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Subcommittee on Building (Minor Works) Regulation

Meeting on 23 April 2009

Background brief

Purpose

This paper gives a summary of previous discussions by the Bills Committee on Buildings (Amendment) Bill 2007 (the 2007 Bill) and the Panel on Development on the proposed minor works control system (MWCS).

Background

2. Under the existing Buildings Ordinance (the Ordinance) (Cap. 123), all building works, despite their scale and complexity, are regulated under one single building control system. Prior approval of building plans prepared by authorized persons and consent to commence building works must be obtained from the Building Authority (BA) before commencement of such works. This control system does not differentiate building works relating to the construction of a new building from minor building works carried out in existing buildings (e.g. erection of supporting frames for air conditioners) which are simple in nature. As a result, many minor building works are carried out without complying with the law and are therefore unauthorized building works (UBWs).

3. To devise a set of simplified statutory requirements for carrying out the minor works, the Administration introduced the 2007 Bill into the Legislative Council (LegCo) on 5 December 2007. The Bill aimed at introducing the MWCS to provide for a simplified control mechanism with associated penalties for offences relating to minor works, as well as a validation scheme for three specific types of UBWs which had been completed before the commencement of the MWCS. The requirement to seek the BA's prior approval for building plans and consent to commence minor works would be dispensed with. The MWCS, which would be set out in the regulations to be made by the Secretary for Development (SDEV), would improve efficiency and flexibility, enhance

building safety and increase the user-friendliness of the building control regime, thus facilitating compliance. Following scrutiny by a Bills Committee, the Bill was passed by LegCo on 18 June 2008.

4. Certain provisions of the Buildings (Amendment) Ordinance 2008 (BAO 2008), including the enabling provision for SDEV to make regulations in respect of minor works, commenced on 15 December 2008 through the Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2008 (L.N. 225) gazetted on 13 October 2008.

The Building (Minor Works) Regulation

5. To enable the introduction of the MWCS, the Building (Minor Works) Regulation (the Regulation) was gazetted on 27 March 2009 and tabled at LegCo on 1 April 2009. Subject to the completion of the negative vetting process, the Regulation will come into operation on a day to be appointed by SDEV by notice published in the Gazette.

6. The major areas concerning the MWCS covered by the Regulation include:

- (a) classification of minor works and details of minor works items;
- (b) simplified requirements for carrying out minor works;
- (c) registration of "registered minor works contractors (RMWCs)";
- (d) provisional registration of RMWCs;
- (e) duties of building professionals and registered contractors in carrying out minor works;
- (f) household minor works validation scheme; and
- (g) designated exempted works.

The main provisions of the Regulation are set out in the LegCo Brief (Ref: DEVB(PL-B) 30/30/120).

7. As agreed at the House Committee meeting on 17 April 2009, the Chairman of the House Committee will move a motion to extend the scrutiny period of the Regulation to 20 May 2009.

Deliberations of the Bills Committee on Buildings (Amendment) Bill 2007

8. When scrutinizing the Buildings (Amendment) Bill 2007, the Bills Committee generally supported the policy intent of introducing the MWCS which would streamline the existing buildings control regime in respect of minor works, facilitate the general public to carry out minor works in a more convenient and economical manner, and enable more efficient use of Government resources.

Schedule of minor works

9. The Administration proposed to classify minor works into three classes according to their scale, complexity and safety requirements --

- (a) Class I minor works comprised those relatively more complicated minor works (e.g. installation of internal staircases connecting two floors) which should be designed and supervised by authorized persons (with the assistance of registered structural engineers and/or registered geotechnical engineers as appropriate) (referred to as "building professionals" hereafter) and carried out by registered contractors (including registered general building contractors, registered specialist contractors and RMWCs);
- (b) Class II minor works comprised works of a comparatively lower complexity (e.g. repair of external walls) which could be carried out by registered contractors without the involvement of authorized persons; and
- (c) Class III minor works covered small-scale minor works, mostly carried out in household settings (e.g. erection of supporting frames for air-conditioners), which could be carried out by registered contractors without the involvement of authorized persons.

10. Under each class of minor works, works could be further classified into types and items that corresponded to the specialization of works in the industry. Each item of minor works could be precisely defined with their dimensions, locations and other relevant measurements.

11. The Bills Committee noted that the Administration planned to promulgate the list of minor works as a schedule to the Regulation. For reference by the Bills Committee, the Administration had provided a draft Regulation and a draft schedule of minor works with the specifications and detailed definitions of 114 minor works items which were formulated after extensive consultation with the trades. The Bills Committee noted some deputations' view that there should be flexibility for future amendments to be made to the schedule of minor works through practice notes or codes of practice, in order to cater for technological advancement and development of the construction industry in the light of implementation experience. The Administration advised that following consultation with the Department of Justice, it was necessary to clearly define the class, type and items of minor works in the Regulation. The schedule of minor works would be included as part of the subsidiary legislation.

