

**立法會**  
**Legislative Council**

LC Paper No. LS49/14-15

**Paper for the House Committee Meeting  
on 13 March 2015**

**Legal Service Division Report on  
Proposed Resolution under section 2(3) of the  
Buildings Ordinance (Cap. 123)**

The Secretary for Development (the Secretary) has given notice to move a motion under section 2(3) of the Buildings Ordinance (Cap. 123)<sup>1</sup> at the Legislative Council (LegCo) meeting of 25 March 2015 to amend Schedule 5 to Cap. 123 to include new railway protection areas along the West Island Line and to update certain areas that are currently scheduled areas<sup>2</sup>.

2. Under Cap. 123, ground investigation<sup>3</sup> and underground drainage works<sup>4</sup> carried out in the railway protection areas along the Mass Transit Railway (MTR) lines, i.e. the areas specified as Area Number 3(1) in Schedule 5 require, as appropriate, the appointment of professionals to supervise the building works, prior approval of plans and consent to the commencement of building works by the Building Authority (BA), i.e. the Director of Buildings and issuance of occupation permit in respect of new buildings<sup>5</sup>. Section 17(1) of Cap. 123 provides that where an application is made to BA in respect of approval of plans showing, or consent to commence ground investigation in the scheduled areas

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<sup>1</sup> Section 2(3) of Cap. 123 provides that the Legislative Council may by resolution amend Schedule 5.

<sup>2</sup> Section 2(1) of Cap. 123 defines the term "scheduled areas" to mean the areas specified in 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.

<sup>3</sup> Section 2(1) of Cap. 123 defines the term "ground investigation" to mean 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.

<sup>4</sup> Section 2(1) of Cap. 123 defines the term "drainage works" to mean any work connected with the construction, repair, alteration, disconnexion, trapping and ventilation of drains or sewers.

<sup>5</sup> Section 41(3) of Cap. 123 provides that building works (other than, among other things, ground investigation in the scheduled areas) in any building are exempt from sections 4, 9, 9AA, 14(1) and 21 of Cap. 123 (which relate to the appointment of professionals to supervise the building works, prior approval of plans and consent to the commencement of building works by the Building Authority and issuance of occupation permit in respect of new buildings) if the works do not involve the structure of the building. Section 41(3C)(f) of Cap. 123 provides that drainage works (other than minor works) in any building are exempt from sections 4, 9 and 14(1) of Cap. 123 (which relate to the appointment of professionals to supervise the building works and prior approval of plans and consent to the commencement of building works by the Building Authority) if the works do not involve underground drainage works in a scheduled area that is described as area number 3 in the Schedule 5.

(including Area Number 3(1) in Schedule 5), BA may take action by way of imposing conditions and requirements by orders in writing, and refusing approval of plans or consent to commence the works. Further, Regulation 8(1)(1) of the Buildings (Administration) Regulations (Cap. 123A) sets out the details to be included in a ground investigation plan in the scheduled areas (including Area Number 3(1) in Schedule 5).

3. According to paragraph 2 of the LegCo Brief (File Ref: DEVB(PL-B)30/30/86) issued by the Development Bureau in March 2015 on the proposed resolution, under Cap. 123, ground investigation and underground drainage works to be carried out in the railway protection areas require the prior approval of plans and consent to the commencement of works by BA. Such investigation and works also have to comply with other relevant requirements under Cap. 123. This is to ensure the safety of the railway structures and hence the normal operation of the railway system. Each of the plans mentioned in Area Number 3 in Schedule 5 to Cap. 123 describes a segment of the railway lines operated by the MTR Corporation Limited (including those formerly operated by the Kowloon-Canton Railway Corporation), and delineates and shows a railway protection area the boundary of which is generally 30 metres from the edge of the railway line or premises.

4. The Administration proposes to amend Schedule 5 to Cap. 123 to -
- (a) include the railway protection areas along the West Island Line as scheduled areas (section 1(5) of the Schedule to the proposed resolution); and
  - (b) revise the description of some railway protection areas along the MTR lines (section 1(1) to (4) of the Schedule to the proposed resolution).

The main legal effect of the proposed resolution is to extend the safety requirements mentioned in paragraph 2 above to the railway protection areas along the West Island Line and the other railway protection areas along the MTR lines as updated.

5. According to paragraph 4 of the LegCo Brief, a new set of plans showing the scheduled areas proposed to be added and revised in Schedule 5 to Cap. 123 was signed by the Secretary on 2 March 2015 and deposited in the Land Registry for public inspection.

6. As advised by the Clerk to the Panel on Development, the Panel has not been briefed on the proposed resolution.

7. No difficulties have been identified in the legal or drafting aspects of the proposed resolution.

Prepared by

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