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Report of the Bills Committee on Buildings (Amendment) Bill 2003

Purpose

This paper reports on the deliberation of the Bills Committee on Buildings (Amendment) Bill 2003.

Background

2. The Buildings Ordinance (BO) (Cap. 123) was enacted in 1955. Amendments were made to it and its subsidiary legislation over the years. Notwithstanding the amendments, Members of the Legislative Council (LegCo) considered that the BO failed to meet the practical needs of present-day Hong Kong in the face of continuing and rapid economic development, social evolution, changes in the natural environment and technological advancements. In January 2000, LegCo passed a motion urging the Administration to conduct a comprehensive review of the BO. The review commenced in 2000. In June 2002 the Administration reported the outcome of the review to the Panel on Planning, Lands and Work and proposed a package of amendments to the BO, which constituted the contents of the Buildings (Amendment) Bill 2003.

The Bill

3. The Buildings (Amendment) Bill 2003 (the Bill) was introduced into LegCo on 30 April 2003. The main proposals of the Bill are as follows:

- (a) to introduce a new category of "minor works" under the building control regime and a new category of registered minor works contractors (RMWCs);
- (b) to provide for the registration of removal order and warning notices against unauthorized building works (UBWs) in the Land Registry to facilitate law enforcement;

- (c) to provide for the prosecution of owners who obstruct owners' corporation (OC) in complying with statutory orders in relation to common parts of a building;
- (d) to provide for a statutory framework for the registration of geotechnical engineers and appointment of registered geotechnical engineers (RGEs) to undertake investigation, design and supervision of geotechnical works;
- (e) to rationalize the composition of Contractors Registration Committee (CRC) and registration period of building professionals and contractors;
- (f) to require mandatory provision of emergency vehicular access (EVA) to new buildings;
- (g) to increase the level of fines for contravention of certain offences in the BO; and
- (h) to revise fees and introduce new fees for services in relation to inspection and copying of building records.

The Bills Committee

4. Members decided at the House Committee meeting on 2 May 2003 to form a Bills Committee to scrutinize the Bill. Hon Cyd HO Sau-lan was elected Chairman of the Bills Committee. The Bills Committee has held a total of 22 meetings. The membership list of the Bills Committee is in **Appendix I**.

5. Recognizing the wide coverage and impact of the Bill, the Bills Committee invited views from members of the public through issuing a press release, posting a notice in the LegCo Website and sending invitation letters to 17 building professional bodies and unions and the 18 District Councils. The Bills Committee received written submissions from 22 organizations in the trade and one individual. Out of these organizations, 13 appeared before the Bills Committee to present their views. The lists of organizations which made written submissions and oral presentation to the Bills Committee are in **Appendices II and III** respectively.

Deliberation of the Bills Committee

6. Members of the Bills Committee support the general objectives of the Bill to strengthen safety requirements, facilitate law enforcement and improve

provision of services to the public. Members at the same time consider it important to ensure that each proposal in the Bill could achieve the intended purposes without creating undue hardship or nuisance to the persons affected. This cardinal principle has been taken into account in the examination of each of the proposals in the Bill, the details of which are set out in the ensuing paragraphs.

Introduction of a minor works control regime and a registration system for minor works contractors

Justifications for the minor works control regime

7. The major proposal in the Bill is the introduction of a minor works control regime. The existing building control regime under the BO applies to all private building works irrespective of their scale. The statutory requirements include obtaining the approval of plans by the Building Authority (BA); appointing an authorized person (AP) and a registered structural engineer (RSE) to design and supervise the works; and appointing a registered general building contractor or a registered specialist contractor to carry out the works. Members concur that the current building control requirements are unduly stringent for relatively simple and small-scale works. The cost of complying with these requirements is sometimes disproportionate to the nature and complexity of the works undertaken. Against this background, the Bills Committee notes the need for the introduction of a new control regime for relatively simple and small-scale building works which are called minor works in the Bill.

Classification of minor works (clauses 2 and 11)

8. The Bill proposes to classify minor works into three categories, namely Categories I, II and III, the details of which are to be specified by BA by notice in the Gazette. It is the Administration's intention that the degree of control of these different categories of works should be commensurate with their nature, scale, complexity and degree of risks. For consideration by the Bills Committee, the Administration has provided a draft list of the types of building works which will be designated as minor works. The list covers a wide range of works including alteration, addition or removal of existing buildings or UBWs, drainage works in existing buildings, erection or alteration of signboards, erection, alteration or removal of structures for amenities and repair works. The three categories of minor works are categorized in descending order of the degree of control. For example, erection of an internal circulation staircase is intended by BA to be Category I minor works. Erection of a signboard located at the rooftop of a building having a display area not more than 10 m² will be classified as Category II minor works. Erection of a metal supporting framework for air-conditioning unit and drying

rack for household use will be regarded as Category III minor works.

9. Different categories of minor works are subject to different submission and supervision requirements. Category I minor works shall be designed, supervised and certified by APs and RSEs. Before commencement of Category I works, the relevant plans and documents have to be submitted to BA for record. After completion of Category I minor works, as-built plans and certification of completion have to be submitted to BA. For Category II minor works, the appointment of APs and RSEs is not necessary but the other two requirements regarding submission of plans and documents before and after the commencement of works shall apply. As regards Category III minor works, only as-built plans and certification of completion are required to be submitted to BA after completion of the works.

Details of the registration system for minor works contractors

10. For the purpose of effecting the minor works control regime, the Bill proposes to create a new category of RMWCs for the carrying out of minor works (clause 18). This new category of RMWCs is in addition to the existing categories of registered general building contractors (RGBCs) and registered specialist contractors (RSCs). The Bill proposes to classify RMWCs into two types - Classes A and B (clause 11). Class A RMWCs may carry out Categories I, II and III minor works and Class B RMWCs could only undertake Category III minor works. The Bill provides that BA shall have regard to the qualifications, competence and experience of an applicant applying for registration as a RMWC but does not specify the required qualifications and experience.

