

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 11 May 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 4 May 2012**

Date of tabling in LegCo : 9 May 2012

Amendment to be made by : 6 June 2012 (or 27 June 2012 if extended by resolution)

PART I BUILDING SAFETY

Buildings Ordinance (Cap. 123)

Building (Minor Works) (Amendment) Regulation 2012 (L.N. 74)

L.N. 74 is made by the Secretary for Development under section 38 of the Buildings Ordinance (Cap. 123) to amend the Building (Minor Works) Regulation (Cap. 123 sub. leg. N) (principal Regulation).

2. The principal Regulation provides for the classification of minor works and details of minor works items, simplified requirements for carrying out minor works and duties of building professionals and registered contractors in carrying out minor works. L.N. 74 adds 8 new items of minor works to Schedule 1 to the principal Regulation and two new definitions, namely "aggregate length of any additional wall" and "flat". The effect is to bring these works under the control of the principal Regulation. L.N. 74 comes into operation on 3 October 2012.

3. According to the LegCo Brief, these 8 new items of minor works are commonly associated with subdivision of flats and can be broadly classified into the following four categories -

- (a) creation of rooms with lavatories or other sanitary fitments (proposed new item 1.41);
- (b) installation of internal partitions (proposed new items 1.43, 3.39 and 3.40);

- (c) thickening of floor slabs with solid screeding (proposed new items 1.44, 3.41 and 3.42); and
- (d) formation or alteration to door openings at the common parts including fire escape staircases of building (proposed new item 1.42).

4. The Administration briefed the Panel on Development on 28 February 2012 on its proposal of including building works associated with subdivision of flat units under the Minor Works Control System. Members expressed various concerns including -

- (a) the time taken by the Buildings Department (BD) to approve minor works submission and whether BD had sufficient manpower resources to undertake enforcement against breaches;
- (b) the costs for engaging prescribed building professionals/prescribed registered contractors for carrying out flat subdivision works; and
- (c) the total loading effect caused by the existing and new subdivided flat units on the structural integrity of a building.

5. Members may refer to the LegCo Brief (File Ref.: DEVB (PL-B) 30/30/120) issued by the Development Bureau in May 2012 for further information.

Lifts and Escalators Ordinance (8 of 2012)

Lifts and Escalators (General) Regulation (L.N. 75)

Lifts and Escalators (Fees) Regulation (L.N. 76)

6. L.N. 75 and L.N. 76 are made by the Secretary for Development respectively under sections 154 and 155 of the Lifts and Escalators Ordinance (8 of 2012) (the Ordinance).

7. L.N. 75 sets out the duties of responsible persons¹ and registered persons², the procedural requirements relating to various applications to be made under the Ordinance and some miscellaneous requirements. Details of these requirements are summarized as follows -

¹ Under the Ordinance, a "responsible person" in relation to a lift/escalator means (a) the owner of the lift/escalator; or (b) any other person who has the management or control of the lift/escalator (section 2).

² Under the Ordinance, a "registered person" means a registered lift/escalator contractor, registered lift/escalator engineer, and registered lift/escalator worker (section 2).

(a) Duties of responsible persons and registered persons (Part 2 of the Regulation) -

- (i) Documentation requirements: the responsible persons and registered persons are required to keep a log-book for each lift/escalator for recording information such as works carried out as well as incident and event of failure occurred; and to maintain other documents relating to design, installation, maintenance and examination of a lift/escalator including design specification, installation instructions, maintenance-related records and examination certificates; and
- (ii) Notification requirements: specified categories of registered persons are required to notify the Director of Electrical and Mechanical Services (the Director) certain matters including the undertaking, subcontracting of the lift/escalator works and change in particulars of a registered person within a specified period.

Failure to comply with the relevant requirement without reasonable excuse amounts to an offence and is liable to a fine at level 1 (\$1 to \$2,000) or 3 (\$5,001 to \$10,000).

