

政府總部
發展局
規劃地政科



LC Paper No. CB(2)2163/11-12(02)

**Planning and Lands Branch
Development Bureau
Government Secretariat**

Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

香港添馬添美道二號
政府總部

本局檔號 Our Ref. DEVB(PL-B)30/30/122
來函檔號 Your Ref. CB2/BC/3/11

電話 Tel.: 3509 8806
傳真 Fax : 2899 2916

BY FAX

[Fax : 2509 9055]

29 May 2012

Clerk to Bills Committee
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Mrs Sharon Tong)

Dear Mrs Tong,

**Bills Committee on Buildings Legislation (Amendment) Bill 2011
(the Bills Committee)**

I refer to your letter of 25 May 2012 attaching a submission from the Business and Professionals Alliance (the Alliance) to the Chairman of the Bills Committee (the submission) regarding the Buildings Legislation (Amendment) Bill 2011 (the Bill). Our response to the letter is set out below.

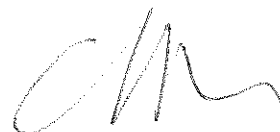
The joint submission urges the Administration to remove the proposed section 22(1B)(a)(i)(A) from the Committee Stage Amendments (CSAs) proposed by the Administration which provides that a magistrate may issue a warrant authorizing the Building Authority (BA) to enter any premises if the magistrate is satisfied that there are reasonable grounds for suspecting that building works have been or are being carried out "in contravention of section 14(1)". It is submitted that the request is out of the concern over the need for a proper balance between the protection of privacy and ensuring building safety.

As explained in the Administration's response to the Bills Committee (LegCo paper no. CB(2)2048/11-12(01)), the proposed section 22(1B)(a)(i)(A) is to cater for the situation where no building plans have been submitted in respect of works that require the prior approval of plans and consent to commencement of works under the Buildings Ordinance (BO). We also supplemented at the meeting of the Bills Committee on 21 May 2012 that this provision would mainly target at the situation where building plan has not been submitted or approved for the entire building structure with no apparent contravention of any standard under the BO in respect of structural safety, public health or fire safety and therefore does not fall under the situation in the proposed section 22(1B)(a)(i)(B) and (C). This may involve situations where the BO has been contravened in a blatant manner. A vivid real example of such a scenario would be an entire building erected on a piece of private land which is not readily identified through inspection from the outside or even in an aerial photo. Without this specific provision, there may be an enforcement loophole which could be exploited by building owners as they would acknowledge the fact that the BD would not be able to take enforcement action due to lack of means to gain entry into the premises.

While the above problem merits attention, we appreciate the concern expressed by the Alliance in the submission about the need to protect privacy, and also the views advanced by some Members during the meetings of the Bills Committee that the Administration should consider extending the grounds for application of warrants in a progressive manner in the light of operational experience and enforcement priority. In the light of the above, we propose to delete the proposed section 22(1B)(a)(i)(A) from the Administration's CSAs in order to address the Members' concerns as mentioned above.

A set of revised CSAs with the proposed section 22(1B)(a)(i)(A) deleted is attached at the Annex for reference.

Yours sincerely,



(Ryan Chiu)

for Secretary for Development

c.c.

DB (Attn : Mr. S W Hui) Fax : 2625 5501

D of J (Attn : Ms. Rayne Chai) Fax : 2869 1302

Buildings Legislation (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Development

<u>Clause</u>	<u>Amendment Proposed</u>
1	By deleting subclause (2) and substituting— “(2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.”.
1	By deleting subclause (3) and substituting— “(3) Sections 2A, 5, 6, 6A, 6B and 6C come into operation on a day to be appointed by the Secretary by notice published in the Gazette.”.
1	By adding— “(4) In subsection (3)— <i>Secretary</i> (局長) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123).”.
2	By deleting “sections 3 to 6” and substituting “sections 2A to 6A”.
New	By adding— “ 2A. Section 2 amended (interpretation) Section 2(3)— Repeal “Schedule 4 or 5”

Substitute

“Schedule 4, 5 or 8”.”.

3(3) In the proposed section 22(1B)(a), in the English text, by deleting “that”.

3(3) By deleting the proposed section 22(1B)(a)(i) and substituting—

“(i) with respect to building works that have been or are being carried out to the premises or land—

(A) that there is a material divergence or deviation from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements; or

(B) that they are not in compliance with the standard of structural stability, public health or fire safety established by regulations;”.

3(3) By deleting the proposed section 22(1B)(a)(ii) and substituting—

“(ii) that the use of the premises has been changed in contravention of section 25(1) or (2);”.

3(3) In the proposed section 22(1B)(a)(iii), in the English text, by adding “that” before “the premises have”.

3(3) In the proposed section 22(1B)(a)(iv), in the English text, by adding “that” before “the drains”.

3(3) In the proposed section 22(1B)(a)(v), in the English text, by adding “that” before “a notice”.

5 By adding—

“(ic) the prescription of the details in relation to any prescribed building or building works specified in

Schedule 8;”.

6 By deleting subclauses (8) and (9) and substituting—

“(8) Section 39C(6)—

Repeal paragraph (b)

Substitute

“(b) *prescribed building or building works* (訂明建築物或建築工程)—

- (i) in relation to subsection (1), means a building or building works prescribed in the Minor Works Regulation as prescribed building or building works;
- (ii) in relation to subsection (1A), means a building or building works specified in Schedule 8; and
- (iii) in relation to subsection (2) or (4), means a building or building works falling within subparagraph (i) or (ii).”.

New By adding immediately after clause 6—

“6A. Schedule 8 added

At the end of the Ordinance—

Add

“Schedule 8 [ss. 2, 38
& 39C]

Prescribed Building or Building Works

Item	Description
1.	Signboard of a kind prescribed under section 38(1)(ke)(ic).”.

New By adding—

“Part 2A

**Amendment to Building (Minor Works)
Regulation**

6B. Building (Minor Works) Regulation amended

The Building (Minor Works) Regulation (Cap. 123 sub. leg. N) is amended as set out in section 6C.

6C. Section 62 amended (provisions relating to section 39C of Ordinance)

Section 62(1)—

Repeal

“in section 39C(6)(b)”

Substitute

“given by section 39C(6)(b)(i) of the Ordinance in relation to section 39C(1)”.’”.