11. As in the case of minor works, the Administration has provided a draft of tentative level of experience and qualifications required of RMWCs for discussion by the Bills Committee. Members note the intention of the Administration to provide various options of requirements for registration as RMWCs to cater for different levels of experience and qualifications of existing practitioners engaged in minor works. Depending on whether an applicant is a holder of an ordinary certificate in subjects relating to building or construction technology and his years of experience in building industry, he may be registered as a Class A or Class B RMWC.

12. Under the Bill, any APs, RSEs or RGEs who fail to comply with the requirements in respect of minor works in BO, shall be liable to criminal sanctions, with a maximum fine of \$1.5 million and imprisonment for three years. If an owner fails to appoint a qualified registered contractor to carry out minor works, he is liable to a fine of \$600,000 and imprisonment for two years (clause 39).

Concerns about the minor works control regime

13. The main concerns of the Bills Committee, which are shared by many deputations, include the following:

- (a) whether the proposed control scheme is effective in regulating minor works to enhance public safety;
- (b) whether the proposed control scheme is simple for implementation and compliance by both practitioners and members of the public; and
- (c) whether existing competent practitioners who engage in minor works could migrate to the new registration system for minor works contractors without undue hardship.

14. Throughout the deliberation of the Bills Committee, the thorny issue lies with Category III minor works, in particular household minor works like erection of metal supporting frames for household air-conditioning units and drying racks. These household minor works are currently regulated under the BO and hence the carrying out of these works has to comply with all the statutory requirements described in paragraph 7 above. However, in practice, the undertaking of household minor works seldom go through the statutory approval procedures and these household minor works are in effect UBWs under the BO. As existing supporting frames for air-conditioning units and drying racks are numerous, the Bills Committee is gravely concerned that the proposed control regime is silent on how existing household minor works will be dealt with. Given their simple nature, members have questioned whether household minor works should be covered by the proposed control regime at all.

Ways in tackling the concerns

15. Various ways have been explored by the Bills Committee to deal with Category III minor works. One way is to designate certain types of household minor works as exempted works under the BO. This proposal is not supported by the Administration on the ground that supporting frames for air-conditioning units and drying racks are load-bearing external projections and do have impact on public safety. If certain building works are regarded as exempted works, there will be no control on the qualifications, experience and competence of the persons undertaking such works. This will defeat the purpose of introducing the control regime to regulate minor works to enhance public safety. Having considered the views of the Administration, the Bills Committee decides not to pursue this option.

16. Whilst the Bills Committee accepts that household minor works should be regulated, members explore the alternative of not taking enforcement action against those works which exist before the introduction of the minor works control regime. This could be done administratively by way of an undertaking on the part of BA. The Administration, however, considers it inappropriate from the policy perspective to give a blanket undertaking of not taking enforcement actions against certain types of UBWs. Under the policy of priority enforcement action adopted since 2001, BA will take enforcement actions against unauthorized structures which may constitute imminent danger. Although BA seldom takes enforcement against household minor works, in the event that existing supporting frames for air-conditioning units or drying racks pose a public hazard, BA is obliged to take enforcement action in the public interest.

17. To deal with existing household minor works, the Administration proposes to provide a five-year transitional period for property owners to undertake rectification works to ensure safety of existing unauthorized household minor works. During this period, the Administration will not take enforcement action against these structures unless they pose imminent danger. On the part of owners, they have to appoint RMWCs to check and carry out any rectification or strengthening works to ensure the integrity and safety of unauthorized household minor works. After completion of the rectification or strengthening works, the RMWCs shall make a submission to BA to certify the safety of these works for record purpose.

18. Given the cost of appointing RMWCs to undertake the rectification and certification work, members have serious doubt on whether owners will voluntarily comply with the requirements. Owners who have newly erected supporting frames for air-conditioning units and drying racks will be least ready to undertake the rectification and certification work. Moreover, owing to resources, the Buildings Department (BD) is most unlikely to conduct audit checks on these household minor works the safety of which is less of a concern. Under such circumstances, the likely scenario is that owners of supporting frames for air-conditioning units and drying racks will leave these structures as they are until they wear off or until the end of the transitional period. Members thus have some reservations over the proposal as being adequately effective and efficient to strengthen public safety but agree that the proposed transitional period could alleviate the concerns of some owners having unauthorized household minor works.

19. The Bills Committee is not convinced of the effectiveness of the proposed regulation regime for Category III minor works in enhancing public safety. On the contrary, members consider that the proposed control regime will cause excessive nuisance to the general public. In their view, the main cause for falling supporting frames or even air-conditioning units does not lie with installation but poor or lack of maintenance. Despite the

Administration's advice that both installation and maintenance are important, members are of the view that the proposed control scheme fails to tackle the problem at root. Moreover, members note the grave concern of the building industry on the impact of the proposed control regime on existing minor works practitioners a great majority of which are self-employed workers or one-person companies. In most cases, these workers and small contractors do not possess the academic qualifications required for registration as RMWCs.

20. In this respect, members note that different avenues would be provided for practitioners to be registered as RMWCs, as described in paragraph 11 above. To allay the concern of existing practitioners of minor works, the Administration further proposes that for those who have many years of practical experience but without attaining the required academic qualifications, they will be eligible for registration as Class B RMWCs provided that they complete a recognized top-up course on the statutory requirements relating to minor works with 90% attendance. There is no need to sit for an examination after completing the top-up course. Moreover, a construction worker of the relevant trade registered under the Construction Workers Registration Bill may carry out certain types of minor works like erection of supporting frames for air-conditioning units and drying racks of a specified size.

21. The concern of the industry, however, could not be allayed entirely. The Bills Committee notes that the Construction Workers Registration Bill is still under scrutiny by LegCo and the contents of which are yet to be finalized. Without certainty on the details of the registration system under the Construction Workers Registration Bill, self-employed workers and small contractors are worried about the enactment of the proposed minor works control regime, which may seriously jeopardize their job opportunities and livelihood. Small contractors in various trades including plumbing, internal decoration, signboard design, electrical and mechanical services, etc, strongly request that more consultation should be conducted before the details of the minor works control scheme are finalized.

