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**Paper for the House Committee meeting
on 19 November 2010**

**Report of the Subcommittee on Three Commencement Notices made
under the Buildings (Amendment) Ordinance 2008,
Building (Minor Works) Regulation and
Building (Administration) (Amendment) Regulation 2009**

Purpose

This paper reports on the deliberations of the Subcommittee on Three Commencement Notices (L.N.s 118 to 120 of 2010) made under the Buildings (Amendment) Ordinance 2008, Building (Minor Works) Regulation and Building (Administration) (Amendment) Regulation 2009 (the Subcommittee).

Background

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

Minor Works Control System

3. Prior to the Amendment Ordinance, the carrying out of large-scale building works or works of a very simple nature were governed by the same set of controls, including the requirements to obtain prior approval and consent from the Building Authority (BA) (i.e. the Director of Buildings)

before commencement of works and to appoint Authorized Persons (i.e. architects, engineers or surveyors registered under BO) and registered professionals to design and supervise the works as well as registered contractors to carry out the works. The requirements of the system were too stringent for minor works which were of a smaller scale and posed a lower level of risk. This not only created difficulties in control and enforcement, but also resulted in many unauthorized building works.

4. In view of the above, BO was amended in June 2008 and the framework of MWCS was introduced, facilitating members of the public to carry out minor works in private buildings lawfully through simplified procedures without compromising the building safety in Hong Kong. The Building (Minor Works) Regulation (B(MW)R) (L.N. 51 of 2009) which provides for the modus operandi of the system, was gazetted on 27 March 2009 and tabled in the Legislative Council (LegCo) on 1 April 2009 for negative vetting.

5. MWCS introduces a new category of building works i.e. "minor works". Under the new system, a total of 118 items of building works have been designated as minor works. The size, location and respective criteria for each item of minor works are set out in Schedule 1 to B(MW)R. These minor works are classified into the following three classes according to their nature, scale, complexity and risk to safety --

- (a) Class I (a total of 40 items) includes those relatively more complicated minor works;
- (b) Class II (a total of 40 items) comprises those of comparatively lower complexity and risk to safety; and
- (c) Class III (a total of 38 items) mainly includes common household Minor Works.

The three Commencement Notices and the relevant ordinance/regulations

Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2010 (L.N. 118 of 2010)

6. Certain provisions of the Amendment Ordinance have already come into operation on 15 December 2008 and 30 December 2009 respectively. The provisions that have come into operation on 15 December 2008 relate to

definitions of new terms added to section 2(1) of BO, the power of the Secretary for Development (SDEV) to make regulations providing for matters relating to minor works as well as some miscellaneous amendments to BO. Those provisions that have come into operation on 30 December 2009 provide for the establishment of a register or provisional register of minor works contractors and the composition of the disciplinary board appointed to hear and determine any proceedings against a registered minor works contractor.

7. By L.N. 118, the remaining provisions of the Amendment Ordinance will come into operation on 31 December 2010. These provisions include --

- (a) appointment of prescribed building professionals: minor works commenced or carried out without approval and consent;
- (b) duties of prescribed building professionals appointed or nominated in respect of minor works commenced under simplified requirements;
- (c) disciplinary proceedings, appointment and duties of prescribed registered minor works contractors (RMWCs);
- (d) order for demolition, removal or alteration of minor works commenced under simplified requirements; and
- (e) offences, exemptions, etc.

Building (Minor Works) Regulation (Commencement) Notice 2010 (L.N. 119 of 2010)

8. The provisions with regard to the establishment of Minor Works Contractors Registration Committee, operational procedures for registration of a RMWC and the classification of minor works have already been brought into operation on 30 December 2009.

9. L.N. 119 specifies 31 December 2010 as the day for the remaining provisions of B(MW)R that have not come into operation to come into operation, including --

- (a) simplified requirements for carrying out minor works;
- (b) appointment and duties of building professionals and registered contractors in carrying out minor works; and

- (c) household minor works validation scheme.

