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**Paper for the House Committee meeting
on 20 November 2009**

Report of the Subcommittee on Building (Minor Works) (Fees) Regulation

Purpose

This paper reports on the deliberations of the Subcommittee on Building (Minor Works) (Fees) Regulation (the Subcommittee).

Background

2. With the passage of the Buildings (Amendment) Ordinance 2008 (20 of 2008) (2008 Amendment Ordinance) on 18 June 2008, a new Minor Works Control System was introduced to the Buildings Ordinance (Cap. 123) (the Ordinance) to simplify the existing building control system to provide a lawful, simple, safe and convenient means for building owners to carry out minor works.

3. Certain provisions of the 2008 Amendment Ordinance, including the enabling provision for the Secretary for Development to make regulations in respect of minor works, commenced on 15 December 2008. The modus operandi of the Minor Works Control System is set out in the Building (Minor Works) Regulation (L.N. 51 of 2009) (B(MW)R), which was introduced by the Secretary for Development in March 2009 and amended by resolution of the Legislative Council (LegCo) (L.N. 113 of 2009) on 20 May 2009.

The Minor Works Control System

4. The B(MW)R provides for the classification of minor works and details of minor works items, simplified requirements for carrying out minor works, registration and provisional registration of registered minor works contractors (RMWCs) as well as duties of building professionals and registered contractors in carrying out minor works. Under the B(MW)R, minor works have been classified into three classes according to their nature, scale and complexity as well as the risk

to safety they pose. The works under each class are further classified into types and items that correspond to the specialization of works in the industry.

5. According to the registration system for qualified RMWCs provided in the 2008 Amendment Ordinance, contractors applying for registration as RMWCs could be body corporates, partnerships, sole proprietorships or individuals (for class III minor works only), and they have to satisfy the Building Authority (BA) that they possess the necessary technical qualifications and work experience before they could be registered under the Ordinance. For practitioners applying for registration as RMWCs operating as firms, their applications would be assessed based on their representatives' academic qualifications and/or relevant experience, comprehension of the statutory requirements, as well as professional experience in the management and supervision of works projects. Practitioners who apply for registration as class III RMWCs operating as individuals will also be required to prove their technical qualifications and/or relevant experience in carrying out the class III minor works items personally.

6. A transitional period and a two-year provisional registration arrangement would be put in place to allow time for the existing minor works practitioners to prepare for registration. The provisional registration would only be available to applicants operating as firms. As for individual applicants, provisional registration is not required because the procedures are simple and straightforward – such individual applicants could obtain the registration by virtue of either qualifications or experience and after attending a one-day top-up course.

The Building (Minor Works) (Fees) Regulation

7. The Building (Minor Works) (Fees) Regulation (L.N. 178 of 2009) (the Fees Regulation) was gazetted on 9 October 2009 and tabled at LegCo on 14 October 2009. The Fees Regulation sets out the level of fees for the various applications for registration as RMWCs under the B(MW)R, including new registration, renewal of registration, restoration of name to register, registration of additional class, type or item of minor works, nomination of additional authorized signatory, review of unsuccessful application and provisional registration. According to the Administration, the proposed fee structure is established on the basis of recovering the full cost of administering the registration system.

The Subcommittee

8. At the meeting of the House Committee on 16 October 2009, Members agreed to form a subcommittee to study the Fees Regulation. Under the chairmanship of Hon CHAN Kin-por, the Subcommittee has held three meetings. The membership list of the Subcommittee is in **Appendix I**. The Subcommittee has invited relevant organizations to give views on the Fees Regulation.

Representatives of eight organizations made oral presentation and one of them also provided a written submission. A list of the eight organizations is in **Appendix II**.

Deliberations of the Subcommittee

Basis for setting the fees

9. The Subcommittee has expressed concern about the basis for setting the following fees: (a) non-natural person applicants (such as firms) have to pay for both application and registration while there is only a single registration fee for natural person applicants; and (b) natural person applicants seeking registration on the basis of experience have to pay a higher fee than those seeking registration on the basis of qualifications.

