

立法會
Legislative Council

LC Paper No. CB(2)1566/12-13

Ref : CB2/SS/7/12

Paper for the House Committee

**Report of the Subcommittee on Building (Minor Works) (Amendment)
Regulation 2013 and Buildings Legislation (Amendment) Ordinance 2012
(Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Building (Minor Works) (Amendment) Regulation 2013 ("Amendment Regulation") and Buildings Legislation (Amendment) Ordinance 2012 (Commencement) Notice ("Commencement Notice").

Background

2. The former Chief Executive announced in his Policy Address in October 2010 that the Government would adopt a multi-pronged approach, covering legislation, enforcement, support and assistance to owners as well as publicity and public education, to enhance building safety. On the legislation front, the Administration introduced a number of measures to enhance building safety through the Buildings Legislation (Amendment) Ordinance 2012 ("BL(A)O") which was enacted in July 2012. One of the legislative amendments in BL(A)O was the enabling provisions (sections 3, 6, 7, 8, 9 and 10 of BL(A)O) for the introduction of a statutory regime, i.e. the Signboard Control System ("SBCS"), to control existing unauthorized signboards through an extension of the scope of works covered by the validation scheme under the Minor Works Control System ("MWCS"). The proposed SBCS is detailed in **Appendix I**. BL(A)O (except sections 3, 6, 7, 8, 9 and 10) came into operation on 20 July 2012.

3. For the purpose of introducing SBCS, the Secretary for Development ("SDEV") has made the Amendment Regulation under section 38 of the Buildings Ordinance (Cap. 123) ("BO"), and the Commencement Notice to bring the provisions related to SBCS in BL(A)O into operation.

The Amendment Regulation (L.N. 73)

4. Under section 39C(1A) of BO, as amended by section 7 of BL(A)O, the continued use of certain existing unauthorized signboards will be allowed after safety inspection, strengthening (if necessary), and certification by prescribed building professionals and/or prescribed registered contractors.

5. For the implementation of section 39C(1A) of BO in relation to unauthorized signboards, the Amendment Regulation amends the Building (Minor Works) Regulation ("B(MW)R") (Cap. 123 sub. leg. N) to provide for the following matters -

- (a) the kinds of signboard to which section 39C(1A) of BO applies are to be specified in the new Part 3 of Schedule 3 to B(MW)R;
- (b) the validation scheme applies to unauthorized signboards erected before 2 September 2013;
- (c) the persons who are required to be appointed to inspect the unauthorized signboards;
- (d) the person appointed to inspect the unauthorized signboard is required to submit to the Building Authority ("BA") a notification;
- (e) the details and particulars to be provided in the notification and other documents to be submitted together with the notification; and
- (f) the requirements in sections 39C(2), (3) and (4) of BO (i.e. safety inspection on and the necessary rectification works to the relevant signboards) are required to be periodically complied with for not more than every five years.

6. The Amendment Regulation will come into operation on the day on which the relevant provisions (i.e. sections 3, 6, 7, 8, 9 and 10) in BL(A)O come into operation.

The Commencement Notice (L.N. 74)

7. By the Commencement Notice, SDEV appoints 2 September 2013 as the day on which sections 3, 6, 7, 8, 9 and 10 of BL(A)O come into operation.

8. Both the Amendment Regulation and the Commencement Notice were gazetted on 24 May 2013 and tabled in the Legislative Council on 29 May

2013. The scrutiny period of the Amendment Regulation and the Commencement Notice has been extended from 26 June 2013 to 17 July 2013 by resolution of the Council on 19 June 2013.

The Subcommittee

9. At the meeting of the House Committee on 31 May 2013, Members decided to form a subcommittee to scrutinize the Amendment Regulation and the Commencement Notice. The membership list of the Subcommittee is in **Appendix II**.

10. Under the chairmanship of Ir Dr Hon LO Wai-kwok, the Subcommittee has held three meetings and received views from the public at one of the meetings. A list of the deputations which have given views to the Subcommittee is in **Appendix III**.

