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BY FAX
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Dear Mr TO,

Building (Minor Works) Regulation (L.N. 51 of 2009)

We are scrutinising the legal and drafting aspects of the Building (Minor Works) Regulation (the Regulation). We have the following questions about the Regulation and would be grateful for your clarification.

Section 7(1)

- (1) What are the criteria for nominating the persons under paragraph (a)-(b)?
- (2) Would it be desirable to specify those criteria for nomination under paragraph (a)-(b)?
- (3) What are the "bodies" referred to under paragraph (c)?
- (4) What are the criteria for selecting the person by the Building Authority under paragraph (c)?
- (5) Would it be desirable to specify those criteria for nomination under paragraph (c)?

Section 9

- (1) Is the meeting open to the public?

- (2) If it is a closed-door meeting, why is it appropriate to make such an arrangement?

Section 11(5)

Would it be appropriate to require the Building Authority to supply or identify the documents if any, relied on by the Authority in refusing the application, to the applicant? The purpose is to facilitate the applicant to consider whether he is to lodge an appeal against the decision of the Authority.

Section 12

- (1) Under subsection (1), in what circumstances, would it be appropriate to refer an application to a Registration Committee for recommendation? Would it be desirable to provide for those circumstances under subsection (1)?
- (2) Under subsection (1), what is the reason for not providing for similar reference procedure in an application under section 10(1)(a)?
- (3) Under subsection (3), how soon, do you expect, a meeting of a Registration Committee will be held to consider an application?
- (4) Under subsection (3), what would happen if there is a pending appeal against the decision of a Registration Committee upon expiry of the period of 3 months?
- (5) Under subsection (3)(d), is the deferment initiated on the request of the applicant or on the motion of the Building Authority?
- (6) Under subsection (3)(d), would it be necessary to give a discretion in appropriate cases to the Building Authority to refer an application to a Registration Committee before the expiry of 6 months?
- (7) Under subsection 3(d), would it be appropriate to add "from receiving the application" after "a period not exceeding 6 months"?
- (8) Under subsection 3(d), what would happen if there is a pending appeal against the decision of the Building Authority to defer the determination of an application upon expiry of the period of 6 months?
- (9) Under subsection (5)(c)(i), would it be appropriate to specify the criteria for deciding whether the management structure of a corporation is adequate?

- (10) Under subsection (5), does it mean that the Building Authority must not allow an application under subsection (2)(a) or (b) or (3)(a) or (b), if the Authority is not satisfied with the requirements in paragraph (a) – (d), notwithstanding the recommendation of a Registration Committee to allow the application in whole or in part? If yes, would it be logical to mandate a Registration Committee to consider the requirements in paragraph (a) – (d) in making a recommendation?
- (11) Would it be appropriate to supply or identify the documents if any, relied on by the Building Authority in refusing the application, to the applicant? The purpose is to facilitate the applicant to consider whether he is to lodge an appeal against the decision of the Authority.

Section 15

- (1) To contrast with the arrangement under sections 11 and 12, under section 15(1), there is no distinction between an application for renewal of registration by a natural person or a person other than a natural person. In either scenario, under section 15(1), the Building Authority may refer the application for renewal to a Registration Committee for recommendation. What is the reason for proposing such an arrangement under section 15(1) which is different from that proposed under sections 11 and 12?
- (2) Under section 15(1), in what circumstances, would it be appropriate to refer an application to a Registration Committee for recommendation? Why is it not necessary to provide for those circumstances under subsection (1)?
- (3) Under section 15(2), would it be desirable to provide for a time limit for the Building Authority to determine the application?
- (4) Under section 15(3), does it mean that the Building Authority must not allow an application under subsection (2)(a) or (b), if the Authority is not satisfied that the applicant has complied with the specified requirements for registration, notwithstanding the recommendation of a Registration Committee to allow the application in whole or in part? If yes, in order to achieve consistency in considering the same requirements by a Registration Committee and the Building Authority, would it therefore be logical to mandate a Registration Committee to consider those specified requirements in making a recommendation as well?
- (5) Under section 15(5)(a), would it be appropriate to require the Building Authority to supply or identify the documents if any, relied on by the Authority in refusing the application, to the applicant? The purpose is to facilitate the applicant to consider whether he is to lodge an appeal against the decision of the Authority.

