

**LEGISLATIVE COUNCIL**  
**BILLS COMMITTEE ON BUILDINGS (AMENDMENT) BILL 2010**

**Proposed Major Committee Stage Amendments**

**PURPOSE**

This paper introduces the proposed major committee stage amendments (CSAs) to the Buildings (Amendment) Bill 2010 (the Bill) for the implementation of the new package of measures to enhance building safety and other miscellaneous refinements to the Bill.

**BACKGROUND**

2. The Bills Committee on the Bill has completed the clause-by-clause examination of the Bill which contains provisions for the introduction of the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS). During the process, the Administration concurred with Members' views that some amendments to the Bill should be made so as to better reflect the policy intent. Corresponding CSAs will be moved by the Administration.

3. The Administration plans to implement a new package of measures to enhance building safety in Hong Kong, which includes the MBIS and MWIS. Building safety is a highly complex and multi-faceted issue. If not addressed properly, the problem of building neglect would only get more serious as Hong Kong's building stock continues to grow old. The Chief Executive announced in his Policy Address on 13 October 2010 that the Government had decided to adopt a new multi-pronged approach to enhance building safety in Hong Kong. The approach covers four major areas –

- (a) legislation;
- (b) enforcement;
- (c) support and assistance to owners; and
- (d) publicity and public education.

4. Full details of the package of new measures are set out in Development Bureau's Legislative Council Brief entitled "Measures to Enhance Building Safety in Hong Kong" issued on 13 October 2010.

5. As regards legislation, our aim is to provide and maintain a modernised, efficient and user-friendly statutory building control regime to meet the development needs of Hong Kong and, at the same time, provide adequate enforcement powers to deter non-compliance. With a view to promptly implementing the relevant initiatives, we recommend introducing CSAs to the Bill for the implementation of certain legislative proposals in the package of measures.

## **LEGISLATIVE PROPOSALS**

6. The Subcommittee on Building Safety and Related Issues under the Development Panel was consulted on 13 January 2011 on the proposal to include the new building safety initiatives in the Bill. Members were in support of the Administration submitting the details of the proposal to this Bills Committee for scrutiny. A list of the draft CSAs is at **Annex A** and a marked-up copy of the relevant provisions of the BO showing the CSAs is at **Annex B**.

### (i) Surcharge for Defaulted Works

*[Clauses 19 and 20(3) to amend the section 33 and proposed new sections 30B and 30C of the BO]*

7. We proposed in the Bill that the Building Authority (BA) may, for the MBIS and MBIS, impose a surcharge of 20% on the cost incurred by the BA to be recovered from an owner who has failed to comply with a notice served under the proposed section 30B(3), (4), (5) or (6) or 30C(3) or (4) (proposed sections 30B(11) and 30C(9) in clause 19 of the Bill). The Bills Committee is supportive of this proposal.

8. We propose extending this arrangement to cover all statutory orders (including all non-MBIS/MWIS orders) issued under the Buildings Ordinance (Cap. 123) (BO) so as to create a stronger deterrent effect against non-compliance. With a stronger deterrent effect, owners will be more willing to properly maintain and repair their buildings and comply with the statutory orders in a timely manner. The proposal will facilitate the implementation of the MBIS/MWIS as buildings will generally be kept in a better condition and the inspection/repair works needed when they are required to join the MBIS/MWIS will be minimized.

(ii) Penalty for Refusing to Share Cost of Works

*[Clause 25 to amend section 39B and new clause 27(16) to amend section 40 of the BO]*

9. Similarly, given the community's support for the imposition of appropriate penalties on non-compliant cases (targeting uncooperative owners), we proposed in the Bill that it will be an offence if an owner/occupier, without reasonable excuse, refuses to pay the relevant share of the inspection and repair costs for the common parts for works being undertaken by his/her building's owners' corporation (OC) in compliance with an MBIS/MWIS notice issued by the BA (clause 25(4) of the Bill). This arrangement will deter uncooperative owners from hindering the inspection and repair works. We propose to extend this arrangement to all works required by statutory orders in respect of common parts of the building that are undertaken by OCs under the BO.

10. It is proposed in the Bill that an owner/occupier who, without reasonable excuse, refuses to pay the relevant share of the inspection and repair costs for the common parts for works being undertaken by his/her building's OC in compliance with a statutory notice issued by the BA under the MBIS/MWIS is liable to imprisonment and fine. In the light of Members' concern expressed at the Bills Committee, we propose removing the imprisonment terms but increasing the proposed fine from level 3 to level 4 (i.e. from \$10,000 to \$25,000) [see the letter from the Development Bureau to the Bills Committee dated 3 December 2010 (ref: CB(1)666/10-11(01))]. This proposed fine would also be applicable to the expanded arrangement mentioned in paragraph 9 above.

(iii) Warrants for Entry of Interiors of Individual Premises

*[New clause 16A to amend section 22 of the BO]*

11. Section 22 of the BO currently empowers officers of BD to enter into any individual premises and, in the presence of a police officer, break into such premises to ascertain their safety. Nevertheless, in practice, it is difficult for the BD to exercise this power. The work of BD is often frustrated by uncooperative owners or occupants who refuse to grant entry to BD's staff, despite the department's effort of paying visits to the flats during different times of the day and week which incur significant staffing resources. However, being fully mindful of the public's private property rights, the BD will only resort to its power of forced entry in extreme cases where there is a clear sign of imminent danger. Operational experience of other departments reveals that with the issue of a warrant from the Court, owners will more readily cooperate and grant entry for inspection and/or necessary repair works. We propose to introduce legislative amendments to provide for application to the Court for

warrants under the BO to facilitate BD's enforcement actions. This will be particularly useful for inspections relating to subdivided units or flats suspected to have illegal internal alterations. Reference has been made to the similar arrangements in the Public Health and Municipal Services Ordinance (Cap. 132), Waterworks Ordinance (Cap. 102), Shipping and Port Control Ordinance (Cap. 313), Fire Safety (Buildings) Ordinance (Cap. 572), etc. which have similar provisions.

(iv) Control of Signboards

*[Clause 26 to amend section 39C of the BO]*

12. Unauthorized signboards are another persistent building safety problem in Hong Kong. It is estimated that there are about 190 000 unauthorised signboards in Hong Kong. Many of them are in active use by business operations while others are simply abandoned. We propose to bring in a statutory control scheme, similar to the one for specified minor building works (small canopies, drying racks and supporting frames for air-conditioners) under the Building (Minor Works) Regulation (Cap. 123 sub. leg. N) (B(MW)R), under which the continued use of certain existing unauthorised signboards (e.g. within stipulated dimensional requirements, not blocking operation of emergency vehicles, etc.) will be allowed after safety checks by registered building professionals or registered contractors. The safety checking has to be renewed once every five years. Unauthorized signboards not joining the scheme will be subject to BD's enforcement actions. Regarding new signboards, small ones will be taken care of by the minor works control system, while larger ones will continue to require the prior approval and consent of BD before installation. With the new schemes, BD will in time establish a comprehensive database of all signboards in Hong Kong and have a firmer grasp of their safety conditions to facilitate control and enforcement action.

(v) Registered Inspectors to Comprehensively Report Exterior Unauthorized Building Works

*[Clause 19 to amend the proposed new section 30D(5)(b) of the BO]*

13. Under the proposed sections 30D(5)(b) in clause 19 of the Bill, the RI appointed to carry out a prescribed inspection must notify the BA of any building works that have been or are being carried out in contravention of any provision in the BO in the common parts, or to an external wall that is not in the common parts, of the building, that are identified during the course of the prescribed inspection. To dovetail with the Administration's plan to enhance enforcement actions against unauthorized building works (UBWs), we propose

that the RI should also notify the BA of any UBWs on roofs, podiums, yards and lanes that are not in the common parts of the buildings. This would facilitate the BA's implementation of the new approach to take prompt actions against such UBWs with a view to creating a stronger deterrent effect against UBWs on the exterior of buildings.

(vi) Other Miscellaneous Amendments

14. We propose to introduce consequential amendments to the Fire Safety (Commercial Premises) Ordinance (Cap. 502) and Fire Safety (Buildings) Ordinance (Cap. 572) to the effect that a particular person (i.e. a public officer who obtained information while exercising or performing a function conferred or imposed on the person by these Ordinances) shall have lawful authority to disclose information (in relation to building works for enhancing fire safety) for the purposes of the BO (i.e. mainly MBIS/MWIS), with a view to facilitating the RIs appointed for building inspection and repair and QPs appointed for window inspection and repair to check and certify that any of the fire safety provisions of the buildings provided or changed in pursuant to Cap. 502 and Cap. 572 are up to standard.

15. We also suggest introducing the following amendments which have been discussed and agreed by the Bills Committee –

- (a) to ensure consistency, we propose amending the Chinese text of section 3(9) of the BO by substituting “認可人士名冊任何名單” with “認可人士名冊中任何名單”;
- (b) to ensure consistency of the BO and B(MW)R, we propose amending the Chinese text of sections 8A(1)(c), 8A(4)(c), 38(1)(ka)(ii), (iii) and (iv), 38(1)(kd)(ii) and 40(2E) and clause 4(6)(e) of the Bill by substituting “類別” with “類型”;
- (c) the Assistant Legal Advisor (ALA) of the Legislative Council raised in her letter of 25 February 2010 concerns over the calculation of time limit for appeal in clauses 10(16), 11(1), 13(6) and 14(1) of the Bill. As stated in our reply of 18 March 2010 (ref: CB. CB(1)1417/09-10(01)), for the avoidance of doubt, we propose repealing the abovementioned clauses;
- (d) Under section 13(7) of the BO, certain person aggrieved by an order made by the Registered Contractor Disciplinary Board may appeal to the Court of First Instance. To make clear our policy intention that a registered minor works contractor may appeal against an order under

this provision, we propose adding registered minor works contractor to this provision;

- (e) at the meeting of the Bills Committee on 13 July 2010, Members enquired about the definition of “projection” in the proposed section 30A in clause 19 of the Bill. As the defined term of “projection” mainly concerns with the meaning of that term used in the proposed section 30B(5) in clause 19 of the Bill, we propose repealing the definition of “projection” in the proposed section 30A(1) and amending the proposed section 30B(5) by substituting “(other than a signboard)” with “as prescribed in the regulations” [see the letter from the Development Bureau to the Bills Committee dated 19 October 2010 (ref: CB(1)126/10-11(01))];
- (f) to better reflect our policy intent, we propose amending the Chinese text of the proposed section 30B(5) in clause 19 of the Bill by substituting “建築物內的處所” with “建築物的處所” and the proposed section 30B(6) by substituting “建築物內某處所” with “建築物的某處所”;
- (g) at the meeting of the Bills Committee on 23 December 2010, Members considered that flexibility should be allowed to building owners to appoint different QPs for prescribed inspection and prescribed repair in respect of windows. We agree with Members' views and propose amending the proposed section 30E(1) in clause 19 of the Bill along the line of the proposed section 30D(1) and (2) in clause 19 of the Bill. Consequential amendments are also proposed for subsections 30E(2) to (8);
- (h) the ALA of LegCo enquired in her letter of 25 February 2010 about the necessity of the proposed section 38(1)(kg)(ii) in clause 23(3) of the Bill. As stated in our reply of 18 March 2010 (ref: CB(1)1417/09-10(01)), we propose repealing the abovementioned clause;
- (i) to ensure consistency, we propose amending the Chinese text of section 3 of the new Schedule 7 in clause 36 of the Bill by substituting “裁判官可在有申請以本附表第 4 條所述的方式提出時” with “裁判官可應以本附表第 4 條所述的方式而提出的申請”; and

- (j) miscellaneous amendments to remove the reference to the Buildings (Amendment) Ordinance 2008, which came into full operation on 31 December 2010, are also included in the CSAs.

**ADVICE SOUGHT**

16. Members are invited to comment on our proposed CSAs outlined above.

**Development Bureau  
February 2011**

BUILDINGS (AMENDMENT) BILL 2010

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Development

<u>Clause</u>	<u>Amendment Proposed</u>
4(6)	In the Chinese text, in the proposed definition of “合資格人士”, in paragraph (e), by deleting “類別” and substituting “類型”.
6(18)	In the Chinese text, by deleting ““或岩土工程師名冊的申請”而代以“” and substituting ““任何名單、結構工程師名冊或岩土工程師名冊的申請”而代以“中任何名單、結構工程師名冊”.
10(3)	By deleting “(as amended by section 9 of the Buildings (Amendment) Ordinance 2008 (20 of 2008) (referred to as the “amending Ordinance” in the following provisions))”.
10(4), (5), (6), (8), (9), (10), (11), (12) and (13)	By deleting “(as amended by section 9 of the amending Ordinance)”.
10	By deleting subclause (16).

- New By adding –
- “10A. Registers of contractors, etc.**
- (1) Section 8A(1)(c) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.
- (2) Section 8A(4)(c) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.”.
- 11 By deleting subclause (1).
- 13(1), (2), (3), (4) and (5) By deleting “(as amended by section 15 of the amending Ordinance)”.
- 13(6) By deleting ““within 28 days of the order of the disciplinary board” after “Instance”” and substituting ““registered minor works contractor,” before “director,””.
- 14 By deleting subclause (1).
- New By adding –
- “16A. Powers of Building Authority**
- (1) Section 22(1) is amended by repealing “The Building Authority or any public officer authorized in writing by him in that behalf” and substituting “Subject to subsection

(1A), the Building Authority or any authorized officer”.

(2) Section 22 is amended by adding –

“(1A) Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into any premises, or enter upon any land under subsection (1) unless a warrant is obtained under subsection (1B).

(1B) A magistrate may issue a warrant authorizing the Building Authority or any authorized officer to enter and, if necessary, break into any premises or enter upon any land if the magistrate is satisfied by information on oath that there is reasonable ground for entry into the premises or land for any of the purposes mentioned in subsection (1) and –

- (a) that admission to the premises or land has been refused or that refusal is apprehended;
- (b) that the premises are, or land is, unoccupied;
- (c) that the occupier is

temporarily absent; or

- (d) that prior notice of entry would defeat the purpose of the entry.

(1C) A warrant issued under subsection (1B) must specify –

- (a) the premises or land to be entered;
- (b) the purpose of the entry;
- (c) the name and capacity of the person entering the premises or land; and
- (d) the date of the issue of the warrant.

(1D) When entering any premises or land under this section, the Building Authority or any authorized officer may take with him or her any person that may be necessary for the purpose of the entry.

(1E) On leaving any unoccupied premises or land entered in accordance with this section, the Building Authority or any authorized officer must leave the premises or

land as effectually secured against trespassers as he or she found the same to be at the time of entry.

(1F) A warrant issued under subsection (1B) continues in force until the purpose for which entry is necessary has been fulfilled.”.

(3) Section 22(2)(b) is amended by repealing “a public officer authorized under this section may take such steps as he may deem” and substituting “an authorized officer may take any steps that he or she considers”.

(4) Section 22 is amended by adding –

“(5) In this section, “authorized officer” ( ) means any public officer authorized in writing by the Building Authority for any of the purposes mentioned in subsection (1).”.

19 In the proposed section 30A, in the heading, by deleting  
 “**Interpretation and application**” and substituting “**Application**”.

19 By deleting the proposed section 30A(1).

- 19 In the proposed section 30B(5), by deleting “(other than a signboard)” and substituting “as prescribed in the regulations”.
- 19 In the proposed section 30B(5), in the Chinese text, by deleting “建築物內” and substituting “建築物”.
- 19 In the proposed section 30B(6), in the Chinese text, by deleting “建築物內” and substituting “建築物的”.
- 19 In the proposed section 30B(11), by deleting “, together with a surcharge of 20% on the cost that the Building Authority may impose,”.
- 19 In the proposed section 30C(8)(b), by deleting “30E(1)” and substituting “30E(1)(a)”.
- 19 In the proposed section 30C(9), by deleting “, together with a surcharge of 20% on the cost that the Building Authority may impose,”.
- 19 In the proposed section 30D(5)(b), by adding “, roof, podium, yard or lane” after “external wall”.

19 In the proposed section 30E(1), by deleting everything after “must appoint” and substituting –

“–

- (a) a qualified person to carry out the prescribed inspection; and
- (b) a qualified person to supervise the prescribed repair.”.

19 In the proposed section 30E, by adding –

“(1A) The qualified person appointed under subsection (1)(b) may be the same qualified person appointed under subsection (1)(a).”.

19 In the proposed section 30E(2), by deleting everything after “subsection” and substituting –

“(1)(a) is a natural person, the qualified person must –

- (a) carry out the prescribed inspection personally; and
- (b) comply generally with this Ordinance.”.