Excising the minor works control regime from the Bill

22. In recognition of the far-reaching impact of the proposed minor works control regime on both the general public and existing minor works practitioners, the Bills Committee critically examined at its meeting on 23 April 2004 the feasibility of working out an effective control regime without causing excessive public nuisance before the expiry of the current legislative term. The Bills Committee considers that until and unless all the concerns raised by members and the industry have been satisfactorily addressed, it is prudent not to go ahead with the proposed minor works control regime hastily.

23. The Bills Committee has examined whether it is possible to delete or defer the commencement of provisions on Category III minor works which are the subject of contention. However, according to the Administration, such an approach will have the effect that Categories I and II minor works will be regulated by the new less stringent control regime, whereas Category III minor works, which are simpler in nature, will still be subject to the existing building control which is more stringent. Having weighed all the pros and cons, the Bills Committee decides that the best way is to excise all provisions relating to minor works from the Bill. In the meantime, the Administration should further consult the industry and re-introduce the revised minor works control regime to LegCo in the next LegCo session. The Administration agrees with the Bills Committee's decision and will propose Committee Stage Amendments (CSAs) to excise all provisions relating to minor works control regime and registration of minor works contractors.

24. Hon Andrew WONG Wang-fat disagrees with the excision on the ground that the issues raised by members and the industry may be resolved to enable enactment of the minor works control regime before the expiry of this legislative term.

Enforcement against unauthorized building works

Serving of removal orders

25. To better deal with the large number of UBWs, the Bill makes several proposals to facilitate enforcement. The first proposal is to clearly specify the person responsible for demolishing UBWs (clause 29). The Bill stipulates the person to whom a removal order shall be served. In gist, a removal order shall be served on the owner of the unit in which the UBW has been erected. If the UBW is connected to another unit and is occupied or used by the owner of that unit, a removal order shall be served on the owner of that unit. Where the UBW is a signboard, a removal order shall be served in the following order:

- (a) the person for whom the signboard is erected;
- (b) the person who is receiving rent of the signboard;
- (c) owner of the premises or land on which the signboard is erected.

26. Members welcome this proposal which will help BA to overcome difficulties in identifying the responsible persons and an express provision in the Bill to empower BA to recover cost of removal work from the person on whom a removal order has been served. As the proposed definition of "signboard" is too restrictive, members support the moving of a CSA by the Administration to expand its scope to cover boards displaying visual image or information (clause 2).

Registration of removal order

27. Members also supports the second proposal in the Bill in connection with UBWs, namely to provide for the registration of removal orders in the Land Registry (clause 29). As registration of a removal order against a property may affect conveyancing, the Administration undertakes at members' request to provide a performance pledge on a time-table for registration of such an order. It is noted that once BA sends a copy of the removal order to the Land Registry for registration, the Land Registry will take about 12 days to prepare the memorial of the order and another 20 working days to complete the registration.

Registration of warning notice

28. Although the Bill will delineate the persons to whom a removal order shall be served by BA, members recognize that BA will not issue a removal order on each and every UBW that comes to its notice. As mentioned in paragraph 16 above, BD has adopted a priority enforcement policy under which removal orders are issued against UBWs that are in progress or newly erected or that present imminent danger to the public or cause serious environmental or health hazards. For UBWs not falling within such priority categories for enforcement action, BD usually issues advisory letters to owners asking them to remove the UBWs voluntarily. However, experience shows that these advisory letters have had very limited deterrent effect.

29. The third proposal in the Bill in connection with UBWs is therefore to address this problem. The Bill proposes to empower BA to issue a warning notice against a UBW where a removal order is not issued and to register the warning notice in the Land Registry if the UBW is not removed within a specified period (clause 30). Notwithstanding members' support for this proposal in principle, they are concerned whether warning notices will be issued against existing minor UBWs. Members also note the concern of The Law Society of Hong Kong that the registration of warning notices could affect conveyancing practices. Warning notices can be treated as encumbrances on title and may be used by purchasers as an excuse for backing out of otherwise binding transactions.

30. The Administration has assured members that currently BD normally will not issue advisory letters on minor UBWs. It will continue to adopt a pragmatic approach after the implementation of the warning notice regime and will not serve warning notices on these works but removal orders will be served if they pose imminent danger. To allow owners sufficient time to take rectification actions before a warning notice is issued, the Administration will adopt an administrative procedure to issue a letter to the owner notifying him of BA's intention to issue such a notice unless action is taken within 30 days. If a warning notice is issued, the owner will be given another two months to

rectify the UBW before the warning notice is registered with the Land Registry.

31. To further allay members' concern, the Administration provides a performance pledge to the Bills Committee that once BA is being notified by the owner of the removal of UBW which is the subject of a warning notice, BA will, within three weeks, carry out inspection and, if the works are done satisfactorily, issue a reply to the owner to confirm such. BA will at the same time lodge in the Land Registry an instrument of satisfaction against the warning notice.

Prosecution of owners for obstructing owners' corporation in complying with statutory orders

32. Apart from the minor works control regime, another contentious proposal in the Bill is an express provision to prosecute any person for obstructing an OC in carrying out works for the purpose of complying with a statutory order issued by BA (clause 38). The Bill proposes that conviction of the offence is punishable by a maximum fine of \$300,000 and imprisonment for one year (clause 39).

33. Members note that under the Building Management Ordinance (BMO) (Cap. 344), the liabilities of owners in relation to the common parts of a building shall be enforceable against the OC, if any. Members recognize that there have been cases in which some individual owners are uncooperative and they obstruct the execution of the works required or refuse entry to their properties for the execution of works. This has made it difficult for the OC to comply with statutory orders, rendering it liable to prosecution.

34. Members, however, at the same time are aware that there are cases in which individual owners may have reasonable grounds for being uncooperative. One of the typical examples quoted by members is dissension between the OC and individual owners on how works should be carried out in complying with a statutory order. The way in which works should be carried out, as decided by the OC, may cause excessive nuisance and inconvenience to an individual owner. Members are concerned that if the proposal in the Bill is implemented, individual owners will be in an unfavorable position in negotiating with OCs when disputes arise.

