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6 September 2002

Clerk of Panel  
(Attn: Mrs Queenie Yu)  
LegCo Panel on Planning, Lands and Works  
Legislative Council Chamber  
8 Jackson Road, Central  
Hong Kong

Dear Mrs Yu,

**Proposed Amendments to the Buildings Ordinance**

At the meeting of the Panel on Planning, Lands and Works held on 14 June 2002, the Administration undertook to follow up on a few issues. The following is a joint reply from the Housing, Planning and Lands Bureau and the Buildings Department on these follow up items.

**Review of the Buildings Ordinance**

2. A Member asked about the scope and timetable for future reviews of the Buildings Ordinance.

3. Over the years, the Administration has been revising the Buildings Ordinance (BO) from time to time to ensure its continued relevance to changing circumstances. The more recent examples include –

- (a) the Building (Administration) (Amendment) Regulation 2000, revising the fee for the provision of certified copy of documents from \$190 to \$45;

and

(b) the Buildings (Amendment) Ordinance 2000, providing for access facilities in new buildings for telecommunications and broadcast network operators and provision of space for the recovery of reusable / recyclable materials.

4. Since 2000, we have undertaken another round of review of the BO. The upshot of the review is the proposed amendments to the BO outlined in the Administration's paper "Review of the Buildings Ordinance" discussed at the June 2002 meeting of the Panel on Planning, Lands and Works. The proposals include rationalization of the building control regime, facilitating law enforcement and improving services to the public. Their final shape as they go through the legislative process, the discussion during the process and the time taken will all have an effect on the scope and timing of the next phase(s) of the review of the BO. Nonetheless, we are already in the process of reviewing the regulations to the BO with a view to modernizing the standards therein. These standards relate to such matters as loading requirements, stability and factors of safety, sanitary fitment requirements and lighting and ventilation requirements.

5. At this stage, any indication of the way beyond the current phase of the review is bound to be highly tentative. Our plan is as follows –

- (a) introduction of Buildings (Amendment) Bill into the Legislative Council – second half of the 2002/03 session. The scope will essentially be that outlined in the June 2002 Panel paper; and
- (b) assuming passage of the Buildings (Amendment) Bill in the second half of the 2003/04 session, commencement of review of the BO as amended – latter half of 2004. The scope will include performance-based and modern standards for building works, as well as issues arising from discussions of the Buildings (Amendment) Bill. An example of the latter is the effect of the minor works regime on such matters as advertisement signboards. Depending on

the number of items to be covered and their scope, we may decide to further phase the review to make the tasks more manageable.

### **Prosecution Cases**

6. A Member asked for a breakdown of the number of prosecution cases under the BO and its regulations. This is at Annex A.

### **Monitoring Mechanism**

7. A Member asked for a table on the monitoring mechanism of professionals and contractors registered under the BO. This is at Annex B.

8. We have carefully reviewed the existing mechanism for ensuring adequate supervision of building works. We are satisfied that, overall, it is working well. As such we do not consider it necessary to set up a dedicated task force to review how supervision of building works could be improved. However, the Buildings Department will continue to be vigilant in discharging its regulatory functions and will put in place improvement measures where they are identified for improving the quality of building works.

### **Appeal Mechanism**

9. A Member suggested that the Administration examine the feasibility of an administrative appeal mechanism for handling cases of uncooperative owners.

10. As explained at the June 2002 Panel meeting and also set out in the Panel paper, owners will be given sufficient warning and notice, and will only be prosecuted if they continue to refuse to cooperate without reasonable excuse. There should, therefore, be ample opportunity for them to seek clarification from and put forward their explanation to the Buildings Department already. As such we consider it unnecessary to put in place an appeal mechanism before prosecution is taken.

11. Separately, we have reviewed our proposal on deterrents against uncooperative owners against the Home Affairs Bureau's

proposal to amend the Building Management Ordinance to empower Owners Corporations (OCs) to borrow from the Building Safety Loan Scheme on behalf of uncooperative owners. We believe that the Home Affairs Bureau's proposal should already meet the objective of dealing with uncooperative owners not paying their share of the works commissioned by the OCs to comply with statutory orders. As such we do not propose to further pursue the "failure to pay" idea in the context of amendments to the BO.

12. We should be grateful if you would advise Members of the above points.

Yours sincerely,

(Miss Cheung Siu Hing)  
for Secretary for Housing, Planning and Lands

c.c. Director of Buildings

**Statistics on number of prosecution cases initiated by  
Buildings Department (1992 – 2001)**

In the past ten years, i.e. 1992 – 2001, the Buildings Department had initiated 1992 prosecution cases under the Buildings Ordinance (BO).

