

## The Government of the Hong Kong Special Administration Region

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Ms Winnie LO  
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8 Jackson Road, Central

Dear Ms LO,

**Buildings (Amendment) Bill 2010**

Thank you for your letter of 25 February 2010. I am pleased to set out below the Administration's response to the issues raised in your letter.

Clause 4(1)

The definition of "contraventions of the provisions of this Ordinance" ("contravention as defined") in section 2(1) of the Buildings Ordinance (Cap. 123) (BO) was added to the BO by the Buildings (Amendment) Ordinance 1959 (B(A)O 1959) and subsequently amended by the Buildings (Amendment) Ordinance 2008 (B(A)O 2008). The meaning of "contravention as defined" is broader than the meaning of "contravene" (or "contravention") as contained in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO) in that "contravention as defined" also includes references to material divergence or deviation from any plan approved by the Building Authority (BA) under the BO or required to be submitted to the BA under the simplified requirements, and failure to submit to the BA any certificate required to be submitted under the simplified requirements. Clause 4(1) of the Buildings (Amendment) Bill 2010 (the Bill), by adding the words "notice served" to

paragraph (a) of this definition, seeks to further extend this definition to cover notices served under the proposed sections 30(3), (4), (5) and (6) and 30C(3) and (4).

The defined term appears in the BO in its varied forms such as “contravention of any of the provisions of this Ordinance” and “contravene the provisions of this Ordinance”. Section 5 of the IGCO provides that “[w]here any word or expression is defined in any Ordinance, such definition shall extend to the grammatical variations and cognate expressions of such word or expression”. We are of the view that, though the exact expression “contraventions of the provisions of this Ordinance” does not appear in the BO, varied forms of the expression in the BO should still be construed accordingly.

#### Clause 4(6)

Under the current building control regime, registered contractors, depending on the type and extent of building works, may be required to conduct testing after carrying out the works to ensure the quality of the works. For example, registered contractors may be required to conduct testing of the building materials/products used to ensure that the same comply with the requirements of the BO and regulations thereunder. Examples of this kind of testing include strength test for repair mortar, pull-off test for external wall tiling and repair mortar as well as hammer-tapping test. Such testing may involve building works, for example, extraction of materials from the building, and hence must be carried out by registered contractors.

Clause 4(6) of the Bill adds a new definition of “prescribed repair” to mean “a repair or testing of a building as prescribed in the regulations”. The term “testing” in this definition refers to the testing that may be required to be conducted after the repair works as aforementioned. The term “testing” is not included in the proposed definition of “prescribed inspection” in clause 4(6) of the Bill, because a wider term “examination” in that proposed definition already covers the necessary testing.

Clauses 6(2), 6(9) and 8

The terms “architects’ register”, “contractors’ register” and “Contractors’ Board” were adopted in the BO at its enactment in 1955. This format of expression has been followed through in the subsequent amendments to the BO, bringing in the terms “authorized persons’ register”, “structural engineers’ register”, “geotechnical engineers’ register” and “Authorized Persons’, Registered Structural Engineers’ and Registered Geotechnical Engineers’ Disciplinary Board Panel”. In order to maintain internal consistency within the BO, the terms “inspectors’ register” and “Registered Inspectors’ Disciplinary Board Panel” are adopted in the Bill.

Similar format of expression, that is, the term expressed with an apostrophe to denote the possessive case, is also found in other enactment, for example, “licensee’s register” in section 1(1) of Schedule 1 to the Broadcasting Ordinance (Cap. 562), and “lock attendant’s register” in regulation 14(3) of the Factories and Industrial Undertakings (Work in Compressed Air) Regulations (Cap. 59 sub. leg. M). The use of an apostrophe or otherwise to denote the possessive case of a term is basically a matter of style adopted in different legislation.

Clauses 10(16), 11(1), 13(6) and 14(1)

Section 3(16) of the BO provides that the BA 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. It is the Administration’s intention that the person may appeal against the decision under section 9A(1) or 13A(1) of the BO within 28 days from the date of the service of the notice of the decision (of the Registration Committee or the BA as the case may be) by the BA. This is in line with Order 55 rule 4 of the Rules of High Court (Cap. 4 sub. leg. A) (RHC).

Sections 7(2A) and 13(4A) of the BO provide that where the disciplinary board makes an order under section 7(2) or 13(4), it shall order that its findings and order be published in the Gazette, which constitutes public notice of the order on the date of publication. In practice, the person will be made aware of the order made by the disciplinary board at the hearing of the disciplinary

proceedings conducted by the disciplinary board, and will also be subsequently notified of the order and reasoning of the disciplinary board in writing. It is the Administration's intention to follow the existing practice that the person may appeal against the order within 28 days from the date of service of the notice of the order in writing, and this is in line with Order 55 rule 4 of the RHC. We note the points raised in your letter and, for the avoidance of doubt, would delete clauses 10(16), 11(1), 13(6) and 14(1) of the Bill.

#### Clause 19

The formulation of the proposed sections 30B(11) and 30C(9) follows that of the existing provisions in the BO, including sections 24(4) and (4A), 24AA(8) and (9) (to be added by section 21 of the B(A)O 2008), 26(3) and (3A), 26A(5) and (6), 27A(3) and (3A), 27C(7) and (8), and 28(7) and (7A) of the BO. In practice, where an order or a notice served under the BO is not complied with, the BA will cause the order or notice to be registered by memorial in the Land Registry before the BA carries out or causes to be carried out the inspection, investigation or works required by the order or notice as far as practicable. For the majority of cases, the person on whom the order or notice has been served will be the same as the current registered owner shown in the Land Registry, and the BA will recover the costs of the inspection, investigation or works that the BA has carried out or has caused to be carried out from that person, i.e. the owner of the concerned premises at the time when the order or notice is registered. However, in some special circumstances, the inspection, investigation or works might have been commenced by the BA and the property had subsequently changed title (before the BA's registration of the order or notice) that the person on whom the order or notice was originally served is no longer the owner of the concerned premises. In such cases the BA will recover the costs of the inspection, investigation or works that the BA has carried out or has caused to be carried out from the original owner, i.e. the person on whom the order or notice was served.

The proposed sections 30B(11) and 30C(9), in line with the other sections named in the above paragraph, prescribe the "person" from whom the cost of the inspection and repair works that the BA has carried out or has caused to be carried out is recoverable, while section 33 of the BO provides for the manner in which the BA is to recover its cost and surcharge.

Clause 23(3)

The proposed section 38(1)(kg)(i) and (ii) were drafted to correspond to the proposed sections 30B and 30D, and 30C and 30E, respectively, so as to echo the introduction of the two schemes, namely the Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme. We note and agree with the point raised in your letter and will delete the proposed section 38(1)(kg)(ii).



(Harry LIN)

for Secretary for Development

c.c. CCS(1)4/LegCo  
DD/BD  
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