19 In the proposed section 30E(3), by deleting everything after “subsection” and substituting –

“(1)(a) is not a natural person, a representative of the qualified person as prescribed in the regulations must –

- (a) carry out the prescribed inspection personally; and
- (b) comply generally with this Ordinance.”.

19 In the proposed section 30E(4), by deleting “(1)” and substituting “(1)(b)”.

19 In the proposed section 30E(5), by deleting “(1)” and substituting “(1)(a) or (b)”.

19 In the proposed section 30E(6), by deleting “(1)” and substituting “(1)(a) or (b)”.

19 In the proposed section 30E(6), by deleting “repair.” and substituting “repair (as the case requires).”.

19 In the proposed section 30E(7), by deleting “(1)” and substituting “(1)(a) or (b)”.

19 In the proposed section 30E(8), by deleting “(1)” and substituting “(1)(a) or (b)”.

20(3) By deleting ““or to recover any surcharge” after “made by him”” and substituting ““impose a surcharge of 20% on the cost due and may” before “certify under””.

23 By adding –

“(2A) Section 38(1)(ka)(ii) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

(2B) Section 38(1)(ka)(iii) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

(2C) Section 38(1)(ka)(iv) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

(2D) Section 38(1)(kd)(ii) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

(2E) Section 38(1)(ke) is amended by adding –

“(ia) the prescription of a period for the purposes of section 39C(1)(b);”.

23(3) By deleting the proposed section 38(1)(kg)(ii).

23(3) In the proposed section 38(1)(kg)(v), by deleting “and”.

- 24(1) By deleting “(as amended by section 26 of the amending Ordinance)”.
- 25 By deleting subclause (1) and substituting –
- “(1) Section 39B(1) is amended by repealing everything before paragraph (a) and substituting –
- “(1) A person who has been notified by an owners’ corporation of a building that an order or notice has been served on the owners’ corporation under any provision of this Ordinance in relation to any common parts of the building must not –”.
- 25 By deleting subclause (2) and substituting –
- “(2) Section 39B(1)(a) is amended by repealing “works or other action that is required for the purpose of complying with the order” and substituting “inspection, investigation, works or other action that is required for the purpose of complying with the order or notice”.
- 25 By deleting subclause (3) and substituting –
- “(3) Section 39B(1)(b) is amended by repealing “works or other action that is required for the purpose of

complying with the order” and substituting “inspection, investigation, works or other action that is required for the purpose of complying with the order or notice”.”.

25 By deleting subclause (4) and substituting –

“(4) Section 39B is amended by adding –

“(1A) A person who has been notified by an owners’ corporation of a building that an order or notice has been served on the owners’ corporation under any provision of this Ordinance in relation to any common parts of the building must not refuse to contribute to the cost of the inspection, investigation, works or other action that is required for the purpose of complying with the order or notice.”.”.

26 (a) By renumbering the clause as clause 26(2).

(b) In subclause (2), by deleting “(as amended by section 27 of the amending Ordinance)”.

(c) By adding –

“(1) Section 39C(1) is repealed and the following substituted –

“(1) Despite sections 24 and 24C, the

Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that they have been completed or carried out in contravention of section 14(1) if –

- (a) the prescribed building or building works were completed or carried out before 31 December 2010, and the requirements in subsections (2), (3) and (4) were complied with in respect of the prescribed building or building works; or
- (b) the prescribed building or building works –
  - (i) were completed or carried out before the date of commencement;
  - (ii) is a building or are

works in respect of which a period of time is prescribed (“prescribed period”) in the regulations for periodic compliance of the requirements in subsections (2), (3) and (4); and

(iii) is a building or are works with respect to which those requirements have been complied with before the commencement of a prescribed period.”.”.

26

By adding –

“(3) Section 39C(6)(a) is amended by repealing “27 of the Buildings (Amendment) Ordinance 2008 (20 of 2008)”

and substituting “26(1) of the Buildings (Amendment) Ordinance 2011 ( of 2011)”.”.

27(1), (2),  
(5), (6),  
(7), (9),  
(10), (13),  
(14) and  
(15)

By deleting “(as amended by section 28 of the amending Ordinance)”.

27 By adding –

“(14A) Section 40(2E) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.”.

27 By adding –

“(16) Section 40 is amended by adding –

“(4C) Any person who without reasonable excuse contravenes section 39B(1A) commits an offence and is liable on conviction to a fine at level 4.”.”.

36 In the proposed Schedule 7, in section 3, in the Chinese text, by deleting “在有申請以本附表第4條所述的方式提出時” and substituting “應以本附表第4條所述的方式而提出的申請”.

New By adding –

**“Fire Safety (Commercial Premises) Ordinance**

**45A. Offence to disclose information obtained officially**

Section 21(2) of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) is amended by adding –

“(ba) in relation to exercising a power or performing a function under the Buildings Ordinance (Cap. 123), or for the purpose of enabling or facilitating any thing or work to be done by any person under that Ordinance; or”.’”.

New By adding –

**“Fire Safety (Buildings) Ordinance**

**47. Offence to disclose information obtained officially**

Section 22(2) of the Fire Safety (Buildings) Ordinance (Cap. 572) is amended by adding –

“(ba) in relation to exercising a power or performing a function under the Buildings Ordinance (Cap. 123), or for the purpose of enabling or facilitating any thing or work to be done by any person under that Ordinance;”.’”.

## **Annex B**

# **Marked-up Version Showing Amendments to Buildings Ordinance (Cap. 123) under Buildings (Amendment) Bill 2010 and Administration's Latest Proposed Committee Stage Amendments**

(as at 10 February 2011)

Legend:

[Proposed amendments under Buildings \(Amendment\) Bill 2010](#)

[Proposed new amendments under the Administration's latest proposed Committee Stage Amendments](#)

**Long title**

To provide for the planning, design and construction of buildings and associated works; to make provision for the rendering safe of dangerous buildings and land; **to make provision for regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe;** and to make provision for matters connected therewith.

**Section 2 Interpretation**

- (1) In this Ordinance, unless the context otherwise requires –
- “access road” (通路) means a road on land held under lease, licence or otherwise from the Government or on land over which the Government has granted a right of way, providing access only to buildings used or intended to be used wholly or mainly for purposes of habitation, and which is not a street;
- “Architects Registration Board” (建築師註冊管理局) means the Architects Registration Board established by section 4 of the Architects Registration Ordinance (Cap 408);
- “authorized person” (認可人士) means a person whose name is on the authorized persons’ register kept under section 3(1) –
- (a) as an architect;
  - (b) as an engineer; or
  - (c) as a surveyor;
- “building” (建築物) includes the whole, or any part, of any domestic or public building or building which is constructed or adapted for use for public entertainment, arch, bridge, cavern adapted or constructed to be used for the storage of petroleum products, chimney, cook-house, cowshed, dock, factory, garage, hangar, hoarding, latrine, matshed, office, oil storage installation, out-house, pier, shelter, shop, stable, stairs, wall, warehouse, wharf, workshop or tower, sea-wall, breakwater, jetty, mole, quay, cavern or any underground space adapted or constructed for occupation or use for any purpose including its associated access tunnels and access shafts, pylon or other similar structure supporting an aerial ropeway and such other structures as the Building Authority may by notice in the Gazette declare to be a building;
- “Building Authority” (建築事務監督) means the Director of Buildings;
- “building owner” (建築物擁有人) means a person desiring to build a new building or to alter an existing building and shall include the agent of and authorized person appointed by a building owner;
- “building works” (建築工程) includes any kind of building construction, site formation works, ground investigation in the scheduled areas, foundation works, repairs, demolition, alteration, addition and every kind of building operation, and includes drainage works;
- “common parts” (公用部分) **has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);**
- “composite building” (綜合用途建築物) means a building that is partly domestic and partly non-domestic;
- “contraventions of the provisions of this Ordinance” (違反本條例的條文) includes –
- (a) failure to comply with any order given, **notice served**, or any condition imposed by the Building Authority under this Ordinance;
  - (b) in the case of building works (other than minor works commenced under the simplified requirements), material divergence or deviation from any plan approved by the Building Authority under this Ordinance;
  - (c) in the case of minor works commenced under the simplified requirements, material divergence or deviation from any plan required to be submitted to the Building Authority under the simplified requirements; and
  - (d) in the case of minor works commenced under the simplified requirements, failure to submit to the Building Authority any

certificate required to be submitted under the simplified requirements;

- “dangerous building” (危險建築物) means any building in such a condition as to cause risk of injury either to the occupiers or users of such building or to the occupiers or users of any neighbouring building or to the general public;
- “design assumption” (設計假定) means an assumption stated or implied in the design calculations or other documentation in respect of building works submitted to the Building Authority;
- “domestic” (住用), when used in relation to a part of a composite building, means a part that is constructed or intended for habitation;
- “domestic building” (住用建築物) means a building constructed or intended to be used for habitation and the expression “domestic purposes” (住用用途) shall be construed accordingly;
- “drain” (排水渠) means a drain used for the drainage of one building and any buildings and yards appurtenant thereto;
- “drainage works” (排水工程) means any work connected with the construction, repair, alteration, disconnexion, trapping and ventilation of drains or sewers;
- “electronic record” (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553);
- “emergency vehicular access” (緊急車輛通道), in relation to a building, means a vehicular access used or to be used for access of a vehicle of the Fire Services Department to the building in the event of a fire or other emergency;
- “Engineers Registration Board” (工程師註冊管理局) means the Engineers Registration Board established by section 3 of the Engineers Registration Ordinance (Cap 409);
- “escalator” (自動梯) has the meaning assigned to it in section 2 of the Lifts and Escalators (Safety) Ordinance (Cap 327);
- “external wall” (外牆) means the whole, or any part, of an outer wall of a building even though adjoining a wall of another building and includes a party wall;
- “frontagers” (臨街處所擁有人) means, in the case of a private street the owners of premises fronting, joining or abutting on such street, and in the case of an access road the owners of premises to which such road provides access;
- “ground investigation” (土地勘測) means any exploratory drilling, boring, excavating and probing of land for obtaining any information on ground conditions and includes the installation of instruments, sampling, field testing, any other site operation and laboratory testing of samples obtained from such operations;
- “groundwater drainage works” (地下水排水工程) means any work or installation connected with the draining of water flowing, percolating or lying under the surface of land but does not include drainage works as defined in this section;
- “habitation” (居住) in relation to the use of a building, or part of a building, includes use of it for hotel, guest-house, boarding-house, hostel, dormitory or similar accommodation;
- “hand-dug caisson” (人工挖掘沉箱) means any foundation or earth-retaining structure, or part thereof, the construction of which includes the excavation of a shaft in the ground by means of digging carried out by any person inside the shaft with or without the aid of machine tools;
- “Land Registry” (土地註冊處) means the Land Registry referred to in section 2(1) of the Land Registration Ordinance (Cap 128);
- “lift” (升降機) has the meaning assigned to it in section 2 of the Lifts and Escalators (Safety) Ordinance (Cap 327);
- “minor works” (小型工程) means building works designated in the regulations as minor works for the purposes of this definition;
- “new building” (新建築物) means any building hereafter erected and also any existing building of which not less than one half measured by volume is rebuilt or which is altered to such an extent as to necessitate the

- reconstruction of not less than one half of the superficial area of the main walls;
- “non-domestic” (非住用), when used in relation to a part of a composite building, means a part that is constructed or intended for use otherwise than for habitation;
- “non-domestic building” (非住用建築物) means a building that is not a domestic building;
- “occupier” (佔用人) means in the case of domestic buildings a person resident therein and in the case of other buildings means a person carrying on an occupation full-time in such building;
- “oil storage installation” (貯油裝置) means any tank having a capacity of not less than 110,000 litres, or a group of tanks any one of which is a tank having a capacity of not less than 110,000 litres, constructed above ground level for the purpose of storing petroleum products;
- “owner” (擁有人) includes any person holding premises direct from the Government whether under lease, licence or otherwise, any mortgagee in possession and any person receiving the rent of any premises, solely or with another, on his own behalf or that of any person, or who would receive the same if such premises were let to a tenant, and where such owner as above defined cannot be found or ascertained or is absent from Hong Kong or is under disability, the agent of such owner;
- “performance review” (表現檢討) means a report in respect of building works, submitted by an authorized person, stating and justifying that the building works have been inspected and monitored in the course of construction and that the geotechnical design assumptions upon which the building works have been based are valid;
- “petroleum products” (石油產品) means crude petroleum or petroleum feed-stock and includes –
- (a) semi-refined petroleum; and
  - (b) wholly refined petroleum,
- which is liquid or solid at ambient temperatures and pressures;
- “place of public entertainment” (公眾娛樂場所) and “public entertainment” (公眾娛樂) have the same meanings assigned to them, respectively, by the Places of Public Entertainment Ordinance (Cap 172);
- “plan” (圖則) includes drawings, details, diagrams, calculations, structural details, structural calculations, geotechnical details and geotechnical calculations;
- “prescribed building professional” (訂明建築專業人士) means an authorized person, a registered structural engineer or a registered geotechnical engineer ~~or a registered geotechnical engineer~~, a registered geotechnical engineer or a registered inspector;
- “prescribed inspection” (訂明檢驗) means an examination or assessment of a building as prescribed in the regulations;
- “prescribed qualification” (訂明資格) means the qualification prescribed under this Ordinance or by the respective Registration Ordinance for inclusion in the respective register;
- “prescribed registered contractor” (訂明註冊承建商) means a registered general building contractor, registered specialist contractor or registered minor works contractor;
- “prescribed repair” (訂明修葺) means a repair or testing of a building as prescribed in the regulations;
- “private street” (私家街道) means a street on land held under lease, licence or otherwise from the Government or on land over which the Government has granted a right of way;
- “qualified person (合資格人士) means a person whose name is for the time being on any of the following registers –
- (a) authorized persons’ register kept under section 3(1);
  - (b) structural engineers’ register kept under section 3(3);
  - (c) inspectors’ register kept under section 3(3B);

- (d) register of general building contractors kept under section 8A;
- (e) register or provisional register of minor works contractors, under the class, type and item of minor works in respect of windows, kept under section 8A,

and who is not subject to any disciplinary order under section 7(2)(bb) or (d) or 13(4)(d) or (e);

“register” (名冊) means a register maintained under this Ordinance and includes a sub-register;

“registered architect” (註冊建築師) means a person whose name is on the register of registered architects established and maintained under section 8 of the Architects Registration Ordinance (Cap 408);

“registered general building contractor” (註冊一般建築承建商) means a person whose name is for the time being on the register of general building contractors maintained under section 8A;

“registered inspector” (註冊檢驗人員) means a person whose name is for the time being on the inspectors' register kept under section 3(3B);

“registered geotechnical engineer” (註冊岩土工程師) means a person whose name is for the time being on the geotechnical engineers' register kept under section 3(3A);

“registered minor works contractor” (註冊小型工程承建商) means a person whose name is for the time being on the register or provisional register of minor works contractors maintained under section 8A;

“registered professional engineer” (註冊專業工程師) means a person whose name is on the register of registered professional engineers established and maintained under section 7 of the Engineers Registration Ordinance (Cap 409);

“registered professional surveyor” (註冊專業測量師) means a person whose name is on the register of registered professional surveyors established and maintained under section 7 of the Surveyors Registration Ordinance (Cap 417);

“registered specialist contractor” (註冊專門承建商) means a person whose name is for the time being on the register of specialist contractors maintained under section 8A;

“registered structural engineer” (註冊結構工程師) means a person whose name is for the time being on the structural engineers' register kept under section 3(3);

“Registration Committee” (註冊事務委員會) means an Authorized Persons Registration Committee, a Structural Engineers Registration Committee, a Geotechnical Engineers Registration ~~Committee~~ ~~or~~ ~~Committee~~, an Inspectors Registration Committee or or a Contractors Registration Committee, as the case requires;

“Registration Ordinance” (註冊條例) means the Architects Registration Ordinance (Cap 408), the Engineers Registration Ordinance (Cap 409) or the Surveyors Registration Ordinance (Cap 417), as the case may be;

“regulations” (規例) means rules and regulations made under this Ordinance;

“scheduled areas” (附表所列地區) means the areas specified in ~~the Fifth Schedule~~ **Schedule 5** and references to a building or building works in the scheduled areas are, in the case of a building or building works situated partly in one of the scheduled areas, references to that part of the building or building works so situated;

“Secretary” (局長) means the Secretary for Development;

“sewer” (污水渠) does not include a drain as defined in this section, but includes all sewers and drains used for the drainage of more than one building and any buildings and yards appurtenant thereto;

“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;

- “simplified requirements” (簡化規定) means any requirements prescribed in the regulations as simplified requirements for the purposes of this definition;
- “site formation works” (地盤平整工程) includes excavations on sloping land, filling, landslip preventive works, landslip remedial works and ground water drainage works;
- “specialized works” (專門工程) means building works or street works designated as specialized works under section 2A;
- “specified” (指明), in relation to a form, means specified by the Building Authority under section 22(4);
- “specified document” (指明文件) means –
- (a) a document made, issued or given, or a plan submitted to or approved by the Building Authority, under or for the purposes of this Ordinance or the Buildings Ordinance 1935 (18 of 1935); or
  - (b) any part of the document or plan;
- “specified document record” (指明文件紀錄) means –
- (a) a record of a specified document made under section 36C(a);
  - (b) an electronic record made under section 36C(b); or
  - (c) a copy of an electronic record made under section 36C(c);
- “street” (街道) includes the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath, or passage whether a thoroughfare or not;
- “street works” (街道工程) means any work for the construction, formation or laying out of any private street or access road, including the surfacing, channelling, draining and lighting thereof, or for the reconstruction, alteration or repair thereof;
- “supervision plan” (監工計劃書) means a plan setting out the plan of safety management of building works or street works prepared in compliance with the technical memorandum issued under section 39A;
- “Surveyors Registration Board” (測量師註冊管理局) means the Surveyors Registration Board established by section 3 of the Surveyors Registration Ordinance (Cap 417);
- “ventilating system” (通風系統) means a mechanical system for introducing or exhausting air;
- “water pipe” (水管) means any water carrying pipe and fittings thereto other than a drain or sewer but does not include any pipe or fitting forming any part of a fire service or inside service within the meaning of the Waterworks Ordinance (Cap 102) the costs of maintenance of which shall, under section 17(2)(b) of that Ordinance, be borne by the Water Authority.