10. Regarding the fee for non-natural person applicants, the Administration has explained that separating application and registration fees would reduce the costs to be borne by unsuccessful non-natural person applicants as these applicants would only have to pay the application fee. There is no such need for natural person applicants in view of the high expected success rate and the low fees involved.

11. The Subcommittee notes the view of deputations that application fees for non-natural persons are on the high side when compared with those for registration as registered general building contractors, bearing in mind that the scope of works to be undertaken by the latter is much wider. The Subcommittee also notes the views of deputations that the Administration should consider waiving half of the fees for provisional registration, reducing the registration fees, especially those for non-natural persons, and narrowing down the differences between the registration fees for non-natural persons and natural persons.

12. On the higher fee payable by natural person applicants seeking registration on the basis of experience, the Administration has explained that as more procedures and resources would be involved in vetting applications on the basis of experience, the corresponding fees would be higher. To address the concerns of members and deputations about the affordability of the registration fees to individual practitioners, especially those aged minor works practitioners, and to encourage early registration, the Administration has agreed to introduce a time-limited "early bird" incentive during the first 12 months of the registration period for those practitioners without any formal qualifications. During the said period, the Buildings Department (BD) will provide a subsidy of \$150 to each applicant whose first-time application of any class III minor works item solely relies on his/her experience. With this subsidy, such an applicant will only need to pay \$155 (instead of \$305) for registration, which is the same as the fee for those applying by virtue of qualifications.

13. The Subcommittee has expressed concerns about the considerations and consultation procedures involved in setting the various fees under the Fees Regulation and in future fees revisions. According to the Administration, it is an established Government policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the goods or services. Regarding the present Fees Regulation, the fees mainly cover staff cost incurred in processing the applications, departmental expenditure as well as other associated expenditure of registration committee meetings. If the number of applications deviates from the original estimate, there might be room for review/adjustment of fees. The fees will be regularly reviewed and, where necessary, revised on an annual basis. The revision can be upwards or downwards, as the case may be.

14. For the introduction of the Minor Works Control System, BD has been working in close liaison with its dedicated working group on minor works. BD has explained to the members of the working group the established full cost recovery principle of the Government, and that in fact most of the fees are calculated at the 2007-2008 price level and the some 10% inflation factor has not been taken into account in the current calculation. As such, there is no room for further reduction in the proposed fees. Before making any adjustment to a fees item prescribed under the Ordinance, BD will consult the building industry through the established channels. Revision of fees involves amendments to subsidiary legislation, which is subject to negative vetting by LegCo.

Fees for review of decisions on registration applications

15. To address the concerns of deputations about the proposed fees for review of decisions on registration applications (the review fees), the Subcommittee has requested the Administration to consider reducing the review fees for all applicants; waiving the review fees for applicants seeking review of decisions on registration application for the first time; and refunding the review fees for successful review applicants.

16. The Administration has explained that under the review mechanism, an unsuccessful applicant may make a written application in specified form to BA for review of his/her case. A Minor Works Contractors Registration Committee will be convened for each review application to scrutinize the case and make a recommendation to BA. As the review mechanism involves the processing of submitted documents, meetings of the Minor Works Contractors Registration Committee, as well as processing and notification of the applicant of the decision, the Administration considers it not practicable to waive the fees for all such applications. Nevertheless, in response to the concerns of members and deputations, the Administration has agreed to refund the review fees for an application where BA substitutes the original decision to which the request for review relates with another decision. The Administration will move amendments to sections 8, 17 and 21 of the Fees Regulation to this effect.

Registration as natural persons and non-natural persons

17. As some applicants can apply for registration as non-natural persons or as natural persons, the Subcommittee has asked the Administration the measures to be adopted to ensure that the applicants are applying for registration under the appropriate category. The Administration has explained that minor works practitioners applying under the non-natural person category are generally larger in their scale of operation. They have to apply for at least a whole type of minor works (instead of an individual class III item as for natural persons) in their applications. Under this category, BA will accept applications for registration in respect of different classes and types of minor works.

