

立法會
Legislative Council

LC Paper No. CB(1)2228/08-09
(These minutes have been seen by
the Administration)

Ref : CB1/SS/7/08

Subcommittee on Building (Minor Works) Regulation

**Minutes of the fourth meeting on
Monday, 4 May 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEE Wing-tat
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Tanya CHAN
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP

Member absent : Hon CHEUNG Hok-ming, GBS, JP

Public officers attending : Mr Edward TO Wing-hang
Acting Deputy Secretary for Development (Planning and
Lands)²

Mr Daniel FONG Siu-wai
Assistant Secretary for Development (Buildings)¹

Mr LAM Siu-tong
Deputy Director of Buildings

Mr HUI Siu-wai
Assistant Director of Buildings (Support)

Miss Selina LAU Suet-ching
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Annette LAM
Senior Council Secretary (1)3

Action

- I. Meeting with the Administration**
(L.N. 51 of 2009 -- Building (Minor Works) Regulation
- Ref: DEVB(PL-B) 30/30/120 -- Legislative Council Brief on "Building (Minor Works) Regulation" issued by the Development Bureau in March 2009
- LC Paper No. LS51/08-09 -- Paragraphs 1 to 20 of the Legal Service Division Report
- LC Paper No. CB(1)1338/08-09(01) -- Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1338/08-09(02) -- Letter from Assistant Legal Adviser to the Administration dated 16 April 2009
- LC Paper No. CB(1)1338/08-09(03) -- Administration's paper dated 21 April 2009 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)1338/08-09(02))

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Clause by clause examination of the Building (Minor Works) Regulation

2. The Administration was requested to:
- (a) consider specifying a time limit for the Building Authority (BA) to give reasons for its decision in refusing an application for registration, renewal of registration, restoration of name to the register and other

applications under the Building (Minor Works) Regulation (the Regulation);

- (b) consider whether a time limit of three months should be regularized for the Building Authority (BA) to make a determination of an application for registration, renewal of registration, registration of additional class, type or item of minor works and nomination of additional authorized signatory under the Regulation;
- (c) consider specifying the factors (such as the nature, seriousness and the timing of the offence) in respect of any offence against an individual under the laws of Hong Kong relating to the carrying out of any building works that would be taken into account by the BA in making a determination of an application for registration, renewal of registration, registration of additional class, type or item of minor works and nomination of additional authorized signatory;
- (d) explore and propose a statutory appeal channel, other than the Court of First Instance, for a person to lodge an appeal against the decision made by the BA or a Registration Committee under section 26 for the purpose of time and cost savings;
- (e) provide an undertaking that the Administration would promulgate in the form of practice notes the standard requirement of photographs showing the physical condition of the premises where the works were to be carried out under section 30(b). Examples and illustrations with descriptions for different scenarios should be set out in the practice notes to facilitate compliance;
- (f) provide information on measures to enhance building owners' understanding of the division of duties among the professional streams of the building industry upon the implementation of the minor works control system;
- (g) clarify whether the number of days referred to in the Regulation was calendar days and whether intervening holidays would be counted;
- (h) consider whether any administrative measures could be taken to remind the building industry of their responsibility to ensure the proper handling and disposal of construction and demolition materials after completion of minor works; and
- (i) provide a response on the feasibility and the timetable for accepting submission of simple notifications, plans, certificates of completion and documents to the BA before commencement and after completion of minor works through the Internet.

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)1528/08-09(01) on 7 May 2009.)

II. Any other business

Dates of next meetings

3. Members agreed that the fifth meeting would be held on Tuesday, 5 May 2009 from 2:30 pm to 6:30 pm to meet with the Administration and continue with clause-by-clause examination of the Building (Minor Works) Regulation.

4. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
15 July 2009

**Proceedings of the fourth meeting of
the Subcommittee on Building (Minor Works) Regulation
on Monday, 4 May 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000– 000616	Chairman	Opening remarks by the Chairman	
000617- 020259	Chairman Administration Assistant Legal Adviser (ALA) Mrs Sophie LEUNG Ms Miriam LAU Mr Abraham SHEK Ms LI Fung-ying Mr LEE Wing-tat Prof Patrick LAU Miss Tanya CHAN Mr IP Wai-ming Mr IP Kwok-him	<p>Clause by clause examination of the Building (Minor Works) Regulation (the Regulation) (LN 51 of 2009, LC Paper Nos. CB(1)1338/08-09(01), (02), and (03))</p> <p><u>Part 4</u></p> <p><u>Section 18 -Application for restoration of name to register</u> Members raised no query</p> <p><u>Section 19 - Determination of application for restoration of name to register</u></p> <p>Miss Tanya CHAN's suggestion to consider specifying a time limit for the Building Authority (BA) to give to the applicant in writing reasons for its decision in refusing an application for restoration of name to register and other applications under the Regulation.</p> <p>The Chairman's suggestion for the Administration to make an overall proposal to address members' concerns about providing a time limit for the BA to make a determination of an application under the Regulation and inform the applicant of its decision.</p> <p><u>Sections 20 and 21</u> Members raised no query.</p> <p><u>Section 22 - Determination of application made under section 21(1)</u></p> <p>ALA pointed out that while section 22(1) provided that the BA must, within 3 months from receiving an application for registration of additional class, type or item of minor works, make a determination of the application, such time limit was not imposed in respect of some other applications under the Regulation such as application for renewal of registration. The Administration was requested to consider whether a time limit of three months should be regularized for the BA to make a determination of an application under the Regulation.</p>	<p>The Administration to follow up as stated in paragraph 2(a) in the minutes.</p> <p>The Administration to follow up as stated in paragraph 2(b) in the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Ms LI Fung-ying's view that the registration procedures should be streamlined to shorten, as far as practicable, the processing time for applications.</p> <p><u>Sections 23 and 24</u> Members raised no query.</p> <p><u>Fee Schedule</u> In response to Ms LI Fung-ying's enquiry about the proposed fee schedule, the Administration advised that subject to the passage of the Regulation, another regulation for registration-related fees would be prepared and introduced into the LegCo for Members' consideration.</p> <p><u>Section 25 - Determination of application made under section 24(1)</u></p> <p>Ms Miriam LAU and Ms LI Fung-ying's view that consideration be given to promulgate the factors (such as the nature, seriousness and the timing of the offence) in respect of any offence against an individual under the laws of Hong Kong relating to the carrying out of any building works that would be taken into account by the BA in making a determination of an application under the Regulation.</p> <p>The Administration's response that where an applicant had any criminal or disciplinary record in relation to the carrying out of any building works, the application for renewal, restoration of name in the register and registration of additional items of minor works would normally be referred to the Registration Committee for recommendation. A determination would be made taken into account a host of factors including the nature, seriousness and the timing of the offence/misconduct, as well as the types or classes of minor works applied for. Details of the factors of consideration would be promulgated in the practice notes for the trade's reference to enhance transparency.</p> <p>Ms Miriam LAU's view that provisions of the Buildings Ordinance (BO) should not be extended strictly to the regulatory regime for minor works contractors carrying out less complex and relatively small-scale work projects.</p> <p>The Administration's response that while the Regulation was mainly modeled on the BO, the Administration would strive to maintain a proper balance, providing some flexibility to cater for the needs of the minor works industry.</p> <p><u>Section 26 - Appeals against decisions of Building Authority or</u></p>	<p>The Administration to follow up as stated in paragraph 2(c) in the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p><u>Minor Works Contractors Registration Committee</u></p> <p>Ms Miriam LAU, Miss Tanya CHAN and Ms LI Fung-ying's concern that small contractor companies or small-scale minor works practitioners might not afford the cost of lodging an appeal against a decision made by the BA or a Registration Committee under Part 4 of the Regulation to the Court of First Instance. The Administration was requested to explore and propose other viable appeal channel/mechanism with reference to the operation of an Administrative Appeal Board, or appointing a separate Registration Committee to review the application.</p> <p>ALA's clarification that an appeal against the decision of the BA under Part 7 in respect of the appointment of a technically competent person in section 46, and under Part 10 in respect of an application for registration as registered minor works contractor (provisional) in section 65 would be considered by the Appeal Tribunal (AT) under the BO.</p> <p>The Administration's explanation that the appeal mechanism in respect of registration matters under the Regulation followed the practice of the registered general building contractors (RGBCs) under the BO. It would not be appropriate for the AT which was to deal mainly with technical issues to consider appeals against the Registration Committee.</p> <p><u>Sections 27-29</u> Members raised no query.</p> <p><u>Publicity</u></p> <p>Members' concern whether minor works practitioners and building owners could fully understand the technicality and the detailed measurements specified in the schedule of minor works, the requirements and modus operandi of the minor works control system, and the division of duties among the professional streams of the building industry.</p> <p>The Administration's explanation that the draft schedule of 118 items of minor works with detailed specifications was drawn up after extensive consultation with the trades to match the specialization of works in the industry. The Administration would maintain close liaison with trade representatives including the Minor Works Concern Group to further refine the modus operandi of the system having regard to the development of the building industry and advancement in building technology and in the light of implementation experience. Technical guidelines and practice notes on the statutory requirements, and standard designs of minor works items would be issued and updated in consultation</p>	<p>The Administration to follow up as stated in paragraph 2(d) in the minutes.</p> <p>The Administration to follow up as stated in paragraph 2(f) in the minutes.</p>

