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28 April 2009

Ms YUE Tin-po
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central

Dear Ms YUE,

Subcommittee on Building (Minor Works) Regulation
Response to Subcommittee's Comments at Meeting on 23 April 2009

Thank you for your letter of 23 April and "list of follow-up actions" of 24 April 2009. At the meeting of Subcommittee on Building (Minor Works) Regulation ("B(MW)R") held on 23 April 2009, the Administration was requested to:-

- (a) provide past written comments from the Law Society of Hong Kong ("LSHK") and the Hong Kong Bar Association ("HKBA") about the legal implications of the three unauthorized minor household structures (i.e. supporting frames for air conditioners, drying racks and small canopies) after they have been validated under the proposed Household Minor Works Validation Scheme ("Validation Scheme");

- (b) follow up with the insurance sector on insurance in respect of unauthorized minor household structures certified to have met the safety requirements under the Validation Scheme; and
- (c) consider the feasibility of putting in place a mechanism or providing channels for existing unauthorized minor works (such as installation of internal staircases connecting two floors under Class I minor works) to be validated subject to the necessary alteration, improvement and/or reinforcement works that might be required to meet the safety requirements and dimensional standards similar to the validation scheme.

Our response is at ensuing paragraphs.

General

The Validation Scheme was formulated in response to the concerns expressed by the Bills Committee of the Buildings (Amendment) Bill 2003. Members were concerned about the presence of a large number of existing unauthorized household minor works in private buildings in Hong Kong, and asked the Administration to explore the alternative of not taking enforcement action against those unauthorized household minor works which were constructed before the introduction of the minor works control system.

We note that before the introduction of the proposed control system, minor works have been carried out in some buildings without obtaining prior approval and consent from the Building Authority (“BA”). We appreciate that these items are of practical use for the households concerned, and accordingly propose to establish the Validation Scheme to rationalize three types of minor works carried out under such circumstances, viz. supporting frames for air conditioners, drying racks and small canopies. They are unauthorized building works (“UBWs”) normally appended on the exteriors of buildings and are not standalone structures. Under the Scheme, we will allow owners to retain these features for continued use after inspection and/or strengthening, if necessary.

The Validation Scheme was supported and agreed by the Bills Committee of the Buildings (Amendment) Bill 2007 (“BAB 2007”). The statutory framework has been stipulated in the new section 39C of the Buildings Ordinance (Cap. 123) (“BO”) (as amended by the BAB 2007). According to the new section 39C, the BA will not take enforcement actions against the validated household minor works unless there is a change in safety conditions.

(i) Concerns over Validation Scheme

During the scrutiny of the BAB 2007, the LSHK and HKBA raised some questions about the Validation Scheme vide their submission to the Bills Committee (LC Papers No. CB(1)708/07-08(03) and CB(1)800/07-08(01)) in January and February 2008 respectively. Their major questions on the Scheme are:-

Questions of HKBA

- (a) the building works to be covered under the Scheme were not particularized in the Bill;
- (b) to what extent the enactment of the Scheme would affect the Court’s evaluation of enforcement risk to found a blot on title in litigation resolving a dispute between the vender and the purchaser of a property was a matter of concern; and
- (c) the Administration should advise on the implications of such a scheme on likelihood of enforcement action to be taken against building or building works that fall outside the Validation Scheme;

Questions of LSHK

- (a) the building works to be covered under the proposed scheme were not particularized in the Bill;
- (b) whether the “non-enforcement” under the Validation Scheme was available when the only ground for enforcement is a breach of section 14(1) of the BO; and
- (c) whether the authorized person (“AP”) or the BA would be required to issue a certificate that the UBWs comply with section 39C, or have been made to comply to the satisfaction of the authorized person and BA, without which might cause title problems when the particular interest in the land comes to be

sold.

The Administration gave response to the Bills Committee vide LC Paper CB(1)785/07-08(02) in February 2008. We subsequently met with the two associations in early March 2008 to explain our policy. The response is summarized as below:

