C) Drainage works (other than minor works) in any building are exempt from sections 4, 9 and 14(1) if the works do not—

(a) alter the structural elements of the building;

- (b) involve any drain or sewer into which there is discharged, or into which it is intended to discharge, any trade effluent, chemical refuse, waste steam, petroleum spirit, carbide of calcium, acid, grease or oil;
- (c) involve altering any manhole at which any drain or sewer from the building is connected with a public sewer;
- (d) involve altering any septic tank or cesspool;
- (e) involve making a direct or indirect connection of an additional drain or sewer to a septic tank or cesspool; or
- (f) involve underground drainage works in a scheduled area that is described as area number 3 in the Fifth Schedule.

(3D) Nothing in subsections (3), (3B) and (3C) permits any building works or drainage works to be carried out in contravention of any regulations.”.

29. Offences in respect of Appeal Tribunal

Section 53B is amended by repealing “of \$10,000” and substituting “at level 3”.

30. Inclusion of certain registered professional engineers in geotechnical engineers’ register

Section 53H is amended by repealing “3(5CA)(a)(i)” and substituting “3(5CA)(a)”.

31. Part IX added

The following is added immediately after section 55—

“PART IX

56. Savings and transitional provisions relating to minor works

(1) Where, before the date of commencement, the Building Authority has given approval and consent for the commencement of any building works under section 14(1), the building works shall not be treated as minor works for the purposes of this Ordinance notwithstanding that they are building works designated as minor works in the regulations.

(2) Where any building works, which are exempt from section 14(1) by virtue of section 41(3) or (3A) as it was in force immediately before the date of commencement, have been completed or are being carried out as at the beginning of the date of commencement, the building works shall not be treated as minor works for the purposes of this Ordinance notwithstanding that they are building works designated as minor works in the regulations.

(3) In this section, “date of commencement” (生效日期) means the date on which section 28 of the Buildings (Amendment) Ordinance 2007 (of 2007) comes into operation.”.

32. Scheduled areas

The Fifth Schedule is amended by repealing “[s. 2(1)]” and substituting “[ss. 2(1) and 41]”.

PART 3

RELATED AMENDMENTS

Building (Administration) Regulations

33. Notification to Building Authority before commencement of building works or street works

Regulation 20(1)(a) and (b) of the Building (Administration) Regulations (Cap. 123 sub. leg. A) is amended by repealing “or the registered specialist contractor” and substituting “, registered specialist contractor or registered minor works contractor”.

34. Building Authority to be notified on change of authorized person, registered structural engineer, registered geotechnical engineer, registered contractor, etc.

Regulation 22(1), (2), (4) and (6) is amended by repealing “or registered specialist contractor” wherever it appears and substituting “, registered specialist contractor or registered minor works contractor”.

35. Duties of registered contractor who ceases to be appointed

Regulation 24 is amended by repealing “or registered specialist contractor” and substituting “, registered specialist contractor or registered minor works contractor”.

36. Certificate to be given by registered contractor and authorized person on completion of building works

(1) Regulation 25(1) is amended—

- (a) by repealing “and registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”;
- (b) by adding “, and the plans approved in respect of the new building and the building works by the Building Authority,” after “regulations”.

(2) Regulation 25(2) is amended—

- (a) by repealing “and the registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”;
- (b) by repealing “the plans approved in respect thereof by the Building Authority” and substituting “the provisions of the Ordinance and regulations, and the plans approved in respect of the new building and the building works by the Building Authority”.

(3) Regulation 25(3) is amended—

- (a) by repealing “and the registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”;
- (b) by repealing “the plans approved in respect thereof by the Building Authority” and substituting “the provisions of the Ordinance and regulations, and the plans approved in respect of the new building and the building works by the Building Authority”.

37. Certificate to be given by authorized person, registered structural engineer, registered geotechnical engineer and registered contractor engaged in respect of emergency work

Regulation 28 is amended by repealing “and registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”.