- (1A) Where this Ordinance refers to a person’s certifying minor works commenced under the simplified requirements, it means the certification by the person of anything that is required by the regulations to be certified in respect of such minor works.
- (1B) For the purposes of this Ordinance, minor works that are commenced or carried out without the approval and consent of the Building Authority under section 14(1) are to be regarded as minor works commenced under the simplified requirements if –
  - (a) a prescribed building professional or a prescribed registered contractor has been appointed in respect of the works; or
  - (b) the works are commenced or carried out by a prescribed registered contractor.
- (2) The duties imposed on and the powers granted to the Building Authority under this Ordinance may be carried out and exercised by an officer of any Department of the Government specified in ~~the Fourth Schedule~~ **Schedule 4** who is authorized by the Director of Buildings either generally or particularly and subject to his instructions.
- (3) The Legislative Council may by resolution amend ~~the Fourth or Fifth Schedule~~ **Schedule 4 or 5**.
- (4) Any reference in Part I or VII to registration in any register shall be construed as the inclusion, retention, further retention or restoration of a person’s name in or to the relevant register, as the case may require.

## PART I

**AUTHORIZED PERSONS, REGISTERED STRUCTURAL ENGINEERS,  
REGISTERED GEOTECHNICAL ENGINEERS, REGISTERED INSPECTORS  
AND REGISTERED CONTRACTORS**

**Section 3 Registers of authorized persons, structural engineers ~~and geotechnical engineers, geotechnical engineers and inspectors~~**

- (1) The Building Authority shall keep a register (hereinafter referred to as the “authorized persons’ register”) of all persons who are qualified to perform the duties and functions of an authorized person in accordance with this Ordinance.
- (2) The authorized persons’ register contains –
  - (a) a list of architects;
  - (b) a list of engineers; and
  - (c) a list of surveyors.
- (3) The Building Authority shall keep a register (hereinafter referred to as the “structural engineers’ register”) of all persons who are qualified to perform the duties and functions of structural engineers (relating to more advanced structural designs of building works or street works) in accordance with this Ordinance.
- (3A) The Building Authority shall keep a register (hereinafter referred to as the “geotechnical engineers’ register”) of all persons who are qualified to perform the duties and functions of geotechnical engineers (relating to geotechnical designs of building works or street works) in accordance with this Ordinance.
- (3B) The Building Authority must keep a register (the “inspectors’ register”) of all persons who are qualified to perform the duties and functions of inspectors in accordance with this Ordinance.
- (3C) The inspectors’ register contains –
  - (a) a list of architects;
  - (b) a list of engineers; and
  - (c) a list of surveyors.
- (4) The Building Authority shall publish annually in the Gazette the names of –
  - (a) the persons included in each of the lists in the authorized persons’ register;
  - (b) the persons included in the structural engineers’ register; ~~and~~
  - (c) the persons included in the geotechnical engineers’ register; ~~and~~
  - (d) the persons included in each of the lists in the inspectors’ register.
- (5) The Building Authority is to establish 34 panels with sufficient members from whom he is to appoint committees to be known respectively as Authorized Persons Registration Committees, Structural Engineers Registration Committees ~~and Geotechnical Engineers Registration Committees, Geotechnical Engineers Registration Committees and Inspectors Registration Committees~~. The Building Authority may appoint more than one Registration Committee of each type at any one time.
- (5A) The function of a Registration Committee is to assist the Building Authority in considering applications for inclusion in the relevant register by –
  - (a) examining the qualifications of applicants;
  - (b) inquiring as the relevant Registration Committee considers necessary to ascertain whether an applicant has the relevant experience;
  - (c) conducting professional interviews with applicants; and
  - (d) advising the Building Authority to accept, defer or reject applications for inclusion in the relevant register.
- (5B) An Authorized Persons Registration Committee consists of –
  - (a) 4 authorized persons nominated by the Architects Registration Board from the list of architects in the authorized persons’ register;
  - (b) 2 authorized persons nominated by the Engineers Registration Board from the list of engineers in the authorized persons’ register;
  - (c) 1 authorized person nominated by the Surveyors Registration Board from the list of surveyors in the authorized persons’ register;
  - (d) an Assistant Director of Buildings nominated by the Building Authority; and
  - (e) 1 person selected by the Building Authority from among the persons nominated in accordance with subsection (5E).
- (5C) A Structural Engineers Registration Committee consists of –

- (a) 3 registered structural engineers nominated by the Engineers Registration Board;
- (b) 1 authorized person nominated by the Architects Registration Board from the list of architects in the authorized persons' register;
- (c) 1 authorized person nominated by the Surveyors Registration Board from the list of surveyors in the authorized persons' register;
- (d) an Assistant Director of Buildings nominated by the Building Authority; and
- (e) 1 person selected by the Building Authority from among the persons nominated in accordance with subsection (5E).

(5CA) A Geotechnical Engineers Registration Committee consists of –

- (a) 3 registered geotechnical engineers nominated by the Engineers Registration Board;
- (b) 1 authorized person nominated by the Architects Registration Board from the list of architects in the authorized persons' register;
- (c) 1 authorized person nominated by the Surveyors Registration Board from the list of surveyors in the authorized persons' register;
- (d) 1 registered structural engineer nominated by the Engineers Registration Board;
- (e) 1 person nominated by the Building Authority as his representative;
- (f) 1 public officer of the rank of Government Geotechnical Engineer nominated by the Director of Civil Engineering and Development; and
- (g) 1 person selected by the Building Authority from among the persons nominated in accordance with subsection (5E).

(5CB) An Inspectors Registration Committee consists of –

- (a) 1 registered inspector nominated by the Architects Registration Board from the list of architects in the inspectors' register;
- (b) 1 registered inspector nominated by the Engineers Registration Board from the list of engineers in the inspectors' register;
- (c) 1 registered inspector nominated by the Surveyors Registration Board from the list of surveyors in the inspectors' register;
- (d) 1 person nominated by the Building Authority as the Building Authority's representative; and
- (e) 1 person selected by the Building Authority from among the persons nominated in accordance with subsection (5E).

(5D) The Building Authority is to appoint an officer of the Buildings Department as the secretary of each Registration Committee, who is not a member of either Registration Committee and may not cast a vote.

(5E) For the purpose of subsections (5B), (5C) ~~and (5CA)~~, (5CA) and (5CB), the Building Authority is to invite such bodies as the Building Authority may think fit to nominate persons for the Building Authority to consider for appointment to each of the respective Registration Committees.

(5F) A person appointed to be a member of the Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel under section 5A must not be a member of a Registration Committee (other than an Inspectors Registration Committee).

(5FA) A person appointed to be a member of the Registered Inspectors' Disciplinary Board Panel under section 5A must not be a member of an Inspectors Registration Committee.

(5G) The quorum for a meeting of a Registration Committee (other than a Geotechnical Engineers Registration ~~Committee~~) Committee or an Inspectors Registration Committee) is –

- (a) the Chairman of the committee;
- (b) the Assistant Director of Buildings nominated under subsection (5B)(d) or (5C)(d); and
- (c) 3 other members for an Authorized Persons Registration Committee and 2 other members for a Structural Engineers Registration Committee.

(5GA) The quorum for a meeting of a Geotechnical Engineers Registration Committee is –

- (a) the Chairman of the committee;
- (b) the Building Authority's representative under subsection (5CA)(e);
- (c) the public officer nominated under subsection (5CA)(f); and

(d) 2 other members.

(5GB) The quorum for a meeting of an Inspectors Registration Committee is –

(a) the Chairman of the committee;

(b) the Building Authority's representative under subsection (5CB)(d);

(c) 1 other members.

(5H) At least one member of the Registration Committee (other than an Inspectors Registration Committee) at a meeting hearing an application for inclusion in a register must be –

(a) for an Authorized Persons Registration Committee, on the same list in the authorized persons' register as that on which the applicant wishes to be included;

(b) for a Structural Engineers Registration Committee, a registered structural engineer; and

(c) for a Geotechnical Engineers Registration Committee under subsection (5CA)(a), a registered professional engineer nominated under that subsection.

(d) (–)

(5I) The Chairman of a Registration Committee is elected by its members.

(5J) A Registration Committee is required to meet as often as the Building Authority directs.

(6) Every applicant for inclusion in the authorized persons' register, the structural engineers' register ~~or the geotechnical engineers' register~~, the geotechnical engineers' register or the inspectors' register shall submit his application in the specified form to the secretary of the respective Registration Committee.

(6A) An applicant under subsection (6) –

(a) (–)

(b) shall pay –

(i) upon submission of the application, the non-refundable prescribed fee for processing of the application;

(ii) upon the application being granted, the respective prescribed fees for inclusion and retention of his name in the appropriate register.

(7) A person must not be included in a register unless –

(a) he has obtained the prescribed qualifications; and

(b) subject to subsection (7AA), he is recommended by the respective Registration Committee for inclusion.

(7AA) A person may be included in the inspectors' register without recommendation by an Inspectors Registration Committee if the person is –

(a) an authorized person or a registered structural engineer with relevant experience as prescribed in the regulations; or

(b) within the period of 12 months beginning on the commencement of section 6 of the Buildings (Amendment) Ordinance 2010 ( of 2010) –

(i) a registered architect nominated by the Architects Registration Board with not less than 5 years of experience in building design, construction, repair and maintenance before the nomination;

(ii) a registered professional engineer nominated by the Engineers Registration Board with not less than 5 years of experience in building design, construction, repair and maintenance before the nomination; or

(iii) a registered professional surveyor nominated by the Surveyors Registration Board with not less than 5 years of experience in building design, construction, repair and maintenance before the nomination.

(7A) If an applicant for inclusion in a register fails to satisfy subsection (7), the Building Authority shall refuse the application.

(7B) If an applicant for inclusion in a register satisfies subsection (7), the Building Authority shall grant the application unless for other reasons he thinks fit to refuse the application.

(7C) The Building Authority shall give reasons in writing to –

(a) the applicant for the refusal of an application for inclusion in a register;

(b) the respective Registration Committee for the refusal of an application for inclusion in a register,

and the reasons must refer to the requirements of subsections (7) and (7B).

- (7D) ~~In subsections (7) to (7C), "register" (名冊) means the authorized persons' register kept under subsection (1), the structural engineers' register kept under subsection (3) or the geotechnical engineers' register kept under subsection (3A), as the case may be.~~ In subsections (7), (7A), (7B) and (7C), "register" (名冊) means the authorized persons' register kept under subsection (1), the structural engineers' register kept under subsection (3), the geotechnical engineers' register kept under subsection (3A) or the inspectors' register kept under subsection (3B), as the case requires.
- (8) Subject to subsection (7), a person's name may be included in more than one of the following registers –
- the authorized persons' register;
  - the structural engineers' register; ~~and~~
  - the geotechnical engineers' register; ~~and~~
  - the inspectors' register,
- and in more than one list in the authorized persons' ~~register.~~ register or the inspectors' registers.
- (9) In respect of every application for inclusion in any list in the authorized persons' register, in the structural engineers' register ~~or in the geotechnical engineers' register,~~ in the geotechnical engineers' register or in any list in the inspectors' register (except for an application made by a person mentioned in subsection (7AA)), the Building Authority shall within 3 months from the date of the meeting of the respective Registration Committee at which the application was considered –
- on payment by the applicant of the prescribed fees mentioned in subsection (6A)(b)(ii), publish in the Gazette and enter in the appropriate list or, as the case may be, register the name of that applicant; or
  - inform the applicant that his application is deferred for a period not exceeding 12 months; or
  - refuse his application.
- (9AA) For an application made by a person mentioned in subsection (7AA) for inclusion in any list in the inspectors' register, the Building Authority must within 1 month after the date of receiving the application –
- on payment by the applicant of the prescribed fees mentioned in subsection (6A)(b)(ii), publish in the Gazette and enter in the appropriate list the name of that applicant; or
  - refuse the application.
- (9A) An application that has been deferred under subsection (9)(b) shall, when it comes up for consideration again –
- be accepted, so that the applicant is included in the appropriate list or registered, as the case may be, upon payment of the prescribed fee; or
  - be refused.
- (9B) A person –
- whose name is included or retained in or restored to the authorized persons' register, the structural engineers' register ~~or the geotechnical engineers' register,~~ the geotechnical engineers' register or the inspectors' register, under this section,
  - (–)
- may apply to the Building Authority, in accordance with subsection (9C), for the further retention or retention, as may be appropriate, of his name in the register for a period of 5 years.
- (9C) An application under subsection (9B) shall be –
- in the specified form;
  - made so as to be received by the Building Authority not earlier than 4 months and not later than 28 days prior to the date of the expiry of the relevant registration;
  - accompanied by the appropriate prescribed fee; and
  - accompanied by a copy of a valid certificate of registration or of renewal of registration issued under the respective Registration Ordinance.
- (9D) The Building Authority shall refuse an application under subsection (9B) unless the applicant holds the prescribed qualifications for registration as an authorized person, a registered structural engineer ~~or a registered geotechnical engineer,~~ a registered

geotechnical engineer or a registered inspector.

- (9E) The registration of an authorized person, structural engineer ~~or geotechnical engineer~~, geotechnical engineer or inspector will continue to be in force if he makes an application for retention within the time limit and pays the retention fee until his application for retention is finalised by the Building Authority, subject to any decision of the relevant Disciplinary Board.
- (10) (–)
- (11) The Building Authority may remove from the authorized persons' register, the structural engineers' register ~~or the geotechnical engineers' register~~, the geotechnical engineers' register or the inspectors' register, after sending by post notice of his intention to the last known address of the person, the name of any person who –
- (a) is deceased; or
  - (b) is not practising the profession in respect of which the name of that person was included in the register.
  - (c) (–)
- (11A) Subject to subsection (11AA), the Building Authority shall remove the name of a person from the authorized persons' register, the structural engineers' register ~~or the geotechnical engineers' register~~, the geotechnical engineers' register or the inspectors' register if the Building Authority –
- (a) does not receive an application made by the person in accordance with subsection (9C); or
  - (b) has refused an application made by the person under subsection (9D) and sent a notice by registered post to his last known address notifying him of the refusal.
- (11AA) The removal of a name under subsection (11A)(a) becomes effective immediately after the date of expiry of the existing registration.
- (11AB) A notice under subsection (11A)(b) shall specify the effective date of removal, which shall not be earlier than the date of expiry of the existing registration.
- (11B) The Building Authority shall remove a name included or retained in or restored to the authorized persons' register, the structural engineers' register ~~or the geotechnical engineers' register~~, the geotechnical engineers' register or the inspectors' register under this section if the Building Authority receives notice that an authorized person, a registered structural engineer ~~or a registered geotechnical engineer~~, a registered geotechnical engineer or a registered inspector has ceased to hold the prescribed qualifications by virtue of which he was registered.
- (11C) The Building Authority shall give notice of the removal of a name from a register under subsection (11B), by prepaid registered post to the person's last known address.
- (12) A person whose name is removed under subsection (11A), (11B) or (11C) may, within 2 years beginning on the date the relevant registration expires, apply for the restoration of his name to the relevant register.
- (13) An application under subsection (12) shall –
- (a) be in the specified form;
  - (b) (–)
  - (c) be accompanied by the prescribed fee for such restoration and the prescribed fee for retention of registration for 5 years; and
  - (d) be accompanied by a copy of a valid certificate of registration or of renewal of registration issued under the respective Registration Ordinance.
- (13A) The Building Authority shall refuse an application under subsection (12) unless the applicant holds the prescribed qualifications for registration as an authorized person, a registered structural engineer ~~or a registered geotechnical engineer~~, a registered geotechnical engineer or a registered inspector.
- (14) Where the Building Authority allows an application made under subsection (6), (9B) or (12) he shall –
- (a) issue to the applicant as regards the relevant registration a certificate of registration, which shall be in effect until the expiry of that registration; and
  - (b) in the case of an application under subsection (12), restore the name of the applicant to the relevant register.
- (15) A registration under this section shall –
- (a) be effective, in the case of –
    - (i) an inclusion in or restoration to a register of a person's name, from

- the date of such inclusion or restoration; and
      - (ii) a retention or further retention of a person's name in a register, from the date of the expiry of the previous registration; and
    - (b) expire, unless the person's name is removed from the relevant register by order of a disciplinary board, at the expiry of 5 years from the effective date of registration calculated in accordance with paragraph (a).
- (16) The Building Authority is required to give reasons in writing for a decision not to include, retain or restore a person's name in a register at the time of giving notice of the refusal.
- (17) The Building Authority shall make available the information specified in subsection (18) for public inspection at any reasonable time to facilitate any member of the public to ascertain –
  - (a) whether he is, in relation to any matter connected with any activity under this Ordinance, dealing with a person registered under this section; and
  - (b) the particulars of a person so registered.
- (18) The information specified for the purposes of subsection (17) is the name, the registration number and the expiry date of the registration of any person registered under this section.

