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Panel on Development

Meeting on 24 February 2009

Background brief on the Minor Works Control System

Purpose

This paper provides background information on the proposed minor works control system and a summary of Members' relevant concerns and views expressed during the relevant discussions of the former Panel on Planning, Lands and Works (now renamed as Panel on Development) (the Panel) and the Bills Committee on Buildings (Amendment) Bill 2007.

Background

2. The existing building control system as specified under the Buildings Ordinance (Cap. 123) (BO) applies to all private building works. Even building works which are minor in nature have to comply fully with the statutory requirements, including the prior approval of plans and consent for commencement by the Building Authority (BA), appointment of authorized persons, registered structural engineers (RSEs) and/or registered geotechnical engineers to design, co-ordinate and supervise the works, as well as appointment of registered general building contractors or registered specialist contractors to carry out the works. The costs and time involved in complying with these requirements are disproportionate to the scale of minor works. As a result, the BO has not been complied with in relation to many of these minor works, rendering a large number of such works unauthorized.

The Buildings (Amendment) Bill 2003

3. On 30 April 2003, the Administration introduced the Buildings (Amendment) Bill 2003 (the 2003 Bill), which proposed, inter alia, to introduce a new category of "minor works" and a new category of registered minor works contractors (RMWCs) under the building control regime. Under the proposal,

RMWCs might carry out the minor works on their own or under the supervision of an AP and/or a RSE, without the submission of building plans for approval by BA.

4. The Bills Committee set up to study the 2003 Bill concurred that given the unduly stringent requirements for relatively simple and small-scale works under the then BO, the introduction of a new control regime for minor works was necessary. The Bills Committee was however concerned about the effectiveness of proposed minor works control regime to enhance public safety and the migration of existing practitioners to the new registration system. The main thorny issue lied with Class III minor works, in particular household minor works. The Bills Committee noted the presence of numerous household minor works which had not gone through the statutory approval procedures and the lack of arrangements under the proposed control regime to deal with these "unauthorized" household minor works. The Bills Committee also noted the grave concern of the building industry on the impact of the proposed control regime on the job opportunities and livelihood of existing minor works practitioners, a great majority of whom were self-employed workers or sole proprietors. The Bills Committee considered that until and unless all the concerns raised by members of the Bills Committee and the industry had been satisfactorily addressed, it would be prudent not to go ahead with the proposed minor works control regime hastily. The Administration, having considered the Bills Committee's views, introduced Committee Stage amendments to the 2003 Bill to excise all the provisions relating to minor works and undertook to further consult the industry in this regard before reverting to the Council.

5. According to a paper provided by the Administration in March 2007, the Administration had since consulted the industry again extensively and reviewed the proposed control system. A Working Group had subsequently been established by the Buildings Department (BD) to refine the minor works proposal with the stakeholders. The Working Group comprised representatives from the relevant professional institutes, practitioners as well as the Minor Works Concern Group representing the frontline minor works practitioners. Besides, in order to explain the concepts and details of the minor works control system to frontline practitioners directly, the BD conducted in late 2006 four briefing sessions. Over 700 participants, including representatives of property management companies, contractors of minor works, trade associations and workers, attended the briefing sessions. The various sectors were generally supportive of the proposal. To ensure that our proposal was practicable and meets the needs of the industry and building owners, the Administration had endeavoured to take into account the views of the various stakeholders in mapping out the details of the revised proposal.

6. The Administration briefed the Panel on 27 March 2007 on its revised proposal for the minor works control system. Panel members were in general supportive of introducing the minor works control system. Some Panel members expressed the following views --

- (a) the requirement of Class III minor works to be carried out by registered contractors might be too harsh and it would increase the financial burden of the public;
- (b) while the minor works control system could simplify the current procedures, expedite the work flow and reduce manpower requirements of the relevant departments, vigilant surveillance of the quality and safety of minor works was important and should be maintained;
- (c) in introducing the minor works control system, the Administration should address the situation where some minor works authorized under the minor works control system might contravene the provisions of the deeds of mutual covenant or management agreements;
- (d) there should be a convenient channel for the public to check whether a contractor was qualified and registered for the relevant minor works; and
- (e) there should be detailed guidelines for minor works practitioners to facilitate their compliance with the statutory requirements.

