

To: All Authorized Persons  
Registered Structural Engineers  
Registered Geotechnical Engineers

31 December 2012

Dear Sir / Madam,

**Validity Period of Modification or Exemption  
Granted under Section 42 of the Buildings Ordinance**

I refer to my letter of 20 October 2010 under ref. BD GP/BOP/6(XI) regarding the imposition of a time limit as a condition when granting modification or exemption under section 42 of the Buildings Ordinance. Since then, the Buildings Department has received enquiries from stakeholders on whether the time limit as stated in the permit (Form BD106) could be extended and if so, the circumstances that the Building Authority would consider when processing an application for such an extension. To this end, an Information Note setting out the arrangement relating to the imposition of a time limit in the Form BD106 and the procedures in applying and the acceptance criteria for the granting of an extension of such time limit is at Annex 1 for your attention.

Yours faithfully,



( YU Tak-cheung )  
Assistant Director / New Buildings 1  
for Building Authority

Encl.

**Information Note on Validity of Modification or Exemption  
Granted under Section 42 of the Buildings Ordinance**

**Purpose**

This information note sets out the arrangement relating to the imposition of a time limit in the permit (Form BD106) for modification or exemption granted under section 42 of the Buildings Ordinance (BO), and the procedures in applying and the acceptance criteria for the granting of an extension of such time limit.

**Time Limit Imposed in the Form BD106**

2. Section 42 of the BO provides that where in the opinion of the Building Authority (BA) special circumstances render it desirable, he may permit by notice in writing modifications of or exemptions from the provisions of the BO. Every application for modification or exemption shall be considered on its own merits by the BA who shall not be required to take into account the modifications or exemptions granted in the past, and a permit in the Form BD106 granted under this section may contain such conditions as the BA shall deem necessary.

3. When an application for approval of plans for a building proposal submitted to the BA is accompanied with a Form BA16 applying for modification or exemption to permit certain works to deviate from the requirements of a specific regulation, the BA may approve such plans and grant a modification of or exemption from such regulation by issuing a Form BD106 to permit such deviation if he considers that the works including the aforesaid deviation are acceptable under the BO. The objective of imposing a time limit in the Form BD106 is to ensure that the project would not be delayed until the circumstances under which the modification or exemption is granted have changed to such a state that the implementation of the works at that stage with the modification or exemption would have been considered as imposing an adverse effect on the built environment.

4. Hence, for an application for approval of plans involving the granting of modification or exemption, which was submitted on or after 21 October 2010, the Form BD106 would be issued on the date of approving such plans and a time limit, generally of 2 years from the date of issue of the said Form BD106, would be imposed for the commencement of works shown on the approved plans in respect of which the modification or exemption is granted (hereafter referred to as "the approved works").

5. The imposition of the time limit will be applied generally in all the cases where modifications or exemptions are granted by the BA under section 42 of the BO. Any subsequent Form BD106 associated with the approval of amendment plans will be imposed with a time limit expiring on the same date as that imposed under the first Form BD106.

6. For Form BD106 issued in connection with the approval of any major revision plans, the time limit generally of 2 years will be imposed afresh, irrespective of any time limit imposed previously.

7. If the consent to commence the approved works as shown on the approved plans is not obtained on or before the expiry of the time limit or where such consent has been obtained but is deemed to be revoked under section 20(1) of the BO after the expiry of the time limit, the modifications or exemptions granted in the Form BD106 will expire and cease to have effect. Such plans without a valid Form BD106 will be in contravention of the BO as certain works shown thereon have deviated from the requirements of a specific regulation. Hence, any amendment plan based on such previously approved plans will also contravene the BO and its allied Regulations, and may be disapproved under section 16(1)(d) of the BO. Likewise, an application for consent to commence the works shown in such previously approved plans may be refused under sections 16(3)(a) and 16(3)(d) of the BO.

8. After the BA has given his consent to the commencement of the approved works in relation to which the modifications or exemptions have been granted and the works have commenced, no further time limit will be imposed in any subsequent Form BD106 to be issued with the approval of amendment plans.

9. Where any building works for the commencement of which the consent of the BA has been obtained are not commenced within 3 months thereof, or if commenced are suspended for such period, such consent shall be deemed to be revoked pursuant to section 20(1) of the BO. Upon application for renewal of the consent, the BA would adopt the procedures and considerations as stated in the following paragraphs to decide whether such consent may be renewed.

#### **Extension of Time**

10. Upon receiving an application for an extension of time (EOT) prior to the expiry of the Form BD106, the BA would check whether there is any change in circumstances which may adversely affect the approved proposal. In other words, the BA would check whether the plans with the modifications or exemptions could be approved as if such plans are submitted afresh together with applications in Form BA16 for such modifications or exemptions. Examples of situations involving such changes in circumstances are :

- (a) where there are amendments to the outline zoning plans or changes in the planning circumstances that are relevant to the modifications or exemptions or under which the modifications or exemptions are granted.
- (b) where the modifications or exemptions relate to gross floor area (GFA) concessions of an approved proposal subject to the GFA concessions policy in force on or before 31 March 2011, a new GFA concession policy has come into effect on 1 April 2011.

11. If there is no change in circumstances or the plans are considered approvable, the EOT may be granted without examining whether the applicant has shown diligence to obtain the consent to commence the approved works since the approval of the corresponding plans and the granting of the modifications or exemptions.

12. If there is a change in circumstances adversely affecting the approved proposal such as examples mentioned in paragraph 10 above, the BA would then examine whether diligent actions have been taken in proceeding with those building works which should be

completed before the commencement of the approved works concerned following the approval of the corresponding plans and the granting of the modifications or exemptions. In considering whether a building proposal has been proceeded with diligently, the BA may take into account the special circumstances listed below and consider extending the time limit in the Form BD106 as appropriate. In all cases, the applicant has to demonstrate with satisfactory proof that diligent actions have been taken to expedite works and minimise delays. Any actions that may have been carried out after the expiry of the Form BD106 to catch up previous delays will not be considered as a ground for the granting of EOT. Genuine technical difficulties and practical problems that may be accepted as valid grounds for EOT include:

- (a) There are site constraints or complex building designs involving complicated or large scale site formation, foundation and/or excavation and lateral support works that cannot be completed within the stipulated time limit.
- (b) There are statutory or administrative requirements from other government departments that are beyond the control of the applicant e.g. special approvals are required for school projects funded by the government; extensive tree transplanting works are required under the planning or lease conditions; special demolition procedures or construction sequence are implemented for projects involving heritage conservation works.
- (c) There are practical difficulties such as general shortage of labour, materials or construction plants, resulting in delays in carrying out the works.
- (d) Additional measures are implemented in carrying out the site formation, foundation and/or excavation and lateral support works to improve site safety and/or quality of works.
- (e) The project is a large development that is divided into different phases as shown on relevant approved plans and there are records to demonstrate that construction works have been carried out diligently in sequence.

13. In assessing the extent of EOT to be granted, the BA may consider whether the applicant has demonstrated that there is a good prospect to commence the approved works within the extended time limit and whether the extension period applied for is reasonable. The period of extension will not be longer than the period of the time limit originally imposed.

14. Applications for EOT should be submitted not earlier than 6 months prior to the expiry of the Form BD106. All applications for EOT will be processed within 28 days.

15. Responsibility to apply for EOT rests with the AP / applicant. Application for EOT submitted after the expiry of the Form BD106 will be rejected except where there is no change in circumstances that would adversely affect the approved proposal. In such exceptional cases, the application for EOT may be favourably considered if the AP could demonstrate that such proposal is in compliance with the legislations and policies prevailing at the time.