### **Section 5 Appointment and powers of disciplinary board**

- (1) For the purposes of section 7, the Secretary may, from time to time, appoint a disciplinary board.
- (2) Every ~~such board shall consist~~ disciplinary board to conduct a hearing of disciplinary proceedings against an authorized person, a registered structural engineer or a registered geotechnical engineer consists of –
  - (a) 4 persons who are members of the Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel appointed under section 5A, at least 1 of whom is on the same register and, in the case of the authorized persons' register, on the same list of the register as the person about whom the inquiry is being held; and
  - (b) 1 person selected from among the persons nominated in accordance with subsection (3A).
  - (c) (–)
- (2AA) Every disciplinary board to conduct a hearing of disciplinary proceedings against a registered inspector consists of –
  - (a) 4 persons who are members of the Registered Inspectors' Disciplinary Board Panel appointed under section 5A, of whom at least –
    - (i) 1 is a person mentioned in section 5A(2A)(a);
    - (ii) 1 is a person mentioned in section 5A(2A)(b);
    - (iii) 1 is a person mentioned in section 5A(2A)(c); and
  - (b) 1 person selected from among the persons nominated in accordance with subsection (3A).
- (2A) The chairman of a disciplinary board shall appoint a legal adviser to assist in the conduct of the hearing of the disciplinary proceedings and to advise the disciplinary board on points of law that arise during the hearing. The disciplinary board may confer with the legal adviser after the conclusion of the hearing and before it hands down its decision but only after giving the person who is the subject of the hearing and his legal representative, if any, the right to be present while the legal adviser gives advice to the disciplinary board and the right to comment on the matters raised by the legal adviser to the disciplinary board.
- (2B) An authorized person, a registered structural engineer ~~or a registered geotechnical engineer~~, a registered geotechnical engineer or a registered inspector, against whom disciplinary proceedings are taken, is entitled to be represented by a legal practitioner at disciplinary proceedings.
- (3) The chairman of a disciplinary board appointed under this section shall be elected from the members of the board by its members.
- (3A) For the purpose of ~~subsection (2)(b)~~ subsections (2)(b) and (2AA)(b), the Building Authority is to invite such bodies as the Building Authority may think fit to nominate persons for the Secretary to consider for appointment to the disciplinary

board.

- (4) For the purposes of any inquiry under section 7, a disciplinary board appointed under this section shall have all such powers as are vested in the Court of First Instance in relation to –
- (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
  - (b) compelling the production of documents;
  - (c) ordering the inspection of premises; and
  - (d) entering upon and viewing premises.
- (5) The members of any disciplinary board appointed under this section, other than persons who are in full-time employment in any office of emolument under the Government, shall be remunerated at such rate as the Chief Executive may determine from time to time or in any particular case.

**Section 5A Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel and Registered Inspectors' Disciplinary Board Panel**

- (1) There shall be an Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board ~~Panel~~, ~~Panel and a Registered Inspectors' Disciplinary Board Panel~~, both of which shall be appointed by the Chief Executive.
- (2) The Authorized Persons', Registered Structural Engineers' and Registered Geotechnical Engineers' Disciplinary Board Panel consists of not more than 25 members, of whom not less than 1 and not more than –
- (a) 5 are authorized persons in the list of architects;
  - (b) 5 are authorized persons in the list of engineers;
  - (c) 5 are authorized persons in the list of surveyors;
  - (d) 5 are registered structural engineers; and
  - (e) 5 are registered geotechnical engineers.
- (2A) The Registered Inspectors' Disciplinary Board Panel consists of not more than 15 members, of whom not less than 1 and not more than –
- (a) 5 are registered inspectors in the list of architects;
  - (b) 5 are registered inspectors in the list of engineers; and
  - (c) 5 are registered inspectors in the list of surveyors.
- (2B) For the purpose of subsections (2) and (2A), each member of the relevant Panel may only take up one seat of membership in the Panel even if the member's name is included in more than one of the lists or registers mentioned in those subsections.
- (3) A person must not be appointed to be a member of the Panel referred to in subsection (2) or (2A) unless he has been recommended for the appointment by the Building Authority after consultation with the Architects Registration Board, the Engineers Registration Board or the Surveyors Registration Board respectively, as appropriate.
- (4) Members of the panel shall hold office for 3 years but shall be eligible for reappointment.

**Section 5AA Secretary to the disciplinary board**

- (1) There shall be a ~~Secretary~~ ~~secretary~~ to the disciplinary board for the purpose of providing administrative services to a disciplinary board appointed under section 5.
- (2) The ~~Secretary to~~ ~~secretary~~ to the disciplinary board shall be-
- (a) appointed by the Secretary ~~for Development~~;
  - (b) a public officer; and
  - (c) a person who is not a member of the disciplinary board appointed under section 5.

**Section 6** (–)

**Section 7 Disciplinary proceedings for authorized person, registered structural engineer ~~or registered geotechnical engineer~~, registered geotechnical engineer or registered inspector**

- (1) The Building Authority may bring to the notice of a disciplinary board appointed under section 5 the matters set out in subsection (1A) in relation to an authorized

person, a registered structural engineer ~~or a registered geotechnical engineer~~, a registered geotechnical engineer or a registered inspector if the conduct referred to the disciplinary board may –

- (a) render the person unfit to remain on the relevant register;
- (b) make further inclusion of the person on the relevant register prejudicial to the due administration of this Ordinance;
- (ba) render the person unfit for certifying any minor works commenced or to be commenced under the simplified requirements;
- (bb) make further certification of minor works commenced or to be commenced under the simplified requirements by him prejudicial to the due administration of this Ordinance; ~~or~~
- (bc) render the person unfit for certifying any prescribed inspection, or certifying or supervising any prescribed repair;
- (bd) make further certification of any prescribed inspection, or certification or supervision of any prescribed repair, by that person prejudicial to the due administration of this Ordinance;
- (be) render the person deserving of suspension from certifying any prescribed inspection, or certifying or supervising any prescribed repair; or
- (c) render the ~~authorized person, registered structural engineer or registered geotechnical engineer~~ person deserving of suspension from the relevant register, a fine or a reprimand.

(1A) The matters referred to in subsection (1) are that the person –

- (a) has been convicted by any court of an offence related to carrying out his professional duties;
- (b) has been negligent or has misconducted himself in a professional way;
- (c) has permitted a material deviation from a supervision plan for which he is responsible without reasonable cause;
- (d) has drawn up a supervision plan that does not comply with the material requirements of this Ordinance;
- (e) has repeatedly drawn up supervision plans that do not comply with the requirements of this Ordinance;
- (f) has certified minor works commenced under the simplified requirements that have been carried out in contravention of this Ordinance;
- (g) has supervised minor works commenced under the simplified requirements that have been carried out in such a manner that they have caused injury to a person (whether or not while under such supervision);
- (h) has certified building works (other than minor works) as if it were minor works commenced under the simplified requirements;
- (i) has supervised building works (other than minor works) as if it were minor works commenced under the simplified requirements; ~~or~~
- (j) has not carried out his duties under section 4B(2)(d), (e) or (f) in respect of minor works commenced under the simplified requirements;
- (k) has failed to discharge the duties, or abide by the requirements, imposed on a registered inspector under this Ordinance; or
- (l) has failed to discharge the duties, or abide by the requirements, imposed on a qualified person under this Ordinance.

(2) Where, after due inquiry, the disciplinary board is satisfied that the authorized person, the registered structural engineer ~~or the registered geotechnical engineer~~, the registered geotechnical engineer or the registered inspector has been convicted as described in subsection (1A)(a) or done an act described in subsection (1A)(b), (c), (d), (e), (f), (g), (h) or (i) or has not carried out the duties mentioned in subsection (1A)(j) in respect of minor works commenced or to be commenced under the simplified ~~requirements~~, requirements, or has failed to discharge the duties or abide by the requirements mentioned in subsection (1A)(k) or (l), the disciplinary board may –

- (a) order that the name of such person be removed –
  - (i) from the authorized persons', structural engineers' or geotechnical engineers' register, as the case may be; or
  - (ii) if his name appears in more than one such register, from those registers, either permanently or for such period as the board thinks fit; ~~or~~

- (aa) order that the name of the person be removed from the inspectors' register, either permanently or for any period that the board thinks fit;
  - (b) order that such person be reprimanded;
  - (ba) order that ~~authorized person, registered structural engineer or registered geotechnical engineer~~ person be fined –
    - (i) in the case of a prescribed inspection (other than a prescribed inspection in respect of a window in a building) or building works (other than minor works), a sum not exceeding \$250,000; or
    - (ii) in the case of a prescribed inspection in respect of a window in a building or minor works, a sum not exceeding \$150,000; ~~or~~
  - (bb) order that the ~~authorized person, registered structural engineer or registered geotechnical engineer~~ person be prohibited from certifying any minor works commenced or to be commenced under the simplified requirements, either permanently or for such period as the disciplinary board thinks fit; ~~or~~
  - (c) (–)
  - (d) order that the person be prohibited from certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building, either permanently or for any period that the disciplinary board thinks fit.
- (2A) Where the disciplinary board makes an order under subsection (2), it shall order that its findings and order be published in the Gazette.
- (3) On an inquiry under this section, a disciplinary board may make such order as it thinks fit with regard to the payment of the costs of the inquiry and the costs of the Building Authority or of the authorized person, registered structural engineer ~~or registered geotechnical engineer~~, registered geotechnical engineer or registered inspector in respect of whom the inquiry is held.
- (3A) The amount referred to in subsection (2)(ba) and any costs of inquiry ordered to be paid under subsection (3) are recoverable as a debt due to the Government.
- (4) (a) Any authorized person, registered structural engineer ~~or registered geotechnical engineer~~, registered geotechnical engineer or registered inspector aggrieved by any order made in respect of him under this section may appeal to a judge of the Court of First Instance ~~within 28 days of the order of the disciplinary board~~ and upon any such appeal the judge may confirm, reverse or vary the order of the disciplinary board.
- (b) The practice in relation to any such appeal shall be subject to any rules of court made under the High Court Ordinance (Cap 4).
- (c) ~~(–)The decision of the judge on any such appeal shall be final.~~

#### Section 9A Appeals from Registration Committees

- (1) A person who is aggrieved by a decision of a Registration Committee under this Part may appeal to a judge of the Court of First Instance ~~within 28 days of the notification of the decision of the Registration Committee by the Building Authority to the person.~~
- (2) On an appeal the judge may confirm, reverse or vary the ~~order~~ decision of the Registration Committee.
- (3) The practice for the appeal is subject to any rules of court made under the High Court Ordinance (Cap 4).
- (4) ~~(–)The decision of the judge is final.~~

#### Section 11AA Secretary to the disciplinary board

- (1) There shall be a ~~Secretary~~ secretary to the disciplinary board for the purpose of providing administrative services to a disciplinary board appointed under section 11.
- (2) The ~~Secretary to~~ secretary to the disciplinary board shall be –
  - (a) appointed by the Secretary ~~for Development~~;
  - (b) a public officer; and
  - (c) a person who is not a member of the disciplinary board appointed under section 11.

#### Section 13 Disciplinary proceedings for contractors

- (1) The Building Authority may bring to the notice of a disciplinary board appointed

under section 11 the matters set out in subsection (2) in relation to a registered general building contractor, a registered specialist contractor or a registered minor works contractor if the conduct referred to the disciplinary board may –

- (a) render the contractor unfit to be on the register;
- (b) make the further inclusion of the contractor in the register prejudicial to the due administration of this Ordinance;
- (c) render the contractor deserving of suspension from the register, a fine or a reprimand;
- (d) render the contractor unfit for certifying or carrying out minor works commenced under the simplified requirements;
- (e) make further certification of or carrying out minor works commenced under the simplified requirements by the contractor prejudicial to the due administration of this Ordinance;~~or~~
- (f) render the contractor deserving of suspension from certifying or carrying out minor works commenced under the simplified requirements;
- (g) render the contractor unfit for certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building;
- (h) make further certification of any prescribed inspection, or certification or supervision of any prescribed repair, in respect of a window in a building by that contractor prejudicial to the due administration of this Ordinance; or
- (i) render the contractor deserving of suspension from certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building.

(2) The matters referred to in subsection (1) are that the person –

- (a) has been convicted by any court of an offence relating to building works or street works;
- (b) has been negligent or has misconducted himself in building works or street works;
- (c) has deviated in a material manner from a supervision plan without reasonable cause;
- (d) has drawn up a supervision plan that does not comply with the material requirements of this Ordinance;
- (e) has repeatedly drawn up supervision plans that do not comply with the requirements of this Ordinance;
- (f) has certified minor works commenced under the simplified requirements that have been carried out in contravention of this Ordinance;
- (g) has supervised minor works commenced under the simplified requirements that have been carried out in such a manner that they have caused injury to a person (whether or not while under such supervision);
- (h) has carried out minor works commenced under the simplified requirements in such a manner that they have caused injury to a person;
- (i) has carried out building works (other than minor works) under the simplified requirements as if it were minor works commenced under the simplified requirements;~~or~~
- (j) has certified building works (other than minor works) as if it were minor works commenced under the simplified requirements; or
- (k) has failed to discharge the duties, or abide by the requirements, imposed on a qualified person, registered general building contractor or registered minor works contractor under this Ordinance in respect of a prescribed inspection or prescribed repair.

(3) The Building Authority may, in bringing to the notice of a disciplinary board a conviction, negligence or misconduct of a registered contractor that is a body corporate or is operating as a partnership, refer the names of the directors, officers, any person appointed to act for the body corporate for the purposes of this Ordinance and its partners to the disciplinary board for its consideration and action.

