

COMMENTS ON BUILDINGS (AMENDMENT) BILL 2003

Prepared by the Association of Architectural Practices (AAP)

The Buildings Ordinance was enacted in 1955 to regulate the design, planning and construction of buildings in connection with public safety and hygiene. While legislative amendments and codes of practice were introduced from time to time, we consider that a comprehensive review of the Ordinance is necessary such that the tasks of building control will tie in with the current context of the city and market development. The Association of Architectural Practices (AAP) is in support of the Amendment Bill in principle. We agree with various proposals in the Bill which seek to enhance and ensure the protection of public safety. However, at the same time, we do have to stress that the administrative measures on building control must be carefully worked out and implemented to avoid causing undue hardship and grievances on the public.

Our particular comments on the Bill are set out below:

1.0 Control Regime on Minor Works

It is noted that the Building Authority may by notice in the Gazette specify different types of minor works according to the nature, scale and complexity of the works involved.

2.0 Registration of Geotechnical Engineers

We agree with the proposal to provide for the registration of geotechnical engineers to undertake the investigation, design and supervision of geotechnical works and to assume statutory responsibility for their works. However, we consider that the delegation of powers and duties under the Buildings Ordinance should not be further diversified or otherwise the simplicity in the current system will be lost. If more and more statutory parties were to be introduced, the line of communication and responsibility will be confused to an extent that undermines the clarity and efficiency in the present system.

3.0 Registration of Warning Notices in Land Registry

Since there are other sections in the Amendment Bill to facilitate entry into individual premises for the purpose of removing Unauthorized Building Works (UBWs) that may cause imminent environmental or health hazards, we have reservation in the proposal of empowering the BA to register Warning Notices in the Land Registry. Once a Warning Notice is registered against a certain premises, any transaction of the property will be practically frozen. It should be noted that the reasons for non-compliance with removal orders from BA are often quite complicated and sometimes it may be beyond the property owner's control or capability to ensure that the UBWs could be demolished in a timely manner.

4.0 Registration and Renewal Period for APs/RSEs

To reduce the workload for yearly renewal registration, we are in support of the proposal to extend the registration/renewal period for APs/RSEs from one year to five years.

5.0 Disciplinary Actions against APs/RSEs

Section 7 (2C) of the Amendment Bill stipulates that the authorized person or registered structural engineer may be subject to disciplinary proceedings where

- (i) any minor works he has certified have been carried out in contravention of the Ordinance;
- (ii) any building works he has supervised or certified have been carried out in contravention of section 14(1);
- (iii) any minor works under his supervision have been carried out in such a manner that they have caused injury to any person.

We find the above provisions highly objectionable. Under the existing Ordinance, disciplinary proceedings will only be exercised in case of professional misconduct or significant default in the preparation or execution of supervision plan by the AP or RSE himself. The AP or RSE is not held liable for the construction and supervision works carried out by the Registered Contractor. The division in the line of responsibility between AP/RSE and the Registered Contractor is clear in the present legislation. We seriously question why a different set of criteria should be applied for minor works.

Unless the AP or RSE is proven to have knowingly committed or permitted the contravention, or the injury has directly arisen out of the negligence of the AP or RSE, they should not be subject to disciplinary proceedings. It must be stressed that the supervision of AP and RSE is on a periodic basis under most circumstances and it is not possible for them to ensure that all works are carried out in a manner that fully complies with the Ordinance. Even if the AP and RSE are serving full time, they could not have the capability to watch over each of the workers on site.