(b) Requirements of applications under the Ordinance (Parts 3 to 6 of the Regulation)

- (i) Types of applications: the Regulation sets out the procedural requirements for applications for use permits for a lift/escalator, resumption permits or duplicates of these permits; applications for registration as registered persons or renewal of the respective registration, and applications for duplicates or replacements of respective registration certificates or cards; and
- (ii) Procedural requirements: an application must be submitted in specified form, contain the information and particulars specified in the specified form and be accompanied with the prescribed fee.

(c) Miscellaneous requirements (Part 7 of the Regulation)

The Regulation also provides for the preparation and completion of a preliminary report or full report in respect of incidents relating to

lifts/escalators to be reported to the Director under section 40 or 70 of the Ordinance and the removal of a notice displayed under section 7 or 22 of this Regulation in respect of such an incident.

8. L.N. 76 sets out the prescribed fees payable in respect of the applications provided for under L.N. 75 (see paragraph 7(b)(i) above). The level of fees is set at a range of \$140 to \$4,870. According to the LegCo Brief, the fees under this regulation are set in accordance with the "user-pay" principle to recover full cost of the services provided and are comparable with the level of fees of similar nature, e.g. application fees under the Electricity (Registration) Regulations (Cap. 406 sub. leg. D) and the Electricity Supply Lines (Protection) Regulation (Cap. 406 sub. leg. H).

9. L.N. 75 and L.N. 76 will come into operation on a day to be appointed by notice published in the Gazette.

10. Members may refer to the LegCo Brief (File Ref: DEVB(CR)(W)1-10/30) issued by the Development Bureau on 2 May 2012 for background and further information. The Administration briefed the Panel on Development on 27 March 2012 on the background of these two regulations to be made under the Ordinance after its enactment. Members noted the purposes of the two regulations and raised no objection.

11. Legal Service Division is still scrutinizing L.N. 75 and will make a further report, if necessary.

PART II ROAD TRAFFIC

Road Traffic Ordinance (Cap. 374)

Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation 2012 (L.N. 77)

Road Traffic (Parking) (Amendment) Regulation 2012 (L.N. 78)

Road Traffic (Expressway) (Amendment) Regulation 2012 (L.N. 79)

12. L.N. 77 to L.N. 79 are made by the Secretary for Transport and Housing (STH) pursuant to section 6(1), section 12(1) and sections 13(b) and 131(1) of the Road Traffic Ordinance (Cap. 374) (RTO) respectively.

L.N. 77 and L.N. 79

13. Section 6(1) empowers STH to make regulations on the registration and licensing of vehicles. Section 131(1) of RTO empowers STH to make regulations to provide for prohibiting, controlling and regulating the use of an expressway by all or any specified type or class or description of vehicle. In

addition, section 13 of RTO provides that a regulation made under section 131 of RTO may give power for any person or class of vehicles to be exempted from any regulation made under the RTO.

14. At present, regulation 4 of the Road Traffic (Expressway) Regulations (Cap. 374Q) (RTER) provides that no person shall use a vehicle on an expressway unless the vehicle belongs to one of the types specified and with an engine cylinder capacity of not less than 125cm³. Regulation 50 of Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) provides that the registered owner of a vehicle which is suitable for use on expressways but does not fall under any of the types specified in regulation 4 may apply for an expressway permit at a fee.

15. According to the Administration, it is the Government's policy to promote the use of electric vehicles (EVs). L.N. 77 and L.N. 79 –

- (a) allow the following types of EVs to be used on the expressways–
 - (i) any electric private car with a rated power³ of not less than 7kW;
 - (ii) any electric motor cycle and electric motor tricycle with a rated power not less than 3kW; and
- (b) require the rated power of EVs as one of the particulars to be entered in the register of vehicles maintained by the Commissioner of Transport (Commissioner) and in the registration documents of the vehicle concerned.

