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30 April 2009

Ms YUE Tin-po
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central

Dear Ms YUE,

Subcommittee on Building (Minor Works) Regulation
Response to Subcommittee's Comments at Meeting on 27 April 2009

I refer to your "list of follow-up actions" of 28 April 2009 summarizing the comments raised by the Subcommittee at the captioned meeting and am pleased to provide below the Administration's response.

General

As explained at the meeting, most provisions in the Building (Minor Works) Regulation ("the Regulation") 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 ("RGBCs"). 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 RGBCs 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 schedule of convening professional interviews), 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.

Nevertheless, we note the Subcommittee's views and suggestions on certain arrangements that may require further clarifications in the Regulation. We have carefully considered Members' views and the associated implications. Our comments and proposals are outlined in ensuing paragraphs.

Composition of Minor Works Contractors Registration Committee

Section 7(1)(a)

This section provides for that a Minor Works Contractors Registration Committee ("Registration Committee") must include one person nominated by the BA as member.

The arrangement for the establishment of such Registration Committees is similar to that for the existing contractors registration committees established under the BO. In general, the criteria for nomination of members to the Registration Committees 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, our current plan is to invite experienced practitioners in the minor works industry (such as personnel

from the Minor Works Concern Group, a group comprising representatives from various organizations of minor works industry) to join the Registration Committees. With experience gained in administering the minor works control system, we may make adjustments and updates to the detailed criteria for nominations. However, we appreciate Members' suggestion to clarify our intention that the BA will only nominate a person with professional experience and knowledge of minor building works as a member of the Committee in section 7(1)(a) of the Regulation. We shall make amendments to the section, and present to the Subcommittee the draft Resolution shortly.

Determination of application made under section 10(1)(b) (by non-natural person (i.e. firm) applicants)

Section 12(1) and 12(3)

This provision provides for that the BA may refer, either in whole or in part, an application to a Registration Committee for recommendation. Members asked the Administration to consider specifying in the Regulation under what circumstances would the BA refer an application to the Registration Committee, and the timing for such referral.

According to our current proposal, applications involving Class I minor works, which require a relatively higher level of skills and are more complicated, will be referred to Registration Committees for consideration. Applications involving Class II or Class III minor works will be subject to a simpler vetting mechanism by the BA. However, under exceptional circumstances (e.g. the applicant was disciplined, convicted of criminal offences relating to the carrying out of building works, or was inactive and conducted no minor works projects in the past few years), the applications may also be referred to the Registration Committees for consideration. In other words, the BA will consider the nature of the minor works being applied for, as well as the qualification, background and experience of the applicant, in deciding whether to refer an application to a Registration Committee. We will make corresponding amendments to section 12(1) and present the draft Resolution to the Subcommittee shortly.

Corresponding amendments will also be made to other similar clauses in sections 15(1), 19(1), 23(1) and 25(1) covering the applications for renewal, restoration, inclusion of additional class/ type/ item of minor works, and inclusion of additional authorized signatory.

The further details of the criteria for making referrals will be reviewed from time to time and will be promulgated in a practice note to be issued by the BD in consultation with the industry.

Regarding the schedule for convening the meeting and professional interview for a Registration Committee, similar to the current practice applicable to RGBCs, such meeting will normally 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.

The wording of and arrangement stipulated in the Regulation follow those for RGBCs under the existing BO. According to the experience of the BD in the registration of RGBCs, there are occasionally cases where applicants request delaying the meeting of the Registration Committee. This maybe due to a clash with the applicant's schedule (e.g. the applicant has other works projects in the Mainland) or the need to acquire additional academic certifications from overseas institutions. If a specific time limit were included in the statute, we would not be able to accede to the applicants' requests to delay the meeting but could only reject the application if the applicants could not schedule to attend the meeting or submit the complete documents. The applicants would have to start the application process all over again, including paying the application fees.

The current arrangements for RGBCs have been operating smoothly in general. The BD will strive to cooperate with the applicants and arrange to convene the meetings of the Registration Committees as early as practicable and to fit the schedules of the applicants. On balance, we recommend that we should not specify the timing for convening the meeting for the Registration Committees in the Regulation to allow flexibility.

Section 12(3)

This provision stipulates that the BA must, within 3 months from the meeting of a Registration Committee at which an application is considered, make a decision on the application. Members were concerned that for cases where more than one meeting was held, whether the BA's decision would be made after the first or last meeting.

It is our policy intention that the 3 months should count from the first meeting of the Committee at which an application is considered. The present wording in both the English and Chinese versions of the Regulation, viz. "within 3 months from the meeting of the Committee at which the application is considered" and "該委員會舉行會議考慮該申請起計的三個月內", reflects that the counting of the three-month period will start after the Committee has convened any (including the first) meeting to consider the application. The existing wording has adequately reflected our policy intention.

