

立法會

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Legal Service Division Report on Subsidiary Legislation Gazetted on 9 October 2009

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PART I MINOR WORKS UNDER THE BUILDINGS ORDINANCE

Background

The Buildings (Amendment) Ordinance 2008 (20 of 2008) was passed by the LegCo on 18 June 2008. A new minor works control system was introduced to the Buildings Ordinance (Cap. 123) (BO) to simplify the existing building control system to provide a lawful, simple, safe and convenient means for building owners to carry out minor works. The Building (Minor Works) Regulation (L.N. 51 of 2009) (B(MW)R) which was subsequently amended by a resolution of the LegCo (L.N. 113 of 2009), sets out the details of the operation of the minor works control system. "Minor works" are classified by B(MW)R into three classes according to the nature, scale and complexity as well as the risk to the safety they pose.

Buildings Ordinance (Cap. 123)

Building (Minor Works) (Fees) Regulation (L.N. 178)

Building (Administration) (Amendment) Regulation 2009 (L.N. 180)

2. L.N. 178 is made by the Chief Executive in Council under section 38(1A) of BO to prescribe the fees payable in relation to various applications and registrations made under B(MW)R. It will come into operation on a day to be

appointed by the Secretary for Development (SDEV) by notice published in the Gazette.

3. L.N. 180 is made by SDEV under section 38 of BO to amend the Building (Administration) Regulations (Cap. 123 sub. leg. A) (the Administration Regulations).

4. At present, regulation 22(3) and (4) of the Administration Regulations requires authorised persons and registered structural or geotechnical engineers to notify the Building Authority in writing within 14 days of a change in the appointment of any technically competent person appointed under the said Regulations. Section 2 of L.N. 180 shortens the notice period from 14 days to 7 days.

5. Regulation 45 of the Administration Regulations requires authorised persons and certain engineers or contractors to notify the Building Authority of any change in business address. Section 3 of L.N. 180 extends the duty of notification to registered minor works contractors.

6. L.N.180 will also come into operation on a day to be appointed by SDEV by notice published in the Gazette.

Prevention of Bribery Ordinance (Cap. 201)

Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2009 (L.N. 179)

7. The Order is made by the Chief Executive in Council under section 35 of the Prevention of Bribery Ordinance (Cap. 201) (POBO) to amend Schedule 1 to POBO by adding the Minor Works Contractors Registration Committee (the Committee) into the Schedule as item 113.

8. The Committee is to be appointed by the Building Authority under section 6 of B(MW)R. Its functions are –

- (a) examining the qualifications of applicants for registration as registered minor works contractors;
- (b) making necessary inquiry to ascertain whether the applicants have the experience required of them for the purposes of their applications;
- (c) conducting interviews with the applicants; and

- (d) making recommendations to the Authority to allow or refuse, either in whole or in part, the applications or defer the determination of the applications.
9. By adding it into the Schedule to POBO, the Committee becomes a "public body" and POBO is therefore applicable to the Committee.
10. L.N. 179 will come into operation on a day to be appointed by SDEV by notice published in the Gazette.

Buildings Ordinance (Cap. 123)

Technical Memorandum for Supervision Plans (S.S. 5) - Non-legislative instrument subject to negative vetting by LegCo

11. The Technical Memorandum for Supervision Plans (Special Supplement No. 5) (the Memorandum) is made by SDEV under section 39A of BO. The Memorandum replaces the second edition of the Technical Memorandum (S.S. No. 5 to Gazette No. 22/2005), which came into operation on 31 December 2005 (the 2005 Memorandum).
12. The Memorandum supplements the provisions of BO governing the supervision of building works and street works. It is largely the same as the 2005 Memorandum. According to the LegCo Brief, the major updates in the Memorandum include –
- (a) section 11, which sets out that supervision plans are not required for certain minor building works; and
 - (b) Table 1, which sets out the minimum supervision requirements for certain minor works.
13. The Memorandum also includes consequential updates in relation to, among other things, the implementation of the minor works control system.
14. Under section 39A(2), SDEV must cause the Memorandum to be laid on the table of the LegCo after gazettal. The LegCo may by resolution passed at one of its sittings held before the expiry of a period of 28 days after the sitting at which it was laid, to amend the Memorandum, provided that the Memorandum be amended in any manner consistent with the power to issue the Memorandum. Section 39A(5) further provides that before the expiry of the said 28 days, the LegCo may extend that period by 21 days.

