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**Paper for the House Committee Meeting
on 17 April 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 March 2009**

Date of tabling in LegCo : 1 April 2009 (L.N. 51 - L.N. 57)

Amendment to be made by : 29 April 2009 (or 20 May 2009 if extended by resolution)

PART I THE MINOR WORKS CONTROL SYSTEM

Buildings Ordinance (Cap. 123)

Building (Minor Works) Regulation (L.N. 51)

The Buildings (Amendment) Ordinance 2008 (Ord. No. 20 of 2008) (the Amendment Ordinance) amends the Buildings Ordinance (Cap. 123) (BO) for the introduction of the minor works control system. A new category of building works, namely "minor works", and a register of "registered minor works contractors" (RMWCs) for carrying out such minor works, will be introduced under the BO. In respect of minor works, the requirement to seek the Building Authority's (BA) prior approval for building plans and consent to commence works will be dispensed with.

2. The principal object of this Regulation is to provide for various matters relating to the implementation of the minor works control system.
3. Part 1 contains the definition of terms used in this Regulation.
4. Part 2 contains matters to be designated or prescribed for the purposes of the BO, namely—
 - (a) minor works;
 - (b) simplified requirements; and
 - (c) designated exempted works.

5. Part 3 contains matters relating to the establishment, composition and function of the Minor Works Contractors Registration Committee (Registration Committee). In short, a Registration Committee, comprising representatives from the industry, will be appointed to assist the BA in considering certain applications, for example an application by a person who is not a natural person for registration as an RMWC, under the Regulation. The BA may refer the applications to the Registration Committee which will recommend to the BA to allow, defer or refuse the applications.

6. Part 4 deals with the registration of a person as an RMWC, the renewal and restoration of the registration. It also deals with an application for the registration of additional classes, types or items of minor works, and addition of an authorized signatory to the contractor's registration. A person who is aggrieved by a decision, made in respect of his application for registration, renewal of registration, restoration of registration, or registration of additional classes, etc., by the BA or a Registration Committee under this Part, may appeal to the Court of First Instance.

7. Part 5 specifies, for the purposes of sections 4A and 9AA of the BO, the prescribed building professionals (i.e. an authorized person, registered structural engineer or registered geotechnical engineer) required to be appointed in respect of class I minor works or a prescribed registered contractor (i.e. a registered general building contractor, registered specialist contractor or RMWC) required to be appointed in respect of any class of minor works.

8. Part 6 sets out the details of the simplified requirements. Under the simplified requirements, the need to seek the BA's prior approval for building plans and consent to commence works under section 14(1) of the BO is dispensed with. Instead, the specified person appointed under section 27 of this Regulation is required to submit specified documents before the commencement and after the completion of class I and class II minor works, and after the completion of class III minor works.

9. Part 7 sets out the duties of a prescribed building professional and prescribed registered contractor in respect of any minor works commenced or carried out under the simplified requirements. In respect of class I minor works, a prescribed building professional is required to give such periodical supervision and make such inspections as may be necessary to ensure, among other things, that the works are carried out in general accordance with the BO. In respect of any minor works, a prescribed registered contractor, who is a person other than a natural person, is required to give continuous supervision to the carrying out of the works to ensure, among other things, that the works are carried out in general accordance with the BO. In respect of class III minor works, a prescribed registered contractor, who is a natural person, is required to carry out the works personally and ensure that the works are carried out in accordance with the BO.

10. Part 8 provides for miscellaneous matters. The following provisions are noteworthy. Section 58 provides that any person who, without reasonable excuse,

contravenes certain provisions relating to the submission of documents under Part 6, commits an offence and is liable on conviction to a fine at level 5 (\$50,000). Section 61 provides that the receipt of plans by the BA does not, among other things, confer any title to land.