L.N. 78

16. Section 12(1) of RTO provides that STH may make regulations to provide for parking of vehicles. Regulation 27A(3) of the Road Traffic (Parking) Regulations (Cap. 374C) (RTPR) provides that the Commissioner may issue a disabled person parking permit (DPPP) to an applicant who is a disabled person holding a valid full driving licence or a learner's driving licence which permits the applicant to drive any private car, motorcycle or motor tricycle. Various driving concessions⁴ are enjoyed by the holder of a valid DPPP. However, no DPPP may be issued to a disabled person who holds a valid probationary driving licence (PDL).

³ "rated power" is the maximum power output that can be sustained for an extended period and it relates closely to the speed and acceleration performance of EVs. The use of this as a criterion is equivalent to the use of engine cylinder capacity for petrol/diesel vehicles.

⁴ The concessions include using parking spaces designated for disabled person issued with DPPP for free, waiving of fees at metered parking spaces and a 50% discount on parking fees at Government car parks managed by Transport Department and at the Link Management Limited car parks.

17. L.N. 78 amends RTPR to provide that a disabled person who holds a valid PDL may be issued a DPPP so that the disabled person may also enjoy the parking concessions mentioned above.

18. For the proposals under L.N. 77 and L.N. 79, the Panel on Transport was consulted in February 2012 and Members supported the proposals. For the proposal under L.N. 78, the Panel on Transport was consulted in April 2012 and no comments from Members were received by the Secretariat. Members may wish to refer to LegCo Brief (without file reference) dated May 2012 issued by the Transport and Housing Bureau for further information.

19. L.N.77 to L.N. 79 will come into operation on 29 June 2012.

PART III MISCELLANEOUS

Public Health and Municipal Services Ordinance (Cap. 132) Pesticide Residues in Food Regulation (L.N. 73)

20. L.N. 73 is made by the Director of Food and Environment Hygiene (DFEH) pursuant to section 55(1) of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMO).

21. Section 55(1) of PHMO provides that the appropriate authority (DEFH) may make regulations to prohibit or regulate the addition of any specified substance to food intended for sale for human consumption.

22. At present, the import, manufacture, sale and supply of pesticides are regulated by the Pesticide Ordinance (Cap. 133). There is no specific legislation that regulates the level of pesticide residues in food. The Administration considers that specific legislation for pesticide residues level in food is required.

23. There are two schedules to the Pesticide Residues in Food Regulation (PRF Regulation). Schedule 1 specifies a list of food and the maximum concentration of specified pesticide residues permitted (known as maximum residue limits (MRLs) and extraneous maximum residue limits (EMRLs)) in that food. Schedule 2 specifies pesticides that are exempted. Unless the pesticide used on a type of food is exempted, only food containing pesticide residues which do not exceed any of the permitted levels specified in Schedule 1 for that food is allowed to be imported and sold. For food containing residue of any pesticide that is neither exempted nor specified in the

PRF Regulation, the import and sale of the food concerned is only allowed if consumption of the food is not dangerous or prejudicial to health. A maximum fine of HK\$50,000 and imprisonment of six months may be imposed on any contravention. Further, under the PHMO, the DFEH may amend the Schedules to include any pesticide that is used on food crops.

24. The Panel on Food Safety and Environmental Hygiene was consulted on 12 July 2011 and members raised no objection to the Administration's proposed regulation in pesticide residues in food in Hong Kong. Members may wish to refer to LegCo Brief (File Ref: FH CR 5/1886/07) dated May 2012 issued by the Food and Health Bureau for further information.

25. It is noted that the definitions of MRLs and EMRLs under the regulation are not substantive definitions. Further, the LegCo Brief has not explained the difference between the two terms. The Legal Service Division wrote a letter on 8 May 2012 to the Administration and asked the Administration to clarify the difference between the two terms and the need for substantive definitions.