Out of these 1992 cases:

(a) 157 cases were related to the carrying out of unauthorized building works in existing buildings (without the prior approval and consent of the Building Authority) [BO s 40(1) cases];

(b) 1705 cases were related to failure to comply with an order served under the Buildings Ordinance [BO s 40(1B)(b) cases]; and

(c) the remaining 130 cases were related to site irregularities for new building works, demolition works or 'alteration and addition' works [BO s 40(2A)(b), s 40(2AA), s 40(2AB), s 40(2AC), s 40(2B)(a)&(b), B(DW)R s 13(2) and s 13(4) cases].

**Monitoring Mechanism of Building Professionals (Authorized Persons and Registered Structural Engineers) and Contractors (Registered General Building Contractors and Registered Specialist Contractors)**

The monitoring mechanism of building professionals under the Buildings Ordinance comprises the following elements:

- (1) registration of Authorized Person (AP), Registered Structural Engineer (RSE), Registered General Building Contractor (RGBC) and Registered Specialist Contractor (RSC);
- (2) prosecution; and
- (3) disciplinary action.

The details are set out below. Where relevant, proposed changes to the Buildings Ordinance are also set out for ease of reference.

<b>1 REGISTRATION</b>			
	<u>Provision</u>	<u>Details</u>	<u>Proposed Changes</u>
1.1	<b><u>BO s 3</u></b> Registers of AP and RSE	<p><b><u>AP and RSE to be registered</u></b></p> <p>- The Building Authority (BA) shall keep registers of all persons who are qualified in performing the duties and functions of an AP or RSE respectively in accordance with the Buildings Ordinance (BO).</p>	<i>We propose to extend the registration period.</i>
		<p><u>Control</u></p> <p>- Only persons who have obtained the prescribed qualifications, who have adequate experience and are recommended by the Registration Committee are allowed to perform the duties and functions of AP and RSE.</p>	
1.2	Register of registered geotechnical engineers (RGE) (Proposed)	<p>- The register of RGE is currently not provided for in BO.</p>	<i>We propose to introduce the statutory requirement for appointment of RGE to undertake the investigation, design and supervision of geotechnical works. RGEs would also be subject to prosecution or disciplinary actions similar to those for AP and RSE.</i>

1.3	<p><u>BO s 8, 8A, 8B, 8C</u></p> <p>Register of registered contractors (RGBC/RSC)</p>	<p><b><u>RGBC and RSC to be registered</u></b></p> <ul style="list-style-type: none"> <li>- The BA shall keep a register of RGBC and registers of RSC who are qualified to perform the duties of an RGBC or RSC respectively in accordance with the BO.</li> <li>- <b><u>Control</u></b> An RGBC or RSC would not be included in a register unless he himself or persons representing the body corporate have the prescribed qualifications, competence and experience in performing the duties and functions of an RGBC or RSC under the BO and are recommended by the Contractors Registration Committee for inclusion into the respective register. This is to ensure that only qualified persons are allowed to perform the duties and functions of contractors.</li> </ul>	<p><i>We propose to revise the registration period.</i></p>
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## 2 PROSECUTION

	<u>Provision</u>	<u>Details</u>	<u>Proposed Changes</u>
2.1	<u>BO s 40(1)</u>	- Fine/Imprisonment imposed for contravention of section 14(1) or 21(1) in relation to commencement of or carrying out building works without having first obtained the approval and consent from the BA, or occupying a new building without having first obtained an occupation permit or temporary occupation permit from the BA.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.2	<u>BO s 40(1A)</u>	- Fine/Imprisonment imposed for contravention of section 22(2)(a), 24B(14) or 27(5)(a) in relation to denying the BA access to inspect building works or entering premises subject to closure order without the BA's permission.	<i>No change proposed.</i>
2.3	<u>BO s 40(1B)(a)</u>	- Fine/Imprisonment imposed for contravention of s. 30(1) or 31(1) in relation to carrying out works for the construction, formation, laying out, or alteration of any means of access or opening to or from any street without first obtaining the consent from BA, or for erecting any works over streets.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>

2.4	<u>BO s 40(1E)</u>	- Fine/Imprisonment imposed for contravention of s. 24B(6) for carrying out works other than the demolition or alteration works stated in the notice of Application for Priority Demolition Order issued by the BA.	<i>No change proposed.</i>
2.5	<u>BO s 40(2)</u>	- Fine/Imprisonment imposed for contravention of s. 25(1) or 42 in relation to failure to give notice to the BA of any material change in use of building or contravening any condition of exemption.	<i>No change proposed.</i>
2.6	<u>BO s 40(2A)</u>	- Fine/Imprisonment imposed for contravention by any person, including AP, RSE, RGBC or RSC, who permits the use of defective material, etc or diverges or deviates in a material way from any work shown in an approved plan, or knowingly misrepresents a material fact in plan, certificate, form, etc.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.7	<u>BO s 40(2AA)</u>	- Fine/Imprisonment imposed for contravention of section 4(3)(b) by any AP, RSE, or 9(5)(b) or (6)(b) by any RGBC or RSC in failure to notify BA of any contravention of the regulations which are to their knowledge, resulting from carrying out of building works according to approved plans.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>