Deliberations of the Subcommittee

Five-year validity period

11. Under the proposed SBCS, existing unauthorized signboards that fall within the relevant technical specifications can be validated and the continued use of these signboards will be allowed upon validation. Unauthorized signboards that are ineligible for validation or have not been validated under SBCS will be subject to enforcement action by BA according to the prevailing enforcement policy. The Subcommittee notes that in addition to the safety inspection required when the signboard is to be validated, all validated signboards under SBCS are proposed to be subject to a five-year safety inspection cycle. In order to enhance the safety of these signboards, some members have asked whether the proposed interval of five years should be shortened so as to increase the frequency of inspections of these signboards especially those erected at old buildings without proper maintenance.

12. The Administration has advised that the proposed interval of five years aims to strike a balance between tackling the building safety problems arising from existing unauthorized signboards and avoiding bringing undue inconvenience to business operators. Moreover, all validated signboards would, apart from undergoing validation every five years under SBCS, also undergo periodic safety inspection if these signboards are situated at buildings selected as target buildings under the Mandatory Building Inspection Scheme ("MBIS"). MBIS requires private buildings aged 30 years or above to undergo safety inspection of their common parts, external walls, projections

and signboards at intervals of 10 years. The scope of inspection under MBIS does not only cover the approved parts of the building but also unauthorized minor works that have been validated under the validation scheme (including unauthorized signboards). As the potential danger posed by unauthorized signboards at private buildings aged 30 years or above is generally higher, the requirement under MBIS can ensure extra inspection of these signboards in addition to that under SBCS. Based on the above considerations, the Administration considers setting the validation period at five years an appropriate arrangement.

13. The Administration has also pointed out that where a validated signboard subsequently becomes dangerous owing to any change in circumstances or lack of proper maintenance, the Buildings Department ("BD") may also take prompt enforcement action under section 105(1) of the Public Health and Municipal Services Ordinance (Cap. 132) to require the signboard owner to remove it or carry out works to render it safe.

14. Some members have asked about the action to be taken against signboards that have been validated but subsequently become abandoned. The Administration has advised that by implementing the proposed SBCS under which the validated signboards are to be inspected every five years, BD would have information on the whereabouts of those signboards which have not undergone the required periodic safety inspection and can take appropriate action against them.

Existing unauthorized signboards fixed to the common parts of a building

15. Some members have expressed concern that some existing unauthorized signboards may have been fixed to the external wall or the common parts of a building without the authorization by the property owner concerned. These members have asked whether the validation applicant would be required to obtain the permission from the property owner concerned in arranging the validation of a signboard under SBCS. Hon Tony TSE has suggested that the validation applicants should be required to purchase insurance for the signboards to be validated.

16. The Administration has explained that while BO aims to regulate the planning, design and construction of buildings and associated works, requiring the validation applicants to obtain property owners' consent is not within the scope of BO's regulation but is related to property right and building management issues. The Administration has pointed out that under the Building Management Ordinance (Cap. 344) ("BMO") and the Deed of Mutual Covenant ("DMC"), owners of a building are responsible for the

management of the common parts of the building. DMC clearly sets out the rights, interests and obligations of the owners concerned. The enforcement of DMC rests with the parties to DMC concerned, and the Government is not one of them.

17. The Administration has also highlighted that section 14(2) of BO and section 61 of B(MW)R stipulate that neither BA's approval of any plans, consent for the commencement of any building works, nor acknowledgement of receipt of plans or documents concerning minor works shall be deemed to -

- (a) confer any title to land;
- (b) act as a waiver of any term in any lease or licence; or
- (c) grant any exemption from or to permit any contravention of any of the provisions of BO or of any other enactment.

