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21 April 2009

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Dear Mr. Lam,

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

Thank you for your letter of 16 April 2009 concerning the Building (Minor Works) Regulation (B(MW)R). For the ease of reference, we have grouped topics of a similar nature together in our reply. The detailed response to your questions is set out in ensuing paragraphs.

General

Whilst the Buildings (Amendment) Ordinance 2008 (20 of 2008) (BAO 2008), passed by the Legislative Council in June 2008, sets out the major principles for the proposed minor works control system, the B(MW)R provides for the modus operandi, including contractors' registration, the simplified requirements for carrying out minor works and classification of minor works, of the proposed regime.

A preliminary draft of the B(MW)R was tabled at the bills committee meeting of the Buildings (Amendment) Bill 2007 held on 11 March 2008. As a result, we have benefited from the advice and observations provided by Members, particularly comments reflecting the wishes of individual minor works practitioners that the registration requirements should meet with the requirements and needs of the industry. Since the enactment of the BAO 2008 in June 2008, the Administration has further refined the draft Regulation in consultation with the industry, including the “Minor Works Concern Group” representing frontline minor works practitioners and other stakeholders.

Most provisions in the B(MW)R are modeled on the existing Buildings Ordinance (Cap 123) (BO) and its regulations governing the carrying out of general building works by authorized persons and registered general building contractors. We made such arrangement because minor works and general building works only differ in terms of scale and complexity, but have very similar requirements on other aspects. Furthermore, since general building contractors may also conduct minor works under the simplified requirements, if we were to adopt two entirely different systems, it would entail more operational difficulties and inconvenience.

Similar to existing practice, regarding the operational and procedural details and guidelines on compliance with the requirements (such as the qualifications and experience of technical personnel and the number of personnel and frequency of inspection to implement the supervision plan as required, which are highly technical in nature), the Building Authority (BA) will promulgate the same through administrative practice notes and guidelines for the industry or the Department's internal reference. Such notes and guidelines will be adjusted and updated regularly in accordance with the development of the building industry and advancement in building technology.

(i) Establishment of Minor Works Contractors Registration Committees

[Section 7(1), Questions (1) to (5)]

The arrangement for the establishment of Minor Works Contractors

Registration Committees (MWCRCs) is similar to that for the existing contractors registration committees established under the BO. In general, the criteria for nomination of members to MWCRCs will be:

- (a) professional experience in the minor works industry; and
- (b) knowledge of the statutory requirements.

For section 7(1)(a) of the Regulation, we will invite experienced practitioners in the minor works industry (such as personnel nominated by the Minor Works Concern Group, a group comprising representatives from various organizations of minor works industry) to join the MWCRCs.

For section 7(1)(b), modeled on the existing practice of nominations of building professionals for various registration committees under the BO, nominations of authorized persons and registered structural engineers who are familiar with the statutory regime of the BO will be invited from the professional registration boards.

As regards section 7(1)(c), under the current practice for appointment of registration committees under the BO, the ‘bodies’ that the BA would consider include the Hong Kong Construction Association Ltd., Hong Kong General Building Contractors Association Ltd., Contractor's Authorized Signatory Association Ltd. and Hong Kong Institute of Construction Managers. They are well-established contractor associations and professional institutes in building construction which represent the majority of the industry. Other suitable bodies may also be invited in the future.

The Buildings Department (BD) intends to make arrangements similar to those under the existing BO for nominations for MWCRCs. As we will adjust and update the detailed criteria for nominations from time to time, we do not intend to include the same under the B(MW)R. Nevertheless, we will maintain transparency in our operation and keep the industry informed of our practice.

(ii) Meeting of Minor Works Contractors Registration Committees

Meetings of MWCRCs

[Section 9, Questions (1) & (2)]

It is the current practice for registration committees established under the BO to have closed-door meetings. Such meetings involve detailed examination of the applicants' personal and business information. They are similar to job and other professional interviews. For the applicants' privacy and to facilitate frank discussions, it is appropriate to continue the practice of having closed-door meetings for minor works contractors.

The MWCRC will conduct an interview with the applicant for registration as a "registered minor works contractor" (RMWC) during the MWCRC meeting. The applicant will be given a chance to present himself and make his case to the Committee.

Timing of Meeting

*[Section 12, Question (3);
Section 23, Question (3); and
Section 25, Question (2)]*

Similar to current practice applicable to general building contractors, a meeting of a MWCRC will be held in approximately two to four months upon receipt of an application. The time required mainly depends on the completeness of the documents submitted by the applicant and the availability of the applicant to attend the meeting.