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		<p>with the industry on a regular basis for the reference of building professionals and registered contractors to facilitate practitioners' compliance. As the minor works control system (MWCS) was a new concept to the general public, extensive publicity and public education programme would be launched to enhance the practitioners' and the public's understanding of the MWCS, the classification of minor works and the channels to hire appropriate professionals and contractors to carry out minor works. These included briefing sessions, seminars, reader-friendly leaflets tailor-made for building owners and various stakeholders, etc. In collaboration with the Hong Kong Housing Society (HKHS), telephone hotline service and advisory service through resource help-desks at HKHS' Property Management Advisory Centres at various districts would provide technical advice and assistance to the general public.</p> <p><u>Part 6</u></p> <p><u>Sections 30-36 on submission of documents</u></p> <p>Members noted that any person, who without reasonable excuse, contravened sections 30 to 36 committed an offence and was liable on conviction to a fine at level 5. Members considered that it might not be feasible to provide photographs showing the physical condition of the premises where the minor works, particularly those on the external walls at a great height, were to be carried out as required under sections 20(b), 33(b) and 36(c) of the Regulation. Members requested the Administration to promulgate the standard requirement of photographs and provide examples and illustrations with descriptions for different scenarios in the practice notes to facilitate the industry's compliance.</p> <p>The Administration's response that as the MWCS and the simplified requirements were a self-certifying system, documents were required under sections 30 to 36 to ensure compliance for the protection of building owners. The BD would adopt a pragmatic approach in enforcing this requirement and would only require practitioners to take photos from positions that were physically accessible and safe. Examples and illustrations would be promulgated in the practice notes.</p> <p>ALA's question on whether the authorized persons/contractors/persons referred to under sections 30 to 36 be considered to have contravened the provisions if his opinion was given negligently under section 58.</p> <p>The Administration's response that the aim of section 58 was to deal with failure in the submission of necessary documents. As</p>	<p>The Administration to follow up as stated in paragraph 2(e) in the minutes.</p>

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		<p>long as the building professional or prescribed registered contractor (PRC), as the case may be, had carried out their duties in submitting the plans and documents stipulated in Part 6, it was considered that the requirement was complied with under Part 6. If it had come to the attention of the BA that the building professional or PRC had given his opinion negligently, appropriate actions would be taken against such person under other provisions of the BO.</p> <p><u>Counting of days</u></p> <p>In response to Ms LI Fung-ying, the Administration clarified that following the usual practice adopted under the BO, the counting of days was in calendar days and intervening holidays would be counted. Such information would be promulgated through practice notes to the industry.</p> <p><u>Acceptance of electronic submissions</u></p> <p>Members expressed concern about the storage of voluminous documents. They urged the Administration to explore the feasibility and provide a timetable for accepting electronic submission of documents (such as notifications, plans, certificates of completion) in respect of minor works projects to save cost and time.</p> <p>The Administration's advice that the BD was in the process of computerizing its record system in order that hard copies of the documents could be stored away in remote areas. Records of certificates of completion, plans and documents would be made available in BD's Building Information Centre for public inspection and for checking on the Internet. The BD's current information technology capacity could not support electronic submission of documents.</p> <p><u>Disposal of construction waste</u></p> <p>Discussion on disposal of construction waste after completion of minor works.</p> <p>The Administration's explanation that the disposal of construction waste was outside the coverage of the BO. As such, RMWCs could not be legally required to provide information on waste disposal. RMWCs would be reminded to take appropriate steps to ensure proper disposal of construction waste through the promulgation of practice notes and other administrative means.</p> <p><u>Sections 33-39</u></p> <p>Members raised no query.</p>	<p>The Administration to follow up as stated in paragraph 2(i) in the minutes.</p> <p>The Administration to follow up as stated in paragraph 2(h) in the minutes</p>

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		<p><u>Part 7</u></p> <p><u>Sections 40-42</u> Members raised no query.</p> <p>Prof Patrick LAU suggested that publicity and public education effort should be made to promote understanding of the MWCS among interior design professionals who might be involved in minor works projects.</p>	
020300-020413	Chairman	Meeting arrangement	