35. The Bills Committee has examined in depth how disputes between individual owners and OCs concerning compliance with statutory orders issued by BA could be dealt with. According to the Administration, Home Affairs Department (HAD) staff will provide liaison and informal mediation service to resolve disputes between individual owners and OCs. Depending on the nature of disputes, such cases may be adjudicated by the Lands Tribunal under the Tenth Schedule to the BMO. Legal advice from the Administration confirms that disputes between individual owners and OCs regarding the

manner of complying with a statutory order issued by BA could be heard and determined by the Lands Tribunal.

36. Based on past experience, members have doubts on the effectiveness of HAD staff in resolving disputes between individual owners and OCs. Members are of the view that even if the Lands Tribunal can hear and determine disputes between individual owners and OCs on how a statutory order should be carried out, it is not the optimal channel to handle the matter because of the time and the procedures involved. They note that a person aggrieved by any decision made by BA in the exercise of discretion may appeal to the Appeal Tribunal (Building) formed under the BO. The Appeal Tribunal (Building) comprises members who have professional knowledge of building related matters. Members consider it unsatisfactory that two bodies, namely the Lands Tribunal and the Appeal Tribunal (Building), handle matters relating to different aspects of statutory orders issued by BA. They thus suggest extending the ambit of the Appeal Tribunal (Building) to determine all disputes between individual owners and OCs relating to statutory orders issued by BA.

37. This suggestion from members however is not supported by the Administration. The reasons given by the Administration are that the jurisdiction of the Appeal Tribunal (Building) is confined to determining an appeal against any decision made by BA in the exercise of discretion under sections 44(1) and 47 of the BO. The manner as to how an order should be complied with falls outside the jurisdiction of the Appeal Tribunal (Building). To extend its scope to cover matters relating to disputes between individual owners and OCs would have profound legal, financial and staffing implications. The Administration considers it appropriate to resolve these disputes through mediation. In this respect, HAD, in conjunction with the Hong Kong Mediation Council and the Hong Kong Mediation Centre, has launched a pilot scheme on mediation to resolve building management disputes.

Revised proposal

38. In view of the reservations expressed by some members of the Bills Committee, the Administration has suggested excising the proposed new section 39B (clause 38) from the Bill. Disputes between individual owners and OCs will continue to be resolved through mediation and litigation. The Bills Committee, however, considers that mediation is not an effective means to deal with disputes between individual owners and OCs, in particular if the owners are intent to be uncooperative. Under these circumstances, only legal sanction could achieve effect and the proposed section 39B has its merit. As to the concern about unjustified prosecution, it could be addressed because the offence provision in the proposed section 40 (4B) (clause 39(1)) expressly provides that only persons without reasonable excuse shall be guilty of the offence.

39. Having weighed all the pros and cons, the Bills Committee reaches a consensus that, instead of excising the proposed section 39B from the Bill altogether, the scope of its application should be narrowed down to cover orders issued by BA which are of a more serious nature. Members accept that uncooperative owners shall be liable for prosecution for obstructing OC in carrying out works in compliance with an order issued by BA in relation to the following aspects:

- (a) demolition, removal, or alteration of UBWs;
- (b) repair of dangerous buildings; and
- (c) investigation of defective buildings and structures and the carrying out of remedial work thereto. These structures include dangerous slopes, earth-retaining structures, buried services in the vicinity of slopes or earth-retaining structures and defective or insanitary drains or sewers.

40. As it is not unusual that OC will appoint a management company to carry out its work, members also accept that the provision will apply where a management company is employed or engaged by the OC to act on its behalf. Members agree that the penalty for contravention of the proposed provision should be reduced to a fine at level 3, i.e. \$10,000 and imprisonment for six months. The Administration will move CSAs to achieve the effect.

Registration and appointment of geotechnical engineers

41. Another major proposal of the Bill is the proposed mandatory appointment of RGEs for certain building works (clause 5 (a)). The existing BO provides for mandatory appointment of an AP and RSE for the carrying out of building works. Although there is no statutory requirement for the appointment of geotechnical engineers (GEs), GEs are appointed in many projects as sub-consultants to assist APs in carrying out building works which require geotechnical expertise. To ensure the quality of geotechnical works and recognize the role of GEs in building works, the Bills Committee supports mandatory appointment of RGEs in the investigation, design and supervision of geotechnical works. This proposal is unanimously welcomed by various disciplines of the building profession.

42. For the purpose of effecting mandatory appointment of RGEs for certain building works, the Bill also proposes a registration scheme for GEs (clauses 4 to 7). The only concern raised by the engineering profession is about the proposed transitional arrangement for registration as RGEs. The Bill specifies the channels for certain categories of persons to register as RGEs during a transitional period (clause 43, new section 53I). Within one year from the commencement of the relevant provision in the Bill, an AP or RSE is

eligible for registration as RGE if he fulfils the specified conditions. One of the specified conditions is that BA is satisfied with his possession of the appropriate geotechnical experience and competence in relation to site formation works (clause 43, new section 53I(2)(a)(iii)). The engineering profession criticizes that such a condition is too vague and BA will be conferred with excessive discretion to decide on each case. Members note that prior to the introduction of the Bill, the Administration has agreed with the engineering profession on the number, scale and complexity of site formation works which will be accepted by BA as proof of competence but these details have not been spelt out in the Bill. To allay the concern of the engineering profession, the Administration proposes to set out the mutually agreed technical details in a practice note to APs and RSEs. This arrangement is accepted by the engineering profession.

Rationalizing the registration scheme for building professionals

43. The Bill proposes several amendments to rationalize the registration scheme for APs, RSEs, and registered contractors (RCs). These include:

- (a) increasing the registration, restoration and renewal period of APs and RSEs from 12 months to five years to allow continuity of practice (clause 4(p) and (v), section 3(9B) and 13(c) and 15(b);
- (b) removing the option of registration, restoration and renewal period of one year for RCs which is seldom preferred. The registration period for RCs will be standardized at three years (clauses 12(c) and (l), 14(b) and (e) and 15(a) and (c), sections 8B(5)(a), (12), section 8C(2)(9), section 8D(2) and (6)); and
- (c) deleting the requirement for an applicant for registration as RC to seek an endorsement of any AP/RSE or Hong Kong Construction Association (clause 12(b), section 8B(4)). This requirement is found to be unnecessary because under the existing BO, an applicant is required to satisfy BA of his experience and as proof of relevant experience, the applicant will have to produce documentary evidence with endorsement of such experience by persons related to the projects undertaken by him.