26. L.N. 73 will come into operation on 1 August 2014. According to the Administration, the deferred commencement is intended to provide a grace period for the trade to comply with the PRF Regulation.

27. According to the LegCo Brief, before the commencement of the PRF Regulation, the Director of Agriculture Fisheries and Conservation will amend the application form for registration of pesticides under the Pesticides Ordinance (Cap. 133), so that information relating to MRLs of a pesticide which is intended to be used on any local food crop is required to be provided for in an application.

Legislation Publication Ordinance (Cap. 614)
Legislation Publication (Revision) Order 2012 (L.N. 80)

28. L.N. 80 is made by the Secretary of Justice (SJ) pursuant to section 17 of the Legislation Publication Ordinance (Cap. 614) (LPO) to make revisions to various Ordinances.

29. Section 17 of LPO provides that SJ may, among other things, make alterations to an Ordinance for the purpose of securing uniformity in expression within the Ordinance or with another Ordinance, or to replace a word in an Ordinance indicating gender by a gender-neutral word.

30. In gist, the Order –

- (a) makes alterations to the denotation of certain places or states so that the same denotation is used when reference is made to the same place or state in different pieces of legislation;
- (b) replaces "shall" by "must" and "shall be deemed" by "is deemed" where appropriate;
- (c) alters the form or arrangement of a few lists of countries to facilitate searching by, for example, changing the reference of "Republic of Korea" to "Korea, Republic of" in the legislation; and
- (d) makes gender-neutral amendments to the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990), Guardianship of Minors Ordinance (Cap. 13) and a number of court forms.

31. The Panel on Administration of Justice and Legal Services was consulted on 26 March 2012 and Editorial Record 1 of 2012 was considered. The Administration has informed Members that certain minor amendments to various Ordinances could not be made by way of editorial power but would have to be made by amending the principal ordinances by way of subsidiary legislation. Members may wish to refer to LegCo Brief (File Ref: LDT 993/01/0) dated 30 April 2012 issued by the Department of Justice for further information.

32. L.N. 80 will come into operation on 29 June 2012.

Securities and Futures Ordinance (Cap. 571)

Securities and Futures (Futures Contracts) Notice 2012 (L.N. 81)

33. L.N. 81 is made by the Financial Secretary (FS) pursuant to section 392 of the Securities and Futures Ordinance (Cap. 571) (SFO). The section empowers the FS to prescribe that any interests, rights or property and the circumstances of which any of the aforesaid interests, rights or property are to be regarded as futures contracts.

34. At present, insolvency override protection⁵ is enjoyed by a market contract pursuant to section 45(1)(a) of SFO. A market contract is defined to include any futures contract or securities contract that satisfies certain conditions but does not include any over-the-counter (OTC) derivatives

⁵ Transactions that enjoy the protection are not susceptible to being undone pursuant to general insolvency law.

transaction (which is a kind of structured product). Hence, the aforesaid protection is not conferred on those transactions.

35. To enable the above protection to extend to OTC derivatives transactions, L.N. 81 prescribes that any structured product that satisfies the requirements below is to be regarded as a futures contract⁶, for the purpose of the definition of market contract and some other provisions (including provisions which concern insider dealing, exchange controller and clearing house) in the SFO –

- (a) any structured product which does not fall within the definition of securities in section 1 of Part of Schedule 1 to SFO; and
- (b) is not a contract or an option on a contract made under the rules or conventions of a futures market.

36. According to paragraph 10 of the LegCo Brief, L.N. 81 will be repealed upon the implementation of the regulatory regime for OTC derivatives market⁷.

37. The Panel on Financial Affairs was consulted on 2 April 2012. Members asked various questions in relation to OTC derivatives transactions and the Administration provided further information in relation to the said transactions. Members may wish to refer to LegCo Brief (without file reference) dated 2 May 2012 issued by the Financial Services and the Treasury Bureau for further information.