15. The Memorandum will come into operation on a date to be appointed by the SDEV by notice published in the Gazette.

16. In relation to L.N. 178 to L.N. 180 and the Memorandum, Members may refer to the LegCo Brief issued by the Development Bureau in October 2009 (File Ref.: DEVB(PL-B) 30/30/120) for further information.

17. The Bills Committee on the Buildings (Amendment) Bill 2007 and the Subcommittee on Building (Minor Works) Regulation had noted the proposed level of fees for the various applications by registered minor works contractors made under B(MW)R. However, both committees had not discussed the issue concerning the inclusion of the Committee in Schedule 1 to POBO nor the other items of subsidiary legislation or the Memorandum.

18. The Panel of Development has not been consulted on the three items of subsidiary legislation and the Memorandum.

PART II ESTATE AGENTS

Estate Agents Ordinance (Cap. 511)

Estate Agents (Licensing) (Amendment) (No. 2) Regulation 2009 (L.N. 181)

Estate Agents Practice (General Duties and Hong Kong Residential Properties) (Amendment) Regulation 2009 (L.N. 182)

L.N. 181

19. L.N. 181 is made by the Estate Agents Authority (EAA) with the approval of the Secretary for Transport and Housing (STH) under section 56 of the Estate Agents Ordinance (Cap. 511) (EAO) to amend section 7 of the Estate Agents (Licensing) Regulation (Cap. 511 sub leg A) (the Licensing Regulation).

20. According to the LegCo Brief, Supplement VI to the Mainland and Hong Kong Closer Economic Partnership Arrangement signed in May 2009 reassured that Hong Kong and the Mainland would take forward the mutual recognition of each other's professional estate agent qualifications.

21. A mutual recognition of qualifications scheme (the Scheme) will be set up. Under the Scheme, EAA and the China Institute of Real Estate Appraisers and Agents (CIREA) of the Mainland may each nominate the same number of estate agents to apply for each other's estate agent licences. The nominees are required to attend a special course organized by the other side and be granted licences by the other side upon passing a special examination. Subject to fulfilling other relevant

regulations of the other side (like the requirements in EAO in Hong Kong), a nominee who is granted a licence by the other side may engage in estate agency work in the other side.

22. L.N. 181 amends section 7 of the Licensing Regulation, which concerns the educational qualifications and experience for applicants for estate agent licences, by -

- (a) enabling EAA to provide training courses and to set examinations for holders of CIREA certificates; and
- (b) empowering EAA to issue a licence to a holder of a CIREA certificate who has completed the said training and passed the examination.

23. According to the LegCo Brief, EAA has consulted the estate agency trade on the Scheme. The trade supports the Scheme and looks forward to the early implementation of the Scheme.

24. L.N. 181 will come into operation on 7 December 2009.

25. Members may refer to the LegCo Brief issued by the Transport and Housing Bureau in October 2009 (File Ref. HD(CR) 55/213 Pt. 5) for further information.

L.N. 182

26. L.N. 182 is made by EAA with the approval of STH under section 56(1)(k) of EAO to amend Forms 1 and 2 in the Schedule to the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation 2009 (Cap. 511 sub. leg. C) (the Principal Regulation).

27. Estate agents licensed under EAO are required to provide various types of property information from prescribed sources to property buyers or lessees through Form 1 (Property Information Form) or Form 2 (Leasing Information Form) prescribed in the Schedule to the Principal Regulation. At present, one of the prescribed sources of information on Forms 1 and 2 is "Rating and Valuation Department (Info-Hotline Service)" relating to the information on "saleable area" and "year of completion" of the properties.

28. According to the Administration, a specific information system (in the present case, the Info-Hotline Service) may be replaced by another to keep pace with practical needs and technological advance. As such, L.N. 182 removes the reference to "Info-Hotline Service" on Forms 1 and 2.

29. Further, the Buildings Department is one of the prescribed sources in relation to the information on "saleable area" and "year of completion" on Form 1 but not on Form 2. For consistency, Buildings Department is included in Form 2 as one of the prescribed sources by L.N. 182.

