



THE HONG KONG INSTITUTE OF SURVEYORS

Comments on Buildings (Amendment) Bill 2003

General:

1. We support in principle the various proposed amendments to the Buildings Ordinance with a view to rationalize the building control regime and strengthen safety requirements. We set below our initial brief comments on the more major issues and we are prepared to provide more detailed comments and oral elaboration to the Bills Committee or to any government authorities concerned.

Minor Works:

2. The proposals on the “Minor Works Control Regime” form the bulk of the legislative amendments to provide a statutory framework for regulation of minor works and the registration of minor works contractors.
3. We accept the tightening up of the so-called “exempted works” and we welcome the concept of self-certification in respect of certain building works that are considered “minor” by virtue of their scale, nature, complexity and risks involved. If a simple, efficient and easy-to-follow system is established to attract compliance, it would no doubt facilitate more self-regulation and better control of building works. We strongly believe that this was the original intent of the Administration, but regrettably, the framework for control of minor works proposed in the Bill appears to be so complicated, cumbersome and ambiguous that would render the original objectives distorted and confused.
4. What constitutes “minor works” has not been clearly defined except a sneaky provision to empower the Building Authority to specify the minor works by notice in the Gazette. This is highly unsatisfactory. From Annex A of the LegCo Paper CB(1)2290/02-03(01), the examples of minor works given are fairly confusing and do not give a clear conceptual direction. We feel that some framework or parameters setting out the nature, scale and complexity for “minor works” would be necessary.
5. We are of the opinion that the whole system should be simplified and that minor works need only be categorized depending on whether they have any implication on the original building design parameters and whether they have any structural implications. The paramount concern is safety. This will differentiate whether the works need to be supervised by an AP/RSE or they can be taken up solely by a technically competent RMWC.
6. We also consider that all minor works should be subject to prior notification to the Building Authority in addition to the certificate of completion. This is the

minimum act that starts the system rolling. To ensure credibility of the system, it is vital that the building owner fully appreciates his liabilities. Therefore, upon submission of the notice to carry out minor works, the building owner should undertake to comply with the regulations. It is his obligation to ensure that his contractor does not commit any contravention and more importantly he does not instruct his contractor to do anything in contravention of the law. As it is ultimately the building owner who is liable to ensure compliance with the regulations, his undertaking serves to remind him of his obligations. In the event of any contravention, the building owner should be held liable if he carries out or permits the carrying out of building works that contravene the building regulations.

7. How minor works contractors are to be classified is not spelt out. We consider that the system should be simple and clear to enable the general public to select the appropriate contractor for the relevant works. It will help if RMWC can be identified by their specialization, e.g., general works, drainage works, demolition works, etc. The qualifications of RMWC are also not known and we expect the authority to require certain technical competency. In this regard, we think the registered professionals RA, RPE and RPS should be considered.

Registered Geotechnical Engineers:

8. There is the increasing need to have specialist input in the building control regime. We support the introduction of RGE who are to be responsible for all aspects of geotechnical works submissions and supervision, independent of the AP and RSE.

Signboards:

9. We have no objection to deem "signboards" as building works under the Buildings Ordinance but it will never resolve all the problems envisaged in the previously conceived signboard licensing scheme. There are also certain grey areas that need further clarification. The proposed (and indeed the current) enforcement framework differentiating whether the unauthorized works have or have not been completed is not promoting effectiveness of control. In the case of signboards, it is possible that an ignorant owner of the building could be landed with an order to remove an unauthorized signboard that infringes his right in the first place, and this will be unfair.

Obstruction of Owners' Corporation:

10. We do not consider appropriate to give Owners' Corporation any additional privilege. In certain circumstances, it could be the OC or another owner that obstructs a small owner in discharging an order issued by the BA. The current provision in section 40(2AAA) of the Buildings Ordinance is that anyone who obstructs the BA in the exercise of his power shall be guilty of an offence. This principle can simply be extended to include anyone who obstructs the carrying of works or any incidental actions for the discharge of an order issued by the BA. This will cover both situations whether the OC is being obstructed or the OC is obstructing.

Emergency Vehicular Access:

11. The provision of an emergency vehicular access to buildings for fire engines and emergency vehicles is supported but only where it is necessary and practicable. We consider that in certain situations, e.g., where a building fronts an existing street or where emergency vehicular access is already available, such a requirement should be excluded. It need not be subject to the bureaucracy of having to seek BA's exemption.
12. The provision of EVA is indeed a fundamental consideration in the conceptual design of sizeable development and it would appear more appropriate to include in section 16 of the Buildings Ordinance a ground for disapproval of plans where the BA is not satisfied that EVA is or will be provided.

The Hong Kong Institute of Surveyors
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BC/AW