Building (Administration) (Amendment) Regulation 2009 (Commencement) Notice (L.N. 120 of 2010)

10. The Building (Administration) (Amendment) Regulation 2009 amends the Building (Administration) Regulations (Cap. 123 sub. leg. A) to --

- (a) reduce the period within which an authorised person, registered structural engineer, registered geotechnical engineer, registered general building contractor, registered specialist contractor or RMWC is required to notify the BA of a change in the appointment of any technically competent person from 14 days to 7 days; and
- (b) require a RMWC to notify the BA of a change to business address.

11. L.N. 120 specifies 31 December 2010 as the day on which the Building (Administration) (Amendment) Regulation 2009 will come into operation.

The Subcommittee

12. At the meeting of the House Committee on 15 October 2010, a subcommittee was formed to study the three Commencement Notices. Under the chairmanship of Hon LI Fung-ying, the Subcommittee has held two meetings. The membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

Processing time of application for registration by natural persons

13. The Subcommittee has expressed concern about the processing time of applications for registration as minor works contractors, particularly those submitted by individual Class III minor works practitioners. The Subcommittee has suggested that special consideration be given to issuing certificates of "provisional registration" to those practitioners who have

already applied for registration as RMWCs and are waiting for the outcome to continue with their work after 31 December 2010. As a last resort, some members of the Subcommittee have suggested extension of the deadline for registration to a later date, e.g. around the Chinese New Year.

14. The Administration has explained that according to B(MW)R, the statutory period for processing applications for registration as minor works contractors submitted by a natural person is three months. The consideration of applicants with experience only but no academic qualifications will be particularly time-consuming, as the Buildings Department (BD) will have to check all the submitted past employment records of the applicants to see if there is adequate evidence to demonstrate their competence to conduct the type(s) of minor works involved. In practice, the current processing time for normal cases has already been reduced from three months to two months in an attempt to meet the needs of Class III applicants to ensure that they could obtain the registration earlier. In light of the members' concern, the Administration undertakes to further reduce the processing time for normal cases from two months to one month. In other words, BD undertakes that, if all required supporting documents are duly provided and in order, all applications submitted by individuals by 30 November 2010 will be approved on or before 31 December 2010.

15. As a further measure to encourage and assist frontline practitioners to register as Class III minor works contractors, BD will sustain the above "fast track" registration arrangement until 31 March 2011. This will enable the practitioners to obtain registration swiftly during the early period of operation of the new control system.

16. The Administration has explained to members that with the above arrangement, it would not be necessary to provide for "provisional registration" for individual applicants.

Measures to encourage early registration

17. The Subcommittee notes that as at October 2010, only 1,005 applications from companies and 924 applications from natural persons have been received for RMWC registration. The Subcommittee further notes that the general culture of the construction sector is that the practitioners generally dislike paperwork and are not keen about registration in whatever ways. Even with MWCS, experienced and qualified practitioners may still choose to make a living by working for registered companies or individuals. It is therefore necessary to formulate effective promotion and publicity measures which best suit the culture of the sector to

motivate more applicants to come forward for RMWC registration. In this connection, the Subcommittee has suggested BD collaborate with trade unions of the sector to devise effective means to promote MWCS so as to boost the number of applications

18. To address the concerns of the Subcommittee, the Administration has agreed to take the following measures to encourage early registration --