44. Members note the support of the building profession for these three proposals. The only concern raised by contractors is the difference in registration period between AP/RSE and RC. According to the Administration, unlike APs and RSEs who are individuals, most RCs are companies and their management structure may change from time to time. Moreover, unlike APs and RSEs, there is no independent professional

institution to ensure the continued competence of RCs. Members accept that the registration period for RCs should be three years. To avoid abuse by unscrupulous contractors, members urge the Administration to ensure speedy completion of disciplinary proceedings in respect of RCs for misconduct. If found justified, the disciplinary board should remove the names of the RCs concerned immediately from the register and not at the expiry of the three-year registration period.

Revising the Composition of Contractors Registration Committee

45. Under the BO, the function of CRC is to advise BA in considering applications for registration as RGBCs or RSCs by examining the qualifications and experience of the applicants and conducting interviews with the applicants. At present CRC is made up of nine members and seven of whom are nominated by professional institutes and contractors' associations. One of the prescribed members is a nominee by the Hong Kong Electrical & Mechanical Contractors Association Limited (EMCA). To allow greater flexibility in appointing member with relevant expertise in assessing applications for RSCs, the Bill proposes to delete the nominee from EMCA and increases the number of nominees by BA from one to two in accordance with the specialty required (clause 10(c)). This proposal is supported by the Bills Committee.

46. The Bills Committee also supports another proposal in the Bill to revise the nomination arrangement for AP/RSE members to sit on CRC (clause 10(b)(ii)). At present three members of CRC are nominated by the respective professional institutes of architects, engineers and surveyors. Since APs/RSEs may not be a member of these professional institutes, it is considered more appropriate that AP/RSE members for CRC should be nominated by the respective Registration Boards for architects, engineers and surveyors. This revised nomination arrangement for CRC will be aligned with that of the Registration Committee of AP/RSE. Members consider this an improvement and agree with the proposed change.

Increase of fines for building offences

47. The proposal for increase of fines by four or six times for selected offences in connection with UBWs, substandard building works and construction danger has been a subject of concern to members and deputations alike (clause 39). Contractors, in particular, object the proposed increase at the present most difficult time ever experienced by the construction industry.

48. Members have examined two aspects in relation to the fine proposal, namely, the need for an increase and the appropriateness of the extent of increase. On the need for an increase, members accept the Administration's explanation that since the fines in question were either revised in 1979 or

introduced in 1981, both of which are over 20 years ago, it is necessary to maintain the deterrent effect by restoring the value of money. An increase in the levels of fines is therefore justified.

49. On the proposed extent of increase, the explanation given by the Administration is that reference is made to the Building Cost Index (BCI). The BCI is prepared by the Architectural Services Department and is widely accepted by the building industry as an objective measure to track changes in construction cost. Since 1979 the BCI has increased by 610% and since 1981 by 440%. These are the basis for increasing the fines by four or six times.

50. The Administration could not trace the reference to which the fines were made when they were first introduced. Members find it rare that the levels of fines are linked to the construction cost. To maintain the deterrent effect of fines, members consider it more appropriate to make reference to the composite Consumer Price Index (CPI), which is widely used in many sectors as an indicator of money value. The Administration takes on board members' suggestion. It also accepts the Bills Committee's view to conduct a review of the level of each fine against factors including gravity of the offence, frequency of charges, any public concern on the relevant offences and comparable provisions in other legislation. The Administration concludes after the review that the levels of fine are commensurate with the seriousness of the offences. According to the information provided by the Census and Statistics Department, the composite CPI for 2003 is about four times the level of 1979 and three times of 1981. The Bills Committee therefore agrees that fines for offences last revised in 1979 should be increased by four times and fines first introduced in 1981 should be increased by three times.

51. The only exception is those in relation to the offence concerning failure of the building professionals and registered contractors concerned to notify BA of any contravention of the regulations that would result from carrying out the works shown in approved plans. Under the current section 40 (2AA), conviction of the offence is punishable by a maximum fine of \$250,000 and imprisonment for three years. The Bill increases the fine to \$1.5 million. The engineering profession raises strong objection to the proposed increase and the penalty of imprisonment. It argues that the mere failure to notify the BA of any contravention is not a serious offence and should not attract a severe penalty. The Bills Committee shares its view. The Administration therefore agrees to retain the existing fine at \$250,000 and delete the imprisonment penalty.

52. The Administration will move CSAs to revise the fines in accordance with the agreement reached with the Bills Committee.

Provision of emergency vehicular access to new buildings

53. Members note the absence of statutory requirement for the provision of EVA to buildings under the existing BO. By administrative arrangement the Administration has since 1980 required the provision of EVA if the building development involves a new land grant or a lease modification. However, this administrative requirement cannot be extended to redevelopments where there is no change to the conditions under pre-1980 leases.

54. To remedy the deficiency, the Bills Committee welcomes the introduction of a statutory requirement for the provision of EVA to all new buildings (clause 79, new regulation 41D in Building (Planning) Regulations). The design and construction standards of EVA will be specified by BA in a Code of Practice. Members also support exemption from the statutory requirement where EVA cannot be provided due to topographical constraints or where the building concerned constitutes a low fire risk. To address some deputations' concern, the Administration has clarified that a building fronting an existing street which conforms to the standards of EVA will be considered as complying with the new regulation and application for exemption is not required. Moreover, the statutory requirement will also not apply to any proposed small houses or residential developments in the New Territories if they are issued with a certificate of exemption in respect of building works under the Buildings Ordinance (Application to the New Territories) Ordinance, Cap.121.

Introduction of new fees and revised fees for services

55. Both members and deputations welcome the proposals in the Bill to improve services to the public. These include introducing a new service fee in Building (Administration) Regulations for inspection of building plans and documents and providing non-certified copies of such documents on a cost recovery basis (clause 74). The major concern of deputations rests with the proposal to charge the issue of documents kept under the BO at \$38 per copy.