30. L.N. 182 will come into operation on 7 December 2009.

31. Members may refer to the LegCo Brief issued by the Transport and Housing Bureau in October 2009 (File Ref.: HD/PH 5/6/4) for further information.

PART III ANCHORAGES AND LANDING PLACES UNDER THE IMMIGRATION ORDINANCE

Immigration Ordinance (Cap. 115)

Immigration (Anchorage and Landing Places) (Amendment) Order 2009 (L.N. 183)

32. The Amendment Order is made by the Secretary for Security under section 60 of the Immigration Ordinance (Cap. 115).

33. According to the LegCo Brief issued by the Security Bureau and the Transport and Housing Bureau in October 2009 (with no file reference), transit passenger ferry service is provided at the existing SkyPier situated within the restricted area of the Hong Kong International Airport to Macao, Shenzhen Shekou, Shenzhen Fuyong, Dongguan, Zhongshan, Zhuhai Jiuzhou and Nansha. The SkyPier has been designated as an approved immigration anchorage under paragraph 2(1)(b) of the Immigration (Anchorage and Landing Places) Order (Cap. 115 sub. leg. C). The boundary of the anchorage is set out at Schedule 1A to the Order.

34. A new and permanent SkyPier is expected to commence operation in December 2009 replacing the existing one. As a result, the Amendment Order is made to amend the boundary of the anchorage set out in Schedule 1A to the Order.

35. The Amendment Order will come into operation on 4 December 2009.

PART IV PUBLIC PLEASURE GROUNDS

Public Health and Municipal Services Ordinance (Cap. 132)

Public Health and Municipal Services (Setting Aside Places and Cessation of Setting Aside Place for Use as Public Pleasure Grounds) Order 2009 (L.N. 184)

Public Health and Municipal Services Ordinance (Amendment of Fourth Schedule) (No. 3) Order 2009 (L.N. 185)

36. L.N. 184 and L.N. 185 are made by the Director of Leisure and Cultural Services respectively under section 106(1) and (6) of the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance).

37. The Director is responsible for the management of public pleasure grounds listed in the Fourth Schedule to the Ordinance. By L.N. 184, 15 new venues have been set aside as public pleasure grounds and by L.N. 185, they are included in the Fourth Schedule to the Ordinance. The inclusion will enable the Director as the Authority under the Ordinance to enforce the regulations relating to the public pleasure grounds for proper management.

38. At the same time, the Victoria Park Squash Court was removed by L.N. 184 as public pleasure ground as it has been handed over to the Architectural Services Department for demolition to facilitate the redevelopment of the Victoria Park Swimming Pool. By L.N. 185, it is removed from the Fourth Schedule to the Ordinance.

39. Members may refer to the LegCo Brief issued by the Leisure and Cultural Services Department on 29 September 2009 (File Ref.: (30) in LCS 19/HQ 813/00(13)) for further information.

40. L.N. 184 and L.N. 185 have come into effect on the day of gazettal.

PART V RULES OF THE HIGH COURT

High Court Ordinance (Cap. 4)

United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

Rules of the High Court (Amendment) Rules 2009 (L.N. 186)

41. The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance) was enacted in 2002 to give effect to the mandatory elements of United Nations Security Council Resolution (UNSCR) 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF).

42. Sections 5, 6, 8, 13, 17 and 18 of the Ordinance provide for matters relating to specification of persons and property as terrorists, terrorist associates or terrorist property, freezing of funds, forfeiture of terrorist property and compensation for wrongful specification of terrorists and terrorist property. These provisions

(except section 5) were subsequently amended by the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 (21 of 2004) (the Amendment Ordinance), which was enacted in 2004 to amend the Ordinance to: (a) give full effect to the requirements of UNSCR 1373; (b) implement the FATF Special Recommendations on freezing non-fund terrorist property; and (c) implement other international conventions against terrorism, namely, the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

43. Provisions including sections 12A, 12B, 12C, 12G and 12H were introduced by the Amendment Ordinance to empower the Court of First Instance to make orders relating to production of documents and material, search of premises and seizure of terrorist property.

44. The provisions mentioned in paragraphs 42 and 43 above have not been brought into operation pending the making of rules of court to provide for the procedural matters involved.