Section 17

Section 17 deals with the removal of the name of a registered minor works contractor from the relevant register upon refusal of an application for renewal of registration or expiry of the registration without being renewed. It is noted that there are other circumstances in which the name of a registered contractor may be removed from the relevant register, for example under the new section 13(4) of the Principal Ordinance, the disciplinary board may order that the name of the registered contractor be removed from the relevant register in specified circumstances. Would it be necessary to add a new provision to the Regulation to deal with the circumstances in which the name of a registered contractor, other than the circumstances under section 17, may be removed from the relevant register?

Section 18

- (1) What would be the practical considerations to an applicant, when he considers choosing to apply for restoration of his name to the relevant register under section 18 or start a fresh application for registration under section 10?
- (2) Under the new section 13(4) of the Principal Ordinance, the disciplinary board may order that the name of the registered contractor be removed from the relevant register in specified circumstances, either permanently or for such period as the disciplinary board thinks fit. In the case of temporary removal, is it necessary to provide for the procedure for the name of the person affected to be restored to the register?

Section 19

- (1) To contrast with the arrangement under sections 11 and 12, under section 19(1), there is no distinction between an application for restoration of registration by a natural person or a person other than a natural person. In either scenario, under section 19(1), the Building Authority may refer the application for renewal to a Registration Committee for recommendation. What is the reason for proposing such an arrangement under section 19(1) which is different from that proposed under sections 11 and 12?
- (2) Under section 19(1), in what circumstances, would it be appropriate to refer an application to a Registration Committee for recommendation? Would it be desirable to provide for those circumstances under subsection (1)?
- (3) Under section 19(2), would it be desirable to provide for a time limit for the Building Authority to determine the application?

- (4) Under section 19(3), does it mean that the Building Authority must not allow an application under subsection (2)(a) or (b), if the Authority is not satisfied that the applicant has complied with the specified requirements for registration, notwithstanding the recommendation of a Registration Committee to allow the application in whole or in part? If yes, in order to achieve consistency in considering the same requirements by a Registration Committee and the Building Authority, would it therefore be logical to mandate a Registration Committee to consider those specified requirements in making a recommendation as well?
- (5) Under section 19(5), would it be appropriate to require the Building Authority to supply or identify the documents if any, relied on by the Authority in refusing the application, to the applicant? The purpose is to facilitate the applicant to consider whether he is to lodge an appeal against the decision of the Authority.

Section 21

What is the reason for not providing for a reference procedure to a Registration Committee?

Section 22(5)

Would it be appropriate to require the Building Authority to supply or identify the documents if any, relied on by the Authority in refusing the application, to the applicant? The purpose is to facilitate the applicant to consider whether he is to lodge an appeal against the decision of the Authority.

Section 23

- (1) To contrast with the arrangement under sections 15 and 19, under section 23(1), the Building Authority may only refer an application by a person other than a natural person to a Registration Committee for recommendation. What is the reason for proposing such an arrangement under section 23(1) which is different from that proposed under sections 15 and 19?
- (2) Under section 23(1), in what circumstances, would it be appropriate to refer an application to a Registration Committee for recommendation? Would it be desirable to provide for those circumstances under subsection (1)?
- (3) Under subsection (3), how soon, do you expect, a meeting of a Registration Committee will be held to consider an application?

- (4) Under subsection (3), what would happen if there is a pending appeal against the decision of a Registration Committee upon expiry of the period of 3 months?
- (5) Under subsection 3(d), would it be appropriate to add "from receiving the application" after ""a period not exceeding 6 months"?
- (6) Under subsection 3(d), what would happen if there is a pending appeal against the decision of the Building Authority to defer the determination of an application upon expiry of the period of 6 months?
- (7) Under section 23(5), does it mean that the Building Authority must not allow an application under subsection (2)(a) or (b) or (3)(a) or (b), if the Authority is not satisfied that the applicant has complied with the specified requirements for registration, notwithstanding the recommendation of a Registration Committee to allow the application in whole or in part? If yes, in order to achieve consistency in considering the same requirements by a Registration Committee and the Building Authority, would it therefore be logical to mandate a Registration Committee to consider those specified requirements in making a recommendation as well?
- (8) Under subsection (3)(d), is the deferment initiated on the request of the applicant or on the motion of the Building Authority?
- (9) Under subsection (3)(d), would it be necessary to give a discretion in appropriate cases to the Building Authority to refer an application to a Registration Committee before the expiry of 6 months?
- (10) Under subsection (8), would it be appropriate to require the Building Authority to supply or identify the documents if any, relied on by the Authority in refusing the application, to the applicant? The purpose is to facilitate the applicant to consider whether he is to lodge an appeal against the decision of the Authority.