18. The Administration has advised that should there be disputes between property owners and the validation applicant over which legal entity that the permission should be granted, such disputes should be resolved according to the provisions in BMO and DMC. The parties concerned could approach the District Offices to seek free legal advice and mediation service where necessary. The Administration has stressed that the proposed SBCS aims at enhancing the safety of existing unauthorized signboards through validation. The validation will not affect the administration of DMC.

19. The Administration has further advised that under SBCS, if the building concerned has formed an Owners' Corporation ("OC"), BD will require the applicant to submit information about the OC. BD will take the initiative to notify the OC about the application relating to signboards situated in the common parts of the building concerned upon acknowledgement of the validation submission. The Administration has also agreed to make the following arrangements -

- (a) BD will remind the signboard owner and the prescribed building professionals/prescribed registered contractors in the "Matters to Note" page of the notification form for validation that if the signboard involves building works on the external wall or in the common parts of a building, they should pay attention to the relevant conditions in the DMC of the building, and notify the property management company, the OC or the owners concerned. Similar reminder will also be included in the Practice Note

concerning SBCS to be issued by BD for reference of the industry; and

- (b) BD will also insert an annotation¹ in the notification forms for validation to remind the applicants to purchase third party liability insurance.

Information to be submitted for validation

20. Hon Cyd HO has expressed concern that the new section 62A(4)(b) of the Amendment Regulation only requires the submission of "photographs and description showing the physical condition of the signboard" for joining the validation scheme for signboards. She considers the requirement too lax and would not serve the purpose of ensuring safety of signboards joining the validation scheme.

21. The Administration has explained that under the proposed SBCS, the information required to be submitted differs according to different levels of complexity in construction, sizes and locations of signboards. For relatively small signboards belonging to the Class III category, only photographs of the signboard with simple annotations will suffice; for signboards belonging to the Class II category, photographs and plans are required to be submitted; whereas for relatively large signboards in the Class I category, the validation applicants are also required to submit information such as structural calculations and plans.

22. With regard to the new section 62A(4)(b) of the Amendment Regulation, the Administration has explained that since the purpose of documents, such as simple annotations, structural calculations and plans, is to describe the physical conditions of the relevant signboard, they fall within the literal meaning of "description" in that section. To align with the existing three-tier framework of building works control regime², it is considered that the myriad

¹ The draft annotation reads "If the signboard is fixed to the external wall or common parts of the building, the signboard owner is advised to liaise with the OC, the management company or the owners concerned regarding the arrangement of third party liability insurance."

² According to the Administration, building safety standards and requirements in Hong Kong are regulated by a three-tier framework. The first tier is the principal legislation, i.e. BO, which provides the broad legal framework. The second tier is the subsidiary legislation made under BO prescribing the detailed procedural and technical requirements. The third tier includes the administrative practice notes, codes of practice and guidelines issued by BD, which provide the industry with the fine details of the procedures, technical standards and latest practices in relation to the requirements of the principal and subsidiary legislation. BD has also issued general guidelines in layman terms and public education materials to help the public and building owners understand the statutory requirements and building safety matters.

scenarios and technical details encountered in practice should be provided by technical guidelines which the industry are familiar with, including the information required in their submissions for validation for different types of signboards. Also, BD will give clear instructions and explanations in the relevant specified forms to facilitate the submission of the necessary information for validation. At the request of the Subcommittee, the Administration has provided draft copies of the specified forms, Technical Guidelines, Practice Note and Recommended Plans for Strengthening Works under SBCS for members' perusal.

Recommendation

23. The Subcommittee does not object to the Amendment Regulation and the Commencement Notice. The Subcommittee and the Administration will not propose any amendment.

