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Legislative Council

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Report of the Bills Committee on Buildings (Amendment) Bill 2000

Purpose

This paper reports on the deliberations of the Bills Committee on Buildings (Amendment) Bill 2000.

The Bill

2. In light of the operational experience of the Building Authority, the Administration has identified the need to introduce various legislative amendments to improve and update the Buildings Ordinance (the Ordinance), Cap 123. The Buildings (Amendment) Bill 2000 was introduced to the Legislative Council at its meeting on 16 February 2000.

3. The Bill aims to -

- (a) empower the Authority to grant building concessions to hotel developments and to increase the penalty for any material change in use of buildings without the prior approval of the Authority;
- (b) enable the Authority to require performance review of geotechnical design for certain categories of sites;
- (c) require the provision of floor space and facilities for material recovery in new buildings;
- (d) require the provision of access facilities in new buildings for use by telecommunication and broadcasting network operators; and
- (e) revise the fee structure for the registration of Authorized Persons and Registered Structural Engineers.

The Bills Committee

4. The House Committee decided at its meeting on 18 February 2000 to form a Bills Committee to study the Bill. Hon Ronald ARCULLI was elected Chairman of the Bills Committee at its first meeting on 17 March 2000 to commence preparatory work. The membership list of the Bills Committee is at **Appendix I**. The scrutiny of the Bill commenced at the second meeting held on 8 May 2000. A total of three meetings were held.

Deliberations of the Bills Committee

5. As the Bill involves changes to the building concessions for hotel developments as well as improvements to building control, the Bills Committee invited written submissions from relevant parties, including representative bodies of the hotel and the building industries. Representations were received from the Federation of Hong Kong Hotel Owners Limited, the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers, and the Real Estate Developers Association of Hong Kong. The deliberations of the Bills Committee are set out in the ensuing paragraphs.

Building concessions for hotel developments

6. Members note that the Authority has, since 1969, exercised discretionary power under the Ordinance to grant building concessions to bona fide hotel developments such that certain supporting facilities could be eligible for exemption from plot ratio computation. To support the long term growth of the tourism industry, the Administration considers that the concessions for hotel developments are justified and proposes that the current policy on hotel concessions be confirmed and formalized by amending the Building (Planning) Regulations (the Planning Regulations).

7. Members note that the floor space which may be disregarded by the Building Authority in determining the gross floor area of a hotel building is set out in the new Regulation 23A(3)(b) of the Planning Regulations. Members find the list of supporting facilities to be exempted from gross floor area calculation included under sub-paragraph (i) to (iii) is not meant to be exhaustive. To allow flexibility in meeting the needs of the industry, they consider that there is no need to restrict the scope of supporting facilities to be considered for exemption to “other similar supporting facilities” under sub-paragraph (iv) of the Regulation. The Administration has taken on board the Bills Committee’s view and agreed to move amendments to paragraph 4 to the Schedule, such that proposed Regulation 23A(3)(b)(iv) will be revised to “other supporting facilities as may be approved by the Building Authority”.

8. Members have also expressed concern about the offence provision under the proposed Regulation 23A(8)(a) whereby it would be an offence to change the use of a hotel or a hotel area which enjoys concession without the prior approval of the Authority. Members consider that since owners of hotels may not be aware of the changes in the use of the hotel or the hotel area as they normally do not interfere with the management of the hotel, it would be unfair on the part of the Authority to hold owners liable for such

changes of use, unless the changes are known to the owners. To address members' concern, the Administration has agreed to move amendments to the proposed Regulation 23A(8)(a) to include a defence provision such that it shall be a defence for the person charged to prove to the satisfaction of the court that he did not know, nor could reasonably have discovered the contravention.

9. In this respect, the hotel industry has questioned the need for the inclusion of new offence provisions under proposed Regulation 23A(8)(a) when offence provisions are already provided under section 40(2)(a) of the Ordinance to deal with failure to give notice of change of use under section 25 of the Ordinance. The Bills Committee notes that the existing section 25 of the Ordinance relates to material change of use for all buildings. Other non-material change of use such as changing a staff canteen into a fast food outlet would not be caught under the existing provisions. The offence provision under proposed Regulation 23A(8)(a), which encompasses non-material change of use, will be able to cover any change of use of a hotel building or the hotel part of the building to a use other than that of a hotel.

10. Members also note that, given the profits that could be made from unauthorized change of uses, the existing penalty of \$10,000 and six months imprisonment under section 40(2)(a) of the Ordinance is not considered sufficient. The Administration has taken the opportunity to increase the penalty under section 40(2)(a) to a fine at level 6 (\$100,000) and imprisonment for two years, so that the penalty will be the same as the new offence provisions under proposed Regulation 23A(8)(a). In order to synchronize the commencement of both offence provisions, the Administration will move corresponding amendments to Clause 1(3) of the Bill.

11. The Bills Committee take note of the reservations of the Federation of Hong Kong Hotel Owners Limited regarding the proposed Regulation 23A(5)(a) and (b) which provides that the use of hotels in which a licence has not been issued or renewed, or an order of exclusion is in effect, would be regarded as change of use to a use other than that of hotel. The Federation is concerned that this might affect the validity or renewal of a hotel licence.

12. The Administration explains that the issue of a hotel licence is adequately governed by the Hotel and Guesthouse Accommodation Ordinance, Cap. 349. There is no conflict between the administration of hotel concessions and the issue or renewal of a hotel licence. The objective of proposed Regulation 23A(5)(a) and (b) is to ensure that the use of a hotel which enjoys concessions will serve, and continue to serve the tourism industry, and not be changed to a use other than that of a hotel. The Federation accepts the explanation offered by the Administration and has written to the Bills Committee expressing its support for the early enactment of the Bill.