(iii) Eligibility Criteria for Registration

Management Structure of Corporations

*[Section 12, Question (9); and
Section 65, Question (2)]*

The BD has worked out, in consultation with the building industry, a set of requirements on the qualifications and experience for registration as RMWCs for Classes I, II and III minor works. The

criteria, together with the detailed procedural guidelines for application, will be promulgated in a Practice Note to Registered Contractors (PNRC). Such practice facilitates periodic amendments and allows flexibility to keep the requirements updated in accordance with technological advancement as well as development of the building industry.

As regards the management structure of a non-natural-person applicant, the applicant will have to submit the corporation's organization chart indicating the line of responsibility of its management structure as well as the proof of qualification and experience of its authorized signatories and technical directors.

Experience of Provisional Contractors

[Section 65, Question (1)]

The experience required for registration as a provisional contractor will be the same as that for a formal contractor. In general, an applicant's authorized signatory to be appointed under the requirement of the B(MW)R should have three to five years of work experience in the relevant sectors involving the corresponding classes or types of minor works in the building industry.

**(iv) Referral of Applications to Minor Works Contractors
Registration Committees**

Criteria for Referral

*[Section 12, Question (1);
Section 15, Question (2);
Section 19, Question (2);
Section 23, Question (2); and
Section 25, Question (1)]*

According to our current proposal, only applications involving Class I minor works, which require a relatively higher level of skills and are more complicated, will be referred to MWCRCs for consideration. Applications involving Class II or Class III minor works will be subject to a simpler vetting mechanism by the BA. Only under

exceptional circumstances would such applications be referred to the MWCRCs for consideration.

The proposed criteria for referral to MWCRCs are being finalised by the BD in consultation with the industry. The details will in due course be promulgated in a PNRC to be issued by the BD. Such practice facilitates periodic amendments and allows flexibility to keep the requirements updated in accordance with technological advancement as well as development of the building industry.

Application by Natural Persons

[Section 10(1);

Section 12, Question (2);

Section 15, Question (1);

Section 19, Question (1);

Section 21; and

Section 23, Question (1)]

"Natural-person" applicants are individual minor works practitioners who are required to possess the relevant skills and conduct minor works personally. In view of their scale of operation and level of skills, we allow them to apply to register as RMWCs under Class III on an item-by-item basis. This is to match with the actual operation of the industry and allow opportunities for existing individual practitioners in the market to register. This arrangement indeed reflects the aspirations of practitioners during our consultation and has the support of Bills Committee of the Buildings (Amendment) Bill 2007. For other non-natural person applicants, they have to apply for at least a type of minor works under the various classes of minor works.

It is our intention to keep the registration mechanism simple for applications made by a natural person, who are individual workers in the industry. Such applicants can only apply for Class III minor works on an item-by-item basis. The complexity of such works is low. In view of the above, the application of a natural person for a new registration or a registration of additional item of minor works will not be referred to a MWCRC.

Nevertheless, should such a natural-person applicant have any criminal or disciplinary records in relation to the carrying out of building works during the registration period, we consider it prudent to have his case examined and considered by experts in the industry. Thus it is necessary to refer his case to the MWCRC for determination on whether to renew/restore his registration.

Building Authority's Consideration of Applications

*[Section 12, Question (10);
Section 15, Question (4);
Section 19, Question (4);
Section 23, Question (7); and
Section 25, Question (8)]*

The BA can refuse an application which is recommended for acceptance by the MWCRC. In practice, if an application is referred to a MWCRC for consideration, the specific requirements for registration will also be considered by the MWCRC. The BA will normally follow the recommendation made by the MWCRC unless there are special reasons for otherwise. Such arrangement has been adopted for the present system for registration of registered general building contractors (RGBCs) and registered specialist contractors (RSCs) under the BO and has been operating smoothly so far.

(v) Deferment of Determination of Application

Initiation of Deferment

*[Section 12, Question (5);
Section 23, Question (8); and
Section 25, Question (4)]*

The deferment of determination of an application is a decision made by the BA generally upon the advice of a MWCRC.

Beginning of Period of Deferment

*[Section 12, Question (7);
Section 23, Question (5); and
Section 25, Question (6)]*

The determination could be deferred for a period not exceeding six months from the date on which the determination of the BA is made. This arrangement is similar to the existing procedures for the registration of RGBCs and RSCs. We consider the current wording of the sections concerned, modeled on the relevant provision of the existing BO, has reflected the legislative intent.