38. L.N. 81 will come into operation on 27 June 2012

PART IV COMMENCEMENT NOTICES

Buildings Ordinance (Cap. 123)

Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2012 (L.N. 82)

Building (Inspection and Repair) Regulation (Commencement) Notice (L.N. 83)

Building (Minor Works) (Amendment) Regulation 2011 (Commencement) Notice (L.N. 84)

⁶ Futures contract is also defined in Schedule 1 to SFO. In gist, it means a contract or an option on a contract made under the rules or conventions of a futures market or any interests, rights or property which is prescribed by a notice issued pursuant to section 392 of SFO to be regarded as futures contracts in accordance with the terms specified in the notice.

⁷ Paragraph 2 of the LegCo Brief states that the Hong Kong Monetary Authority and Securities and Futures Commission have been developing a regulatory regime for OTC derivatives market in Hong Kong, for which the relevant bill is planned to be introduced to LegCo in 2012-2013.

L.N. 82

39. The Buildings (Amendment) Ordinance 2011 (16 of 2011) (the Amendment Ordinance) was passed by the Legislative Council at its meeting on 29 June 2011 and published in the gazette on 8 July 2011. It amends the Buildings Ordinance (Cap. 123) (BO) to implement a mandatory building inspection scheme and a mandatory window inspection scheme, and to make related, consequential and other minor amendments.

40. By L.N. 82 made under section 2 of the Amendment Ordinance, the Secretary for Development has appointed 30 June 2012 as the day on which sections 3, 7, 8, 10, 14, 17, 19, 20, 21, 25(1), 26, 27, 28, 30, 31, 37, 45, 47, 48 and 49 of the Amendment Ordinance come into operation.

41. By L.N. 149 of 2011 gazetted on 28 October 2011, most of the other provisions of the Amendment Ordinance came into operation on 30 December 2011.

42. With L.N. 82, the whole of the Amendment Ordinance will become operative except sections 32 to 36 which respectively amend several Schedule headings (e.g. "Second Schedule" is amended to "Schedule 2") under BO. According to the Administration, the amendments to be effected by these sections have already been effected (by editorial amendments under section 2A of the Laws (Loose-leaf) Publication Ordinance 1990 (51 of 1990)) in February 2012 as recorded in E.R. 1 of 2012. As such, sections 32 to 36 of the Amendment Ordinance will not commence operation and will be repealed in due course.

43. Members may refer to the Information Note issued by the Development Bureau (with no file reference) in May 2012 (Annex I) for further information.

L.N. 83 and L.N. 84

44. The Building (Inspection and Repair) Regulation (L.N. 146 of 2011) sets out the detailed procedural and technical requirements of the two schemes. The Building (Minor Works) (Amendment) Regulation 2011 (L.N. 148 of 2011) provides for the appointment of a registered inspector for any prescribed repair work that is Class I⁸ minor works and amends Schedule 1 in relation to the types of minor works. Both regulations were gazetted on 28 October 2011 and scrutinized by a subcommittee of House Committee.

⁸ Under the Building (Minor Works) Regulation, minor works are classified into 3 classes (Classes I, II and III) with more controlling measures imposed on Class I. Irrespective of their classification, all minor works are required to be carried out by prescribed registered contractors.

45. By L.N. 83 and L.N. 84 respectively, the Secretary for Development has appointed 30 June 2012 as the day on which the Building (Inspection and Repair) Regulation (L.N. 146 of 2011) and the Building (Minor Works) (Amendment) Regulation 2011 (L.N. 148 of 2011) come into operation.

Lifts and Escalators Ordinance (8 of 2012)

Lifts and Escalators Ordinance (Commencement) Notice 2012 (L.N. 85)

46. By L.N. 85 made under section 1 of the Lifts and Escalators Ordinance 2012 (8 of 2012) (the Ordinance), the Secretary for Development has appointed 3 July 2012 as the day on which the following provisions of the Ordinance come into operation -

- (a) sections 1, 2, 3, 4, 6 and 7;
- (b) Division 1 of Part 4 ; and
- (c) sections 123, 124, 125, 145, 146, 149, 153, 154 and 155.