(4) Where, after due inquiry, the disciplinary board is satisfied that the registered contractor or the director or officer or the person appointed by the registered contractor to act on his behalf for the purposes of this Ordinance has been convicted as described in subsection (2)(a) or done an act described in subsection (2)(b), (c), (d), (e), (f), (g), (h), (i) or ~~(j)~~ or failed to discharge the duties or abide by the

requirements mentioned in subsection (2)(k), the disciplinary board may –

- (a) order that the name of the registered contractor or the name of the director, officer or person be removed from the relevant register, either permanently or for such period as the disciplinary board thinks fit;
  - (b) order that the registered contractor or the director, officer or person be fined –
    - (i) in the case of building works (other than minor works), a sum not exceeding \$250,000; or
    - (ii) in the case of a prescribed inspection in respect of a window in a building or minor works, a sum not exceeding \$150,000;
  - (c) order that the registered contractor or the director, officer or person be reprimanded; ~~or~~
  - (d) in the case of a registered contractor who is a registered general building contractor or a registered specialist contractor, order that he be prohibited from certifying or carrying out any minor works commenced under the simplified requirements, either permanently or for such period as the disciplinary board thinks fit; ~~or~~
  - (e) in the case of a registered contractor who is a registered general building contractor or registered minor works contractor, order that the contractor be prohibited from certifying any prescribed inspection, or certifying or supervising any prescribed repair, in respect of a window in a building, either permanently or for any period that the disciplinary board thinks fit.
- (4A) Where the disciplinary board makes an order under subsection (4), it shall order that its findings and order be published in the Gazette.
- (5) In making an order in respect of a director, officer or other person appointed by a registered contractor to act on its behalf for the purposes of this Ordinance, the board may remove the director, officer or other person from any other company with respect to which he is registered under this Ordinance.
- (6) A disciplinary board may make an order as it thinks fit for the payment of the costs of the inquiry or for the payment of the costs of the Building Authority or of the contractor, director, officer or other person about whom the inquiry is held.
- (6A) The amount referred to in subsection (4)(b) and any costs of inquiry ordered to be paid under subsection (6) are recoverable as a debt due to the Government.
- (7) A registered general building contractor, registered specialist contractor, **registered minor works contractor**, director, officer or other person aggrieved by an order made in respect of him under this section may appeal to a judge of the Court of First Instance ~~within 28 days of the order of the disciplinary board.~~
- (8) On an appeal the judge may confirm, reverse or vary the order of the disciplinary board.
- (9) The practice for the appeal is subject to any rules of court made under the High Court Ordinance (Cap 4).
- (10) ~~(–)The decision of the judge is final.~~

### **Section 13A Appeal against Building Authority’s decision**

- (1) An applicant for registration, renewal of registration or restoration of his name to a register who is dissatisfied with a decision of the Building Authority may appeal to a judge of the Court of First Instance ~~within 28 days of the notification of the decision of the Building Authority by the Building Authority to the applicant.~~
- (2) On an appeal the judge may confirm, reverse or vary the decision of the Building Authority.
- (3) The practice for the appeal is subject to any rules of court made under the High Court Ordinance (Cap 4).
- (4) ~~(–)The decision of the judge is final.~~

### **Section 18 Authority to erect shoring in certain cases**

- (1) Without prejudice to any other provision of this Ordinance and subject to subsection (2), where –
  - (a) for the purpose of satisfying the Building Authority that such precautions as are referred to in section 16(5) have been taken; or
  - (b) for the purpose of complying with a condition prescribed by the Building Authority under section 17,

the erection of shoring for any building is necessary, the person whose building works or proposed building works necessitate the erection of the shoring is hereby authorized to erect, or cause to be erected, such shoring as may be necessary, and the same may be affixed –

- (i) in or to or around the building for which it is erected, or otherwise in relation to that building as the circumstances require; or
  - (ii) with the permission of the Director of Buildings, or an officer of the Buildings Department authorized in that behalf by the Director of Buildings either by name or by reference to an office, granted under subsection (3) and in accordance with such permission, in or over or upon any street, whether or not the street is on land held under lease from the Government,
- and maintained for such time as may be necessary and thereafter removed.

(2) Nothing in subsection (1) authorizes –

- (a) the affixing of shoring in or over or upon any land, not being a street, unless the land is owned by either the owner of the building for which the shoring is erected or the person whose building works or proposed building works necessitate the erection of the shoring; or
- (b) the affixing of shoring in or to or around, or otherwise in relation to, any building other than the building for which the shoring is erected.

(3) Whenever it is necessary, for either of the purposes specified in subsection (1), to erect shoring in or over or upon a street, whether or not the street is on land held under lease from the Government, the Director of Buildings or an officer of the Buildings Department authorized in that behalf by the Director of Buildings, either by name or by reference to an office, may, if he thinks fit, permit the erection of such shoring, subject to such conditions as he considers necessary.

(4) Any damage to a building for which shoring is erected pursuant to subsection (1) caused by or resulting from the erection, maintenance or dismantling of the shoring shall be made good as soon as practicable by the person whose building works or proposed building works necessitated the erection, maintenance or dismantling of the shoring.

(5) (a) Any occupier of a building for which shoring is erected pursuant to subsection (1), and any other person whatsoever, who suffers any loss or damage by reason of the erection, maintenance or dismantling of the shoring shall be entitled to recover compensation from the person whose building works or proposed building works necessitated the erection, maintenance or dismantling of the shoring.

(b) Where any dispute arises as to –

- (i) whether compensation is payable under this subsection,
- (ii) the amount of any such compensation, or
- (iii) the person to whom it is payable,

the same shall be determined in accordance with the provisions of section 18A.

(6) (a) Any person authorized by the Building Authority in writing may enter any building specified in such authorization for the purpose of ascertaining what shoring may be required for the building for either of the purposes specified in subsection (1) or of ascertaining the manner in which shoring for the building may be affixed or for the purpose of erecting shoring for the building pursuant to subsection (1) or of maintaining such shoring in good order or of inspecting the same.

(b) An authorization granted to any person under paragraph (a) shall be deemed also to authorize any servant or agent of that person, and such an agent's servants, to enter the building for the like purpose.

(c) If a magistrate is satisfied by evidence on oath that the entry to a building of any person authorized to enter the same by or under paragraph (a) or (b) has been obstructed, he may upon application by or on behalf of the person authorized to enter such building under paragraph (a) issue a warrant in the form in ~~the Third Schedule~~ **Schedule 3** authorizing-

- (i) each and every person authorized prior to the issue of the warrant to enter such building by or under paragraph (a) or (b); and
- (ii) any police officer of or above the rank of inspector and any other police officer acting under his direction,

to enter such building on such occasion or occasions, and at such time or times, as may be necessary for the purpose for which the authorization under paragraph (a) was granted, and in the execution of such warrant any such police officer may use such force as may be necessary.

- (d) A copy, in the English language and in the Chinese language, of any warrant issued under paragraph (c) shall be posted in a conspicuous position on the building to which it relates.

## Section 22 Powers of Building Authority

- (1) ~~Subject to subsection (1A), the Building Authority or any authorized officer~~ ~~The Building Authority or any public officer authorized in writing by him in that behalf~~ may at any time enter and where necessary, in the presence of a police officer, break into any premises or enter upon any land –
- (a) to ascertain whether any building, structure, street or natural, formed or man-made land is dangerous or liable to become dangerous;
  - (b) to inspect or test any groundwater drainage works, drainage works or drainage system;
  - (c) to ascertain whether the provisions of this Ordinance or of any notice order or regulation hereunder are being complied with;
  - (d) to carry out or cause to be carried out any work which he is authorized to carry out under this Ordinance.
- (1A) ~~Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into any premises, or enter upon any land under subsection (1) unless a warrant is obtained under subsection (1B).~~
- (1B) A magistrate may issue a warrant authorizing the Building Authority or any authorized officer to enter and, if necessary, break into any premises or enter upon any land if the magistrate is satisfied by information on oath that there is reasonable ground for entry into the premises or land for any of the purposes mentioned in subsection (1) and –
- (a) that admission to the premises or land has been refused or that refusal is apprehended;
  - (b) that the premises are, or land is, unoccupied;
  - (c) that the occupier is temporarily absent; or
  - (d) that prior notice of entry would defeat the purpose of the entry.
- (1C) A warrant issued under subsection (1B) must specify –
- (a) the premises or land to be entered;
  - (b) the purpose of the entry;
  - (c) the name and capacity of the person entering the premises or land; and
  - (d) the date of the issue of the warrant.
- (1D) When entering any premises or land under this section, the Building Authority or any authorized officer may take with him or her any person that may be necessary for the purpose of the entry.
- (1E) On leaving any unoccupied premises or land entered in accordance with this section, the Building Authority or any authorized officer must leave the premises or land as effectually secured against trespassers as he or she found the same to be at the time of entry.
- (1F) A warrant issued under subsection (1B) continues in force until the purpose for which entry is necessary has been fulfilled.
- (2) For the purposes of subsection (1) –
- (a) access to every part of any building works or street works shall be provided by the registered general building contractor, registered specialist contractor or registered minor works contractor; and
  - (b) ~~the Building Authority or an authorized officer may take any steps that he or she considers a public officer authorized under this section may take such steps as he may deem~~ necessary, including the making of openings and the taking of reasonable samples.
- (3) The Building Authority may by order in writing require an authorized person to carry out such tests as may be specified in the order.
- (4) The Building Authority may specify any form for the purposes of this Ordinance.
- (5) In this section, “authorized officer” ( ) means any public officer authorized in writing by the Building Authority for any of the purposes mentioned in subsection (1).

**Section 23 Building works, etc. to cease on order of Building Authority**

- (1) Where in the opinion of the Building Authority –
- (a) any building works or street works are being carried out in contravention of any of the provisions of this Ordinance or are connected with any building works that have been so carried out; or
  - (b) any building works that are being carried out –
    - (i) will cause, or will be likely to cause, a total or partial collapse of any adjoining or other building, street or natural, formed or man-made land;~~;~~~~or~~
    - (ii) will render, or will be likely to render, any adjoining or other building, street or natural, formed or man-made land so dangerous that it will collapse, or be likely to collapse, either totally or partially;~~;~~~~or~~
    - (iii) are in dangerous conditions within the site of the building works,
- he may by order in writing served on the registered general building contractor, registered specialist contractor, registered minor works contractor or other person carrying out such works, as the case may be, require that such works cease until the order is withdrawn.
- (2) The Building Authority may by order in writing served on the registered general building contractor, registered specialist contractor, registered minor works contractor or other person carrying out building works or street works require that the works cease if there has been a material deviation –
- (a) from the technical memorandum for the preparation of a supervision plan for the building works or street works; or
  - (b) from the supervision plan for the works,
- which in the opinion of the Building Authority may lead to a dangerous or potentially dangerous situation.
- (3) The Building Authority may by order in writing served on the registered general building contractor, registered specialist contractor, registered minor works contractor or other person carrying out building works or street works require that the works cease if he is satisfied that a condition imposed on the giving of his approval or consent has not been, or is not able to be, complied with.
- (4) If the Building Authority orders that the works cease, the person carrying out the building works or street works shall cease to continue the works as quickly and as safely as possible.
- (5) The Building Authority may in withdrawing an order that works cease make the withdrawal subject to reasonable conditions.

**Section 28C Magistrate's warrant**

- (1) If a magistrate is satisfied by evidence on oath that the entry upon any land or the carrying out or maintenance of any groundwater drainage works by any person authorized under section 28B(4) has been obstructed, he may upon application by or on behalf of the person so authorized issue a warrant in the form in ~~the Sixth Schedule~~ **Schedule 6** authorizing –
- (a) every person so authorized before the issue of the warrant to enter upon the land on such occasions and at such times as may be necessary for the purpose for which the authorization under section 28B(4) was granted and to carry out or maintain any such authorized works; and
  - (b) any police officer of or above the rank of inspector and any other police officer acting under his direction to enter upon the land in company with, and for the purpose of preventing the obstruction of, any person authorized under paragraph (a), and in the execution of the warrant any such police officer may use such force as may be necessary.
- (2) A copy, in the English language and in the Chinese language, of any warrant issued under subsection (1) shall be posted in a conspicuous position on the land to which it relates.

**Section 30A Interpretation and application**

- (1) ~~(–) In this Part, “projection” (伸出物) means a projection from a building as prescribed in the regulations.~~
- (2) This Part does not apply to a domestic building not exceeding 3 storeys in height.

**Section 30B Obligation on owners to carry out prescribed inspection and prescribed repair in respect of buildings**

- (1) This section applies to any building aged 30 years or above.
- (2) The age of a building mentioned in subsection (1) is to be determined by the Building Authority –
- (a) if an occupation permit in respect of the building is issued by the Building Authority under section 21(2), according to the date the occupation permit is issued; and
  - (b) in any other case, according to the evidence available to the Building Authority.
- (3) The Building Authority may by notice in writing served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the common parts of the building to be carried out within a specified time.
- (4) If an external wall of a building is not in the common parts of the building, the Building Authority may by notice in writing served on the owner of the external wall require a prescribed inspection and, if necessary, prescribed repair in respect of the external wall to be carried out within a specified time.
- (5) Without limiting subsections (3) and (4), the Building Authority may by notice in writing served on an owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of any projection (as prescribed in the regulations ~~other than a signboard~~) that is connected to that owner’s premises in the building and is occupied or used by that owner or any occupier of that premises to be carried out within a specified time.
- (6) Without limiting subsections (3) and (4), if a signboard is erected on a building, the Building Authority may by notice in writing served on –
- (a) the person for whom the signboard is erected; or
  - (b) if that person cannot be found, the person who would receive any rent or other money consideration if the signboard were hired out or the person who is receiving such rent or money consideration; or
  - (c) if the persons referred to in paragraphs (a) and (b) cannot be found, the owner of the premises in the building on which the signboard is erected,
- require a prescribed inspection and, if necessary, prescribed repair in respect of the signboard to be carried out within a specified time.
- (7) In a notice served under subsection (3), (4), (5) or (6), the Building Authority may specify for a relevant part of a building –
- (a) the date by which a registered inspector must be appointed to carry out a prescribed inspection in respect of that part of the building;
  - (b) the date by which a prescribed inspection in respect of that part of the building is required to be completed; and
  - (c) the date by which a prescribed repair in respect of that part of the building, as may be required under subsection (8), is required to be completed.
- (8) If a prescribed inspection in respect of a relevant part of a building shows that that part of the building has been rendered dangerous, or is liable to become dangerous, the owner on whom the notice is served must carry out a prescribed repair in respect of that part of the building, in accordance with this Ordinance, to render that part of the building safe.
- (9) The Building Authority may cause a notice served under subsection (3), (4), (5) or (6) to be registered by memorial in the Land Registry against the building to which the notice relates.
- (10) If a notice served under subsection (3), (4), (5) or (6) is not complied with, the Building Authority may, without further notification, carry out or cause to be carried out –
- (a) any inspection in respect of the common parts, external wall, projection or signboard of the building that the Building Authority considers necessary for the purpose of that notice; and
  - (b) any repair works that the Building Authority considers necessary or

expedient to render the building safe, having had regard to the findings of an inspection in respect of the building, whether the inspection is carried out or caused to be carried out by the Building Authority under paragraph (a), or by a registered inspector appointed under section 30D(1)(a).

- (11) The cost of the inspection and repair works that the Building Authority has carried out or has caused to be carried out under subsection (10), ~~together with a surcharge of 20% on the cost that the Building Authority may impose~~, is recoverable as a debt due to the Government from –
- (a) if the notice served under subsection (3), (4), (5) or (6) has not been registered with the Land Registry under subsection (9), the person on whom the notice is served; or
  - (b) if the notice served under subsection (3), (4), (5) or (6) has been registered with the Land Registry under subsection (9), the person who is the owner of the relevant part of the building –
    - (i) as at the date of completion of the inspection if the Building Authority has carried out or has caused to be carried out the inspection mentioned in subsection (10)(a) only; or
    - (ii) as at the date of completion of the repair works mentioned in subsection (10)(b) if the Building Authority has carried out or has caused to be carried out the repair works, whether or not the Building Authority has also carried out or has also caused to be carried out the inspection mentioned in subsection (10)(a).
- (12) After a notice under subsection (3), (4), (5) or (6) (the “preceding notice”) has been complied with, a fresh notice in respect of the same part of the building must not be served under that subsection before the expiry of 10 years after the date of the preceding notice.
- (13) In this section, a reference to an inspection or repair of any part of a building does not include an inspection or repair of the windows in the building.

### **Section 30C   Obligation on owners to carry out prescribed inspection and prescribed repair in respect of windows**

- (1) This section applies to any building aged 10 years or above.
- (2) The age of a building mentioned in subsection (1) is to be determined by the Building Authority –
  - (a) if an occupation permit in respect of the building is issued by the Building Authority under section 21(2), according to the date the occupation permit is issued; and
  - (b) in any other case, according to the evidence available to the Building Authority.
- (3) Subject to subsection (4), the Building Authority may by notice in writing served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the windows in the building to be carried out within a specified time.
- (4) If any window in a building is exclusively used by an owner of the building or any occupier of that owner’s premises, the Building Authority may by notice in writing served only on that owner require a prescribed inspection and, if necessary, prescribed repair in respect of the window to be carried out within a specified time.
- (5) In a notice served under subsection (3) or (4), the Building Authority may specify for a window in a building –
  - (a) the date by which a qualified person must be appointed to carry out a prescribed inspection in respect of that window;
  - (b) the date by which a prescribed inspection in respect of that window is required to be completed; and
  - (c) the date by which a prescribed repair in respect of that window, as may be required under subsection (6), is required to be completed.
- (6) If a prescribed inspection in respect of a window in a building shows that the window has been rendered dangerous, or is liable to become dangerous, the owner on whom the notice is served must carry out a prescribed repair in respect of the window, in accordance with this Ordinance, to render the window safe.
- (7) The Building Authority may cause a notice served under subsection (3) or (4) to be registered by memorial in the Land Registry against the building to which the notice

relates.