38. Duties imposed by this Part not to prejudice any other duties imposed by Ordinance or other regulations

Regulation 35 is amended by repealing “or registered specialist contractor” where it twice appears and substituting “, registered specialist contractor or registered minor works contractor”.

39. Duty of authorized person to supply copy of plans of building works or street works to registered contractor

Regulation 36(1) and (2) is amended by repealing “and the registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”.

40. Duty of registered contractor to keep approved plans and supervision plans on site

Regulation 40 is amended by repealing “and the registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”.

41. Duty of registered contractor to supervise

(1) Regulation 41(1) is amended by repealing “and the registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”.

(2) Regulation 41(2) is amended—

(a) by repealing “and the registered specialist contractor” where it twice appears and substituting “, registered specialist contractor and registered minor works contractor”;

(b) by adding “or 9AA” after “section 9”.

(3) Regulation 41(4) is amended by repealing “and a registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”.

(4) Regulation 41(6) is amended by repealing “and the registered specialist contractor” and substituting “, registered specialist contractor and registered minor works contractor”.

42. Regulation added

The following is added—

“48. Regulations do not apply to prescribed requirement minor works

These regulations do not apply in respect of prescribed requirement minor works.”.

Building (Planning) Regulations

43. Interpretation

Regulation 2(1) of the Building (Planning) Regulations (Cap. 123 sub. leg. F) is amended by adding—

““drying rack” (晾衣架) means a structure for hanging clothes or garments for drying;”.

44. Eaves, cornices, mouldings, etc.

Regulation 7 is amended by adding—

“(3) No drying rack or supporting structure for an air-conditioning unit shall project over a street for more than 750 mm or at a height of less than 2.5 m above the level of the ground.”.

PART 4

CONSEQUENTIAL AMENDMENT

Construction Workers Registration Ordinance**45. Interpretation**

Section 2(1) of the Construction Workers Registration Ordinance (Cap. 583) is amended, in the definition of “construction site”, in paragraph (a)(ii)—

- (a) by repealing “41(3) or (3A)” and substituting “14AA or 41(3), (3B) or (3C)”;
- (b) by repealing “carried out without application to or approval from the Building Authority” and substituting “commenced or carried out without complying with section 14(1) of that Ordinance”.

46. Interpretation

Section 19(2) is repealed and the following substituted—

“(2) For the purposes of this Part, any construction operations that are building works, or street works, that are not carried out by or on behalf of the Government are deemed to begin—

- (a) on the date of the Building Authority’s consent in writing for the commencement of the works under section 14(1)(b) of the Buildings Ordinance (Cap. 123); or
- (b) where the building works are the works to which section 14AA of the Buildings Ordinance (Cap. 123) applies, on the date of the commencement of the works as indicated in any document submitted to the Building Authority under the regulations made under the Buildings Ordinance (Cap. 123).”.

47. Principal contractors and controllers to retrieve and record data of registered construction workers on construction site

Section 58(9)(b) is repealed and the following substituted—

- “(b) any construction work that is building works, or street works, that are not carried out by or on behalf of the Government is deemed to begin—

- (i) on the date of the Building Authority's consent in writing for the commencement of the works under section 14(1)(b) of the Buildings Ordinance (Cap. 123); or
- (ii) where the building works are the works to which section 14AA of the Buildings Ordinance (Cap. 123) applies, on the date of the commencement of the works as indicated in any document submitted to the Building Authority under the regulations made under the Buildings Ordinance (Cap. 123).”.