47. The provisions that are brought into operation are mainly preliminary provisions providing for short title and commencement, interpretation and application of the Ordinance, and the empowering provisions relating to the appointment and functions of the Registrar under the Ordinance, the making of regulations and the issuing of the code of practice.

48. According to a letter from the Development Bureau dated 8 May 2012 (Annex II), the Administration intends to bring the Ordinance into operation by phases. The first phase is to provide for the commencement of the preparation works for the operation of the Ordinance. The second phase is to commence the main provisions of the Ordinance including those for repealing the existing Lifts and Escalators (Safety) Ordinance (Cap. 327) in end 2012 or early 2013. Subsequent phases are to commence the remaining provisions including those for the termination of the transitional arrangements in respect of the qualification requirements for registration as a registered engineer or a registered worker under the Ordinance.

Protection of Wages on Insolvency (Amendment) Ordinance 2012 (7 of 2012)
Protection of Wages on Insolvency (Amendment) Ordinance 2012
(Commencement) Notice (L.N. 86)

49. By L.N. 86 made under section 1(2) of the Protection of Wages on Insolvency (Amendment) Ordinance 2012 (7 of 2012) (the Amendment Ordinance), the Secretary for Labour and Welfare has appointed 29 June 2012 as the day on which the Amendment Ordinance comes into operation.

50. The Amendment Ordinance, which was passed on 18 April 2012 and gazetted on 27 April 2012, amends the Protection of Wages on Insolvency Ordinance (Cap. 380) to provide for payment from the Protection of Wages on Insolvency Fund in respect of untaken statutory holidays and untaken annual leave, subject to certain limitations.

Concluding Observations

51. The relevant LegCo Panels have not been consulted on the above commencement notices. Subject to the Administration's response to the letter regarding L.N. 73 and save for L.N. 75 which is still under scrutiny, no difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Encls.

Prepared by

TAM Shuk-fong, Clara (L.N. 74 - L.N. 76 and L.N. 82 - L.N. 86)

LEE Hoi-see, Evelyn (L.N. 73, L.N. 77 - L.N. 81)

Assistant Legal Advisers

Legislative Council Secretariat

10 May 2012

**Buildings (Amendment) Ordinance 2011
(Commencement) Notice 2012**

The Buildings (Amendment) Ordinance 2011 (B(A)O) provides for the legislative framework of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS). It was enacted on 29 June 2011. A subcommittee was formed by the Legislative Council (LegCo) to scrutinize the relevant subsidiary legislation, including the Building (Administration) (Amendment) Regulation 2011 (B(A)(A)R), the Building (Inspection and Repair) Regulation (B(I&R)R), the Building (Minor Works) (Amendment) Regulation 2011 (B(MW)(A)R) and the Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011. The scrutiny was completed on 21 December 2011.

2. As mentioned in the LegCo Brief on the above subsidiary legislation issued in October 2011, those sections in the B(A)O and B(A)(A)R concerning registration of registered inspectors (RIs) and other miscellaneous amendments to the Buildings Ordinance (BO) were brought into operation on 30 December 2011. It was mentioned in the said brief that the operation of MBIS and MWIS would commence in the second quarter of 2012 and the first batch of statutory notices for MBIS/MWIS would be issued in the last quarter of 2012.

3. On 27 April 2012, the Secretary for Development made three commencement notices, namely, the Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2012, the Building (Inspection and Repair) Regulation (Commencement) Notice and the Building (Minor Works) (Amendment) Regulation 2011 (Commencement) Notice, all of which were gazetted on 4 May 2012. These notices seek to commence the remaining provisions of the B(A)O and the regulations on 30 June 2012 to put the MBIS and the MWIS into operation.