- (8) If a notice served under subsection (3) or (4) is not complied with, the Building Authority may, without further notification, carry out or cause to be carried out –
- (a) any inspection in respect of the window concerned that the Building Authority considers necessary for the purpose of that notice; and
  - (b) any repair works that the Building Authority considers necessary or expedient to render the window safe, having had regard to the findings of an inspection in respect of the window, whether the inspection is carried out or caused to be carried out by the Building Authority under paragraph (a), or by a qualified person appointed under section ~~30E(1)(a)~~ 30E(1).
- (9) The cost of the inspection and repair works that the Building Authority has carried out or has caused to be carried out under subsection (8), ~~together with a surcharge of 20% on the cost that the Building Authority may impose~~, is recoverable as a debt due to the Government from –
- (a) if the notice served under subsection (3) or (4) has not been registered with the Land Registry under subsection (7), the person on whom the notice is served; or
  - (b) if the notice served under subsection (3) or (4) has been registered with the Land Registry under subsection (7), the person who is the owner of the relevant part of the building –
    - (i) as at the date of completion of the inspection if the Building Authority has carried out or has caused to be carried out the inspection mentioned in subsection (8)(a) only; or
    - (ii) as at the date of completion of the repair works mentioned in subsection (8)(b) if the Building Authority has carried out or has caused to be carried out the repair works, whether or not the Building Authority has also carried out or has also caused to be carried out the inspection mentioned in subsection (8)(a).
- (10) After a notice under subsection (3) or (4) (the “preceding notice”) has been complied with, a fresh notice in respect of the same window must not be served under that subsection before the expiry of 5 years after the date of the preceding notice.

### **Section 30D Appointment and duties of registered inspectors**

- (1) Any person for whom a prescribed inspection or prescribed repair in respect of a building is to be carried out must appoint –
- (a) a registered inspector to carry out the prescribed inspection; and
  - (b) a registered inspector to supervise the prescribed repair.
- (2) The registered inspector appointed under subsection (1)(b) may be the same registered inspector appointed under subsection (1)(a).
- (3) A registered inspector appointed under subsection (1)(a) must –
- (a) carry out the prescribed inspection personally unless otherwise exempted by the regulations; and
  - (b) comply generally with this Ordinance.
- (4) A registered inspector appointed under subsection (1)(b) must –
- (a) provide proper supervision of the carrying out of the prescribed repair;
  - (b) ensure the repair materials to be used –
    - (i) are not defective and comply with this Ordinance; and
    - (ii) have been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under this Ordinance;
  - (c) ensure the building, for which the registered inspector is appointed to supervise the prescribed repair, is safe or has been rendered safe; and
  - (d) comply generally with this Ordinance.
- (5) A registered inspector appointed under subsection (1)(a) to carry out a prescribed inspection must notify the Building Authority of –
- (a) any case of emergency that is revealed during the course of the prescribed inspection; and
  - (b) any building works that have been or are being carried out in contravention of any provision of this Ordinance in the common parts, or to an external wall, roof, podium, yard or lane that is not in the common parts, of the

building, that is identified during the course of the prescribed inspection.

- (6) A registered inspector appointed under subsection (1)(b) to supervise a prescribed repair must notify the Building Authority of any case of emergency that is revealed during the course of supervision of the prescribed repair.
- (7) A registered inspector appointed under subsection (1)(a) or (b) must not act, at the same time, as a contractor to carry out the prescribed repair for the same part of the building.
- (8) If a registered inspector appointed under subsection (1)(a) or (b) becomes unwilling to act or unable, whether by reason of termination of appointment or for any other reason, to act, the person for whom the prescribed inspection or prescribed repair is to be, or is being, carried out must appoint another registered inspector to act instead of the original registered inspector.
- (9) A registered inspector appointed under subsection (1)(a) is not allowed to nominate another registered inspector to act in his or her stead even though he or she is temporarily unable to act by reason of illness or absence from Hong Kong.
- (10) If a registered inspector appointed under subsection (1)(b) is temporarily unable to act by reason of illness or absence from Hong Kong, he or she may nominate another registered inspector to temporarily act in his or her stead for the period of illness or absence.
- (11) In this section, a reference to an inspection or repair of a building does not include an inspection or repair of the windows in the building.

### Section 30E Appointment and duties of qualified persons

- (1) Any person for whom a prescribed inspection or prescribed repair in respect of a window in a building is to be carried out must appoint –
  - (a) a qualified person to carry out the prescribed inspection; and
  - (b) a qualified person to supervise the prescribed repair.
- (1A) ~~The qualified person appointed under subsection (1)(b) may be the same qualified person appointed under subsection (1)(a). a qualified person to carry out the prescribed inspection and, if a prescribed repair of the window is required, appoint the same qualified person to supervise the prescribed repair.~~
- (2) If a qualified person appointed under subsection (1)(a) is a natural person, the qualified person must –
  - (a) carry out the prescribed inspection personally; and
  - (b) comply generally with this Ordinance. ~~(1) is a natural person, the qualified person must carry out the prescribed inspection personally.~~
- (3) If a qualified person appointed under subsection (1)(a) is not a natural person, a representative of the qualified person as prescribed in the regulations must –
  - (a) carry out the prescribed inspection personally; and
  - (b) comply generally with this Ordinance. ~~(1) is not a natural person, a representative of the qualified person as prescribed in the regulations must carry out the prescribed inspection personally.~~
- (4) A qualified person appointed under subsection (1)(b) ~~(1)~~ must –
  - (a) provide proper supervision of the carrying out of the prescribed repair;
  - (b) ensure the repair materials to be used –
    - (i) are not defective and comply with this Ordinance; and
    - (ii) have been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under this Ordinance;
  - (c) ensure the window, for which the qualified person is appointed to supervise the prescribed repair, is safe or has been rendered safe; and
  - (d) comply generally with this Ordinance.
- (5) If a qualified person appointed under subsection (1)(a) or (b) ~~(1)~~ is a registered general building contractor or registered minor works contractor, the qualified person may also act as a contractor to carry out the prescribed repair.
- (6) A qualified person appointed under subsection (1)(a) or (b) ~~(1)~~ must notify the Building Authority of any case of emergency that is revealed during the course of the prescribed inspection or supervision of the prescribed repair ~~(as the case requires). repair.~~
- (7) If a qualified person appointed under subsection (1)(a) or (b) ~~(1)~~ becomes unwilling to act or unable, whether by reason of termination of appointment or for any other

reason, to act, the person for whom the prescribed inspection or prescribed repair is to be, or is being, carried out must appoint another qualified person to act instead of the original qualified person.

- (8) A qualified person appointed under subsection (1)(a) or (b)(+) is not allowed to nominate another qualified person to act in his or her stead even though he or she is temporarily unable to act by reason of illness or absence from Hong Kong.

### **Section 30F Duties of registered general building contractors and registered minor works contractors**

A registered general building contractor or registered minor works contractor appointed to carry out a prescribed repair must ensure the part of the building for which the contractor is appointed to carry out the prescribed repair has been rendered safe.

### **Section 33 Recovery of costs of works and surcharge by Building Authority**

- (1) In any case where under this Ordinance the Building Authority is authorized to recover the cost of any inspection, investigation or works carried out by him or caused to be carried out by him or to recover the costs of services provided by him or caused to be provided by him or to recover the cost of any abortive visit made by him ~~or to recover any surcharge~~, he may impose a surcharge of 20% on the cost due and may certify under his hand the cost and surcharge due and names of the persons liable therefor, and may by such certificate apportion such cost and surcharge among such persons.
- (2) Such cost may include –
- (a) the cost of materials supplied by the Building Authority for the purpose of carrying out such inspection, investigation or works; and
  - (b) supervision charges.
- (3) A copy of the Building Authority's certificate shall be served upon each person affected thereby.
- (4) Interest at the rate of 10 per cent per annum from the expiry of 1 month from the date of such service shall be recoverable as part of such cost or surcharge.
- (5) The payment of such cost or surcharge by any person shall be without prejudice to his right to recover the same from any person liable to pay the expenses of the repair of, or of other building works in connexion with, any building or land.
- (6) Without prejudice to any other remedy of the Building Authority for the recovery of such cost or surcharge, the same may be recovered as a debt due to the Government.
- (7) The writ of summons in connexion with such action shall be taken to have been duly served if it appears, to the satisfaction of the Court, that the writ was left at the defendant's residence or place of business, or in case the same is unknown, that it was left at the building or on the land in respect of which the claim is made.
- (8) A certificate purporting to be under the hand of the Building Authority, made under the provisions of subsection (1), and setting forth that the cost or surcharge claimed is due or payable to the Building Authority and that the person sued is liable for the payment thereof, and specifying the nature and particulars of the claim shall be prima facie evidence of the facts certified therein and of the signature of the Building Authority thereto.
- (9) At any time before such costs or surcharge and any interest accrued thereon has been wholly recovered, a memorial of the certificate referred to in subsection (1) may be registered in the Land Registry against the title of any premises or land in respect of which such cost or surcharge arose, and upon such registration the cost or surcharge and any interest accrued or thereafter accruing shall –
- (a) be recoverable by action in Court in accordance with the provisions of this section from any person who from such Land Registry register then or thereafter appears to be the owner of such premises or land:
 

Provided that –

    - (i) the amount recovered by virtue of this subsection shall not exceed the value of that person's interest in the premises or land charged; and
    - (ii) where the amount so recovered is equal to the value of the premises or land the charge created under paragraph (b) shall become void; and

- (b) constitute a first charge on the said premises or land which shall give the Building Authority the same powers and remedies in respect thereof as if he were a mortgagee under a mortgage by deed in common form having power of sale and lease and of appointing a receiver:

Provided that the charge shall be void and no liability shall accrue under this subsection against a bona fide purchaser or mortgagee of the premises or land for valuable consideration who, subsequent to the completion of the works specified in the certificate and before the registration of the memorial thereof, has acquired and registered an interest in the premises or land to be charged.

- (10) Upon the recovery of any sum under this section the Building Authority shall lodge in the Land Registry an appropriate memorial of satisfaction against any memorial lodged there by him under subsection (9).

### **Section 35 Service of notices and orders**

- (1) Any notice, order or certificate required to be served under this Ordinance may be served by serving a copy –

- (a) personally; or  
 (b) by registered post addressed to the last known place of business or residence of the person to be served; or  
 (c) by leaving the same with an adult occupier of the premises or land to which the notice or order relates or by posting the same upon a conspicuous part of such premises or land:

Provided that in addition to or in substitution for any such method of service the publication in the Gazette of any such notice or order together with the available particulars of the person to whom it is addressed shall be deemed to be good service.

- (2) A certificate purporting to be signed by a person who states in that certificate that the person has effected service under subsection (1) is evidence of the facts stated in the certificate relating to that service.

### **Section 37 Limitation of public liability**

- (1) No liability shall rest upon Government or upon any public officer by reason of the fact that any building works are carried out in accordance with the provisions of this Ordinance or that such building works or the plans thereof or materials therefor are subject to inspection or approval by a public officer, nor shall anything in this Ordinance make it obligatory for the Building Authority to inspect any building, building works or materials or the site of any proposed building to ascertain that the provisions of this Ordinance are complied with or that plans, certificates ~~and notices, forms, reports, notices and other documents~~ submitted to him are accurate.
- (2) No matter or thing done by the Building Authority or by any public officer acting under his direction shall if it were done bona fide for the purpose of executing this Ordinance subject him or such public officer personally to any action, liability, claim or demand whatsoever.
- (3) Nothing in this Ordinance contained shall exempt any person from any proceeding by way of mandamus, injunction, prohibition or other order unless it is expressly so enacted.

### **Section 38 Regulations**

- (1) The Secretary may by regulation provide for –
- (a) registration and control of –
- (i) authorized persons;
- (ii) registered structural engineers;
- (iia) registered geotechnical engineers;
- (iib) registered inspectors;
- (iii) registered general building contractors;
- (iv)-(v)
- (vi) registered specialist contractors;
- (vii) registered minor works contractors;
- (aa) restoration to and removal from the register of any person referred to in paragraph (a);
- (b) the manner of making application for and granting of approval of plans of

- building works or street works, and the giving of consent to commence or carry on such works, including cases where it is desired –
- (i) to add to or alter building works or street works the commencement of which has already been consented to, or
  - (ii) to commence certain parts of building works or street works before other parts;
- (ba) the planning, design and construction of site formation works;
- (bb) the planning, design and carrying out of ground investigation in the scheduled areas;
- (c) planning and design of buildings including –
- (i) streets;
  - (ii) projections;
  - (iii) heights, site coverage, plot ratio and open spaces including service lanes;
  - (iv) lighting and ventilation;
  - (v) sanitation;
  - (vi) staircases and fire-escapes;
  - (vii) domestic buildings;
  - (viii) buildings for special uses including industrial buildings, places of public entertainment and schools;
  - (ix) any sea-wall, breakwater, jetty, mole, quay, wharf or pier;
  - (x) exceptional structures;
  - (xi) timber yards and hoardings;
  - (xii) fire fighting equipment;
  - (xiii) matters relating to the installation of lifts and escalators;
  - (xiv) matters relating to the provision of access facilities for telecommunications and broadcasting services; and
  - (xv) matters relating to the provision of emergency vehicular access;
- (d) the construction of buildings including –
- (i) materials;
  - (ii) loads and stresses;
  - (iii) foundations, floors and sites;
  - (iv) walls and piers;
  - (v) roofs, flues and chimneys;
  - (vi) structural steel work, reinforced concrete, and timber;
  - (vii) fire-resisting construction;
  - (viii) retaining walls;
  - (ix) plumbing and drainage;
  - (x) wells;
  - (xi) matters relating to the installation of lifts and escalators;
  - (xii) refuse chutes, refuse storage chambers, and floor space and facilities for material recovery and separation of refuse; and
  - (xiii) matters relating to the provision of emergency vehicular access;
- (e) the supply of water to buildings for all purposes, including the connexion thereof to buildings and the arrangement, size, construction and type of piping therefor and the power of the Building Authority to require that the supply of water be obtained from a particular source or to prohibit or restrict the supply of water from any particular sources;
- (f) (–)
- (g) the construction, inspection, testing and safe working of ventilating systems;
- (h) the testing of drainage works and matters ancillary thereto;
- (i) the demolition of buildings and the safety precautions to be taken in respect thereof;
- (ia) the design, construction, licensing, inspection, testing and maintenance of oil storage installations and matters connected therewith, including the imposition of restrictions and conditions relating to the use of such installations for the storage of petroleum products; prohibiting the use of any oil storage installation, requiring any petroleum products to be removed from any oil storage installation, the seizure, removal and detention of any petroleum products not removed from any oil storage installation as required, the power of entry, inspection and examination; and for the

establishment of a Standing Advisory Committee to advise the Building Authority on such matters relating to oil storage installations as may be specified in the regulations;

- (ib) as regards the conservation of energy –
  - (i) requirements relating to the planning, design and construction of any building or buildings of a class or description specified in the regulations, including the furnishing of information regarding these matters;
  - (ii) as regards buildings complying with or required to comply with regulations under subparagraph (i), exemptions from specified requirements in any other regulation made under this subsection;
- (j) the granting of permits for and control of buildings required for a limited time or constructed of shortlived materials;
- (k) plans, notices and certificates to be delivered to the Building Authority;
- (ka) matters relating to minor works, including –
  - (i) the designation of any building works as minor works for the purposes of the definition of “minor works” in section 2(1);
  - (ii) the classification of minor works into different classes, types or items;
  - (iii) the appointment of prescribed building professionals in respect of different classes, types or items of minor works; and
  - (iv) the appointment of prescribed registered contractors to carry out different classes, types or items of minor works;
- (kb) the prescription of any requirements as simplified requirements for the purposes of the definition of “simplified requirements” in section 2(1), including –
  - (i) the duties of any prescribed building professionals and prescribed registered contractors, appointed in respect of minor works commenced under the simplified requirements (whether to be performed before or after the commencement of the minor works);
  - (ii) the requirements for the commencement, carrying out, completion and certification of minor works under the simplified requirements; and
  - (iii) the requirements for the submission or delivery of prescribed plans, certificates, notices or other documents to the Building Authority or other persons;
- (kc) matters relating to the enforcement of or other matters concerning the simplified requirements;
- (kd) matters relating to the display or indication of information relating to –
  - (i) the registration number of any prescribed registered contractor; and
  - (ii) the class, type and item of the minor works in respect of which any prescribed registered contractor is registered,
 in order to facilitate any member of the public to ascertain whether he is, in relation to any matter connected with any activity under this Ordinance, dealing with a contractor registered under this Ordinance;
- (ke) matters relating to section 39C, including matters relating to –
  - (i) the appointment of persons including a registered minor works contractor to inspect any building or building works for the purposes of that section;
  - (ia) the prescription of a period for the purposes of section 39C(1)(b);
  - (ii) the prescription of any building or building works for the purposes of the definition of “prescribed building or building works” in section 39C(6)(b); and
  - (iii) any plans, certificates, notices or other documents that are required to be submitted or delivered to the Building Authority or other persons;
- (kg) matters relating to a prescribed inspection or prescribed repair in respect of a building including –
  - (i) the scope, standard and requirements of a prescribed inspection or prescribed repair in respect of a building;
  - (ii) ~~(–)the scope, standard and requirements of a prescribed inspection~~

or prescribed repair in respect of a window in a building;