56. The Bills Committee notes that the various fee proposals are worked out on the assumption that BD staff have to provide both searching and copying services. Since different customers require different services, members find it necessary to improve the charging mechanism to cater for different needs. The Administration agrees to revise the fee charging structure to address the need of two different types of customers, namely, building professionals and non-professionals. For non-professionals, they usually require one-stop service of copying of plans or documents including retrieval, searching and copying. The cost of retrieving and searching the relevant plans and documents will be covered in the fees. However, for building professionals, they normally inspect and identify the plans/documents by themselves before placing an order for copying service. Under these situations, the fees for

copying will be limited to the cost of copying service. Members support the revised fee proposals, in particular the proposal to charge \$1.4 or 1.6 per copy of a document if the customer searches the relevant document by himself. The revised fee proposals are also welcomed by the building profession. The Administration will move CSAs to the clause to achieve the effect.

Committee Stage Amendments

57. A full set of the CSAs to be moved by the Administration is in **Appendix IV**. The Bills Committee supports the CSAs.

Recommendation

58. The Bills Committee supports the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting on 23 June 2004.

Consultation with the House Committee

59. The House Committee at its meeting on 4 June 2004 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 23 June 2004.

Prepared by
Council Business Division 1
Legislative Council Secretariat
8 June 2004

Bills Committee on Buildings (Amendment) Bill 2003

Membership list

Chairman Hon Cyd HO Sau-lan

Members Ir Dr Hon Raymond HO Chung-tai, JP
Hon Margaret NG
Hon Andrew WONG Wang-fat, JP
Hon Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP

(Total: 13 members)

Clerk Miss Odelia LEUNG

Legal Adviser Mr LEE Yu-sung

Date 8 July 2003

Appendix II

Bills Committee on Buildings (Amendment) Bill 2003

List of individual/organizations which had made written submissions to the Bills Committee

Individual

1. Mr B W CHOY

Organizations

1. Central and Western District Council
2. Hong Kong Construction Sub-Contractors Association
3. Hong Kong Electrical & Mechanical Management & Professional Association
4. Hong Kong General Building Contractors Association Ltd
5. Hong Kong Institute of Real Estate Administration
6. Hong Kong Licensed Plumbers Association Ltd
7. Hong Kong Marble & Granite Merchants Association
8. Hong Kong Water Works Professionals Association Ltd
9. Sign Association of Hong Kong
10. The Association of Architectural Practices Ltd
11. The Association of Consulting Engineers of Hong Kong
12. The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions
13. The Hong Kong Association of Property Management Companies Ltd
14. The Hong Kong Construction Association Ltd
15. The Hong Kong Institute of Architects
16. The Hong Kong Institute of Housing
17. The Hong Kong Institute of Surveyors
18. The Hong Kong Institution of Engineers
19. The Law Society of Hong Kong

20. The Real Estate Developers Association of Hong Kong
21. Urban Watch
22. 小型工程承建商註冊制度關注小組

Appendix III

Bills Committee on Buildings (Amendment) Bill 2003

List of organizations which had made oral presentation to the Bills Committee

1. Hong Kong Electrical & Mechanical Management & Professional Association
2. Hong Kong Institute of Real Estate Administration
3. Hong Kong Licensed Plumbers Association Ltd
4. Hong Kong Water Works Professionals Association Ltd
5. The Association of Architectural Practices Ltd
6. The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions
7. The Hong Kong Association of Property Management Companies Ltd
8. The Hong Kong Construction Association Ltd
9. The Hong Kong Institute of Architects
10. The Hong Kong Institute of Housing
11. The Hong Kong Institute of Surveyors
12. The Hong Kong Institution of Engineers
13. 小型工程承建商註冊制度關注小組

BUILDINGS (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Housing, Planning and Lands

Clause

Amendment Proposed

2

(a) By deleting paragraphs (a) and (e).

(b) In paragraph (f) -

(i) by deleting the proposed definitions of "category I minor works", "category II minor works" and "category III minor works", "certify", "class A registered minor works contractor", "class B registered minor works contractor", "minor works", "registered minor works contractor" and "relevant class A registered minor works contractor" and "relevant class B registered minor works contractor";

(ii) by deleting the proposed definition of "signboard" and substituting -

"signboard" (招牌) means a
hoarding, framework,
scaffolding or other

structure erected solely
for the purpose of
displaying any
advertisement, making any
announcement or
notification, or displaying
any visual image or other
information;".

4

(a) In paragraph (d) -

(i) by deleting the proposed section
3(5CA) (a) (vi) and substituting -

"(vi) 1 public officer of the rank
of Government Geotechnical
Engineer nominated by the
Director of Civil
Engineering and
Development; and";

(ii) by deleting the proposed section
3(5CA) (b) (vi) and substituting -

"(vi) 1 public officer of the rank
of Government Geotechnical
Engineer nominated by the
Director of Civil
Engineering and
Development; and".

(b) In paragraph (h), in the proposed section

3(5GA) (c), by deleting "Assistant Director of

Civil Engineering" and substituting "public officer".

5 By deleting paragraphs (b) and (e).

8 By deleting the clause.

9 (a) By deleting paragraph (a)(i).

(b) In paragraph (d) -

(i) by deleting the proposed section 7(2B),
(2C), (2D) and (2E);

(ii) by deleting the semicolon at the end and
substituting a full stop.

(c) By deleting paragraph (e).

10 (a) By deleting paragraph (a).

(b) In paragraph (c), by deleting the proposed section
8(3B).

(c) In paragraph (d), by deleting the semicolon and
substituting a full stop.

(d) By deleting paragraph (e).

11 By deleting the clause.

12 (a) By deleting paragraphs (a) and (d).

(b) By deleting paragraph (e) and substituting -

"(e) in subsection (6), by adding
"relevant" before "Contractors

Registration Committee";".

- (c) By deleting paragraph (f) and substituting -
 "(f) in subsection (7), by adding "relevant"
 before "Contractors Registration
 Committee";".
- (d) By deleting paragraphs (g), (h) and (i).
- (e) By deleting paragraph (j) and substituting -
 "(j) in subsection (10), by adding
 "relevant" before "Contractors
 Registration Committee";".
- (f) By deleting paragraph (k).