Determination of Period of Deferment

*[Section 12, Question (6);
Section 23, Question (9); and
Section 25, Question (5)]*

In recommending the length of a deferral period, the MWCRC would take into account the competence and experience of the applicant as reflected in the application package his provided as well as the performance at the interview. If the MWCRC considers that the applicant has marginally failed the requirements, a deferral recommendation will be made. In practice, the BA will under normal circumstances accept the recommended deferment period. Applicants who are aggrieved by the deferral could lodge an appeal according to section 26 of the B(MW)R.

(vi) Renewal/ restoration of registration

Building Authority's Consideration of Applications

*[Section 15, Question (3); and
Section 19, Question (3)]*

The BA will endeavour to process applications and complete the process for renewal and restoration applications as soon as possible. Nevertheless, in case a renewal application cannot be processed on time, a contractor's registration will remain in force under section 14(3) of the B(MW)R if he submitted his renewal application within the specified time period (i.e. not more than four months but not less than

28 days prior to the expiry of registration). In the case of restoration applications, they will be processed in the same manner as renewal applications as the two kinds of application are very similar in nature.

It is expected that the time required for processing renewal and restoration applications for RMWCs will be similar.

Restoration and Fresh Applications

[Section 18, Question (1)]

From the perspective of an applicant, the major difference between submitting a restoration application and a fresh application for registration is the amount of fee to be paid. A restoration application will incur a lower fee. For the BA, the processing time for a restoration application should be shorter as the registration condition of the applicant should remain the same (e.g. having the same group of persons nominated as authorized signatories).

Removal of Name from Register

*[Section 17; and
Section 18, Question (2)]*

The removal of a contractor's name from the register by the disciplinary board is to be dealt with under the new section 13(4) of the BO. As such, there is no need to have another provision to deal with the same matter in the B(MW)R. In case there is such a disciplinary order, section 16 of the B(MW)R provides that the validity of the registration will be affected accordingly. Section 17 of the B(MW)R provides for the specific circumstances under which the name of a contractor will be removed and does not contradict section 16. Under the current system, the name of a registered contractor whose name is temporarily suspended will be automatically put back on the register when the period of suspension specified in the disciplinary order elapsed.

(vii) Refusal of Registration Applications

[Section 11(5);

Section 12, Question (11);

Section 15, Question (5);

Section 19, Question (5);

Section 22(5);

Section 23, Question (10); and

Section 25, Question (9)]

The BD has worked out in consultation with the building industry a set of requirements on qualifications and experience for registration as RMWCs for Classes I, II and III minor works. The criteria, together with the detailed procedural guidelines for application, will be stipulated in a PNRC. This practice facilitates periodic amendments and allows flexibility to keep the requirements updated in accordance with technological advancement as well as development of the building industry.

It is stipulated in the relevant sections of the B(MW)R that the BA must give reasons in writing for the decision of refusing an application. Such requirement will allow the applicant to understand the ground of the BA in considering the application.

(viii) Appeal Mechanism

Appeal for Appointment of Technically Competent Persons

[Section 26, Question (1); and

Section 46]

Pursuant to section 44 of the BO, a person aggrieved by any decision made by the BA in the exercise of a discretion under the BO may lodge an appeal to the Appeal Tribunal, except where the Ordinance provides otherwise. This section applies to the BA's decisions made in respect of sections 46 and 63 of the B(MW)R. As the appointment of a technically competent person is a technical issue in relation to the implementation of the supervision plan of a minor works project, the Appeal Tribunal is in an appropriate and a professional position to consider the appeal.

Appeal for Registration of Provisional Contractors
[Section 26, Question (2); and
Section 65, Question (3)]

The registration of RMWC (provisional) is intended to assist those existing practitioners who do not have the required academic qualifications for registration as RMWCs but possess adequate experience of conducting minor works to continue business immediately after the implementation of the new control system. The provisional registration will last for two years at most. All such applications are handled by the BA (MWCRC is not involved) and the experience required for registration will be straightforward and explicit. We consider that the appeal mechanism provided for under section 44 of the BO is an appropriate avenue to handle appeal cases concerning such applications.

For the aforementioned appeals for technically competent persons and provisional contractors, if the applicant is not content with the decision of the Appeal Tribunal, he can appeal to the Court.