Buildings (Amendment) Bill 2007

7. The Buildings (Amendment) Bill 2007 (the 2007 Bill) was introduced into the Legislative Council on 5 December 2007. The Bill aimed at introducing a minor works control system providing a simplified control mechanism with associated penalties for offences relating to minor works, as well as providing a validation scheme for three specific types of unauthorized building works (UBWs) which have been completed before the commencement of the minor works control system. The detailed modus operandi of the minor works control system will be set out in the regulations to be made by the Secretary for Development (SDEV) under the BO. A Bills Committee was formed to examine the Bill which was subsequently passed by the Legislative Council on 18 June 2008.

8. The Bills Committee on Buildings (Amendment) Bill 2007 supported the policy intent of the Bill to introduce a minor works control system, as the system 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 as well as enable more efficient use of Government resources. In the course of deliberation, members raised concerns about the classification of minor works, whether the schedule of minor works should be subsidiary legislation, the notification procedures on completion of minor works, the change of class of minor works in the course of works implementation, the registration system for minor works practitioners and top-up courses for these practitioners, interface with the Construction Workers Registration Ordinance (Cap. 583), the validation scheme, penalties for offences relating to minor works, as well as the publicity of the new system. The major concerns and issues raised during the Bills Committee's deliberation and the Administration's responses are tabulated in **Appendix I**.

9. Under the new minor works control system, there is a new category of building works, namely "minor works" which are to be categorized into three classes. The specifications for the list of 114 items of minor works will be promulgated in subsequent regulations. Under the new system, there is no need to obtain prior approval of plans from the BA to undertake minor works and control of various degrees is exercised on minor works of every class. Owners can appoint technical personnel of different qualifications in accordance with the complexity of the works.

10. A register of minor works contractors will be established under the new system. Contractor companies and individual practitioners can register as minor works contractors of the relevant classes and types by virtue of their work experience, qualifications and competence. Short-term top-up training courses relating to statutory requirements and technical skills will be provided. BD will provide other kinds of support to practitioners, including advisory services and the issue of detailed technical guidelines to help them in the registration and carry out minor works in compliance with new statutory requirements.

11. The Buildings (Amendment) Ordinance 2008 provides for validation of unauthorized building works or building structures through a procedure to be further prescribed by regulations. The Administration plans to rationalize three types of household minor works under the validation scheme, namely supporting frames for air conditioners, drying racks and small canopies. Subject to the inspection and certification by a building professional or registered contractor and validation by the BA to confirm their safety, no enforcement action will be taken by BD against these types of unauthorized minor works. There will be no time limit for building owners to carry out the validation process. Owners can, in accordance with their needs, take the opportunity of large-scale maintenance works of their buildings, such as works under the proposed Mandatory Building Inspection Scheme or the BD's large-scale enforcement operations, to validate and retain the three types of unauthorized works.

12. Certain provisions of the Buildings (Amendment) Ordinance 2008 came into operation on 15 December 2008. These provisions relate to definitions of new terms added to section 2(1) of BO as a result of the amendments introduced by the Ordinance, the power of SDEV to make regulations providing for matters relating to minor works as well as some miscellaneous amendments to BO. The other provisions, which relate to the minor works control system, the validation scheme and penalties for offences relating to minor works, have not come into operation pending the making of regulations by the Secretary providing for the operational details of the minor works control system.

Latest development

13. The Administration will brief the Panel on Development on the proposals covered by the Building (Minor Works) Regulation at the Panel meeting on 24 February 2009.