12. Members were concerned that the specifications for the proposed minor works, such as size, height and material used, were too technical for comprehension by the general public. The Administration explained that the specifications for the proposed minor works were drawn up after consulting the trades. The Administration would publish user-friendly pamphlets with easy-to-follow procedural guides for the average households and building owners, before the implementation of the MWCS.

Notification procedures upon completion of minor works carried out by RMWCs

13. According to the MWCS proposed by the Administration, building professionals and registered contractors would be required to notify BA before the commencement of Classes I and II minor works, but notification of the commencement of Class III minor works would not be required. Upon completion of Class I minor works, a RMWC appointed in respect of the works should within seven days submit certification to the appointed building professionals for further action. If the building professionals were satisfied with the RMWC's certification, the appointed authorized person should submit the required plans and certification to the BA within seven days after they received the certification from RMWCs. Upon completion of Classes II and III minor works, a RMWC appointed in respect of such minor works would submit to BA, within 14 days, a completion certificate certifying that the minor works had been completed in compliance with the provisions of the Ordinance and the Regulation as well as the prescribed plans. Detailed requirements on submission of documents and plans upon completion of different classes of minor works would be stipulated in the Regulation to be made under the Ordinance. Upon receipt of the documents and plans submitted, Buildings Department (BD) would decide whether or not to carry out an audit check of the completed works. If no audit check would be conducted, BD would issue an acknowledgement of receipt of the documentation to the RMWC and the building owner. If BD decided to carry out an audit check, BD would liaise with the RMWC and the building owner to inform them the arrangements of the inspection. Follow-up action would be taken if audit result was not satisfactory. If the minor works were found to be in order after inspection, BD would issue an acknowledgement letter to the RMWC and the building owner, confirming that the works had been completed satisfactorily in compliance with the minor works requirements.

14. The Law Society of Hong Kong and the Hong Kong Bar Association had suggested that to avoid title problems, a simple form should be devised for RMWCs to notify the BA upon completion of minor works, and such document should be registered with the Land Registry. The Administration agreed that completion certificates would be in specified form, and the form should be kept simple to facilitate RMWCs in completing the forms. The information provided by RMWCs, including plans or brief description and photos of the completed works and certification that the minor works had been done to the contractor's satisfaction and in accordance with the statutory provisions, would be scanned

and made available for public inspection in BD's Building Information Centre. The information would also be uploaded onto the website of BD.

Registration system for minor works contractors and provisional registration arrangement

15. According to the proposed registration system for qualified RMWCs, the contractors who applied for registration as RMWCs could be body corporate, partnerships, sole proprietorships or individuals (Class III only), and they had to satisfy BA that their personnel possessed the necessary technical qualifications and work experience before they could be registered under the Ordinance. For practitioners who applied for registration as RMWCs operating as firms, their applications would be assessed based on their representatives' formal qualifications and/or relevant experience, comprehension of the statutory requirements, as well as professional experience in the management and supervision of works projects.

16. The Bills Committee considered that the Administration should devise measures to help eligible practitioners understand the registration system and apply for registration. The Administration advised that the registration requirements for RMWCs would be specified in the Regulation, whilst detailed qualifications would be promulgated in practice notes to be issued by BD.

17. According to the Administration, individual workers could apply for registration as Class III RMWCs by proof of their relevant experience, which would vary from three to six years depending on the type and item of minor works. Some members of the Bills Committee were concerned that individual practitioners applying for registration might have difficulties in providing documentary proof of their experience. The industry also requested for flexibility in verifying the experience of applicants.

18. As there would be 114 items of minor works under the proposed system, members considered that the registration system should be kept simple. According to the Administration, the delineation of duties among works items was to cater for the different types of operation of the trades. RMWCs could choose to register for individual items of Class III minor works, or a type or the whole class of the works items. To reduce inconvenience to multi-task RMWCs, consideration would be given to issuing smart cards to facilitate identification of their eligibility to carry out minor works. The requirement for RMWCs to produce their registration numbers would be clearly reflected in the publicity materials.

19. The Bills Committee noted that a transitional period and a two-year provisional registration arrangement would be put in place to allow time for the existing minor works practitioners to prepare for registration. The provisional registration would only be available to applicants operating as firms. As for individual applicants, provisional registration was not required because such

individual applicants could obtain the registration by virtue of either qualifications or experience and after attending a one-day top-up course.

20. The Bills Committee was concerned that as provisional registration would be introduced only for RMWCs operating as firms, building owners and enforcement agents would have difficulty in verifying the eligibility of contractors carrying out minor works. The Administration explained that the provisional registration system would ensure that there would be continuation during the transitional period and sustain an adequate supply of RMWCs in the market to carry out minor works. The Administration would also issue identification documents to RMWCs to facilitate verification of contractors' eligibility by building owners. As the Regulation would require the technical directors and authorized signatories of the company-based contractors to supervise and coordinate the carrying out of the minor works, there would be no statutory requirements for RMWCs, operating as firms, to employ RMWCs, operating as individual practitioners, to carry out minor works.