- (a) BD will extend the provision of subsidy on application fees for applicants relying solely on experience to applications submitted by 31 March 2011. To give these practitioners a last chance to come up to apply with a lower fee, their registration fee will stay at \$155 (instead of \$305) if they apply before the above extended deadline;
- (b) BD will continue to closely monitor the provision of the training courses for individual Class III practitioners. BD has been maintaining close liaison with the training institutes, and noted that there are adequate places for the training courses. The Administration has been providing full subsidy on the training courses since October 2009, and will continue to do so for two more years until October 2012;
- (c) BD will continue to work closely with the trade unions, including the Minor Works Joint Working Group representing frontline practitioners, in mapping out the implementation details including the commencement and promotion of the MWCS; and
- (d) BD will step up its efforts to disseminate, through collaboration with its partner organisations, the message of early registration. Various possible channels, including face-to-face contact by visiting shops where the minor works business is conducted (e.g. small operations providing household alteration or repair works), direct contacts through trade unions, reminders to those who have completed the training courses, reminders to those who are attending the courses, and advertisements, etc., will be utilised to reach out to the frontline practitioners to inform them of the arrangements and invite them to apply early.

19. According to the Administration, the announcement of the commencement date through Announcements in the Public Interest and the channels has induced more individual practitioners to come forward to apply

for registration, with the number of applications surging to 457 in October 2010 alone, compared to a monthly average of some 160 in the preceding period. The Administration has further explained that since the public has been made aware of the commencement date of MWCS through those well publicised channels, any deferral would not be conducive to an effective implementation of this initiative, and as this might create confusion among owners planning to carry out minor works. The Administration has assured members that, except for cases of a serious nature raising safety concerns, BD would be lenient in carrying out law enforcement actions in the initial months after implementation of MWCS. Actions to be taken by BD in the initial months would mainly be giving of advice or warning.

Technical Memorandum for Supervision Plans 2009

20. The Subcommittee has also noted that the Technical Memorandum for Supervision Plans 2009 (Special Supplement No. 5) (the Memorandum) is made by the SDEV under section 39A of BO. The Memorandum replaces the 2005 edition of the Technical Memorandum, and was gazetted on 9 October 2009 and tabled in LegCo on 14 October 2009.

21. 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. 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.

22. The Memorandum also includes consequential updates in relation to, among other things, the implementation of MWCS. Under section 39A(7) of BO, the Memorandum is not subsidiary legislation, but it is subject to LegCo's scrutiny under a mechanism provided in section 39A of BO which is in substance the same as that provided in section 34 of Cap. 1. No amendment was made by LegCo within the scrutiny period as provided in section 39A (3) to (5) of BO. According to section 39A(9) of BO, SDEV is entitled to appoint in the memorandum or by notice in the Gazette a commencement date which is later than that is specified by section 39A(9)(a) or (b). The Memorandum provides that SDEV may appoint a later date by notice in the Gazette for commencement of the Memorandum.

23. By virtue of the Technical Memorandum for Supervision Plans 2009 (Commencement) Notice (S.S. No. 5 on 8 October 2010), SDEV appoints 31 December 2010 as the day on which the Memorandum will come into operation. According to the Administration, this is to synchronise the commencement dates of L.N. 118, L.N. 119 and L.N. 120 so as to bring MWCS into full operation. As for the reason(s) why the commencement notice for the Memorandum has not been tabled in LegCo, the Subcommittee has been advised that section 39A of BO does not require the commencement notice for the Memorandum to be tabled in LegCo; while section 39A(7) provides that the technical memorandum issued under that section is not subsidiary legislation.

24. The Subcommittee has noted the coming into operation of the Technical Memorandum for Supervision Plans 2009 (Commencement) Notice on 31 December 2010.

Proposed amendments

25. The Administration has not proposed any amendments to the three Commencement Notices. The Subcommittee will not move any amendments in its name.

Advice sought

26. Members are requested to note the deliberations of the Subcommittee.

**Subcommittee on Three Commencement Notices made under the
Buildings (Amendment) Ordinance 2008,
Building (Minor Works) Regulation and
Building (Administration) (Amendment) Regulation 2009**

Membership list

Chairman Hon LI Fung-ying, SBS, JP

Members Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, SBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Tanya CHAN

(Total: 11 members)

Clerk Mr Stephen LAM

Legal Adviser Mr YICK Wing-kin

Date 2 November 2010