Advice sought

24. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
10 July 2013

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

Building (Minor Works) (Amendment) Regulation 2013

(Extract)

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THE PROPOSED SBCS

9. The existence of unauthorised signboards is a 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 and their existence carries notable value for sustaining local commercial activities and contributing to Hong Kong's prosperity. In order to enhance the safety of existing unauthorised signboards, it is proposed that the SBCS be introduced in a way similar to that for prescribed building or building works (i.e. unauthorised small canopies, drying racks and supporting frames for air-conditioners) under the B(MW)R at present. Under the system, the continued use of certain existing unauthorised signboards will be allowed after safety inspection, strengthening (if necessary), and certification by building professionals and/or registered contractors. Unauthorised signboards that have not been validated under the SBCS will be subject to enforcement action by the BD.

5-Year Validity Period

10. In addition to the safety inspection required when the signboard is to be validated, we propose that all validated signboards should be subject to periodic safety inspection. At present, all prescribed building works under the B(MW)R belong to household amenity features. Unlike household amenity features, most of the unauthorised signboards are used by business operations. As such, they may deteriorate faster due to lack of maintenance if the business operations have closed down. It is therefore considered more appropriate that the signboard validated under the SBCS be subject to a 5-year safety inspection cycle. Signboard owners who have had their unauthorised signboards validated should, at intervals of not more than 5 years, either make a fresh validation submission for the signboards concerned or remove them. By subjecting the validated signboards to a 5-year inspection cycle, it is expected that the safety of these signboards can be further enhanced. This should also alleviate the

potential risk posed by signboards that had been validated and subsequently abandoned as the BD would have information about the whereabouts of such signboards which have not undergone the periodic safety inspection and can take appropriate action against them.

Technical Specifications

11. To further delineate the limit on the size of unauthorised signboards that are eligible for safety validation, it is proposed that the technical specifications should follow those that have been designated as minor works in the B(MW)R to ensure that the signboards eligible for validation, like other minor works, are small in scale and pose less potential risk. The requirement of prior approval and consent of the BA before erection or alteration will, however, continue to apply to signboards falling outside these specifications. Under the MWCS, erection or alteration of specific types of signboards are designated as minor works, which include projecting signboards, wall signboards, signboards on the roof of a building, outdoor signboards fixed on-grade (or together with a spread footing) and signboards on or hung beneath the soffit of a balcony or canopy (other than a cantilevered slab). The erection or alteration of these types of signboards, according to different specifications, is further classified into Class I, II or III minor works. It is proposed that only the building professionals or contractors who are registered for the specific classes, types and items of minor works relating to the erection and alteration of signboards can carry out the safety inspection, strengthening, and certification of unauthorised signboards falling within the corresponding classes, types and items.

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**Development Bureau
May 2013**

**Subcommittee on Building (Minor Works) (Amendment) Regulation 2013 and
Buildings Legislation (Amendment) Ordinance 2012 (Commencement) Notice**

Membership List

Chairman Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Hon WU Chi-wai, MH
Hon CHAN Han-pan
Hon KWOK Wai-keung
Hon Tony TSE Wai-chuen

Total : 7 Members

Clerk Ms Joanne MAK

Legal Adviser Mr YICK Wing-kin

Date 7 June 2013

《2013年建築物(小型工程)(修訂)規例》及
《〈2012年建築物法例(修訂)條例〉(生效日期)公告》小組委員會
Subcommittee on Building (Minor Works) (Amendment) Regulation 2013 and
Buildings Legislation (Amendment) Ordinance 2012 (Commencement) Notice

曾向小組委員會表達意見的團體名單

List of organizations which have
submitted views to the Subcommittee

名稱	<u>Name</u>
* 1. 民主黨	Democratic Party
* 2. 民生關注街坊	民生關注街坊
3. 承建商授權簽署人協會	Contractor's Authorised Signatory Association
4. 香港建築業承建商聯會	Hong Kong General Building Contractors Association
5. 香港專業及資深行政人員協會	Hong Kong Professionals and Senior Executives Association
6. 註冊小型工程承建商簽署人協會	Registered Minor Works Contractor Signatory Association
7. 逸東社區網絡協會	Yat Tung Community and Network Association
* 只提交書面意見的團體	Organizations which have submitted written views only