Relevant papers

14. A list of relevant papers is at **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
20 February 2009

**Major concerns and issues raised during the deliberations of the Bills
Committee on Buildings (Amendment) Bill 2007
and the Administration's response**

Concern/issue raised by members	Administration's response
<i>A. Classification and specification of minor works</i>	
Works which require the issuance of occupation permits (OPs) should not be classified as minor works.	Following further consultation with relevant professional bodies, the Administration agreed that minor works should not comprise works which require the issuance of OPs, and moved relevant Committee Stage amendments (CSAs).
Consideration should be given to allowing flexibility for future amendments to the schedule of minor works through practice notes or codes of practice so as to cope with the technological advancement and development of the construction industry in the light of implementation experience.	After consultation with the Department of Justice, the Administration advised that as the classes, types and items of the minor works would need to be clearly defined and referenced to in certain provisions of the future Building (Minor Works and Related Matters) Regulation (the Regulation), the schedule of minor works would be included as part of the subsidiary legislation.
Specifications for the proposed minor works, such as size, height and material used, are too technical for comprehension of general members of the public.	The Administration advised that it would be necessary to provide in the legislation precise definitions of each item of the minor works in respect of dimensions, weights, locations and other relevant measurements to help ensure compliance with other relevant requirements, such as plot ratio, positional requirements, fire safety and hygiene. The Administration would publish user-friendly pamphlets with easy-to-follow procedural guides for the average households and building owners prior to the implementation of the minor works system.

Concern/issue raised by members	Administration's response
<p>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" are too technical for the general public to understand.</p>	<p>The general criteria for exemption of buildings works are already provided for under the existing Buildings Ordinance. A list of "designated exempted works", which are small-scale, simple and of low risk (e.g. water tanks and small-sized signboard works), will be drawn up in future based on these criteria. Detailed descriptions will also be set out for each of the items in the list. The list will be updated from time to time.</p>
<p><i>B. Notification procedures upon completion of minor works</i></p>	
<p>Members noted the suggestion of the Law Society of Hong Kong and the Hong Kong Bar Association that to avoid title problems, a simple form should be devised for RMWCs to notify BA upon completion of minor works, and such document should be registered with the Land Registry.</p>	<p>The Administration agreed that completion certificates would be in specified form, the design of which will be as simple as possible to facilitate RMWCs in completing the forms. The information provided by the RMWCs in the certificates would be scanned and made available for public inspection in BD's Building Information Centre. To this end, the Administration moved CSAs to empower the Building Authority to make available building plans/documents in an electronic form via the Internet for public inspection.</p>
<p><i>C. Registration system for minor works contractors</i></p>	
<p>The Administration should devise measures to help eligible practitioners to understand the registration system and apply for registration according to their need and preference.</p>	<p>The registration requirements for RMWCs will be specified in the Regulation, whilst detailed qualifications will be promulgated in practice notes to be issued by Buildings Department. Minor works practitioners should choose to register as "firms" or "individuals" in accordance with their own modes of operation. The Administration will step up publicity effort to clearly explain the registration system to the industry, in particular the frontline practitioners for Class III minor works.</p>

Concern/issue raised by members	Administration's response
<p>Individual practitioners applying for registration might have difficulties in providing documentary proof of their experience, as in the case of registration of Chinese medicine practitioners and construction workers.</p>	<p>Individual workers can apply for registration as Class III RMWCs by proof of their relevant experience, which will vary from three to six years depending on the type and item of minor works. Flexibility will be exercised in verifying the applicants' experience. For instance, the applicant can certify certain part of their experience by way of statutory declaration. Alternatively, individual workers with the relevant formal qualifications will be eligible for registration as Class III RMWCs. They can attend the relevant trade tests to obtain the formal qualification.</p>
<p>The requirement for RMWCs to possess multi-task registration in order to undertake simple minor works (e.g. the installation of air-conditioners) will exert unnecessary burden on the self-employed practitioners and property owners.</p>	<p>The registration system for minor works contractors will mirror the existing operation of the industry, i.e. practitioners possessing unique or multi-qualifications can apply for registration as RMWCs qualified for a single item or multiple items of minor works respectively. For registration, in addition to the submission of proof of experience or formal qualification, practitioners operating as individuals will only be required to attend a one-day top-up course before registration. Their eligibility for undertaking respective type/item(s) of minor works will be clearly specified in their registration certificates.</p> <p>To reduce inconvenience to multi-task RMWCs, consideration will be given to issuing smart cards to facilitate identification of their eligibility to carry out minor works. In this connection, the Administration agreed to consider in consultation with the trade the Bills Committee's suggestion that the requirement for RMWCs to show their registration numbers and relevant</p>

