



THE LAW SOCIETY'S COMMENTS ON BUILDINGS (AMENDMENT) BILL 2003

The Law Society supports the Bill. It considers that it fulfils a need which has existed for some considerable time to provide procedures whereby essential minor works can be done without breaching the Buildings Ordinance. Hopefully, this will reduce the number of unauthorized building works being added in future to the already existing huge stock of these works.

On a general note, while we do not wish to pinpoint any particular element, the new procedures described in the Bill do read as if they are quite bureaucratic and may well be found confusing to the non-professional. It is suggested that the workings of the new procedures be kept well under review with a view to simplifying where necessary.

Also, we support a major educational programme to inform building corporations and management committees in particular.

Specific Comments

We have the following specific comments:

Clause 26

It is not clear why the new S.21(6)(da) is required as temporary occupation permits or occupation permits are not usually issued for amendment and alteration works.

Clause 29

New S.24(2A) seems to have most relevance to the common parts of a development. If it is intended principally to apply to common parts (Clause 38 suggests that) we suggest that this be made clearer by adding an appropriate phrase such as “including the common parts ...” into the drafting of (2A).

Clause 40

Reading this with Clause 43 (new S.53J) it is not clear whether after this Bill becomes law there will be any category of “building works” which will be exempt from the Buildings Ordinance, including the new S.14(1)(a) and (b). Is this intended? Can this be clarified?

Clause 62

Regulation 25

In relation to the approval of title from a conveyancing point of view, the provision in new regulation 25 will help to distinguish authorised and unauthorised works. However, the new registration of certificates system may well trigger a practice of requiring architect certificates in future sales of property.

In Hong Kong properties there are numerous buildings with minor building works, erections and alterations some of which are authorized, some are unauthorized, and some are exempted works. The best way to ascertain that a property is free of any unauthorised building works is the production of a certificate from an architect or authorized person who issue the same after checking or comparing the relevant approval plans and the present layout of the property. The architect’s certificate will certainly increase the costs of Vendors which will be quite substantial.

If architect certificates are required, this will have additional impact on the sale of land and will lead to delay. In some cases, the architect will not be able to produce one as some buildings are very old, and the Building Department will have difficulty in locating the approved plans.

Currently, it is not a practice for a Purchaser's Solicitors to ask for an architect certificate. There is concern that in the future not only a master layout plan of a project will have to be registered, but also detailed approved plans of each block and each unit must also be registered, unless there is a requirement for the annexing of an approved plan on the 1st assignment of each unit.

The Law Society of Hong Kong
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