4. The three commencement notices will bring all the remaining provisions of the B(A)O and the regulations into operation, except for sections 32 to 36 of the B(A)O (at Annex), which amend the Schedule headings under the BO. These sections of the B(A)O are no longer necessary because the relevant Schedule headings under the BO have

already been amended by E.R. 1 of 2012 in February 2012 (by editorial amendments under section 2A of the Laws (Loose-leaf) Publication Ordinance 1990 (51 of 1990)) to reflect the current drafting practices. As such, these sections will not commence operation and will be repealed when the next opportunity arises.

Development Bureau
May 2012

Sections 32 to 36 of the Buildings (Amendment) Ordinance 2011

32 Provisions of Buildings Ordinance 1935 to continue in operation

The Second Schedule is amended, in the English text, by repealing “SECOND SCHEDULE” and substituting “SCHEDULE 2”.

33 Form of warrant

The Third Schedule is amended, in the English text, by repealing “THIRD SCHEDULE” and substituting “SCHEDULE 3”.

34 Departments

The Fourth Schedule is amended, in the English text, by repealing “FOURTH SCHEDULE” and substituting “SCHEDULE 4”.

35 Scheduled areas

The Fifth Schedule is amended, in the English text, by repealing “FIFTH SCHEDULE” and substituting “SCHEDULE 5”.

36 Form of warrant

The Sixth Schedule is amended, in the English text, by repealing “SIXTH SCHEDULE” and substituting “SCHEDULE 6”.

政府總部

發展局

工務科

香港花園道美利大廈



Works Branch
Development Bureau
Government Secretariat
Murray Building, Garden Road,
Hong Kong

本局網址 Our Website: <http://www.devb.gov.hk>

本局檔號 Our Ref.: DEVB(CR)(W)1-10/30

來函檔號 Your Ref.: LS/S/24/11-12(02)

電話 Tel No.: 3509 8277

傳真 Fax No.: 2801 5034

電郵 E-mail: jimmy_pm_chan@devb.gov.hk

8 May 2012

Ms Clara TAM
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms TAM,

Information Note on
Lifts and Escalators Ordinance (Commencement) Notice 2012
(L.N. 85 of 2012)

I refer to your letter dated 4 May 2012 requesting for clarification of several matters regarding the Lifts and Escalators Ordinance (Commencement) Notice 2012 (L.N. 85 of 2012) ("the Notice")¹. We provide the relevant information in the ensuing paragraphs.

The Lifts and Escalators Ordinance (8 of 2012) ("the Ordinance") was enacted in April 2012. It seeks to replace the existing Lifts and Escalators (Safety) Ordinance (Cap. 327) ("the existing Ordinance") with an aim to further enhancing lift and escalator safety in Hong Kong. For

¹ Under section 1(2) of the Lifts and Escalators Ordinance (8 of 2012), the Secretary for Development by the Notice published on 4 May 2012 appointed 3 July 2012 as the day on which the following provisions of the Ordinance come into operation —

- (a) sections 1, 2, 3, 4, 6 and 7;
- (b) Division 1 of Part 4;
- (c) sections 123, 124, 125, 145, 146, 149, 153, 154 and 155.

smooth implementation of the Ordinance, we plan to bring the Ordinance into operation in phases. The first phase is to commence the provisions as set out in the Notice for commencing the necessary preparation works to pave way for the full operation of the Ordinance. The second phase is to commence the main provisions of the Ordinance for repealing the existing Ordinance and for commencing a series of enhanced control measures. The subsequent phases are to commence the remaining provisions under Part 9 of Schedule 16 of the Ordinance to implement the sequential termination of the transitional arrangements in respect of the qualification requirements for registration as a registered engineer or a registered worker under the Ordinance. The transitional arrangements have been deliberated in detail at the Bills Committee on Lifts and Escalators Bill ("the Bills Committee"). The concerned deliberation could be found in paragraphs 22 to 24 and 39 to 44 of the Paper for the House Committee meeting on 24 February 2012 regarding the Report of the Bills Committee (LC Paper No. CB(1)1117/11-12).