2.8	<u>BO s 40(2AB)</u>	- Fine/Imprisonment imposed for contravention of any condition imposed, for failing to comply with the requirement of order issued under s.17(1) in respect of building works other than those listed in s.40(2AC) below.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.9	<u>BO s 40(2AC)</u>	- Fine/Imprisonment imposed on any person, in relation to site formation works, piling works, excavation works or foundation works, who fails to comply with the condition imposed under item 7 in the table to section 17(1) in respect of measures to prevent collapse.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.10	<u>BO s 40(2B)</u>	- Fine/Imprisonment imposed on any person carrying out or permitting the carrying out of building works in such manner that it causes or is likely to cause injury to any person or damage to any property.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.11	<u>BO s 40(2C)</u>	- Fine/Imprisonment imposed on any person who, without reasonable excuse, fails to comply with an order served on him under section 24A requiring dangerous works to be ceased or remedied.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>

2.12	<u>BO s 40(2D)</u>	- Fine/Imprisonment imposed on any person who knowingly misrepresents a material fact in any report submitted to the BA under section 27C(2)(c) on investigation of water pipes, drains or sewers laid in slopes.	<i>No change proposed.</i>
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2.13	<p><u>B(DW)R s 13</u> Offence and penalties for demolition works</p>	<p>Fine/Imprisonment imposed on:</p> <ol style="list-style-type: none"> <li>(1) an AP who contravenes regulation 3(1). (i.e., failing to disconnect all attached building services installations and fittings before the commencement of demolition works);</li> <li>(2) an RGBC or RSC who contravenes regulation 3(2). (i.e., failing to provide precautionary measures such as fans, sealing all sewer and drainage connexions, and removing all glazed sashes and doors from the building before the commencement of demolition works);</li> <li>(3) an RGBC or RSC who contravenes regulation 6(a), (i.e., failing to provide precautions to prevent fire or explosion, etc.) or regulation 8(2); or</li> <li>(4) an RGBC or RSC, or any person directly concerned with the demolition works in the event of a contravention of regulation 4(1) (provision of shoring), 4A (sequence of carrying out demolition works), 5 (electric cables, etc. not to remain charged), 6(b) (protection of openings from danger), 7 (provisions in relation to shuts for removal of materials, etc), 8(1) or (3) (demolition works to be carried out under supervision of technically competent person), 9(1) or (3) (certain operations to be carried out only under competent supervision), 10 (floors, etc. not to be overloaded), 11 (precautions to be taken in relation to cutting of steelwork, etc.) or 12 (precautions to be taken in removing framing).</li> </ol>	<p><i>No change proposed.</i></p>
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<b><u>3 DISCIPLINARY ACTIONS</u></b>		
	<u>Provision</u>	<u>Details</u>

3.1	<p><b><u>BO s 7</u></b></p> <p>Disciplinary proceedings for AP and RSE</p>	<p>The BA may bring to the notice of a disciplinary board for the consideration of imposing sanctions, such as temporary or permanent removal of the name from respective register or reprimand and fine or publishing the findings in the gazette as appropriate, where an AP or RSE:-</p> <p class="list-item-l1">(a) has been convicted by any court of an offence related to carrying out his professional duties;</p> <p class="list-item-l1">(b) has been negligent or has misconducted himself in a professional way;</p> <p class="list-item-l1">(c) has permitted a material deviation from a supervision plan for which he is responsible without reasonable cause; or</p> <p class="list-item-l1">(d) has drawn up, or repeatedly drawn up, a supervision plan that does not comply with the material requirements of the BO.</p>
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3.2	<b><u>BO s 13</u></b>  Disciplinary proceedings for Registered Contractors	<p>The BA may bring to the notice of a disciplinary board for the consideration of imposing sanctions, such as temporary or permanent removal of the name from respective registers or fine or reprimand and publishing the findings in the gazette as appropriate, where an RGBC or RSC:-</p> <p>(a) has been convicted by any court of an offence relating to building works or street works; (b) has been negligent or has misconducted himself in building works or street works; (c) has deviated in a material manner from a supervision plan without reasonable cause; or (d) has drawn up, or repeatedly drawn up, a supervision plan that does not comply with the material requirements of the BO.</p>
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