Explanatory Memorandum

The object of this Bill is to amend the Buildings Ordinance (Cap. 123) (the “Ordinance”) and its subsidiary legislation to—

- (a) introduce “minor works” as a new category of building works to cover building works of a minor nature, and to provide for a new register of minor works contractors who are qualified to carry out the works;
- (b) introduce a set of simplified statutory requirements that may be adopted for commencement of minor works without having obtained the approval and consent of the Building Authority under section 14(1) of the Ordinance;
- (c) provide for matters relating to the appointment, duties and disciplinary measures applicable to an authorized person, a registered structural engineer, a registered geotechnical engineer, a registered general building contractor, a registered specialist contractor and a registered minor works contractor who is appointed in respect of minor works;
- (d) provide for a scheme to be prescribed in the regulations under which demolition orders will not be made in respect of unauthorized building works or building structures;
- (e) amend the scope of works that are exempt from the regulation of the Ordinance; and
- (f) introduce other miscellaneous amendments to the Ordinance and its regulation, including the following—
 - (i) clarify the procedure for the removal of a name from a register maintained under the Ordinance;
 - (ii) state the purposes for which the information in the registers maintained by the Building Authority under the Ordinance may be made available for public inspection; and
 - (iii) provide for matters relating to the control of drying racks and supporting structure of air-conditioning units.

2. The Bill is divided into 4 Parts.

Part 1 of the Bill

3. Clauses 1 and 2 provide for the short title and commencement.

Part 2 of the Bill

4. Clause 3(1)(a) amends the definition of “contraventions of the provisions of this Ordinance” in section 2(1) of the Ordinance to widen its scope.

5. Clause 3(1)(c) adds new definitions to section 2(1) of the Ordinance as a result of the proposed amendments to the Ordinance. It includes the definitions of “prescribed registered contractor”, “prescribed requirement minor works”, “prescribed requirements”, “registered minor works contractor” and “Secretary”.

6. Clause 4 empowers the Building Authority to designate any category of building works or street works as specialized works.

7. Clause 5(1) removes a spent provision from section 3(5CA) of the Ordinance.

8. Clauses 5(5) and 11 amend sections 3(11A) and 8C of the Ordinance respectively by clarifying the effective date of the removal of a name from a register maintained under the Ordinance.

9. Clauses 5(6) and 10(4) provide for the purposes for which the information kept in the registers under the Ordinance is to be made available for public inspection.

10. Clause 6 amends section 4(1) of the Ordinance to disapply that section in cases of prescribed requirement minor works, so that it is not necessary to appoint an authorized person, a registered structural engineer and a registered geotechnical engineer in respect of those works under section 4(1) of the Ordinance if minor works are to be commenced or carried out without having obtained the approval and consent of the Building Authority under section 14(1) of the Ordinance but with appointments having been made under sections 4A(1) and 9AA(1) of the Ordinance.

11. Clause 7 adds new sections 4A and 4B to the Ordinance—

- (a) to provide, further to clause 6, for the appointment or nomination in the circumstances prescribed by the regulations, of an authorized person, a registered structural engineer and a registered geotechnical engineer in respect of minor works, in cases where prior approval and consent of the Building Authority are not to be sought for carrying out the minor works; and

- (b) to provide for the duties to be carried out by the appointed or nominated authorized person, registered structural engineer and registered geotechnical engineer, including duties to comply with the prescribed requirements, being the simplified statutory requirements prescribed in the regulations.

12. Clauses 8 and 14(1) and (4)(b) amend sections 5 and 11 of the Ordinance respectively to replace the references to the Secretary for Development by Secretary.

13. Clause 9(1) and (2) amends section 7 of the Ordinance to include new grounds on which the Building Authority may refer to the disciplinary board cases relating to the conduct of authorized persons, registered structural engineers and registered geotechnical engineers.

14. Clause 9(3)(c) amends section 7(2)(ba) of the Ordinance to empower a disciplinary board to impose fines on the persons referred to in that paragraph in cases relating to prescribed requirement minor works and to prohibit such persons from certifying prescribed requirement minor works.

15. Clauses 9(4) and 15(4) add new sections 7(3A) and 13(6A) to the Ordinance respectively to provide that fines imposed by a disciplinary board and any costs of inquiry ordered to be paid to the Building Authority are recoverable as a debt due to the Government.

