

香港特別行政區政府

The Government of the Hong Kong Special Administration Region

發展局

香港花園道

美利大廈九樓



Development Bureau

9/F, Murray Building

Garden Road, Hong Kong

本局檔號 Our Ref. DEVB(PL-B) 30/30/120

來函檔號 Your Ref. LS/S/1/10-11

電話 Tel.: 2848 6007

傳真 Fax.: 2899 2916

25 October 2010

Mr YICK Wing-kin
Assistant Legal Adviser
Legislative Council Building
8 Jackson Road, Central

Dear Mr YICK,

**Technical Memorandum for Supervision Plans 2009
(Commencement) Notice (S.S. No.5 on 8 October 2010)**

Thank you for your letter of 15 October 2010. I am pleased to set out below the Administration's response to the issues raised in your letter.

Commencement Date

Section 39A(9) of the Buildings Ordinance (Cap. 123) (BO) provides that –

“Unless the Secretary [for Development] 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.” (emphasis added)

The Technical Memorandum for Supervision Plans 2009 (“TM 2009”) was gazetted on 6 October 2009 and tabled in LegCo on 14 October 2009. No amendments have been suggested by Members. As stipulated in the TM 2009, it will commence to have effect on a date to be appointed by the Secretary for Development by notice published in the Gazette. The captioned notice serves to notify stakeholders of the commencement date of the TM 2009 appointed by the Secretary under section 39A(9).

Tabling of TM 2009

Section 39A of the BO provides that a technical memorandum issued under that section is not subsidiary legislation but subject to vetting by LegCo. Under section 39A(9) (see above), the Secretary for Development may appoint a later date (after the expiry of the vetting procedure of the technical memorandum by LegCo) as the commencement date of the technical memorandum by notice in the Gazette. Unlike the technical memorandum, section 39A of the BO does not provide for that such a notice be subject to vetting by LegCo. The notice for commencement of the technical memorandum (which is not subsidiary legislation) is not subsidiary legislation and is published as a general notice in the Gazette. Hence the captioned notice was not tabled in LegCo.

Yours sincerely,

(Harry LIN)

for Secretary for Development

c.c. DD/BD
LD/DoJ