- (iii) the requirements of the appointment of registered inspectors, qualified persons, registered general building contractors and registered minor works contractors for a prescribed inspection or prescribed repair;
- (iv) the duties of registered inspectors, qualified persons, registered general building contractors and registered minor works contractors in relation to a prescribed inspection or prescribed repair;
- (v) the prescription of any exemption for the purposes of section 30D(3)(a); and
- (vi) the prescription of representatives of qualified persons for the purposes of section 30E(3);
- (kf) the designation of any building works as designated exempted works for the purposes of section 41(3B);
- (l)-(m) (–)
- (n) the better carrying into effect of the provisions of this Ordinance.
- (1AA) Without limiting the generality of subsection (1), the Secretary may by regulation provide for the registration of persons as registered minor works contractors in the provisional register (whether or not as supplemental or transitional arrangements).
- (1A) The Chief Executive in Council may by regulation provide for the imposition of fees in respect of any matter with regard to which provision is made in this Ordinance or in regulations made under this Ordinance.
- (1B) The Chief Executive in Council may by regulation provide for –
  - (a) the procedure as regards the exercise of the right of appeal conferred by section 44;
  - (b) the practice and procedure of an Appeal Tribunal constituted under section 48; and
  - (c) matters ancillary or incidental to those specified under paragraph (a) or (b).
- (1C) Regulations made under subsection (1)(ib) may provide that any requirement in such regulations applies to a building, any part of a building or parts of a building as are specified.
- (2) Regulations under this section may provide for the carrying out by the Building Authority of all building works required to be carried out therein, and for the recovery of the costs thereof from the person required to carry out such building works.
- (3) (a) Regulations under this section may provide that where the Building Authority issues permits thereunder he may –
  - (i) endorse conditions on such permits;
  - (ii) cancel such permits for breaches thereof; and
  - (iii) require the permittee to deposit a sum not exceeding \$500 as security for the due compliance with such conditions.
 (b) Upon the breach of any such condition, any deposit required by this subsection shall upon application to a magistrate be declared by him to be forfeited to the Government.
- (3A) The amount of fees provided for in regulations made under subsection (1A) in respect of the making of application for or granting of approval of plans of building works or street works may be fixed at levels which provide for the recovery of expenditure incurred or likely to be incurred generally by the Government in relation to such application or approval and need not be limited by reference to the administrative or other costs incurred or likely to be incurred in the processing of any individual submission of plans.
- (4) Regulations under this section may provide that a contravention of any specific provision thereof shall be an offence and may prescribe penalties therefor of –
  - (a) a fine not exceeding level 6;
  - (b) in the case of a continuing offence, a daily fine not exceeding \$5,000 for each day during which the offence continues; and
  - (c) imprisonment for a period not exceeding 2 years.
- (5) Regulations under this section shall be published once in the Gazette at least 3 weeks before coming into operation:  
 Provided that where the Secretary or the Chief Executive in Council, as the case may be, deems it expedient such publication may be dispensed with.

**Section 39A Technical memorandum**

- (1) The Secretary may issue a technical memorandum dealing with –
- (a) the circumstances in which a supervision plan is not required for building works or street works;
  - (b) the classes of supervision that the Building Authority identifies as appropriate to various types of building works and street works having regard to the complexity of the building works or street works, the manpower required and level of supervision required for each of the classes of supervision;
  - (c) detailed supervision requirements for various types of building works and street works including the management structure required to ensure site safety, the manpower required for each element of the management structure, the qualifications and experience of the personnel involved and the specific tasks to be associated in each element of the management structure;
  - (d) the method statement of various types of building works and street works, the types of precautionary and protective measures required to be undertaken for the safety of the site, the workers and the public, and such other details relating to site safety as the Building Authority may consider necessary;
  - (e) the qualifications and experience required for technically competent persons to be appointed for supervisory work under supervision plans;
  - (f) the circumstances in which an authorized person, registered structural engineer, registered geotechnical engineer, registered inspector, registered general building contractor, registered specialist contractor or registered minor works contractor is permitted to notify in retrospect for minor deviations from a supervision plan;
  - (g) the method and timing of notification of, and the amendment procedures for, a proposed or actual deviation from a supervision plan, including deviations caused by an emergency;
  - (h) the form and content of a supervision plan;
  - (i) the general responsibilities of the site supervision personnel for the various types of building works and street works;
  - (j) the procedure, timing and sequence for the submission of supervision plans.
- (2) The Secretary must publish a technical memorandum issued under this Ordinance in the Gazette and cause it to be laid on the table of the Legislative Council at the next sitting after publication.
- (3) Where the Secretary has caused a technical memorandum to be laid on the table of the Legislative Council, the Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiry of a period of 28 days after the sitting at which it was laid, provide that the technical memorandum be amended in any manner consistent with the power to issue the technical memorandum.
- (4) If the period for passing a resolution would, but for this subsection, expire –
- (a) after the end of a session of the Legislative Council or after a dissolution of the Legislative Council; but
  - (b) on or before the day of the second sitting of the Legislative Council in the next following session of the Legislative Council,
- the period is deemed to extend to and expire on the day after that second sitting.
- (5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to a technical memorandum specified therein –
- (a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
  - (b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next following session.
- (6) A resolution passed by the Legislative Council under this section must be published in the Gazette not later than 14 days after the resolution is passed or within such

further period as the Secretary may allow in any particular case.

- (7) A technical memorandum issued under subsection (1) is not subsidiary legislation.
- (8) In this section, “sitting” (立法會會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper.
- (9) Unless the Secretary appoints a later date either in the memorandum or by notice in the Gazette, a technical memorandum commences to have effect –
- (a) if the Legislative Council does not pass a resolution amending the technical memorandum, upon the expiry of the period, or the period as extended, as the case may be, for passing an amending resolution; and
  - (b) if the Legislative Council passes a resolution amending the technical memorandum, at the beginning of the day of the publication in the Gazette of the resolution.
- (10) If the Secretary issues a technical memorandum under this Ordinance, he must make available a copy of the technical memorandum for inspection by the public free of charge at such offices of the Government as the Secretary directs during business hours.

### **Section 39B Obstruction of owners' corporation**

- (1) ~~A person who has been notified by an owners' corporation of a building that an order or notice has been served on the owners' corporation under any provision of this Ordinance in relation to any common parts of the building must not~~ ~~No person who has been notified by an owners' corporation of a building that an order has been served on the owners' corporation under sections 24(1), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4) or 28(2)(a), (3) or (5), or a notice has been served on the owners' corporation under section 30B(3), (5) or (6) or 30C(3), in relation to any common parts of the building shall~~ (a) obstruct a person employed or engaged by the owners' corporation in the carrying out of any inspection, investigation, works or other action that is required for the purpose of complying with the order or notice; ~~works or other action that is required for the purpose of complying with the order; or order or notice;~~
- (b) refuse to allow a person employed or engaged by the owners' corporation access to or the use of any premises, which is reasonably necessary for the carrying out of any inspection, investigation, works or other action that is required for the purpose of complying with the order or notice. ~~works or other action that is required for the purpose of complying with the order; order or notice; or~~
- ~~(c) refuse to contribute to the cost of the inspection or repair works that is required for the purpose of complying with the notice served under section 30B(3), (5) or (6) or 30C(3).~~ (1A) A person who has been notified by an owners' corporation of a building that an order or notice has been served on the owners' corporation under any provision of this Ordinance in relation to any common parts of the building must not refuse to contribute to the cost of the inspection, investigation, works or other action that is required for the purpose of complying with the order or notice.
- ~~(2) In this section –~~  
~~“common parts” (公用部分) has the meaning assigned to it in section 2 of the Building Management Ordinance (Cap 344);~~  
~~“owners' corporation” (業主立案法團) means a corporation registered under section 8 of the Building Management Ordinance (Cap 344).~~
- (2) In this section, “owners' corporation” (業主立案法團) means a corporation registered under section 8 of the Building Management Ordinance (Cap. 344).

### **Section 39C Building Authority shall not serve order under section 24 or notice under section 24C**

- (1) ~~Despite sections 24 and 24C, the Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that they have been completed or carried out in contravention of section 14(1) if –~~

- (a) the prescribed building or building works were completed or carried out before 31 December 2010, and the requirements in subsections (2), (3) and (4) were complied with in respect of the prescribed building or building works; or
- (b) the prescribed building or building works –
- (i) were completed or carried out before the date of commencement;
  - (ii) is a building or are works in respect of which a period of time is prescribed (“prescribed period”) in the regulations for periodic compliance of the requirements in subsections (2), (3) and (4); and
  - (iii) is a building or are works with respect to which those requirements have been complied with before the commencement of a prescribed period. ~~Notwithstanding sections 24 and 24C, if the requirements in subsections (2), (3) and (4) have been complied with in respect of a prescribed building or building works that have been completed or carried out before the date of commencement, the Building Authority shall not serve an order under section 24 or a notice under section 24C in respect of that building or building works on the ground that they have been completed or carried out in contravention of section 14(1).~~
- (2) An authorized person, a registered structural engineer, a registered inspector, a registered general building contractor, a registered specialist contractor or a registered minor works contractor as required by the regulations is to be appointed to inspect the prescribed building or building works.
- (3) The person appointed under subsection (2) is to submit or deliver to the Building Authority or other persons prescribed plans, certificates, notices and other documents as required by the regulations.
- (4) Where the person appointed under subsection (2) considers that for the safety of the prescribed building or building works, it is necessary to carry out minor works to alter, rectify or reinforce the prescribed building or building works, such works are to be carried out by a prescribed registered contractor under the simplified requirements.
- (5) Nothing in this section affects the power of the Building Authority to serve an order under section 24 or a notice under section 24C on the grounds other than those referred to in subsection (1).
- (6) In this section –
- (a) “date of commencement” (生效日期) means the date of commencement of section 26(c) of the Buildings (Amendment) Ordinance 2011 ( of 2011) ~~27 of the Buildings (Amendment) Ordinance 2008 (20 of 2008);~~
  - (b) “prescribed building or building works” (訂明建築物或建築工程) means a building or building works prescribed in the regulations as prescribed building or building works for the purposes of this definition.

## PART IV OFFENCES

### Section 40 Offences

- (1AA) Any person who knowingly contravenes section 14(1) in respect of building works (other than minor works) or street works 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.
- (1AB) Any person who commits an offence under section 4A(2) or 9AA(2) shall be liable on conviction to a fine at level 6.
- (1) Any person who contravenes section 21(1) shall be guilty of an offence and shall be liable on conviction –
- (a) to a fine at level 6 and to imprisonment for 2 years; and
  - (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (1A) Any person who contravenes section 22(2)(a), 24B(14) or 27(5)(a) shall be guilty of an offence and shall be liable on conviction to a fine of at level 2 and to

imprisonment for 6 months.

- (1B) Any person who –
- (a) contravenes section 30(1) or 31(1); or
  - (b) without reasonable excuse, fails to comply with an order served on him under section 19(2), 20(2), 22(3), 23, 25(2), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4), 28(2)(a) or (3) or (5), 29(2)(a), 29A(2), 30(3) or 31(2)(a),
- shall be guilty of an offence and shall be liable on conviction –
- (i) to a fine at level 5 and to imprisonment for 1 year; and
  - (ii) in the case of an offence consisting of a failure to comply with an order served on him under section 23, 25(2), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4) or 28(3) or (5) to a further fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the failure to comply with the order has continued.
- (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.
- (1BB) Any person who, without reasonable excuse, fails to comply with an order served on him under section 24AA(1) shall be guilty of an offence and shall be liable on conviction –
- (a) to a fine at level 5 and to imprisonment for 3 months; and
  - (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (1BC) Any person who, without reasonable excuse, fails to comply with a notice served on the person under section 30B(3), (4), (5) or (6) commits an offence and is liable on conviction –
- (a) to a fine at level 5 and to imprisonment for 1 year; and
  - (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (1BD) Any person who, without reasonable excuse, fails to comply with a notice served on the person under section 30C(3) or (4) commits an offence and is, subject to subsection (1BE), liable on conviction –
- (a) to a fine at level 4 and to imprisonment for 3 months; and
  - (b) to a fine of \$2,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (1BE) Before taking court proceedings against a person for an offence under subsection (1BD), the Building Authority must serve on the person a penalty notice described in Schedule 7.
- (1BF) Schedule 7 has effect in relation to a penalty notice.
- (1BG) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 7.
- (1C) Any person who –
- (a) without reasonable excuse, fails to comply with an order served on him under section 32(2); or
  - (b) contravenes section 24B(8) or 32(3),
- shall be guilty of an offence and shall be liable on conviction to a fine at level 1 and to imprisonment for 6 months.
- (1D) Any owner who –
- (a) fails to serve upon all former occupiers who have notified him of their addresses, the copies required to be served under section 27(10)(a); or
  - (b) fails to serve upon the Building Authority the certificate required to be served under section 27(10)(b),
- shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (1E) Any person who contravenes section 24B(6) shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 1 year and to a further fine of \$5,000 for each day during which the offence continues.
- (2) Any person who –

- (a) fails to give any notice required to be given under section 25(1); or
- (b) contravenes any condition of a permit granted by the Building Authority under section 42,

shall be guilty of an offence and shall, without prejudice to any other penalty, be liable on conviction to a fine at level 6 and to imprisonment for 2 years.

(2AAA) Any person who obstructs the Building Authority, any officer authorized by him or any other public officer, in the exercise of his power under this Ordinance, shall be guilty of an offence and shall, without prejudice to any other penalty, be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(2A) Any person for whom any ~~building works or street works are being carried out and any authorized person, registered structural engineer, registered geotechnical engineer, registered general building contractor, registered specialist contractor or registered minor works contractors~~ directly concerned with any such prescribed inspection or building works or street works are being carried out and any authorized person, registered structural engineer, registered geotechnical engineer, registered inspector, qualified person, registered general building contractor, registered specialist contractor or registered minor works contractor directly concerned with any such inspection or works who –

- (a) permits or authorizes to be incorporated in or used in the carrying out of any such inspection or works any materials which –
  - (i) are defective or do not comply with the provisions of this Ordinance;
  - (ii) have not been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under this Ordinance;
- (b) diverges or deviates in any material way from any work shown in a plan approved by the Building Authority under this Ordinance;
- (ba) diverges or deviates in any material way from any works shown in a plan relating to minor works that is required to be submitted to the Building Authority under the simplified requirements; or
- (c) knowingly misrepresents a material fact in any plan, certificate, form ~~or notice, report, notice or other document~~ given to the Building Authority under this Ordinance,

shall be guilty of an offence and shall be liable on conviction –

- (d) in the case of a prescribed inspection (other than a prescribed inspection in respect of a window in a building) or building works (other than minor works) or street works, to a fine of \$1,000,000 and to imprisonment for 3 years; or
- (e) in the case of a prescribed inspection in respect of a window in a building or minor works, to a fine of \$500,000 and to imprisonment for 18 months.

(2AA) Any authorized person, registered structural engineer or registered geotechnical engineer who contravenes section 4(3)(b), or any registered general building contractor or registered specialist contractor who contravenes section 9(5)(b) or (6)(b), shall be guilty of an offence and shall be liable on conviction to a fine of \$250,000:

Provided that it shall be a defence in any prosecution for a contravention of any section referred to in this subsection for the person charged to prove to the satisfaction of the court that he did not know, nor could reasonably have discovered, the contravention referred to in the charge.

(2AAAA) Any prescribed building professional who contravenes section 4B(2)(c), or any prescribed registered contractor who contravenes section 9AA(4)(b) or (6)(b), shall be guilty of an offence and shall be liable on conviction to a fine at level 5.