11. Part 9 deals with matters relating to section 39C of the BO, which provides for a scheme generally known as the Household Minor Works Validation Scheme. Section 39C of the BO provides that if the specified requirements under the provision 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 of section 27 of the Amendment Ordinance (i.e. the adding of section 39C to the BO), the BA will not serve a warning notice or order for demolition, etc. in respect of that building or building works on the ground that the works have been carried out without the prior approval and consent of the BA. Section 27 of the Amendment Ordinance has not yet come into operation and is intended to come into operation in tandem with the Regulation. The specified requirements relate to appointment of building professionals or RMWCs to, among other things, inspect the prescribed building or building works. Nevertheless, the legal status of such structures will remain unauthorised and will not change by joining the validation scheme. The definition of "prescribed building or building works" is specified in Schedule 3 (which is explained in paragraph 15 below).

12. Part 10 deals with registration of a person (other than a natural person) as an RMWC (provisional). Some existing practitioners may not have the required academic qualifications for registration as RMWCs but possess adequate experience of conducting minor works. To allow this group of practitioners to continue business immediately after the implementation of the new control system, a provisional registration system will be established. Within two years after the commencement of section 64, a person (other than a natural person) (the applicant) may apply to the BA for registration as an RMWC (provisional) for any class of minor works. The applicant must, in respect of each type of minor works under each class to which the application relates, nominate at least one individual who is proposed to be an authorised signatory of the applicant to act for it for the purposes of the BO on its registration as an RMWC (provisional). The BA may allow an application, if the BA is satisfied, among other things, that the nominated person has the experience specified by the BA. The provisional registration will expire on the expiry of two years after commencement of section 28 (prescribed registered contractors to be appointed for purposes of section 9AA of the BO) or when a provisional contractor has formally registered as an RMWC, whichever is the earliest.

13. Schedule 1 contains a list of minor works and sets out the types of minor works they belong to. There are three classes of minor works. The works under each class are further classified into types and items that correspond to the specialisation of works in the industry. Class I minor works are relatively more complicated minor works, for example installation of internal staircases connecting two floors. Class II minor works are comparatively less complicated works, for

example repair of external walls. Class III minor works cover small-scale minor works, mostly carried out in household settings, such as erection of supporting frames for air-conditioners.

14. Section 41(3B) of the BO provides that designated exempted works that are prescribed in the regulations are exempt from the appointment of building professionals or contractors under the BO, or consent to commence works given the works do not involve the structure of the buildings. Schedule 2 contains a list of designated exempted works, for example removal of any glass reinforced polyester water tank not exceeding a specified size or removal of a short fence wall.

15. Schedule 3 contains the specifications of building or building works that are prescribed for the purposes of the Household Minor Works Validation Scheme. The lists contains unauthorised supporting frames for air conditioners, unauthorised drying racks and unauthorised small canopies.

16. Members may refer to LegCo Brief (File Ref : DEVB(PL-B) 30/30/120) issued in March 2009 by the Development Bureau for background information.

17. At the meeting of the Panel on Development on 24 February 2009, the Administration briefed the Panel on the major areas to be covered in the Regulation. Panel members expressed the following concerns and views—

- (a) the minor works control system should not be too complicated and should not cause undue disturbance to the public;
- (b) regulation of existing unauthorised minor household structures should not be too strict;
- (c) whether owners would be required to carry out the inspection and necessary works on existing unauthorised minor household structures within a specified period of time under the Household Minor Works Validation Scheme; and
- (d) whether the Household Minor Works Validation Scheme would affect the ability of owners' corporations to clear existing unauthorised minor household structures which were in breach of the relevant Deeds of Mutual Covenant and/or erected in public areas.

18. Panel members noted that a preliminary draft of the Regulation was tabled at the Bills Committee on Buildings (Amendment) Bill on 11 March 2008. Since the enactment of the Amendment Ordinance, the Administration had further refined the draft Regulation in consultation with the industry, including the Minor Works Concern Group which represents frontline minor works practitioners and other stakeholders.