Concern/issue raised by members	Administration's response
	<p>details should be clearly reflected in the publicity materials. The Administration will map out detailed requirements in the regulations to be made in consultation with the industry.</p>
<p>Members expressed concern about the fees for these top-up courses, the institutions providing such courses and the estimated number of course participants.</p>	<p>Top-up courses will be provided by the Construction Industry Training Authority and training institutes, and the courses will commence shortly after enactment of the Bill to facilitate practitioners to apply for registration under the minor works control system. The estimated number of participants (who are mainly class III contractors) is about 10 000. The course fees will not be expensive, for example it will only be about \$100 for one day course.</p>
<p><i>D. Interface with the Construction Workers Registration Ordinance (Cap. 583) (CWRO)</i></p>	
<p>Members questioned the rationale for creating another registration system under the proposed minor works control system, and examined the feasibility of streamlining the proposed minor works registration system with the construction workers registration system under CWRO</p>	<p>The registration system for RMWCs was originally intended for the registration of contractors, operating as firms. Noting that the industry is characterized by the presence of many individual practitioners who are competent in carrying out Class III minor works, the Bill provides for their registration as Class III RMWCs.</p> <p>The Administration will consider acceding to the practitioners' request that a separate category of trades be established under the CWRO for minor works. The Administration will put in place a simplified procedure to facilitate certain skilled workers of relevant designated trades registered under CWRO as well as holders of other relevant trade test certificates or apprentice certificates to obtain registration as RMWCs under the Ordinance for carrying out Class III minor works items.</p>

Concern/issue raised by members	Administration's response
<i>E. Validation scheme for three types of unauthorized buildings works</i>	
<p>Members expressed concern about the legal implications of the proposed minor works control system on existing unauthorized building works (UBWs) which are minor in nature.</p>	<p>It is not possible to legalize previous building works which were constructed without proper approval, as this will undermine the established practice and pose a negative impact on public safety. As such, existing unauthorized supporting frames for air-conditioners, drying racks and small canopies will still be regarded as UBWs even if they have been validated under the proposed validation scheme.</p> <p>The Administration has sought the views of the Law Society of Hong Kong and the Hong Kong Bar Association, which have not raised any objection to the proposed scheme.</p>
<i>F. Penalties for offences relating to minor works</i>	
<p>The proposed criminal liabilities of parties involved in the carrying out of minor works should be more clearly defined. In particular, it is not uncommon for building owners/tenants to order for the carrying out of such minor works through an agent (such as a property management company commissioned by the co-owners of a building to carry out repair works for the common parts or an air-conditioning retailer providing installation service of the air-conditioners).</p>	<p>The Administration agreed to amend the relevant provisions to the effect that the person who arranged for the carrying out of minor works will commit an offence if he has knowingly failed to appoint the prescribed building professionals or the prescribed registered contractors. Besides, if a person has appointed another person (for example, when a building owner purchases an air conditioner and the electrical appliance company undertakes to arrange for the installation of the machine at the owner's apartment) to arrange for the carrying out of minor works, such appointed person (i.e. the electrical appliance company) will be regarded as the person who arranged for the carrying out of minor works and the first-mentioned person (i.e. the building owner) will not be held responsible for the carrying out of such works.</p>