- Requirements of the Validation Scheme and the specifications of the minor works covered by the Scheme would be stipulated in regulations to be made under the BO (i.e. section 62 and Schedule 3 of the B(MW)R currently being scrutinized by the Subcommittee). Details as well as technical requirements of the Scheme would also be covered in the technical guidelines to be produced for registered minor works contractors (“RMWCs”) as well as the public education and publicity materials for building owners;
- Under new section 39C of the BO, after going through the procedures required in the section and the regulations (section 62 of B(MW)R) to be made, the BA would not issue orders under section 24 or notices under section 24C of the BO merely on the ground that the subject UBWs were originally erected without approval and consent from the BA, i.e. it has contravened section 14(1) of the Ordinance. The building professional or contractor appointed to inspect and carry out rectification works as necessary to the subject UBWs should certify that the subject UBWs are safe and are in compliance with the provisions of the BO, except section 14(1);
- Similar to the arrangement for completed minor works, certificates would have to be submitted to the BA. The records of such certifications and all relevant documents would be kept by the BA and made available in the Building Information Centre of the Buildings Department (“BD”) for inspection by the public. Such documents will also be made available for checking on the Internet. It was envisaged that the time taken to complete the inspection/ reinforcement works of the UBWs and to submit the required documents to the BA would be very short. The

Validation Scheme shall not create any problems relating to land titles and conveyancing;

- The BA will reserve his power to take action against such validated UBWs in case there is a change in the condition of the UBWs in future. The objective is to ensure that such UBWs are safe and will not present a danger to the public; and
- Concerning the enforcement policy against other UBWs that fall outside the Validation Scheme, the existing policy will remain unchanged and enforcement action will not be affected by the Scheme.

The LSHK and HKBA noted the Administration's response and did not raise further comments.

(ii) Insurance on Validated Household Minor Works

The minor works control system is a new scheme and we will launch an extensive publicity campaign to introduce the same to various stakeholders, including the insurance industry. It is not a statutory requirement under the BO to require building owners to acquire insurance for building works. However, we appreciate that it is in the interest of the building owners to purchase insurance to cover building works, and the BD has been lining up the insurance and building industries to exchange views and facilitate the collaboration between the two parties on the development of insurance products for minor works. For example, the BD conducted a seminar in August 2008 for the core members of the insurance industry and introduced them the details of the minor works control system, with a view to fostering new products to dovetail with the implementation of the new control system including the Validation Scheme. We will continue our liaison with the two parties. We will also remind building owners of the benefits for acquisition of insurance for their building works in our publicity campaign.

(iii) Scope of Validation Scheme

As mentioned above, the Validation Scheme will only cover three types of household minor works with specific dimensions that were constructed without prior approval and consent from the BA. They are

commonly found in households and are of practical use to the owners concerned. This Scheme represents a breakthrough in the building control system. It was in view of the concerns of the then Bills Committee that we included in the BAB 2007 statutory provisions stipulating that the BA would not take enforcement action against certain UBWs that did not follow the statutory procedures when they were constructed. We have concerns in extending the scope of Scheme to cover other larger-scale or non-amenity UBWs in buildings in Hong Kong.

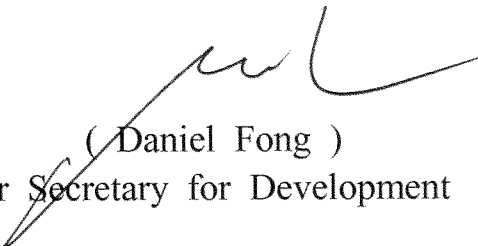
The three types of small-scale amenity works covered under the Scheme are relatively minor in nature and structurally less complicated. The BD will formulate detailed guidelines and checklists for the minor works practitioners in inspecting and certifying the safety of these structures. Other more complex building works (such as internal staircases connecting two floors) should have had their plans designed by registered building professionals and their construction works conducted and supervised by registered professionals and contractors. Such works are of a larger scale and the safety risk they pose is relatively higher. Those unauthorized works have no guarantee in the quality of design and construction. In the absence of details on the planning, supervision and construction of such UBWs and in view of their complexity, we find it not feasible to allow validation of such UBWs through the minor works control system, which is a self-certifying regime. We also find it impractical to devise an objective and systematic set of procedures and criteria for the industry to follow in checking and inspection such larger-scale UBWs and to certify them as safe. Simple alteration and reinforcement works may not work for such UBWs to render them safe, unlike the three types of amenity minor works covered in the Validation Scheme. Inclusion of more UBWs in the simple Validation Scheme may also cause confusion to the public.

The Validation Scheme and the items of minor works we propose for inclusion were worked out in consultation with a working group comprising major stakeholders in the building industry over the past few years. The current Scheme represents a balance between building safety and convenience to the public and has been discussed extensively in the scrutiny of the BAB 2007. The current Regulation basically seeks to

give statutory effect to what has been agreed in those thorough considerations.

Please contact the undersigned should you require any further clarifications.

Yours sincerely,



(Daniel Fong)
for Secretary for Development

cc

Director of Buildings (Attention: Mr S T Lam)

Department of Justice (Attention: Miss Selina Lau)