

香港特別行政區政府

The Government of the Hong Kong Special Administration Region

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25 February 2011

Ms Annette LAM
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central

Dear Ms LAM,

**Bills Committee on Buildings (Amendment) Bill 2010
Administration's Response to Follow-up Issues**

In response to the discussions at the meetings of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 23 December 2010 and 11 February 2011, we are pleased to provide below information in relation to the matters which Members enquired about and discussed.

Surcharge for Defaulted Works

At the meeting of the Bills Committee on 11 February 2011, Members suggested allowing the Building Authority (BA) to have a discretionary power to impose a variable surcharge, capped at 20%, on the cost incurred by the BA to be recovered from an owner if the owner has failed to comply with a BA's notice/order. We accept Members' suggestion and will introduce amendment to the effect (subject to final wording) that the BA "may impose a surcharge of **not exceeding** 20% on the cost due".

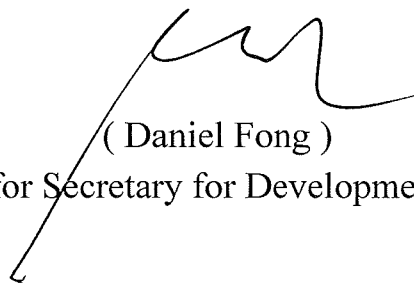
Relationship between Registered Inspectors and Contractors

At the meeting of the Bills Committee on 23 December 2010, Members enquired about how the Administration could determine whether a registered inspector (RI) appointed to carry out a prescribed inspection or supervise a prescribed repair in respect of a building is also acting as a contractor to carry out the prescribed repair for the same part of the building as stipulated under the new section 30D(7) in clause 19 of the Bill.

When the Mandatory Building Inspection Scheme (MBIS) comes into operation, the BD will require an RI to certify in a specified form that he/she is not a partner, director, or other person appointed by a body corporate to act for it for the purposes of the Building Ordinance (Cap. 123) (BO) (i.e. an authorized signatory), of the contractor appointed to carry out the prescribed repair for the same part of the building. According to clause 27 of the Bill (i.e. section 40(2A)(c) of the BO), an RI directly concerned with any such inspection or works who knowingly misrepresents a material fact in any plan, certificate, form, report, notice or other document given to the BA under the BO shall be guilty of an offence. In the context of MBIS, if an RI submits a specified form certifying that he/she is not a partner, director or authorized signatory of the contractor concerned but there is evidence showing that he/she actually is, the maximum penalty is a fine of \$1,000,000 and imprisonment for three years.

As a further measure, under the draft Practice Notes on Best Practices on Tendering Procedures (attached to the Annex of the letter from the Development Bureau to the Bills Committee dated 10 February 2011 (ref: CB(1)1266/10-11(02))), RIs are advised to sign a declaration on compliance with the ethical commitments which include, among others, the RI, the directors and employees of his company, agents and sub-consultants must in written form disclose any conflict of interest or potential conflict of interest, whether personal or financial, in relation to their duties under the contract. After making such disclosure, those persons must take all reasonable steps or measures to alleviate or remove any opportunity of conflict of interest. According to the BD's experience, practice notes are an effective tool to promote good practices and building professionals will follow the recommendations stipulated under such notes upon promulgation by the Department.

Yours sincerely,



(Daniel Fong)
for Secretary for Development

c.c.

Director of Buildings
Department of Justice