Section 25

- (1) Under section 25(1), in what circumstances, would it be appropriate to refer an application to a Registration Committee for recommendation? Would it be desirable to provide for those circumstances under subsection (1)?
- (2) Under subsection (3), how soon, do you expect, a meeting of a Registration Committee will be held to consider an application?

- (3) Under subsection (3), what would happen if there is a pending appeal against the decision of a Registration Committee upon expiry of the period of 3 months?
- (4) Under subsection (3)(d), is the deferment initiated on the request of the applicant or on the motion of the Building Authority?
- (5) Under subsection (3)(d), would it be necessary to give a discretion in appropriate cases to the Building Authority to refer an application to a Registration Committee before the expiry of 6 months?
- (6) Under subsection 3(d), would it be appropriate to add "from receiving the application" after "'a period not exceeding 6 months"?
- (7) Under subsection 3(d), what would happen if there is a pending appeal against the decision of the Building Authority to defer the determination of an application upon expiry of the period of 6 months?
- (8) Under subsection (5), does it mean that the Building Authority must not allow an application under subsection (2)(a) or (b) or (3)(a) or (b), if the Authority is not satisfied that the applicant has complied with the specified requirements for registration, notwithstanding the recommendation of a Registration Committee to allow the application in whole or in part? If yes, in order to achieve consistency in considering the same requirements by a Registration Committee and the Building Authority, would it therefore be logical to mandate a Registration Committee to consider those specified requirements in making a recommendation as well?
- (9) Under subsection (8), would it be appropriate to require the Building Authority to supply or identify the documents if any, relied on by the Authority in refusing the application, to the applicant? The purpose is to facilitate the applicant to consider whether he is to lodge an appeal against the decision of the Authority.

Section 26

- (1) What are the reasons for not extending the appeal against the decision of the Building Authority under Part 7 in respect of the appointment of technically competent person in section 46?
- (2) What are the reasons for not extending the appeal against the decision of the Building Authority under Part 10 in respect of an application for registration as registered minor works contractor (provisional) in section 65?

- (3) What is the legal effect on a decision of the Building Authority when such decision is being appealed against?

Section 30(a)(iv)

Would the authorised person be considered under section 58 to have contravened the provision if his opinion is given negligently?

Section 31(c)(iii)-(v)

Would the person referred to under the respective provisions be considered under section 58 to have contravened the provisions if his opinion is given negligently?

Section 32(c) (iii)-(v)

Would the person referred to under the respective provisions be considered under section 58 to have contravened the provisions if his opinion is given negligently?

Section 33(a)(iii)

Would the contractor be considered under section 58 to have contravened the provision if his opinion is given negligently?

Section 34(c)(iii)

Would the contractor be considered under section 58 to have contravened the provision if his opinion is given negligently?

Section 35(c)(iii)

Would the contractor be considered under section 58 to have contravened the provision if his opinion is given negligently?

Section 43(3)

The provision requires a prescribed contractor appointed under section 28 in respect of any minor works to keep records of specified activities and retain the records for a specified period of time. Under section 59, the Building Authority may inspect such records. Would it be appropriate to provide for a penalty for failure to keep and retain the records under section 43(3)?

Section 46

Would it be desirable to provide for an appeal mechanism by the aggrieved person against the decision of the Building Authority?

Section 62(3)

The provision requires a person appointed under section 39C(2) of the Principal Ordinance to submit to the Building Authority specified documents, etc. The person is required to do things similar to those under section 30-36. It is noted that under section 58, a person may be guilty of an offence for contravening section 30-36. What are the reasons for not providing for similar penalty for a person who contravenes section 62(3)?

Section 64

- (1) What are the reasons for creating a registered minor works contractor (provisional) register for a person other than a natural person?
- (2) What are the reasons for not extending the application for registration as registered minor works contractor (provisional) to a natural person?

Section 65

- (1) Under subsection (3)(a)(i), what will be the experience to be specified by the Building Authority?
- (2) Under subsection (3)(b)(i), how would you measure whether the management structure is adequate or not?
- (3) Under subsection (6), would it be desirable to provide for an appeal mechanism to the person who is aggrieved by the decision of the Building Authority?

We would be grateful for your reply, in both languages, at your earliest opportunity.

Yours sincerely,

(Stephen LAM)
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cc. DoJ (Attn.: Miss Selina LAU) (Fax: 2869 1302)
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