According to the BD's experience for the registration of RGBCs, for the vast majority of the cases, only one Committee meeting will be held.

Section 12(3)(d)

This section provides for that the BA may, after the meeting of a Registration Committee, defer the determination of the application for a period not exceeding 6 months, and refer it again to a Registration Committee for consideration after that period on the request of the applicant. Members asked the Administration to consider whether a discretion would be given in appropriate cases for the BA to refer an application to a Registration Committee before the expiry of the deferral period upon the applicants' request.

As explained at the Subcommittee meeting, the wording and arrangement of the Regulation follow those for RGBCs under the existing BO. The current arrangements have been operating smoothly. The Registration Committees comprise experts and professionals from the field of minor works who are conversant with the inadequacies and professional training needs of the candidates for cases of deferral. They will, in accordance with their experience, recommend a suitable period of

time for the candidates to enhance their core competence before coming back to the Committees. The BA will follow the professional advice of the Committees in making the deferrals. We consider such arrangement reasonable.

Section 12(5)(c)(i)

This section states that if the applicant is a corporation, the BA will consider whether its management structure is adequate in determining the application. Members asked us to explain further such consideration and provide scenarios to determine whether the management structure of a corporation was adequate.

Our objective is to ensure that the corporation has a sound management structure to conduct minor works in a professional, efficient and safe manner. Our basic requirement is for the corporation to possess a qualified technical director, with a qualified authorized signatory (as defined under section 2 of the Regulation) reporting to him. The applicant should also demonstrate that the corporation has the required safety personnel to ensure work safety. A sample organization chart is attached at Annex A for Members' reference.

Determination of application for renewal of registration

Section 15(1)

As mentioned above, similar to section 12(1), we will amend the section to specify that the BA will consider the nature of the minor works being applied for, as well as the qualification, background and experience of the applicant, in deciding whether to refer a renewal application to a Registration Committee.

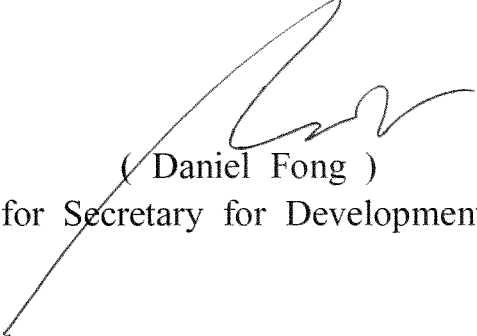
Textual amendment to section 17(3)

In the Chinese version of the section, we will amend "第 15(5)(b) 款" to "第 15(5)(b) 條".

Registration and related fees

Subject to the passage of the Regulation stipulating the modus operandi of the minor works control system, we will prepare and introduce another regulation for registration and related fees into the Legislative Council for Members' consideration. At the request of the Subcommittee, we provide at Annex B our proposal on fees for Members' reference.

Yours sincerely,



(Daniel Fong)