13 By deleting the clause.

- 14 (a) By deleting paragraphs (c) and (d)(ii).
- (b) In paragraph (e), by deleting the proposed section
 8C(8).

- 15 (a) By deleting paragraph (b)(ii).
- (b) By deleting paragraph (c) and substituting -
 "(c) by adding -
 "(5) A registration
 restored under this section
 expires, unless the contractor's
 name is removed from the relevant
 register by order of a
 disciplinary board, on the expiry
 of 3 years beginning on the date

of restoration of the applicant's
name to the register."."

18 By deleting paragraphs (a), (b), (c), (d), (e) and (f).

19 (a) In paragraph (b), by deleting the semicolon at the
end and substituting a full stop.

(b) By deleting paragraphs (c), (d) and (e).

20 By deleting the clause.

21 By deleting the clause and substituting -

**"21. Disciplinary proceedings
for contractors**

Section 13 is amended -

(a) in subsection (4) -

(i) in paragraph (c), by
repealing "; and" and
substituting a full
stop;

(ii) by repealing paragraph
(d);

(b) by adding -

"(4A) Where the
disciplinary board makes an
order under subsection (4),
it shall order that its
findings and order be

published in the
Gazette."."

22 By deleting the clause.

23 By deleting the clause.

New By adding -

**"24A. Conditions may be imposed in
certain cases**

Section 17(2) is repealed."

25 By deleting the clause and substituting -

"25. Provision for urgent work

Section 19(4) (c) is amended by adding ", the
registered geotechnical engineer" after
"engineer"."

26 By deleting the clause.

27 By deleting the clause.

28 By deleting the clause.

29 (a) By deleting paragraph (a).

(b) In paragraph (b), in the proposed sections 24(2)
and (2A), by deleting "or (1A)".

(c) By deleting paragraph (c).

30

In the proposed section 24C -

(a) by deleting subsection (1)(d) and
substituting -

"(d) specifying a date after which the
notice will be registered with the
Land Registry in accordance with
subsection (4) if before that
date -

(i) the building or
building works is or
are not demolished; or

(ii) the building or
building works is or
are not altered in such
a manner as to cause the
building or building
works to comply with
those provisions, or
otherwise to put an end
to the contraventions
of those provisions.";

(b) in subsection (4), by deleting "to his
satisfaction" and substituting "in the
manner described in subsection (1)(d)(ii)";

(c) in subsection (6) -

(i) by deleting "warning";

(ii) by deleting "to the satisfaction

of the Building Authority, he" and
substituting "in the manner
described in subsection
(1) (d) (ii), the Building
Authority".

32 In the proposed section 29A(1), by deleting "to the
satisfaction of the Building Authority".

36 By deleting paragraphs (a) (ii) and (b).

37 By deleting everything after "amended by" and
substituting "adding "registered geotechnical
engineer," after "engineer, ".".

38 In the proposed section 39B(1) -
(a) by deleting "or (1A)";
(b) by deleting ", 28(2) (a), (3) or (5),
29(2) (a), 29A(2), 30(3) or 31(2) (a)" and
substituting "or 28(2) (a), (3) or (5)".

39 (a) In paragraph (a), by deleting the proposed 40(1AA)
and substituting -

"(1AA) Any person who contravenes
section 14(1) shall be guilty of an offence
and shall be liable on conviction -

(a) to a fine of \$400,000 and to
imprisonment for 2 years;

and

- (b) to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued."

- (b) In paragraph (d), by deleting the proposed section 40(1BA) and substituting -

"(1BA) Any person who, without reasonable excuse, fails to comply with an order served on him under section 24(1) shall be guilty of an offence and shall be liable on conviction -

- (a) to a fine of \$200,000 and to imprisonment for 1 year; and
- (b) to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued."

- (c) By deleting paragraph (e)(ii) and substituting -

"(ii) by repealing "\$250,000" and substituting "\$1,000,000";".

- (d) By deleting paragraph (f)(ii), (iii) and (iv) and substituting -

"(ii) by repealing "and to imprisonment for 3 years";".

- (e) In paragraph (h), by deleting "\$200,000" and

substituting "\$150,000".

(f) By deleting paragraph (i) and substituting -

"(i) in subsection (2AC), by repealing
"\$250,000" and substituting
"\$750,000";".

(g) By deleting paragraph (j) and substituting -

"(j) in subsection (2B), by repealing
"\$250,000" and substituting
"\$1,000,000";".

(h) By deleting paragraph (k) and substituting -

"(k) in subsection (2C) -
 (i) in paragraph (a), by
 repealing "\$250,000" and
 substituting "\$1,000,000";
 (ii) in paragraph (b), by
 repealing "\$50,000" and
 substituting "\$200,000".".

(i) By deleting paragraph (l) and substituting -

"(l) by adding -
 "(4B) Any person who without
 reasonable excuse contravenes
 section 39B(1) shall be guilty of
 an offence and shall be liable on
 conviction to a fine at level 3 and
 to imprisonment for 6 months."."

41 By deleting the clause.

42 By deleting "sections 53J and 53K" and substituting
"section 53K".

43 By deleting the proposed section 53J.

45 By deleting "ERGISTERED" and substituting
"REGISTERED".

48 (a) In the heading, by deleting "**, specialist
contractors and minor works contractors**" and
substituting "**and specialist contractors**".

(b) By deleting paragraphs (a)(i) and (c).

50 By deleting the clause.

51 By deleting the clause.

52 By deleting paragraph (b).

53 By deleting the clause.

54 By deleting "or from 2 or more registered general
building contractors, registered specialist
contractors or registered minor works contractors".