(2AAAB) It is a defence in any prosecution for a contravention of any section referred to in subsection (2AAAA) for the person charged to prove that he had no knowledge of, and could not have reasonably discovered, the contravention referred to in the charge.

(2AAAC) Any person who contravenes an order made by a disciplinary board under section 7(2)(bb), ~~or 13(4)(d)~~ 7(2)(d), 13(4)(d) or 13(4)(e) shall be guilty of an offence and shall be liable on conviction –

- (a) to a fine at level 6 and to imprisonment for 6 months; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction

of the court that the offence has continued.

- (2AB) Any person (whether or not an authorized person, a registered structural engineer, a registered geotechnical engineer, a registered general building contractor, a registered specialist contractor or a registered minor works contractor) directly concerned with any building works or street works set out in items 1, 2, 3, 4, 5 and 6 of Column A in the table to section 17(1) who contravenes any condition imposed, or fails to comply with any requirement of an order in writing, under that section in respect of such building works or street works, or the plans thereof, shall be guilty of an offence and shall be liable on conviction –
- (a) in the case of building works (other than minor works) or street works, to a fine of \$150,000 and to imprisonment for 1 year; or
  - (b) in the case of minor works, to a fine of \$35,000 and to imprisonment for 3 months.
- (2AC) Any person (whether or not an authorized person, a registered structural engineer, a registered geotechnical engineer, a registered general building contractor, a registered specialist contractor or a registered minor works contractor) directly concerned with any site formation works, piling works, excavation works or foundation works who contravenes any condition imposed under item 7 in the table to section 17(1) in respect of such works, or the plans thereof, shall be guilty of an offence and shall be liable on conviction –
- (a) in the case of site formation works, piling works, excavation works or foundation works (other than minor works), to a fine of \$750,000 and to imprisonment for 3 years; or
  - (b) in the case of site formation works, excavation works or foundation works that are minor works, to a fine of \$350,000 and to imprisonment for 18 months.
- (2AD) Any registered inspector who contravenes section 30D(3)(a), or any qualified person who contravenes section 30E(2), or any representative of a qualified person who contravenes section 30E(3), commits an offence and is liable on conviction to a fine of \$250,000.
- (2AE) Any registered inspector who contravenes section 30D(4)(a), or any qualified person who contravenes section 30E(4)(a), commits an offence and is liable on conviction –
- (a) in the case of supervision of a prescribed repair (other than minor works), to a fine of \$250,000; or
  - (b) in the case of supervision of a prescribed repair that is minor works, to a fine of \$150,000.
- (2AF) Any registered inspector, qualified person, registered general building contractor or registered minor works contractor who contravenes section 30D(4)(c), 30E(4)(c) or 30F, as the case may be, commits an offence and is liable on conviction –
- (a) in the case of a prescribed repair (other than minor works), to a fine of \$1,000,000 and to imprisonment for 3 years; or
  - (b) in the case of a prescribed repair that is minor works, to a fine of \$500,000 and to imprisonment for 18 months.
- (2B) Any person (whether or not an authorized person, a registered structural engineer, a registered geotechnical engineer, a registered inspector, a qualified person, a registered general building contractor, a registered specialist contractor or a registered minor works contractor) directly concerned with any prescribed inspection, site formation works, piling works, foundation works or other form of building works who –
- (a) carries out or has carried out such inspection or works, or authorizes or permits or has authorized or permitted such inspection or works to be carried out, in such manner that it causes injury to any person or damage to any property; or
  - (b) carries out or has carried out such inspection or works, or authorizes or permits or has authorized or permitted such inspection or works to be carried out, in such manner as is likely to cause a risk of injury to any person or damage to any property,
- shall be guilty of an offence and shall be liable on conviction –
- (c) in the case of a prescribed inspection (other than a prescribed inspection in respect of a window in a building), or site formation works, piling works, foundation works or other form of building works (other than minor works),

- to a fine of \$1,000,000 and to imprisonment for 3 years; or
- (d) in the case of a prescribed inspection in respect of a window in a building, or site formation works, foundation works or other form of building works that are minor works, to a fine of \$500,000 and to imprisonment for 18 months.
- (2C) Any person who, without reasonable excuse, fails to comply with an order served on him under section 24A, shall be guilty of an offence and shall be liable on conviction –
- (a) in the case of building works (other than minor works) or street works –
- (i) to a fine of \$1,000,000 and to imprisonment for 3 years; and
- (ii) to a fine of \$200,000 for each day during which it is proved to the satisfaction of the court that the offence has continued; or
- (b) in the case of minor works –
- (i) to a fine of \$500,000 and to imprisonment for 18 months; and
- (ii) to a fine of \$100,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (2D) Any person who knowingly misrepresents a material fact in any report submitted to the Building Authority under section 27C(2)(c) shall be guilty of an offence and shall be liable on conviction to a fine of \$250,000 and to imprisonment for 3 years.
- (2E) Where a registered minor works contractor or a registered specialist contractor certifies or carries out minor works belonging to a class, type or item for which he is not registered, he shall be guilty of an offence and shall be liable on conviction –
- (a) to a fine at level 6 and to imprisonment for 6 months; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (2F) Any person other than a prescribed building professional, who, without reasonable excuse, certifies minor works shall be guilty of an offence and shall be liable on conviction –
- (a) to a fine at level 6 and to imprisonment for 6 months; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (2G) Any person other than a prescribed registered contractor or a person acting under the supervision of any such contractor, who, without reasonable excuse, certifies or carries out minor works shall be guilty of an offence and shall be liable on conviction –
- (a) to a fine at level 6 and to imprisonment for 6 months; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (2H) Any person other than a registered inspector who, without reasonable excuse, certifies a prescribed inspection (other than a prescribed inspection in respect of a window in a building), or certifies or supervises a prescribed repair (other than a prescribed repair in respect of a window in a building), in respect of a building commits an offence and is liable on conviction –
- (a) to a fine at level 6 and to imprisonment for 6 months; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (2I) Any person other than a qualified person who, without reasonable excuse, certifies a prescribed inspection or certifies or supervises a prescribed repair, in respect of a window in a building commits an offence and is liable on conviction –
- (a) to a fine at level 6 and to imprisonment for 6 months; and
- (b) to a fine of \$5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.
- (3) Any person who unlawfully and maliciously removes, pulls down, demolishes or damages, or in any way whatsoever interferes with, any shoring erected for a building pursuant to section 18(1) or any groundwater drainage works carried out pursuant to section 28A shall be guilty of an offence and shall be liable to a fine at level 5 and to imprisonment for 1 year.
- (3A) Any person who without reasonable excuse fails to comply with a requirement imposed under section 28A to maintain groundwater drainage works shall be guilty of an offence and shall be liable to a fine at level 5 and imprisonment for 1 year and to a further fine of \$5,000 for each day during which it is proved to the satisfaction

of the court that the failure to comply with the requirement has continued.

- (4) Any person who, after a copy of a warrant issued under section 18(6)(c) has been posted in accordance with section 18(6)(d), obstructs the entry to the building specified in such warrant of any police officer or other person authorized by such warrant to enter the same shall be guilty of an offence and shall be liable to a fine at level 5 and to imprisonment for 1 year.
- (4A) Any person who, after a copy of warrant issued under section 28C has been posted under subsection (2) of that section, obstructs the entry upon the land specified in the warrant by any police officer or other person authorized by the warrant to enter upon the land or obstructs the carrying out or maintenance of any groundwater drainage works by any person authorized by the warrant to carry out or maintain the works shall be guilty of an offence and shall be liable to a fine at level 5 and to imprisonment for 1 year.
- (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.
- (4C) Any person who without reasonable excuse contravenes section 39B(1A) commits an offence and is liable on conviction to a fine at level 4.
- (5) Any person, being a person directly concerned in or with any building works or street works, who permits the commission of any offence specified in this section shall be deemed to be guilty of such offence and shall be liable to the penalty prescribed therefor.
- (6) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or default on the part of, any director, manager, or other officer concerned in the management of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence.
- (6A) Where an offence under this Ordinance committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or default on the part of, any other partner of the partnership, that other partner is also guilty of the offence.
- (7) Where anything is required to be done by the owner of a building, and by virtue of section 2 there is more than one owner of such building, it shall be a defence to any charge of failing to do that thing –
  - (a) that such thing was done by another owner of the building; or
  - (b) that any notice or order in respect of such thing required under this Ordinance to be served on the owner was served on another owner of the building and not on the person charged.
- (7A) Where anything is required to be done by an owner of land or by a person referred to in section 27A(1), it shall be a defence to any charge of failing to do that thing that any notice or order in respect of such thing required under this Ordinance to be served on the owner or on such person was served on another owner of the land or on another such person and not on the person charged.
- (8) Any prosecution under the provisions of this Ordinance may be commenced within 12 months of the commission of the offence or within 12 months of the same being discovered by or coming to the notice of the Building Authority.

#### **Section 46 Secretary to the Appeal Tribunal**

- (1) There shall be a Secretary to the Appeal Tribunal for the purpose of providing administrative services to an Appeal Tribunal.
- (2) The Secretary to the Appeal Tribunal shall be –
  - (a) appointed by the Secretary ~~for Development~~;
  - (b) a public officer; and
  - (c) a person other than a member of the Appeal Tribunal Panel.

#### **Section 54 Saving**

Notwithstanding the repeal of the Buildings Ordinance 1935 (18 of 1935), the provisions of sections 110 to 126 of that Ordinance set out in ~~the Second Schedule~~ **Schedule 2** hereto shall continue in operation until such time as they are replaced by regulations enacted under section 38 or by any other enactment expressed to be in substitution for the provisions of the said sections:

Provided that any reference to an architect in the said sections 110 to 126 shall be taken as references to an authorized person.

### Section 55 Validation

- (1) Any public officer whom the Director of Building Development purported to authorize for the purposes of section 2(2) of this Ordinance at any time before the commencement of the Buildings (Amendment) (No. 2) Ordinance 1985 (73 of 1985) shall be deemed to have been validly authorized, notwithstanding that the public officer was not an officer of the Building Development Department.
- (2) Every act or thing done by the Building Authority or by any public officer authorized by him in writing in that behalf before the commencement of the Buildings (Amendment) Ordinance 1992 (42 of 1992) that would have been lawful if section 28 (as amended by section 3(a) of that Ordinance) had been in force at the time when it was done is hereby validated and declared to have been lawfully done by him.
- (2A) Every act or thing done by the Building Authority or by any public officer authorized by him in writing in that behalf, before the commencement of the Buildings (Amendment) (No. 2) Ordinance 1992 (77 of 1992) that would have been lawful if –
  - (a) section 28(7)(a); and
  - (b) section 28(7)(c) (in so far as it relates to the power to carry out or cause to be carried out such drainage works as the Building Authority considers necessary or expedient but as if there was no requirement to have regard to the findings of an investigation),
 had been in force at the time when it was done is hereby validated and declared to have been lawfully done by him.
- (3) Every act or thing done by any officer of the Drainage Services Department before 21 November 1991 that would have been lawful if ~~the Fourth Schedule~~ Schedule 4 (as amended by the resolution of the Legislative Council (L.N. 406 of 1991)) had been in force and if the act or thing done had been authorized by the Director of Buildings and Lands at the time when it was done is hereby validated and declared to have been lawfully done by the officer.

### Schedule 7

[ss. 40(1BE), (1BF) & (1BG)]

1. A penalty notice under section 40(1BE) must be made in writing stating –
  - (a) that the person served with the penalty notice is required to pay a fixed penalty of \$1,500 within 21 days after the date of the penalty notice;
  - (b) if the person wishes to dispute liability for the offence under section 40(1BD), that the person must notify the Building Authority in writing within 21 days after the date of the penalty notice;
  - (c) that the person is required to comply with the notice served under section 30C(3) or (4), and if the person's failure to comply with the notice continues, the Building Authority may –
    - (i) serve on the person a further penalty notice after the expiry of the penalty notice that is being served; or
    - (ii) proceed to take court proceedings for the person's failure to comply with the notice served under section 30C(3) or (4), and the person would be liable to the fine and imprisonment mentioned in section 40(1BD); and
  - (d) any other related matters, including payment instructions for payment of the fixed penalty.
2. Section 35 applies to the service of a penalty notice under section 40(1BE).
3. If any person on whom a penalty notice has been served has failed to pay the fixed penalty of \$1,500, and has not notified the Building Authority that the person wishes to dispute liability, within 21 days after the date of the penalty notice, a magistrate may, on an application being made in the manner mentioned in section 4 of this Schedule, order the person to pay the fixed penalty of \$1,500, together with a sum of \$300 by way of costs, within 21 days after the date of service of notice of the order.

4. An application under section 3 of this Schedule –
  - (a) may be made in the absence of the person on whom the penalty notice has been served; and
  - (b) must be made in the name of the Secretary for Justice, who may appoint any person or class of persons to make the application.
5. Despite the Magistrate Ordinance (Cap. 227), in an application under section 3 of this Schedule, a magistrate may make an order under that section on production by the applicant to the magistrate of –
  - (a) a copy of the penalty notice served under section 40(1BE); and
  - (b) a certificate of service under section 35(2).
6. In an application under section 3 of this Schedule, a certificate stating –
  - (a) that payment of the fixed penalty of \$1,500 had not been made before the date specified in the certificate; and
  - (b) that the person specified in it had not, before the date specified in the certificate, notified the Building Authority that the person wished to dispute liability for the offence under section 40(1BD),
 and purporting to be signed by or for the Building Authority is to be admitted in evidence without further proof on its production to the magistrate and, unless there is evidence to the contrary, it is presumed that the certificate is so signed and the certificate is evidence of the facts stated in it.
7. If an order is made under section 3 of this Schedule –
  - (a) the magistrate must cause notice of the order to be served on the person to whom it relates; and
  - (b) the sending of the notice to the person by post at the person's address mentioned in the penalty notice constitutes good service.
8. If any person against whom an order under section 3 of this Schedule has been made fails to pay the fixed penalty and costs, the person is taken, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), to have failed to pay the sum adjudged to be paid by a conviction and is liable to be imprisoned under that section.
9. If there is evidence to show that a penalty notice served under section 40(1BE) has not come to the notice of the person to whom it relates before the date of the order made under section 3 of this Schedule, the magistrate may, on an application of which reasonable notice has been given to the Building Authority, rescind the order and –
  - (a) if the person wishes to dispute liability for the offence under section 40(1BD), give leave to that effect; or
  - (b) if that person does not wish to dispute liability, order that person to pay the fixed penalty of \$1,500 within 21 days after the date of the order.
10. An application for rescission of an order under section 9 of this Schedule may be made in person or by counsel or solicitor on behalf of the applicant and the magistrate, for the purpose of securing the attendance of witnesses and generally for conducting the proceedings, has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).
11. An application for rescission of an order under section 9 of this Schedule must be made within 21 days after the date of service of notice of the order made under section 3 of this Schedule, but the magistrate may extend the period if he or she considers it appropriate to do so in the circumstances.
12. If a magistrate gives leave under section 9(a) of this Schedule, proceedings may be taken, despite section 26 of the Magistrates Ordinance (Cap. 227), within 6 months after the date on which the magistrate gives the leave.
13. A magistrate may for good cause, on an application by the Building Authority at any time, rescind any order for the payment of a fixed penalty and costs and any other order made in the same proceedings.
14. If any person against whom an order under section 9(b) of this Schedule has been made fails to pay the fixed penalty, the person is taken, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), to have failed to pay the sum adjudged to be paid by a conviction and is liable to be imprisoned under that section.
15. If any person on whom a penalty notice under section 40(1BE) has been served notifies the Building Authority that the person wishes to dispute liability or the person is given leave under section 9(a) of this Schedule, proceedings may be taken against that person, and a summons issued in those proceedings may be served on

that person in accordance with section 8 of the Magistrates Ordinance (Cap. 227).

16. In proceedings under section 15 of this Schedule, if the court determines that the person is guilty of the offence of failing to comply with the notice served on the person under section 30C(3) or (4) without reasonable excuse, the person is liable to the fine and imprisonment under section 40(1BD).
17. After proceedings have been instituted but not less than 2 days (excluding any public holiday) before the day specified in the summons for the person's appearance, the person may pay the fixed penalty of \$1,500 and a sum of \$500 by way of costs with the production of the summons at any magistracy to terminate the proceedings.
18. If a person's failure to comply with the notice served on the person under section 30C(3) or (4) continues without reasonable excuse despite a penalty notice served under section 40(1BE), the Building Authority may –
  - (a) serve on the person a further penalty notice after the expiry of the penalty notice that is being served; or
  - (b) proceed to take court proceedings against the person under section 40(1BD).
19. The decision of the Building Authority to serve a penalty notice under section 18 of this Schedule is not subject to appeal under section 44.