(ix) Registration Applications pending Appeal

[Section 26, Question (3);
Section 12, Questions (4) and (8);
Section 23, Questions (4) and (6); and
Section 25, Questions (3) and (7)]

According to section 26 of the B(MW)R, the practice for an appeal against a decision of the BA or MWCRC is subject to any rules of court made under the High Court Ordinance (Cap. 4). Order 55 rule 3(3) of the Rules of the High Court (Cap. 4 sub. leg. A) provides that “the bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought unless the Court by which the appeal is to be heard or the Court, tribunal or person by which or by whom the decision was given so orders”. In other words, unless there is an order mentioned in Rule 3(3), the BA will continue to take action under the appropriate section.

In actual operation, the applicant will be notified of the determinations of the MWCRC and BA in one go.

(x) Duties of Building Professionals and Prescribed Contractors

Failure of Submission of Documents

*[Section 30(a)(iv);
Section 31(c)(iii)-(v);
Section 32(c)(iii)-(v);
Section 33(a)(iii);
Section 34(c)(iii); and
Section 35(c)(iii)]*

The aim of section 58 of the B(MW)R is to deal with failure in submission of necessary documents. As long as the building professionals or prescribed registered contractors (PRCs), as the case may be, have carried out their duties in submitting the plans and documents stipulated in the Part 6 of the B(MW)R, it is considered that the requirements under Part 6 are complied with and no contraventions under section 58 would be contemplated.

If it has come to the attention of the BA that the building professional or PRC has given his opinion negligently, appropriate actions will then be taken against such person under other provisions of the BO, taking into account the facts and circumstances of the cases concerned. Disciplinary proceedings and prosecution may be instigated.

Keeping of Records

[Section 43(3)]

As regards the requirements for keeping records of activities and information relevant to the supervision of minor works, there are similar provision in regulation 41(4), (5) & (6) of the Building (Administration) Regulations (Cap. 123 sub. leg. A) requiring RGBCs and RSCs to keep records of activities and information relevant to the supervision of building works or street works for which they are appointed and the BA may inspect such records and information at any reasonable time. Sections 43(3) and 59 of the B(MW)R have been

drafted along the same line.

According to the current practice, if a particular contractor does not comply with this provision persistently, such act will be recorded and taken into consideration upon its subsequent application for renewal of registration.

(xi) Household Minor Works Validation Scheme

[Section 62(3)]

The aim of the Household Minor Works Validation Scheme is to encourage owners to rationalize their existing unauthorized household minor works.

If the unauthorized household minor works in question require alteration or rectification works before certification, the person appointed to conduct such works should submit the relevant certification and documents to the BA upon completion of the works. Failure of or incomplete submission of such may constitute an offence. However, for cases where no alteration or rectifications works are carried out and only inspections are conducted, the person appointed has not altered the status of the existing unauthorized household minor works. There may also be cases where the appointed person considers that the unauthorized works are not suitable for validation (e.g. being vastly over-sized) that he cannot certify the case and submit the relevant documentation to the BA. For the above reasons, we consider that it may not be appropriate to impose a criminal offence on the person. Nevertheless, if such person knowingly misrepresents a fact in his submission to the BA, he will be liable to a criminal offence under new section 40(2A)(e) of the BO.

(xii) Provisional Registration

[Section 64, Questions (1) and (2)]

Some existing practitioners (e.g. authorized signatories of contractor companies) 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

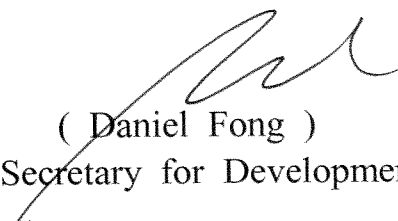
continue business immediately after the implementation of the new control system, a provisional registration system will be established. Such practitioners who can satisfy the BA on their work experience in carrying out minor works may register as RMWCs (provisional) and may carry out minor works within a transitional period of two years.

During the transitional period, such provisional contractors should attend top-up courses with a view to obtaining the required academic qualifications.

The above arrangements are intended for contractors not operating as individuals. Regarding contractors operating as self-employed individuals for Class III minor works, we will accept their applications if they possess relevant trade test certificates, apprentice certificates, other recognized skills qualifications, or adequate experience in carrying out relevant minor works. All individual applicants for Class III minor works items are required to attend a one-day training course relating to the statutory procedures and safety requirements for Class III minor works before registration. Since the duration of the course is very short, in order to streamline the registration process, we do not intend to establish a provisional register for Class III contractors operating as self-employed individuals. After taking the one-day training class, they can register as a proper contractor direct.

Please contact the undersigned should you require any further clarifications.

Yours sincerely,



(Daniel Fong)
for Secretary for Development

cc.

Director of Buildings (Attn: Mr S T Lam)