

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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6 November 2009

Mr Wong Siu-yee
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr. WONG,

Subcommittee on Building (Minor Works) (Fees) Regulation
Response to Subcommittee's Comments
at Meeting on 28 October 2009

Thank you for your letter of 30 October 2009. I am pleased to provide below the Administration's response.

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. Such principle has been followed in determining the fees under the Building (Minor Works) (Fees) Regulation (Fees Regulation). The Government has carefully considered factors such as fairness to users as well as the need and the views of minor works practitioners in mapping out the proposal under the Fees Regulation.

(a) Fees for Request for Review

The review mechanism, as stipulated in the Building (Minor Works) Regulation (B(MW)R), was instituted in response to comments of Members raised in the Subcommittee of the Regulation in May 2009. The

current practice under the Buildings Ordinance (Cap 123) (BO) is that a building contractor who is aggrieved by an unsuccessful application for registration as general building contractor may lodge an appeal to the Court of First Instance (CFI). Members were concerned about the financial ability of the relatively smaller scale minor works practitioners and suggested that alternative avenues should be made for this group of applicants. As such, the review mechanism was set up and agreed by the Subcommittee. Under the review mechanism, an unsuccessful applicant, instead of lodging an appeal to the CFI, may make a written application in specified form to the Building Authority (BA) for review of his case. A Minor Works Contractors Registration Committee will be convened for each review application to scrutinize the case and make a recommendation to the Building Authority. The mechanism provides the applicant with an alternative that will save him the cost and time that he would otherwise have to bear in the legal proceedings. If the applicant is still aggrieved by the decision the BA following the review, he may then lodge an appeal to the CFI.

In setting the various fees, whilst following the full cost recovery principle, we are mindful that the minor works contractors are of small scale and that therefore the future registration system should be as user-friendly as possible. Nevertheless, for the review mechanism, as explained above, it 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. Actual work is involved and, based on the established user-pay and full cost recovery principles, it is not practicable to waive the fees for all such applications. Nevertheless, in view of Members' concern, we are further reviewing the mechanism to explore if there is room for refining the proposal.

(b) Considerations and Processes Involved in Setting/Amending Fees

As pointed out above, 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 proposal under the Fees Regulations, the fees mainly cover staff cost incurred in processing the applications (e.g. Buildings Department (BD) staff receiving applications, preparing documents and providing secretarial

support to the registration committees), departmental expenditure (e.g. provision of paper documents and venue for registration committee meetings) as well as other associated expenditure of the committee meetings. Such fees will be regularly reviewed and, where necessary, revised on an annual basis.

Before making any adjustment to a fee item prescribed under the BO, the BD will consult the building industry through the established channels, including the Building Sub-Committee under the Land and Development Advisory Committee, and the Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers Committee. These committees comprise members from professional institutions, contractors' associations (including minor works contractors), developers and relevant Government departments. Revision of fees involves amendments to subsidiary legislation which is subject to negative vetting by the Legislative Council.

For the proposed minor works control system including the B(MW)R, the BD has been working in close liaison with its dedicated working group on minor works. The working group comprises representatives from various professional institutes, the Hong Kong Construction Association, developers as well as the "Minor Works Concern Group" (comprising frontline minor works practitioners). While the working group has generally raised no adverse comment on the proposal, some members have urged the Government to explore room for further reduction of the fees. The BD has explained to the members the established full cost recovery principle of the Government, and that in fact most of the fees are calculated at the 2007/08 price level and the some 10% inflation factor has not been taken into account in the current calculation. There is no room for further reduction in the proposed registration fees. Upon further clarification, the working group has accepted the proposal as stipulated in the Fees Regulation.

The proposed level of fees (except that for the review mechanism which is new) has also been circulated to both the Bills Committee of the Buildings (Amendment) Bill 2007 and Subcommittee on the B(MW)R.

(c) Registration of Minor Works Contractors for Class III Minor Works

Generally speaking, applications as non-natural persons (firms) and natural persons (individuals) are of different nature. Applicants should make the relevant type of application in accordance with their scale of operation, capability and business needs. The details are outlined in ensuing paragraphs.

Registration as Non-natural Persons (Firms)

Minor works practitioners applying under the non-natural person (firm) category are generally larger in their scale of operation. They have to apply for at least a whole type (instead of an individual item as for natural persons (individuals)) in their applications. In other words, the BA will accept applications for registration in respect of different classes (class I, II or III) and types (i.e. groups of items) of minor works. The applicants have to provide evidence to prove that they are capable of such scale of operation and possess the ability to coordinate and manage such works. The applicants should satisfy the BA the ability of the authorized signatories nominated by them in terms of academic qualifications, work experience in managing and supervising minor works and understanding of the statutory requirements under the BO. The BA will also examine the financial capability of the applicants (such as their ability to gain access to plants, equipment and other resources for the carrying out of minor works).

Registration as Natural Persons (Individuals)

This registration category caters for small scale operations at the individual minor works item (e.g. installation/repair of windows) level. Instead of being conversant with all items in a type of minor works, the individual applicants are focused on a small number of particular skills. The minor works industry is characterized by the presence of such individual workers who are competent in carrying out class III minor works that are mainly simple household works. To cater for the registration of this group of workers, we accept individuals who personally carry out minor works to register for one or more items of class III minor works. Workers who possess relevant certificates or recognized skills/academic qualifications or adequate work experience may apply.

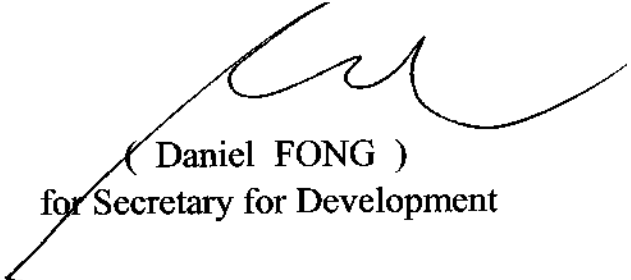
Measures Adopted by Administration to ensure Registration are under Appropriate Category

The requirements for the registration of registered minor works contractors have been stipulated in the Building (Minor Works) Regulation and as explained above, the requirements for minor works practitioners operating as a “firm” and “individual worker” are very different. We trust that the existing firms and individuals in the industry should be able to understand the system and register as the relevant types of contractor that best fit with their operation and business needs. Individual registration is only available for Class III minor works. The BD will exercise special care in the scrutiny of applications to prevent abuse. For example, if a firm-based applicant attempts to apply under the individual category (because of the lower fees) for a large number of minor works items, the BD will raise queries and ask the applicant to provide adequate evidence that s/he possesses adequate skills to carry out all the minor works items personally.

The BD will launch an extensive publicity campaign for the industry, in particular the frontline individual minor works practitioners, to make sure that they understand the registration system. The Department will explain to the practitioners the two types of application and ask them to register for the right type in accordance with their abilities and operational needs. Advisory services will also be provided to answer enquiries from the public and the building industry on the new minor works control system, including the new registration system.

Please let us know if you require further clarifications.

Yours sincerely,



(Daniel FONG)
for Secretary for Development

cc

Director of Buildings
Department of Justice

(Attention: Mr. S T Lam)
(Attention: Miss Selina Lau)