Purpose and effect of the provisions under the Ordinance set out in the Notice

The purpose and effect of the provisions under the Ordinance set out in the Notice, i.e. the first phase, are as follows —

- (i) **Sections 1, 2, 3, 4, 6 and 7** are preliminary provisions which provide for the commencement of the Ordinance, the scope of application of the Ordinance and interpretation provisions.
- (ii) **Division 1 of Part 4** covers **sections 72 and 73** and it provides for the appointment and functioning of the Registrar of Registered Contractors, Engineers and Workers (Lifts and Escalators). To ensure smooth implementation of the registration scheme under the Ordinance, this Division needs to come into operation under the first phase so that preparation works in relation to registration (such as devising registration procedure) could be carried out.
- (iii) **Sections 123, 124, 125, 145, 146, 149, 153, 154 and 155** relate to the powers of the Secretary for Development or the Director of Electrical and Mechanical Services under the Ordinance. Bringing these provisions into operation is for commencing the preparation works in relation to administration and enforcement such as making regulations, issuing codes of practice, specifying

forms and completing the relevant formal authorization, appointment and delegation. We consider that the codes of practice needs to be issued as soon as possible so as to facilitate the carrying out of publicity and promotional activities to industry stakeholders and to allow adequate time for the trade to prepare for the requirements under the codes of practice.

Public consultation

We briefed the Task Force for Legislative Amendments to the Lifts and Escalators (Safety) Ordinance² in early 2012 and the Legislative Council Panel on Development at its meeting held on 27 March 2012 on the general plan of commencing the main provisions of the Ordinance though without the detailed arrangement as set out in the Notice. Members of the Task Force and the Panel raised no objection to our planned preparation works and the tentative schedule of bringing the main provisions of the Ordinance into operation in the fourth quarter of 2012.

Purpose and effect of the remaining provisions of the Ordinance

The main provisions of the Ordinance are planned to come into operation under the second phase. The purpose and effect of the second phase are to repeal the existing Ordinance and to commence a series of enhanced control measures including strengthening the registration regime of personnel engaged in lift and escalator works, increasing the penalty levels of offences and extending the coverage of the legislative framework.

The subsequent phases are to commence the remaining provisions in Part 9 of Schedule 16 of the Ordinance. The purpose and effect of such provisions are to terminate the transitional arrangements in respect of the qualification requirements for registration as a registered engineer or a registered worker under the Ordinance.

² The Task Force for Legislative Amendments to the Lifts and Escalators (Safety) Ordinance was established in August 2010 with industry stakeholders including representatives of worker union, trade associations, professional bodies and the Consumer Council.

Schedule to make further commencement notice(s) to bring the remaining provisions into operation and the anticipated commencement dates of those provisions

Considering the time required to complete the necessary preparation works including the implementation of a series of publicity and promotional activities aiming at giving members of the public and industry stakeholders a better understanding of the requirements under the new legislative framework, we tentatively estimate that the commencement notice for the second phase would be made in the fourth quarter of 2012 for bringing the main provisions into operation in end 2012 or early 2013.

We do not have a fixed schedule on the commencement dates of the subsequent phases in relation to termination of the transitional arrangements in respect of the qualification requirements for registration as a registered engineer or a registered worker under the Ordinance because of the need to take into account of the impact on the livelihood of the existing engineers/workers and the human resources in the industry.

Yours sincerely,



(Jimmy PM CHAN)
for Secretary for Development

c.c.

Director of Electrical and Mechanical Services (Attn: Mr Alfred SIT)
Law Officer (Civil Law), Department of Justice (Attn: Ms Connie CHUNG)
Law Draftsman, Department of Justice (Attn: Ms Frances HUI)