



Buildings (Amendment) Bill 2007

Comments

General

The Law Society welcomes the Buildings (Amendment) Bill 2007 (“the Bill”) and considers the provisions regarding minor works and unauthorized building works (“UBW”) are timely if not long overdue. Most (but certainly not all) UBW’s are relatively minor works and the existence of a less cumbersome and swifter procedure dealing with minor building works should, hopefully, reduce the number of UBW’s being built.

Our main concern at present is that the scheme for non-enforcement against existing UBWs cannot be seen in full until the regulations are published. If a draft of them could be made available to us before the Bills Committee finishes its work we would be able to provide more informed comments on the Bill itself.

As will be seen below, from the conveyancing and other points of view, there will be problems with both schemes if the Bill as gazetted becomes law.

Specific Comments

Clause 7. New Section 4A and 4B

There is no obligation on the authorized person (“AP”) to give a certificate that the works have been done to his satisfaction and in accordance with the ordinance and the regulations.

This will cause title problems when the particular interest in the land comes to be sold. It would be the duty of the vendor to disclose that minor works had been done under the “minor works scheme” and the purchaser would require evidence that the works comply

with the ordinance.

Even if the vendor was not to make the disclosure, a purchaser's solicitor would invariably ask the vendor's solicitor to confirm whether any minor works had been done and, if so, evidence of compliance.

We recommend a simple form be prescribed for issue by the AP that the works have been done to his satisfaction and comply with the order of the Building Authority. It would be useful if this document could be registered in the Land Registry.

It may also be possible for a vendor to contract out of Section 4A as he may require the purchaser to accept the minor works "as is" and without any evidence that they comply with the statutory scheme.

As we do not have sight of the draft regulations, we do not know whether the AP will be required to lodge a record plan or some statement of the minor works to the Building Authority. If so, there will be a record that a purchaser could search to ascertain whether minor works have been done and their status.

Clause 22. New Section 24AA

Again, there is no requirement in the clause – though there may be in the draft regulations – for a certificate of compliance with an order issued by the Building Authority to be issued or registered.

In (6) of the new section, we suggest that "may" be amended to read "shall".

The same comments about conveyancing practice and contracting out as were made in relation to the new Sections 4A and 4B also apply here.

Clause 26. New Section 39C

Having chosen a scheme for minor works which is based on prescribing certain less onerous statutory requirements to be complied with rather than exempting minor works from the Buildings Ordinance altogether, the new Section 39C must follow similar lines.

There are a number of difficulties with the new section as currently drafted.

The first difficulty concerns the scope of enforcement – does new section 31(1) mean non-enforcement is available when the only ground for enforcement is a breach of Section 14(1), or where there is a breach of other sections of the ordinance and regulations also?

Most UBW's in our experience breach not only Section 14(1) but other sections and/or regulations. This means very few UBW's could come under this non-enforcement scheme.

If there are breaches of other sections and regulations, except a UBW from this scheme, will these breaches be judged against the present version of a section, regulation or the version extant, and applied to the UBW when it was first constructed? There are UBW's which might have complied with the ordinance (other than Section 14(1)) and the regulations as they stood when it was built but could be caught as it would no longer comply because of subsequent upgrading statutory amendments.

Subsection (5) would suggest that the scheme covers UBW's which breach Section 14(1) only. If so, this reduces the usefulness of the scheme drastically and would not change the present situation much.

Again, without seeing the draft regulations, we do not know whether the AP or the Building Authority will be required to issue a certificate that the UBW complies with Section 39C, or has been made to comply to the satisfaction of the AP and Building Authority.

The same conveyancing problems apply here as were discussed earlier as title becomes problematic.

Other issues are:

- (a) A breach of the Buildings Ordinance and/or regulations is generally a breach of the relevant Government lease. Is the Government intending to announce that re-entry will not be taken for cases which comply with the new scheme?
- (b) Another significant impact on conveyancing will come if a UBW on a vendor's property could comply with the new scheme if an AP were appointed. Achieving compliance under the new scheme (which might require rectification of the UBW) would take some time and would need a long completion period under the contract of sale and purchase.

Long completion periods are not common in Hong Kong.

- (c) Is it intended that the new scheme will apply to New Territories Exempt Houses (“NTEH”). Has the impact on NTEH’s been considered? The same question applies to the minor works scheme.

The Law Society of Hong Kong

Land Use Planning Committee

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