19. The Regulation will come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

20. The Legal Service Division is still scrutinising the legal and drafting aspects of the Regulation and will make a further report to members if necessary.

PART II FOUR ORDERS AND ONE DECLARATION MADE BY THE SECRETARY FOR SECURITY

Drug Addiction Treatment Centres Ordinance (Cap. 244)

Addiction Treatment Centre (Consolidation) (Amendment) Order 2009 (L.N. 52)

Detention Centres Ordinance (Cap. 239)

Detention Centre (Consolidation) (Amendment) Order 2009 (L.N. 53)

Prisons Ordinance (Cap. 234)

Prisons (Amendment) Order 2009 (L.N. 54)

Rehabilitation Centres Ordinance (Cap. 567)

Rehabilitation Centres (Appointment) (Amendment) Order 2009 (L.N. 55)

Training Centres Ordinance (Cap. 280)

Training Centre (Consolidation) (Amendment) Declaration 2009 (L.N. 56)

21. These Orders and the Declaration relate to institutions situated at two locations, namely the site and buildings at the junction of Shek O Road and Cape Collinson Road at the place known as Dragon's Back, and the place and buildings at 35 Shek Pik Reservoir Road, Lantau Island.

22. The site and certain parts of the buildings situated at the junction of Shek O Road and Cape Collinson Road at the place known as Dragon's Back, have, in the name of Tai Tam Gap Correctional Institution, been appointed as an addiction treatment centre and training centre, and set apart as a prison. As the Institution has been vacated—

- (a) L.N. 52 ceases the appointment of the Institution as an addiction treatment centre;
- (b) L.N. 56 ceases the use of the Institution as a training centre; and
- (c) L.N. 54 discontinues the use of the Institution as a prison,

as from 21 May 2009.

23. The place and buildings situated at 35 Shek Pik Reservoir Road, Lantau Island now occupied by the Sha Tsui Detention Centre and Lai Chi Rehabilitation Centre will be re-designated as follows—

- (a) L.N. 55 ceases the appointment of the Lai Chi Rehabilitation Centre as a rehabilitation centre as from 15 June 2009. L.N. 55 further appoints the Lai Chi Rehabilitation Centre as a rehabilitation centre upon its relocation to the site and buildings previously occupied by the Tai Tam Gap Correctional Institution. The arrangement will come into operation on 21 May 2009;
- (b) L.N. 53 ceases the appointment of the Sha Tsui Detention Centre as a detention centre and further appoints certain parts of the place and buildings situated at 35 Shek Pik Reservoir Road, Lantau Island as a detention centre. The arrangement will come into operation on 15 June 2009;
- (c) L.N. 54 discontinues the use of the Sha Tsui Detention Centre as a prison as from 15 June 2009;
- (d) L.N. 56 declares certain parts of the place and buildings situated at 35 Shek Pik Reservoir Road, Lantau Island to be used for the purposes of a training centre as from 15 June 2009; and
- (e) L.N. 54 sets apart Sha Tsui Correctional Institution (the place and buildings situated at 35 Shek Pik Reservoir Road, Lantau Island) for the purposes of a prison as from 15 June 2009.

24. The Panel on Security has not been consulted on the Orders and Declaration.

25. There are no difficulties identified in relation to the legal or drafting aspect of L.N. 52 – L.N. 56.

PART III SCHEDULE OF SCHOOLS WITH POWER TO INCORPORATE MANAGEMENT COMMITTEE

Education Ordinance (Cap. 279)

Education Ordinance (Amendment of Schedule 3) Notice 2009 (L.N. 57)

26. This Notice amends Schedule 3 to the Education Ordinance (Cap. 279) (the Ordinance) to—

- (a) add Discovery College to that Schedule; and

- (b) repeal two schools, namely Hong Kong Sam Yuk Secondary School and Sam Yuk Middle School from that Schedule.

