

香港特別行政區政府

The Government of the Hong Kong Special Administration Region

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19 October 2010

Mr Stephen LAM
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central

Dear Mr LAM,

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

In response to Members' discussions at the previous meetings of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill), I am pleased to provide below information in relation to the matters about which Members enquired.

Disciplinary Penalties

At the meeting of the Bills Committee on 29 June 2010, Members requested the Administration to provide a comparison between the level of penalties imposed by a disciplinary board against a registered inspector (RI) under section 7(2)(ba) of the Buildings Ordinance (Cap. 123) (BO) (as to be amended by clause 10(9) to (11) of the Bill) and that in comparable legislation. A comparison with the Lifts and Escalators (Safety) Ordinance (Cap. 327) and Architects Registration Ordinance (Cap. 408) is as follows –

Buildings Ordinance

Under sections 7(1) and (1A) of the BO (as to be amended by clause 10(2) to (4) of the Bill), where an RI –

- (a) has been convicted by any court of an offence related to carrying out professional duties;
- (b) has been negligent or has misconducted in a professional way; or
- (c) has failed to discharge the duties or abide by the requirements imposed on an RI or a qualified person under the BO,

and the aforementioned matters may –

- (a) render the person unfit to remain on the register;
- (b) make the further inclusion of the person on the register or further certification of any prescribed inspection or certification or supervision of any prescribed repair by that person prejudicial to the due administration of the BO;
- (c) render the person unfit for certifying any prescribed inspection or certifying or supervising any prescribed repair; or
- (d) render the person deserving of suspension from the register or from certifying any prescribed inspection or certifying or supervising any prescribed repair, a fine or a reprimand,

the BA may bring the aforementioned matters to the notice of a disciplinary board.

According to section 7(2) of the BO (as to be amended by clause 10(5) to (13) of the Bill), the disciplinary board may, after due inquiry, order that –

- (a) the name of the person be removed from the register either permanently or for any period that the disciplinary board thinks fit;
- (b) the person be reprimanded;
- (c) the person be fined a sum not exceeding \$250,000 in case of a prescribed inspection (other than a prescribed inspection in respect of a window in a building) or buildings works (other than minor works) or \$150,000 in case of a prescribed inspection in respect of a window in a building or minor works; or
- (d) that the person be prohibited from certifying any prescribed inspection or certifying or supervising any prescribed repair in

respect of a window in a building either permanently or for any period that the disciplinary board thinks fit.

Lifts and Escalators (Safety) Ordinance

Under section 9 of the Lifts and Escalators (Safety) Ordinance, where it appears to the Director of Electrical and Mechanical Services (DEMS) that a registered lift engineer or a registered escalator engineer –

- (a) has been convicted by any court of such an offence; or
- (b) has in carrying out any lift works or escalator works been guilty of such negligence or misconduct,

as to –

- (a) render the person unfit to be on the register;
- (b) make the further inclusion of the person on the register prejudicial to the due administration of this Ordinance; or
- (c) render the person deserving of censure,

DEMS may refer the matter to the Secretary for Development who must refer that matter to a disciplinary board. The disciplinary board may, after due inquiry, order that –

- (a) the name of the person be removed from the register either permanently or for such period as the board directs; or
- (b) the person be reprimanded.

Architects Registration Ordinance

Under sections 21 and 24 of the Architects Registration Ordinance, where an inquiry committee finds that a registered architect –

- (a) commits misconduct or neglect in any professional respect;
- (b) has been convicted of an offence under the Ordinance;
- (c) has obtained registration under the Ordinance by fraud or misrepresentation;
- (d) was not at the time of his registration under the Ordinance entitled to be registered;
- (e) without reasonable excuse, fails to attend before an inquiry committee when summoned either as a witness or as a person in respect of whom the inquiry committee is meeting; or
- (f) has been convicted in Hong Kong or elsewhere of any offence

which may bring the profession into disrepute and sentenced to imprisonment (whether the sentence is suspended or not), the inquiry committee may order, inter alia, that –

- (a) the name of the person be removed from the register either permanently or for such period as the inquiry committee may think fit;
- (b) the person be reprimanded in writing and on the register; or
- (c) the person be admonished orally.

Similar mechanism is also provided for in sections 20 and 23 of the Engineers Registration Ordinance (Cap. 409) and sections 20 and 23 of the Surveyors Registration Ordinance (Cap. 417).

Meaning of “Projection”

At the meeting of the Bills Committee on 13 July 2010, Members enquired about the definition and meaning of “projection” in other parts of the BO and regulations thereunder and in other legislation.

The word “projection” appears in various provisions in the existing BO and its regulations but is not particularly defined. Generally, a projection could mean anything projecting from a building, such as balconies, verandahs, canopies, eaves, cornices, mouldings, pipes, gutters, drying racks, structures supporting building service installations (such as air-conditioners) etc. We define “projection” in the proposed section 30A(1) in order to clarify the scope of the power of the Building Authority (BA) under the proposed section 30B(5) for the implementation of the Mandatory Building Inspection Scheme. The provision does not alter the meaning of “projection” in other parts of the BO or the regulations thereunder as it is only applicable to the proposed Part IIA of the BO. There is no comparable usage of the word “projection” in other legislation though.

The defined term of “projection”, appearing in the proposed section 30A(1) in the Bill, mainly concerns with the meaning of that term used in the proposed section 30B(5). Members asked whether it was necessary to separately define “projection” in section 30A(1), as the details of which are to be prescribed in the regulations anyway. After review of the provisions, we

propose a committee stage amendment to repeal the definition of “projection” in the proposed section 30A(1) and amend the proposed section 30B(5) by replacing “(other than a signboard)” with “as prescribed in the regulations”.

Notices in relation to Signboards

At the meeting of the Bills Committee on 13 July 2010, Members asked the Administration to further explain the relationship between the proposed section 30B(6) and (9).

The proposed section 30B(6) is modelled on the existing section 24(2)(c) of the BO (dealing with unauthorised signboards) which has been in operation smoothly since its introduction in 2004. The proposed section 30B(6) aims to achieve fairness by clearly prescribing the responsible parties. For a signboard erected in accordance with the approval and consent mechanism under the existing BO or in accordance with the simplified requirements under the to-be-commenced minor works control system, the BA will have the information of the person for whom the signboard is erected, i.e. the person prescribed in paragraph (a) of the proposed section 30B(6). Only when the person has abandoned the signboard or cannot be found (e.g. a dissolved company) will the BA proceed to search for the person prescribed in paragraph (b) and (c) successively. If the person can be found but fails to comply with the BA’s notice, the BA may instigate prosecution and consider carrying out inspection and repair and recovering the costs and surcharge from that person.

Under the proposed section 30B(9), the BA may cause a notice served under the proposed section 30B(6) to be registered by memorial in the Land Registry against the building to which the notice relates, i.e. the premises in the building on which the signboard is erected. This provision is modelled on the existing sections 26(2A), 26A(4A), 27C(6) and 28(6A) of the BO. Where a notice is served under paragraph (c) of the proposed section 30B(6) on the owner of the premises in the building on which the signboard is erected, it is consequential for the BA to cause the notice to be registered against that premises. Where a notice is served under paragraph (a) or (b) on a person, it is possible that the person is also the owner of the premises in the building on which the signboard is erected, and on such occasion the BA may also cause the notice to be registered against that premises. Where the person is not the

owner of the premises in the building on which the signboard is erected, the BA will not cause the notice to be registered.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Harry Lin', written in a cursive style.

(Harry LIN)
for Secretary for Development

c.c. DD/BD
LD/DoJ