

The Government of the Hong Kong Special Administration Region

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14 April 2010

Mr WONG Siu-ye
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central

Dear Mr WONG,

**Buildings (Amendment) Bill 2010
Enforcement against Registered Professionals and Contractors**

In response to Members' discussion at the meeting of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 20 March 2010, I am pleased to provide the relevant information on the disciplinary and prosecution actions that can be taken against registered professionals and contractors under the Buildings Ordinance (Cap. 123) (BO).

Currently under the BO, major building works that require the approval and consent of the Building Authority (BA) have to be undertaken by authorized persons (APs), registered structural engineers (RSEs) and registered geotechnical engineers (RGEs), and carried out by registered contractors (RCs), all of whom are registered under the BO. The BA may take disciplinary and prosecution actions against APs, RSEs, RGEs and RCs if they breach the relevant requirement on building safety under the Ordinance.

Under sections 7(1) and (1A) of the BO, where an AP, RSE or RGE has been convicted by any court of an offence related to carrying out professional duties; has been negligent or has misconducted in a professional way; has permitted a material deviation from a supervision plan for which the person is responsible without reasonable cause; has drawn up a supervision plan that does not comply with the material requirements of the BO; or has repeatedly drawn up supervision plans that do not comply with the requirements of the BO, and the aforementioned matters may render the person unfit to remain on the register, make the further inclusion of the person on the register prejudicial to the due administration of the BO or render the person deserving of suspension from the register, a fine or a reprimand, the BA may bring the aforementioned matters to the notice of a disciplinary board, which, according to section 7(2) of the BO, after due inquiry, may order that the name of the person be removed from the register either permanently or for any period that the disciplinary board thinks fit or that the person be reprimanded or fined.

Similarly, under sections 13(1) and (2) of the BO, where an RC has been convicted by any court of an offence relating to building works or street works; has been negligent or has misconducted in building works or street works; has deviated in a material manner from a supervision plan without reasonable cause; has drawn up a supervision plan that does not comply with the material requirements of the BO; or has repeatedly drawn up supervision plans that do not comply with the requirements of the BO, and the aforementioned matters may render the RC unfit to be on the register, make the further inclusion of the RC on the register prejudicial to the due administration of the BO or render the RC deserving of suspension from the register, a fine or a reprimand, the BA may bring the aforementioned matters to the notice of a disciplinary board, which, according to section 13(4) of the BO, after due inquiry, may order that the name of the RC be removed from the register either permanently or for any period that the disciplinary board thinks fit or that the RC be reprimanded or fined.

The BA may instigate prosecution actions against an AP, RSE, RGE or RC under the BO, for example, under section 40(2A) of the BO, for permitting or authorizing to be incorporated in or used in the carrying out of any such works any materials which are defective or do not comply with the provisions of the BO or have not been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under the BO,

diverging or deviating in any material way from any work shown in a plan approved by the BA under the BO, or knowingly misrepresenting a material fact in any plan, certificate, form or notice given to the BA under the BO; and, under section 40(2B) of the BO, for carrying out building works or authorizing or permitting building works to be carried out in such manner that it causes, or is likely to cause a risk of, injury to any person or damage to any property.

Since 1990, there have been 110 prosecutions against APs, RSEs, RGEs and RCs, among which there are 61 convictions with orders of fine ranging from \$2,000 to \$250,000. There have also been 18 disciplinary proceedings against APs, RSEs, RGEs and RCs, among which there are one order of removal from register, six orders of reprimand and 12 orders of fine (ranging from \$5,000 to \$50,000).

A handwritten signature in black ink, appearing to read 'Harry LIN', is positioned above the printed name.

(Harry LIN)

for Secretary for Development

c.c. DD/BD
LD/DoJ
SGC/CD/DoJ