27. Section 40AC of the Ordinance sets out the requirements which a school has to meet before being specified in Schedule 3, and provides that the Secretary for Education may by notice published in the Gazette amend Schedule 3. In essence, these schools are non-Direct Subsidy Scheme schools, non-aided primary or secondary schools in receipt of government subsidies such as the Capital Grant and Per Caput Grant. Where a school is specified in that Schedule, the sponsoring body of the school may apply to establish an incorporated management committee in respect of the school in accordance with sections 40BJ to 40BN of the Ordinance.

28. Members may refer to LegCo Brief File (Ref : L/M (3) to EMB(SCR) 58/00 Pt. 38) issued in March 2009 by the Education Bureau for background information.

29. According to the LegCo Brief, Hong Kong Sam Yuk Secondary School and Sam Yuk Middle School have ceased operation. Discovery College meets all the requirements in section 40AC of the Ordinance for being specified in Schedule 3.

30. The Panel on Education has not been consulted on the Notice.

31. This Notice will come into operation on 21 May 2009.

32. There are no difficulties identified in relation to the legal or drafting aspect of the above item of subsidiary legislation.

PART IV LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Somalia) Regulation (L.N. 58)

United Nations Sanctions (Arms Embargoes) (Amendment) Regulation 2009 (L.N. 59)

33. The United Nations Sanctions (Somalia) Regulation (the Regulation) is made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (the Ordinance) on the instructions of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

34. On 23 January 1992, the United Nations Security Council (UNSC) adopted Resolution 733 to impose an arms embargo on Somalia. The arms embargo has been in effect since then and has been modified by various subsequent UNSC resolutions. Resolution 733 was implemented, after 1 July 1997, by the United

Nations Sanctions (Arms Embargoes) Regulation (Cap.537 sub. leg. E) (the Arms Embargoes Regulation) which implements arms embargoes against several other nations when it was made in August 1997.

35. On 20 November 2008, UNSC adopted resolution 1844 in which UNSC expressed concern over the recent increase in acts of piracy and armed robbery at sea against vessels off the coast of Somalia, and noted the role piracy may play in financing embargo violations by armed groups. Resolution 1844 consolidates the previous resolutions in relation to arms embargo against Somalia and also imposes new sanctions against the country.

36. The Regulation is made to implement Resolution 1844 and includes the following prohibitions –

- (a) the supply, delivery or carriage of weapons or military equipment to certain persons;
- (b) the provision of advice, assistance or training in certain circumstances;
- (c) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources; and
- (d) entry into or transit through Hong Kong by certain persons.

37. Except for the prohibition in paragraph 4(b) above, the terms of the Regulation are similar to other regulations made to impose sanctions against certain African countries. That prohibition (as set out in section 4 of the Regulation), among other things, specifically prohibits the provision to a person connected with Somalia or a person designated by the committee set up by paragraph 11 of UNSC Resolution 755 of financial or other assistance including investment, brokering or other financial services, related to military activities or to the supply, delivery, manufacture, maintenance or use of any weapons or military equipment.

38. The Regulation comes into operation upon gazettal on 27 March 2009. No expiry date has been specified in both Resolution 1844 and the Regulation. Therefore the Regulation will be in force until it is amended by other regulation.

39. As the arms embargo in relation to Somalia is now implemented by the Regulation, L.N. 59 is made to remove Somalia, on gazettal on 27 March 2009, from the Arms Embargoes Regulation which is to remain in force solely against Sierra Leone.

40. Members may refer to the information paper issued by the Commerce and Economic Development Bureau in March 2009 (LC Paper No. CB(1)1193/08-09(01)) to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions

(the Subcommittee) for further information.

41. Under section 3(5) of the Ordinance, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under the Ordinance. Therefore, the above regulations are not subject to amendment by the Legislative Council. However, since they come within the terms of reference of the Subcommittee, Members may consider referring them to the Subcommittee for further consideration.

42. No difficulties in the legal and drafting aspects of the above items of subsidiary legislation have been identified.

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