Validation scheme

21. The Administration proposed that a validation scheme would be introduced to rationalize the existence of three types of UBWs, namely works relating to supporting frames for air conditioners, drying racks and small canopies completed before the commencement of the MWCS. Building owners would have to appoint building professionals or registered contractors to certify on inspection that such works met the safety requirements. Depending on the circumstances, alteration, improvement and/or reinforcement works would be required to meet the safety standards before the concerned works could be certified. Certificates would be issued by registered contractors upon completion of the validation process, and such certificates would be deposited with the BA and made available for public inspection. Upon validation, the BA would not take enforcement action against the concerned works unless they were found to be dangerous. No time limit would be imposed under the scheme as inspection of the three specific types of UBWs could be carried out in tandem with other buildings maintenance works.

22. As regards the impact of the MWCS on existing UBWs, the Administration explained that it was not possible to legalize previous building works which were constructed without approval, as this would undermine the established practice and affect public safety. Existing unauthorized supporting frames for air-conditioners, drying racks and small canopies would still be regarded as UBWs even if they had been validated under the proposed validation scheme. The Law Society of Hong Kong and the Hong Kong Bar Association had not raised objection to this proposal after clarification with the Administration.

Designated exempted works

23. Members were of the view that it would be difficult for the general public to understand the criteria for exemption of building works, viz. works located and carried out in buildings, works not involving the structure of buildings as well as the requirements (such as, dimensions, specifications and positions) of the "designated exempted works", as these were rather technical. The Administration explained that the general criteria for exemption of buildings works had already been provided for under the existing Ordinance, and a list of "designated exempted works", which were small-scale, simple and of low risk (e.g. water tanks and small-sized signboard works), would be drawn up based on these criteria. Detailed descriptions would also be set out for each of the items in the list of "designated exempted works". The list would be updated from time to time to take into account latest developments of the technical requirements of the works in the industry.

Discussion by the Panel on Development

24. At the meeting of the Panel on Development on 24 February 2009, the Administration briefed members on the major areas set out in the LegCo Brief that would be covered by the draft Regulation to be made by SDEV. Panel members noted that a preliminary draft of the Regulation had been tabled at the meeting of the Bills Committee on 11 March 2008. Since the enactment of the BAO in June 2008, the Administration had further refined the draft Regulation in consultation with the industry, including the Minor Works concern Group which represented frontline minor works practitioners and other stakeholders.

25. Panel members in general supported the Administration's proposal and urged the Administration to implement the MWCS as soon as possible. Some members considered that in enhancing public safety, the implementation of the MWCS should not be too strict and complicated, and should not cause too much disturbance to the public.

26. Panel members also expressed concern whether owners would be required to carry out the inspection and necessary works on existing unauthorized minor household structures within a specified period of time under the Validation Scheme, and whether the Validation Scheme would affect the ability of owners' corporations to clear existing unauthorized minor household structures which were in breach of the relevant Deeds of Mutual Covenant and/or erected in public areas. The Administration advised that the Validation Scheme would not affect the existing enforcement policy on UBWs and would not undermine the powers of owners' corporations.

Relevant papers

27. A list of relevant papers is at **Appendix I**.

Council Business Division 1
Legislative Council Secretariat
22 April 2009

Minor Works Control System
List of relevant papers

Date	Meeting/Event	References
7 December 2007	<p>A Bills Committee was formed at the meeting of the House Committee to study the Buildings (Amendment) Bill 2007.</p> <p>The Bills Committee reported to the House Committee on 6 June 2008.</p>	<p>Legislative Council Brief (File Ref.: DEVB(PL-B) 30/30/120) http://www.legco.gov.hk/yr07-08/english/bills/brief/b14_brf.pdf</p> <p>The Bill http://www.legco.gov.hk/yr07-08/english/bills/b0711231.pdf</p> <p>Legal Service Division Report (LC Paper No. LS17/07-08) http://www.legco.gov.hk/yr07-08/english/hc/papers/hc1207ls-17-e.pdf</p> <p>Bills Committee Report (LC Paper No. CB(1)1868/07-08) http://www.legco.gov.hk/yr07-08/english/bc/bc01/reports/bc010618cb1-1868-e.pdf</p>
18 June 2008	Passage of the Buildings (Amendment) Bill 2007 at the Council meeting	<p>Hansard (pages 223 to 239) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0618-confirm-ec.pdf</p>
24 October 2008	House Committee considered the Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2008 (L.N. 225)	<p>Legal Service Division Report (LC Paper No. LS6/08-09) http://www.legco.gov.hk/yr08-09/english/hc/papers/hc1024ls-6-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(2)197/08-09) http://www.legco.gov.hk/yr08-09/english/hc/minutes/hc20081024.pdf</p>
24 February 2009	Panel on Development	<p>Information paper (LC Paper No. CB(1)816/08-09(07)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0224cb1-816-7-e.pdf</p>

Date	Meeting/Event	References
		Background brief (LC Paper No. CB(1)861/08-09(01)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0224cb1-861-1-e.pdf