55 By deleting the clause.

- 56 (a) By deleting paragraph (a) .
(b) By deleting paragraph (b) and substituting -
" (b) by repealing "or by the registered
structural engineer" and substituting
", registered structural engineer or
registered geotechnical engineer".".
- 57 By deleting paragraph (b) .
- 58 (a) By deleting paragraphs (a), (b), (d) and (e) .
(b) In paragraph (c), by deleting the semicolon and
substituting a full stop.
- 59 (a) By deleting paragraphs (a) (ii), (b) (ii), (d) and
(e) .
(b) In paragraph (c), by deleting the semicolon and
substituting a full stop.
- 61 By deleting the clause.
- 62 By deleting the clause and substituting -
**"62. Certificate to be given by
registered contractor and
authorized person on
completion of building
works**
Regulation 25 is amended -
(a) in paragraph (1), by repealing "or

registered structural engineer"
and substituting ", registered
structural engineer or
registered geotechnical
engineer";

(b) in paragraph (3) -

(i) by adding "or
registered
geotechnical
engineer" after
"structural engineer"
where it twice
appears;

(ii) by repealing
"structurally safe"
and substituting
"structurally or
geotechnically (as the
case may be) safe";

(c) in paragraph (4), by repealing
"and the registered structural
engineer" and substituting ",
registered structural engineer
and registered geotechnical
engineer".

64 By deleting the clause and substituting -

**"64. Certificate to be given by
authorized person, registered
structural engineer, registered
geotechnical engineer and
registered contractor engaged
in respect of emergency work**

Regulation 28 is amended by repealing "and
registered structural engineer" and substituting
", registered structural engineer and registered
geotechnical engineer".

67 In paragraphs (a) and (b), by deleting ", registered
specialist contractor or registered minor works
contractor" and substituting "or registered
specialist contractor".

69 (a) By deleting paragraphs (a), (b), (c)(iii) and (d).
(b) In paragraph (c)(ii), by deleting the semicolon
and substituting a full stop.

72 By deleting the clause and substituting -

**"72. Duty of registered contractor to
keep approved plans and
supervision plans on site**

Regulation 40 is amended by repealing "or
registered structural engineer" and substituting
", registered structural engineer or registered
geotechnical engineer".

73 By deleting the clause.

74

(a) By deleting paragraph (j).

(b) In paragraph (k) -

(i) in the proposed item 10(a) (i), (ii) and (iii), by deleting "\$45" and substituting -

| | | | | | |
|-------|---|---------------|-------|---|---------------|
| "\$45 | } | for | \$8.5 | } | for |
| | | applicants | | | applicants |
| | | who have not | | | who have |
| | | inspected the | | | inspected |
| | | document | | | the document |
| | | pursuant to | | | pursuant to |
| \$45 | } | section | \$8.5 | } | section |
| | | 36(2A) (b) of | | | 36(2A) (b) of |
| | | the Ordinance | | | the |
| | | immediately | | | Ordinance |
| | | before the | | | immediately |
| | | issue | | | before the |
| \$45 | } | | \$8.0 | } | issue"; |
| | | | | | |
| | | | | | |

(ii) in the proposed item 10(b) (i), (ii) and (iii), by deleting "\$97", "\$70" and "\$56" and substituting -

| | | | | | |
|--------|---|----------------|------|---|---------------|
| "\$155 | } | For applicants | \$58 | } | for |
| | | who have not | | | applicants |
| | | inspected the | | | who have |
| | | plan pursuant | | | inspected the |
| | | To section | | | plan pursuant |
| \$125 | } | 36(2A) (b) of | \$52 | } | to section |
| | | the Ordinance | | | 36(2A) (b) of |
| | | immediately | | | the Ordinance |
| | | before the | | | immediately |
| | | issue | | | before the |
| \$93 | } | | \$42 | } | issue"; |
| | | | | | |
| | | | | | |

- (iii) in the proposed item 11(a) (i), (ii) and (iii), by deleting "\$38" and substituting -

| | | | | | |
|-------|---|----------------|-------|---|----------------|
| "\$38 | { | For | \$1.6 | { | for |
| | | applicants | | | applicants |
| | | who have not | | | who have |
| | | inspected the | | | inspected |
| | | document | | | the document |
| | | Pursuant to | | | pursuant to |
| \$38 | | section | \$1.6 | | section |
| | | 36 (2A) (b) of | | | 36 (2A) (b) of |
| | | the Ordinance | | | the |
| | | immediately | | | Ordinance |
| | | before the | | | immediately |
| | | issue | | | before the |
| \$38 | } | | \$1.4 | } | issue"; |

- (iv) in the proposed item 11(b) (i), (ii) and (iii), by deleting "\$72", "\$51" and "\$38" and substituting -

| | | | | | |
|--------|---|----------------|------|---|----------------|
| "\$135 | { | for | \$40 | { | for |
| | | applicants | | | applicants |
| | | who have not | | | who have |
| | | inspected the | | | inspected |
| | | plan pursuant | | | the plan |
| | | to section | | | pursuant |
| \$110 | | 36 (2A) (b) of | \$34 | | to section |
| | | the Ordinance | | | 36 (2A) (b) of |
| | | immediately | | | the |
| | | before the | | | Ordinance |
| | | issue | | | immediately |
| \$74 | } | | \$24 | } | before the |
| | | | | | issue"; |

- (v) in the proposed item 12(a) (ii), by deleting "\$85" and substituting "\$58".

75

By deleting the clause and substituting -

**"75. Duty of authorized person,
registered structural
engineer or registered
geotechnical engineer who has
prepared plans to supply to
Building Authority such
information as he may require**

Regulation 44 is amended by repealing "or registered structural engineer" and substituting ", registered structural engineer or registered geotechnical engineer".

76 By deleting the clause and substituting -

**"76. Duty of authorized person,
registered structural
engineer, registered
geotechnical engineer,
registered contractor, etc. to
notify Building Authority of
change of business address**

Regulation 45 is amended by adding
"registered geotechnical engineer," after
"engineer,".

77 By deleting the clause.

78 By deleting the clause.

79 By deleting "The following is added" and substituting
"The Building (Planning) Regulations (Cap. 123 sub.
Leg. F) are amended by adding".

New By adding immediately under the heading **"Consequential
Amendments"** -

"Prevention of Bribery Ordinance

79A. Public Bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding -

"104. Geotechnical Engineers Registration Committee."."

80 By deleting the clause.

81 (a) By deleting "Schedule 2 is amended" and substituting "Schedule 2 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended".

(b) By deleting paragraph (b) and substituting -
"(b) in item 5, in column 3, by repealing
"(2) and (3)" and substituting "(2),
(3) and (5)".