13. As regards the liability of "occupiers" for the change of use of hotel areas, members have examined how far hotel guests are caught within the meaning of "occupiers" in the context of Regulation 23A(4), (6) and (7). According to the Administration, technically speaking, hotel guests fall within the description of "occupiers" under section 2 of the Ordinance as they are in possession of a part of the hotel building for their exclusive use. On account of the need to effectively and fairly

administer and enforce the Planning Regulations, it does not appear acceptable to specifically exclude hotel guests from the offence provisions. If hotel guests commit an offence under the provisions of the Planning Regulations, it is only fair and equitable that they be so prosecuted. However, the Administration considers it most unlikely in any realistic circumstances that hotel guests would be prosecuted for an offence of changing the particular use of hotel concessionary areas or facilities. The defence provision to be added to the proposed Regulation 23A(8)(a) referred to in paragraph 8 above is also available to hotel occupiers.

Performance review of geotechnical design

14. Members support the proposed amendments to enable the Authority to require performance review of geotechnical design for certain categories of sites outside the areas specified in the Fifth Schedule of the Ordinance. The requirement for a performance review prior to an application for an occupation permit would be imposed as a condition of approval of plans and consent to the commencement of building works. Members note that detailed guidelines on the implementation procedures and the situations under which the requirement of performance review would likely be imposed will be set out by the Authority in a Practice Note to Authorized Persons and Registered Structural Engineers.

15. Some members have pointed out that since performance reviews of geotechnical design are being carried out by geotechnical engineers, the opportunity can be taken to specify in Clause 3, section 17(1) of the Ordinance, item 6(g) of Column B that the performance review “will be carried out by a Registered Professional Engineer in the geotechnical discipline”. The Administration advises that it is at present consulting the building professions on the registration, qualifications and duties of geotechnically qualified persons under the Ordinance. Members’ suggestion of specifying that a performance review is to be carried out by Registered Professional Engineer (Geotechnical) may preclude the engagement of other professionals who may not be so qualified but who are competent to carry out the performance review. For the time being, the Administration suggests that the present situation of not specifying who conducts the performance review be maintained. The Administration agrees to review the situation once the outcome of the consultation process is completed.

Provision of floor space for material recovery in new buildings

16. The Bills Committee note that paragraph 11 to the Schedule of the Bill provides that where a refuse storage or material recovery room is provided, it shall be so designed to comply with the same requirements as that of a refuse storage or material recovery chamber. As the new provisions do not have retrospective effect, existing refuse storage and material recovery rooms need not comply with the new requirements. Section 39(2) of the Ordinance provides that the law prior to the coming into operation of any new regulations made under the Ordinance shall apply to building works or street works being carried out or consent to their commencement being given before the commencement of such regulations.

17. As regards the administrative arrangement in relation to building plans submitted prior to the commencement of relevant provisions of the Amendment Ordinance, the Administration assures that adequate and reasonable time will be allowed for the Authorized Persons and the Registered Structural Engineers to finalize or modify their respective building submissions. Tentatively, the Building Authority will issue a Practice Note for Authorized Persons and Registered Structural Engineers on the relevant provisions of the Amendment Ordinance within one or two months. To allow adequate time to complete the necessary assessment of plans submitted to the Building Authority under the current statutory provisions, the Administration plans to commence the new requirements in October or November 2000.

Provision of access facilities in new buildings for use by telecommunication and broadcasting network operators

18. The Bills Committee is in full support of the proposed provision of access facilities in new buildings for use by telecommunication and broadcasting network operators and considers that the provision will be beneficial to the development of Hong Kong as a telecommunication, broadcasting and Internet hub. Members also note two minor amendments regarding:

- (a) the definition of “broadcasting” under the Planning Regulations; and
- (b) the replacement of “telecommunication” with “telecommunications”, to keep in line with the Telecommunication (Amendment) Bill 1999.

Revised fee structure for the registration of Authorized Persons and Registered Structural Engineers

19. Members support the revised fee structure which is imposed on a full cost recovery basis. The revised fee structure is considered reasonable as it provides for an application fee payable by all applicants and an inclusion fee payable only by successful applicants.

Technical amendment consequential to the enactment of Buildings (Amendment) Ordinance 1996

20. Members note that when the Buildings (Amendment) Ordinance 1996 was enacted, the consequential amendment to section 40(2AA) of the Ordinance was omitted. The opportunity is taken to correct the oversight so that the offence provisions in section 40(2AA) relate to the duties of registered general building contractors and registered specialist contractors under section 9(5)(b) or 9(6)(b) of the Ordinance.

Recommendation

21. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 14 June 2000.

Committee Stage amendments

22. The Committee Stage amendments to be moved by the Administration are at **Appendix II**.

Consultation with the House Committee

23. The House Committee at the meeting on 26 May 2000 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 14 June 2000.

Council Business Division 1
Legislative Council Secretariat
5 June 2000

《2000年建築物(修訂)條例草案》委員會
Bills Committee on Buildings (Amendment) Bill 2000

委員名單
Membership List

夏佳理議員(主席)	Hon Ronald ARCULLI, JP (Chairman)
朱幼麟議員	Hon David CHU Yu-lin
何世柱議員	Hon HO Sai-chu, SBS, JP
何秀蘭議員	Hon Cyd HO Sau-lan
何承天議員	Hon Edward HO Sing-tin, SBS, JP
何鍾泰議員	Ir Dr Hon Raymond HO Chung-tai, JP
陳國強議員	Hon CHAN Kwok-keung
黃容根議員	Hon WONG Yung-kan
楊孝華議員	Hon Howard YOUNG, JP

合共 : 9 位議員

Total : 9 Members