for Secretary for Development

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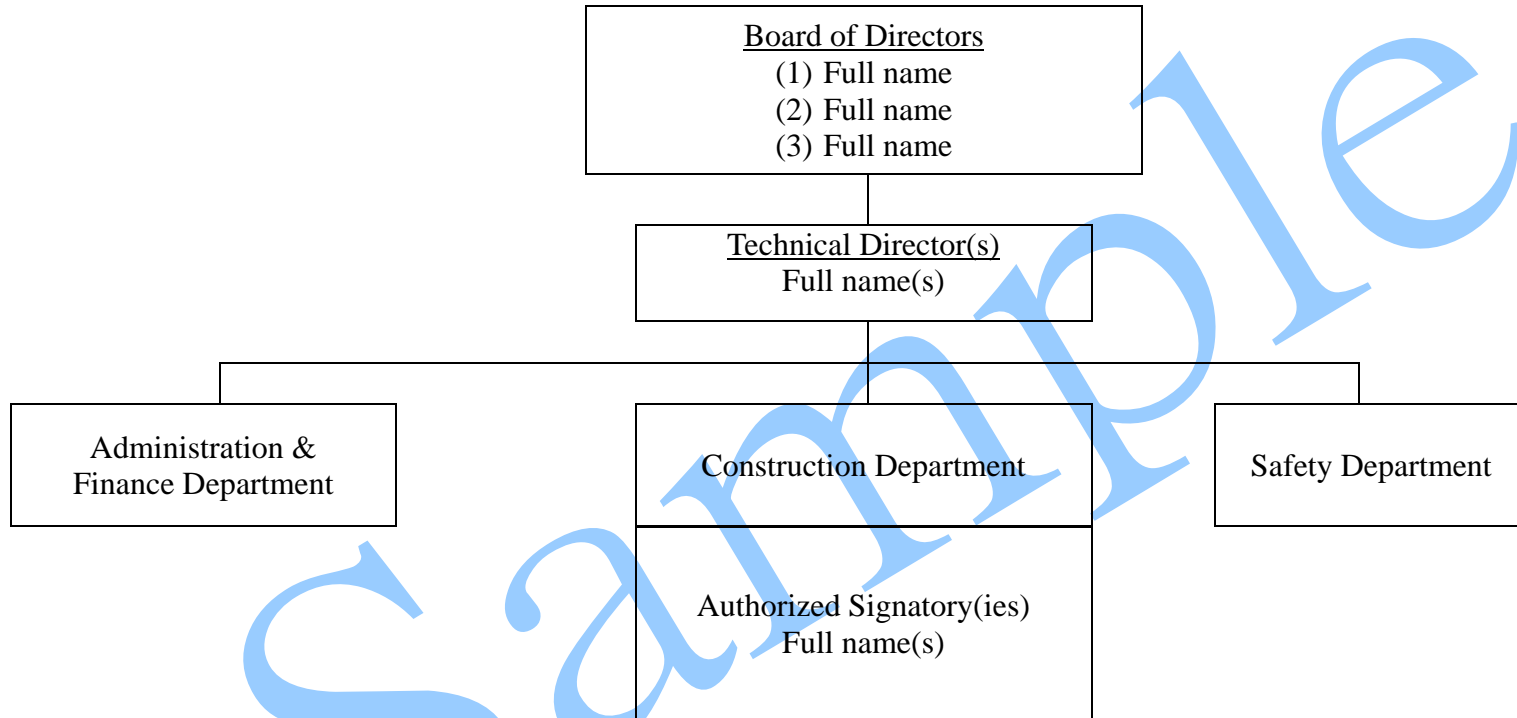
Director of Buildings (Attention: Mr S T Lam)

Department of Justice (Attention: Miss Selina Lau)

Name of Contractor

Organization Chart

Registered Minor Works Contractor to carry out Type _____ in Class _____ Minor Works under the Buildings Ordinance



Remark

This organization chart is for reference only. An applicant should provide detailed arrangement of his own management structure, and delete any item whichever is inapplicable

_____(number)____ director(s) shall constitute a quorum

Endorsed by the Board of Director(s):
_____(Full Name)_____(signature)_____
_____(Full Name)_____(signature)_____
_____(Full Name)_____(signature)_____

Effective Date : _____

Proposed Fees for Registration as Registered Minor Works Contractors Operating as Non-natural Persons (Firms)

	For new registration	Basic application (Appointment of the first authorized signatory and inclusion in the register for 3 years)	Each additional authorized signatory (on top of basic application)
a	Eligible to carry out all Classes of minor works	\$3,025	\$2,090
b	Eligible to carry out Class II and Class III minor works	\$1,705	\$840
c	Eligible to carry out Class III minor works	\$1,125	\$530

	For renewal of registration and restoration of name	Renewal (retention in the register for 3 years)	Restoration (retention in the register for 3 years)
a	Eligible to carry out all Classes of minor works	\$1,100	\$1,250
b	Eligible to carry out Class II and Class III minor works	\$810	\$880
c	Eligible to carry out Class III minor works	\$395	\$420

	For additional registration	For each authorized signatory	
		Addition of authorized signatory (for the minor works that the contractor has been registered for)	Addition of minor works classes/types (for the minor works that the contractor has not been registered for)
a	Eligible to carry out all Classes of minor works	\$2,240	\$2,460
b	Eligible to carry out Class II and Class III minor works	\$965	\$1,110
c	Eligible to carry out Class III minor works	\$630	\$710

Proposed Fees for Registration as Registered Minor Works Contractors (Provisional) Operating as Non-natural Persons (Firms)

	For new registration as registered minor works contractor (provisional)	Basic application (Appointment of the first authorized signatory and inclusion in the register for 2 years)	Each additional authorized signatory (on top of basic application)
a	Eligible to carry out all Classes of minor works	\$1,180	\$710
b	Eligible to carry out Class II and Class III minor works	\$905	\$480
c	Eligible to carry out Class III minor works	\$905	\$480

Proposed Fees for Registration as Registered Minor Works Contractors Operating as Natural Persons (Individuals)

	Application	New registration (inclusion in the register for 3 years)	Renewal (retention in the register for 3 years)	Restoration (retention in the register for 3 years)	Addition of minor works items (after registration)
a	Eligible to carry out certain item(s) of Class III minor works (where there is any item in the application which is solely by virtue of the applicant's experience)	\$305	\$105	\$105	\$305
b	Eligible to carry out certain item(s) of Class III minor works (all items are by virtue of applicant's technical/academic qualifications)	\$155	\$105	\$105	\$155