Concern/issue raised by members	Administration's response
<p>The Administration should delete the proposed term of imprisonment imposed on the person for whom minor works are to be carried out, in particular building owners, for non-compliance of the proposed control regime under Class III, taking into account the simple nature of minor works and the insignificant offence.</p>	<p>The Administration agreed to delete the term of imprisonment under the relevant provisions.</p>
<p><i>G. Publicity</i></p>	
<p>Publicity materials, in the form of pamphlets or codes of practice, should be provided to the public and practitioners to enhance their understanding of the implementation details of the control system.</p>	<p>Extensive publicity and public education campaigns will be conducted to raise public awareness of the control system after passage of the Bill. User-friendly pamphlets and tailor-made technical guidelines, with illustration of diagrams and charts, will be produced to facilitate the understanding of various trades in the industry (such as catering and advertising), and stakeholders (such as building owners and owners' corporations), on the implementation details of the control system. Adequate enquiry services will be provided by Buildings Department, in collaboration with the Home Affairs Department and the Property Advisory Centres operated by the Hong Kong Housing Society, on matters relating to compliance with the new requirements.</p>
<p><i>H. Insurance to cover legal liabilities of RMWCs</i></p>	
<p>Members expressed concern about the availability of insurance plans to cover the legal liabilities of the RMWCs.</p>	<p>The Administration would continue discussion with practitioners of the construction industry and the insurance industry on ways to facilitate subscription to insurance plans by minor works practitioners at a reasonable premium.</p>

**Minor Works Control System
List of relevant papers**

Date	Meeting/Event	References
2 May 2003	<p>A Bills Committee was formed at the meeting of the House Committee to study the Buildings (Amendment) Bill 2003.</p> <p>The Bills Committee reported to the House Committee on 23 June 2004.</p>	<p>Legislative Council Brief (File Ref.: HPLB(B)30/30/102) http://www.legco.gov.hk/yr02-03/english/bills/brief/b47_brf.pdf</p> <p>The Bill http://www.legco.gov.hk/yr02-03/english/bills/c020-e.pdf</p> <p>Legal Service Division Report (LC Paper No. LS103/02-03) http://www.legco.gov.hk/yr02-03/english/hc/papers/hc0502ls-103.pdf</p> <p>Bills Committee Report (LC Paper No. CB(1)2088/03-04) http://www.legco.gov.hk/yr02-03/english/bc/bc09/reports/bc09cb1-2088-e.pdf</p>
27 March 2007	Panel on Planning, Lands and Works discussed with the Administration the subject of "Buildings (Amendment) Bill 2007 -- Minor Works Control System".	<p>Information paper (LC Paper No. CB(1)1184/06-07(05)) http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0327cb1-1184-5-e.pdf</p> <p>Background brief (LC Paper No. CB(1)1184/06-07(06)) http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0327cb1-1184-6-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1641/06-07) http://www.legco.gov.hk/yr06-07/english/panels/plw/minutes/pl070327.pdf</p>

Date	Meeting/Event	References
		Follow-up paper (CB(1)1891/06-07(01)) http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0327cb1-1891-1-e.pdf
7 December 2007	A Bills Committee was formed at the meeting of the House Committee to study the Buildings (Amendment) Bill 2007. The Bills Committee reported to the House Committee on 6 June 2008.	Legislative Council Brief (File Ref.: DEVB(PL-B) 30/30/120) http://www.legco.gov.hk/yr07-08/english/bills/brief/b14_brf.pdf The Bill http://www.legco.gov.hk/yr07-08/english/bills/b0711231.pdf Legal Service Division Report (LC Paper No. LS17/07-08) http://www.legco.gov.hk/yr07-08/english/hc/papers/hc1207ls-17-e.pdf 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
18 June 2008	Passage of the Buildings (Amendment) Bill 2007 at the Council meeting	Hansard (pages 223 to 239) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0618-confirm-ec.pdf
24 October 2008	House Committee considered the Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2008 (L.N. 225).	Legal Service Division Report (LC Paper No. LS6/08-09) http://www.legco.gov.hk/yr08-09/english/hc/papers/hc1024ls-6-e.pdf Minutes of meeting (LC Paper No. CB(2)197/08-09) http://www.legco.gov.hk/yr08-09/english/hc/minutes/hc20081024.pdf