18. Regarding registration as natural persons, it is meant to cater for small scale operations at the individual minor works item level. Instead of being conversant with all items in a type of minor works, the individual applicants are competent in personally carrying out class III minor works items that are mainly simple household works. The Administration accepts eligible individuals who personally carry out minor works to register for one or more items of class III minor works. BD will exercise special care in the scrutiny of applications, launch an extensive publicity campaign for the industry, and provide advisory services to facilitate registration.

Proposed amendments

19. A marked-up copy of the Administration's proposed amendments to the Fees Regulation is given in **Appendix III**. The Administration intends to move a motion at the Council meeting on 2 December 2009 to give effect to the amendments.

Recommendation

20. The Subcommittee supports the Administration's proposed amendments.

Advice sought

21. Members are requested to note the deliberations and recommendation of the Subcommittee.

Subcommittee on Building (Minor Works) (Fees) Regulation

Membership list

Chairman Hon CHAN Kin-por, JP

Members Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Tanya CHAN
Hon IP Wai-ming, MH

(Total: 10 members)

Clerk Mr WONG Siu-yee

Legal Adviser Mr Kelvin LEE

Date 28 October 2009

Subcommittee on Building (Minor Works) (Fees) Regulation

**List of organizations which have made
oral presentation/written submission to the Subcommittee**

Oral presentation

1. Hong Kong Licensed Plumbers Association Ltd.
2. Registered Minor Works Contractor Signatory Association Ltd.
3. The Hong Kong Institute of Surveyors
4. Hong Kong Professional Sign Maker Association Limited
5. Hong Kong General Building Contractors Association Ltd.
6. Hong Kong Water Works Professionals Association
7. The Federation of Hong Kong Electrical & Mechanical Industries Trades Unions
8. Hong Kong Institute of Construction Managers

Written submission

1. Hong Kong Professional Sign Maker Association Limited

Proposed amendments to the Building (Minor Works) (Fees) Regulation

8. Fee for request for review: application relating to one or more items of class III minor works

(1) The fee to be paid under section 26(2)(b) of the Minor Works Regulation for a request to review a decision or recommendation made in respect of an application is \$105.

(2) If the Building Authority substitutes the decision to which the request relates with another decision under section 26(8)(a)(ii) of the Minor Works Regulation, the Authority must refund the fee paid for the request.

17. Fee for request for review: application relating to one or more types of minor works under one or more classes

(1) The fee to be paid under section 26(2)(b) of the Minor Works Regulation for a request to review a decision or recommendation made in respect of an application is a fee equal to the aggregate of the amounts specified in subsection (2) in respect of each proposed authorized signatory involved in the application, or part of the application, in respect of which the request is made.

(2) The amounts specified for the purposes of subsection (1) are –

- (a) if the highest class of minor works in which the individual is involved is class I, \$1,100;
- (b) if the highest class of minor works in which the individual is involved is class II, \$810;
- (c) if the individual is involved in class III minor works only, \$395.

(3) If the Building Authority substitutes the decision to which the request relates with another decision under section 26(8)(a)(ii) of the Minor Works Regulation, the Authority must refund the fee paid for the request.

21. Fee for request for review: application for registration as registered minor works contractor (provisional)

(1) The fee to be paid under section 26(2)(b) of the Minor Works Regulation for a request to review a decision made in respect of an application is a fee equal to the aggregate of the amounts specified in subsection (2) in respect of each proposed authorized signatory involved in the application, or part of the application, in respect of which the request is made.

(2) The amounts specified for the purposes of subsection (1) are –

- (a) if the highest class of minor works in which the individual is involved is class I, \$1,100;
- (b) if the highest class of minor works in which the individual is involved is class II, \$810;
- (c) if the individual is involved in class III minor works only, \$395.

(3) If the Building Authority substitutes the decision to which the request relates with another decision under section 26(8)(a)(ii) of the Minor Works Regulation, the Authority must refund the fee paid for the request.