16. Clause 10(1) amends section 8A(1) of the Ordinance to enable the Building Authority to maintain a register or provisional register of minor works contractors.

17. Clause 10(2) amends section 8A(4) of the Ordinance to enable the Building Authority to remove from the register or provisional register of minor works contractors the name of a registered minor works contractor who ceases to engage in the business of the minor works.

18. Clause 13 adds a new section 9AA to the Ordinance to provide for the appointment, in the circumstances prescribed by the regulations, of a registered general building contractor, a registered specialist contractor or a registered minor works contractor, in respect of minor works, including prescribed requirement minor works.

19. Clause 14 amends section 11 of the Ordinance to provide for the composition of a disciplinary board that is to hear and determine proceedings against a registered minor works contractor.

20. Clause 15(1) and (2) amends section 13(1) and (2) of the Ordinance respectively to include additional grounds on which the Building Authority may refer cases to a disciplinary board that hears proceedings against registered general building contractors, registered specialist contractors or registered minor works contractors in relation to their conduct.

21. Clause 15(3)—

- (a) amends section 13(4) of the Ordinance to enable a disciplinary board to impose fines on registered general building contractors, registered specialist contractors and registered minor works contractors in cases concerning minor works and to prohibit such a person from carrying out or certifying minor works; and
- (b) provides that a registered contractor is responsible for misconduct concerning minor works on the part of a director or officer or person appointed by the relevant registered contractor to act on his behalf.

22. Clause 16 adds a new section 14AA to the Ordinance to provide that minor works may be commenced or carried out without having obtained the approval and consent of the Building Authority under section 14(1) of the Ordinance but with appointments having been made under sections 4A(1) and 9AA(1) of the Ordinance.

23. Clause 17 amends section 19 of the Ordinance to provide that where urgent works are required to be done and as a result of which there is a deviation from a supervision plan, registered general building contractors, registered specialist contractors, registered minor works contractors, registered structural engineers, registered geotechnical engineers or the authorized persons (as the case may require) shall prepare a revised supervision plan for submission to the Building Authority.

24. Clause 23 amends section 31 of the Ordinance to provide that if the dimensions of a signboard do not pose a danger to life or property, then it may be erected in, over, under or upon any portion of any street whether or not on land held under lease from the Government.

25. Clause 24 amends section 38 of the Ordinance to provide for regulation making powers concerning matters including classification of minor works, registration of registered minor works contractors, appointment and duties of building professionals and registered minor works contractors, and prescribed requirements.

26. Clause 26 adds a new section 39C to the Ordinance to provide for a scheme to be prescribed in the regulations under which demolition orders will not be made in respect of unauthorized building works or building structures.

27. Clause 27 amends section 40 of the Ordinance to provide the penalties for the offences relating to minor works and other new provisions.

28. Clause 28 amends section 41 of the Ordinance to provide that certain designated exempted works, and building works that do not bear additional loads, are exempt from certain provisions of the Ordinance.

29. Clause 31 provides savings and transitional arrangements relating to minor works.

Part 3 of the Bill

30. Clauses 33 to 44 provide for related amendments to the Building (Administration) Regulations (Cap. 123 sub. leg. A) (the “Administration Regulations”) and the Building (Planning) Regulations (Cap. 123 sub. leg. F) (the “Planning Regulations”), including the following—

- (a) addition of a new regulation 48 to the Administration Regulations to provide that those Regulations do not apply to prescribed requirement minor works (clause 42);
- (b) addition of a new definition of “drying rack” to the Planning Regulations (clause 43); and
- (c) addition of a new regulation 7(3) to the Planning Regulations to provide for the control of the drying rack or supporting structure of an air-conditioning unit that is projected over a street (clause 44).

Part 4 of the Bill

31. Clauses 45 to 47 contain consequential amendments to the Construction Workers Registration Ordinance (Cap. 583).