45. These Rules, made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) and section 20 of the Ordinance, add a new Order 117A (the new Order) to the Rules of the High Court (Cap. 4 sub. leg. A) (the principal Rules) setting out the procedures for applications to the Court of First Instance for specification of persons and property as terrorists, terrorist associates or terrorist property, forfeiture of terrorist property, production of information and material, etc.

46. The new Order also sets out the procedure for applications under sections 12G and 12H of the Ordinance relating to search and seizure of terrorist property and detention of seized property. Furthermore, these Rules amend Order 1, rule 2(3) of the principal Rules to ensure that other provisions of the principal Rules, if appropriate, apply in respect of applications that may be made under the Ordinance.

47. Section 2 of the Ordinance provides that for the purposes of the Ordinance, a person having a "prescribed interest" in any property is deemed to be a person by, for or on behalf of whom the property is or was held, and that rules of court may prescribe the meaning of "prescribed interest". Under the new Order, "prescribed interest", in relation to any property, means a legal or equitable estate or interest in the property, or a right, power or privilege in connection with the property.

48. These Rules will come into operation on the day appointed for the commencement of sections 5, 6, 8, 13, 17 and 18 of the Ordinance and of sections 5, 7,

12, 13, 16 and 17 of the Amendment Ordinance. According to paragraph 3 of the paper provided by the Administration to the Panel on Security in November 2008 (LC Paper No. CB(2)347/08-09(07)), these sections will be brought into operation after the making of rules of court to provide for the procedural matters involved.

49. The Administration briefed the Panel on Security on the proposed rules of court and code of practice to be made for the Ordinance at its meeting on 2 December 2008. Members mainly expressed views on the code of practice and the Ordinance itself. A member expressed the view that as some outstanding issues in the enactment of the Ordinance had not been addressed by the Administration, she had reservations about introducing the proposed rules of court and code of practice. Members may refer to the minutes of the meeting (LC Paper No. CB(2)738/08-09) for further information.

PART VI CLOSURE OF WATERS

Shipping and Port Control Ordinance (Cap. 313)

Merchant Shipping (Local Vessels) Ordinance (Cap. 548)

Closure of Waters (Opening Ceremony of the Fifth East Asian Games) Notice 2009 (L.N. 187)

50. This Notice is made by the Director of Marine under section 16B of the Shipping and Port Control Ordinance (Cap. 313) and section 26 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). It specifies the areas of the waters at the central part of the Victoria Harbour of Hong Kong to be closed to all vessels except two specified classes of vessels for certain periods on 5 December 2009 for the opening ceremony of the Fifth East Asian Games. The two excepted classes of vessels are vessels directly involved in the opening ceremony of the Fifth East Asian Games, that is to say, parade boats, barges serving as performance stages, barges for fireworks display, vessels towing the barges in position and vessels carrying the participating athletes, and vessels that have special permission from the Director of Marine to enter the areas. The closure prescribed in this Notice will not apply if the boat parade expected to constitute part of the opening ceremony of the Fifth East Asian Games is cancelled as announced by the Secretary for Home Affairs on or before 5 December 2009.

51. Members may refer to the LegCo Brief (File Ref: THB(T) PML CR L/M 5/2009) issued by the Transport and Housing Bureau and the Marine Department on 7 October 2009 for background information.

52. The Panel on Home Affairs was consulted at its meeting on 17 April 2009 on the preparatory work for the 2009 East Asian Games. In response to a member's enquiry about measures to facilitate public viewing of the boat parade and firework display at the Victoria Harbour during the Opening Ceremony of the Games, the Administration undertook to arrange for live broadcast of the Opening Ceremony of the Games on TVs and giant telescreens at various locations to enable the public to enjoy the event. Members did not have strong views on this arrangement. Members may refer to the minutes of the meeting (LC Paper No. CB(2)1789/08-09) for further information.

Concluding Remarks

53. The Legal Service Division is seeking clarification from the Administration in respect of Rules of the High Court (Amendment) Rules 2009 (L.N. 186) relating to certain procedural matters arising from the operation of rules 4, 7, 10, 16 and 17 of the new Order 117A (including claims of legal privilege). A further report will be provided if necessary.

54. No difficulties in the legal and drafting aspects of the remaining items of subsidiary legislation and non-legislative instrument have been identified.

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