

香港特別行政區政府

The Government of the Hong Kong Special Administration Region

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8 November 2010

Mr Stephen LAM
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central

Dear Mr LAM,

**Bills Committee on Buildings (Amendment) Bill 2010
Administration's Response to Follow-up Issues**

In response to Members' discussion at the meeting of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 25 October 2010, I am pleased to provide below information in relation to the matters about which Members enquired.

Refusal to Share Cost of Works

At the aforementioned meeting of the Bills Committee, Members raised concerns about the criminal penalty under the proposed section 39B(1)(c) in clause 25(4) of the Bill where an owner, who has been notified by an owners' corporation (OC) that an order has been served on the OC under the proposed section 30B(3), (5) or (6) or 30C(3), without reasonable excuse, refuses to contribute to the cost of the inspection or repair works that is required for the purpose of complying with the notice.

Background of Proposal

During the two-stage public consultation in 2003 and 2005, a number of respondents raised concerns that, despite the availability of various financial assistance schemes, some owners still refuse to contribute to the cost of repair and maintenance works and this has hindered OCs from carrying out the required works in common parts of the buildings and fulfilling the statutory orders. While OCs may take civil actions against such owners, legal proceedings can be costly and time-consuming. The community therefore supported that appropriate penalties should be imposed against uncooperative owners. It is against this background that we propose in the Bill the imposition of a criminal penalty on owners who, without reasonable excuse, refuse to share the OCs' costs of works for complying with statutory notices served under the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS).

“Required Works”

We share Members' views that works required under MBIS and MWIS should be clearly stated and should be distinguished from additional works that an OC may wish to carry out together with the basic inspection and repair works required under the MBIS and MWIS. It has always been our intention that the MBIS and MWIS would only require minimal repair works that are adequate to render the buildings safe. In the subsidiary legislation, we will stipulate (exact wording being worked out) that such repair works, which must be clearly listed in the repair proposal in the inspection report, should be carried out to render the building up to the statutory standard at the time when the building was constructed (or subsequent enhanced standards as required by the law, for example, upgrading of fire resisting constructions under the Fire Safety (Buildings) Ordinance (Cap. 572)). This will provide a clear basis on which a repair proposal is formulated. Technical details will be further stipulated in the codes of practice and practice notes, and the Buildings Department (BD) will provide guidance through such codes and notes that, for any additional works the clients (i.e. OCs or co-owners) may require, the registered inspector (RI) should provide a separate list (which is beyond the statutory requirement) on top of the repair proposal for the clients' reference.

The BD will conduct audit checks on inspection reports to ensure compliance. As additional safeguards, an RI who has carried out inspection for a building cannot act as a contractor to carry out repair for the same building, and the OCs/owners may appoint different RIs to carry out inspection and supervise repair. This will discourage RIs to propose unnecessary repair works. The Hong Kong Institute of Surveyors has agreed to assist to publicise indicative price lists for owners' reference. Owners may also seek advice from the Hong Kong Housing Society and Urban Renewal Authority, particularly if they apply for financial assistance from the two organisations. Indeed, we have gained valuable experience through the implementation of the Operation Building Bright (OBB) jointly launched by the Government and the two organisations. For example, in close liaison with the Independent Commission Against Corruption, we have issued guidelines to OCs, consultants and contractors, stipulating the requirements and proper procedures for selection and management of consultants and contractors, anti-tender-rigging practices, as well as the detailed roles and duties of the parties involved in the repair works under the OBB. We will share our OBB experience with OCs and owners.

OCs' Financing

Members also suggested that, when some owners refuse to share the cost of the required repair works, the Government should consider advancing the shortfall to the OCs such that the works can be commenced, and subsequently recover the cost from the concerned owners. This suggestion is similar to a previous proposal of empowering OCs to borrow money from the Government on behalf of the owners to carry out repair works for complying with statutory orders, which was discussed in the then Bills Committee for the Building Management (Amendment) Bill 2005. There were submissions by stakeholders, including associations of OCs, to the then Bills Committee expressing strong reservation against the proposal. Professional bodies also raised concerns on the practicality of the proposal. Most importantly, the proposal would give rise to human rights concerns and possible constitutional challenge because the concerned owners would be forced to become a borrower and, if they want to object, forced into court without a choice. Another practical concern is that, in order to ensure the best use of public resources, security (e.g. execution of a legal charge registered against the title of the property) must be provided for a Government loan, but this could not be done by

the Government or OCs without the cooperation of the owners in providing the necessary information and documentations. The then Bills Committee accepted that the proposal should not be pursued.

Individual owners who have financial difficulties in meeting the share of repair costs may consider applying for a loan of up to \$1 million under the Comprehensive Building Safety Improvement Loan Scheme administered by the BD. Eligible elderly owner-occupiers may also apply for grant of up to \$40,000 under the Building Maintenance Grant Scheme for Elderly Owners. In case of default of a small number of owners, an OC may also decide to proceed with the repair works, and seek reimbursement from those uncooperative owners through civil action. As a last resort, to protect public safety, the BD will consider carrying out the inspection and repair works on behalf of the OCs/co-owners and recover the cost from them at a later stage. The BD will apportion the cost among the owners, normally in accordance with the deeds of mutual covenant, and register a legal charge against the titles of those owners who fail to pay their share of the cost involved.

Subdivision of Flats

At the aforementioned meeting of the Bills Committee, Members requested the Administration to explain whether and how RIs would be required under the Bill to report to the Building Authority (BA) any signs of subdivision of flats identified during an inspection under the MBIS and MWIS.

Signs of subdivision of flats may appear within individual units or in common parts or on external walls of the buildings. We have, in the two rounds of public consultation in 2003 and 2005, established a general community consensus that the MBIS, and hence the statutory duties and responsibilities for an RI, should focus on common parts. Otherwise, an RI engaged under the MBIS will be required to inspect each and every individual unit of a building, the cost and time for complying with the Scheme will disproportionately increase and the objective of the Scheme will be defeated. This is against the consensus established in the public consultation. It is also not appropriate to require RIs, who are not public officers and do not possess the statutory power to gain access into private premises, to enter and report the findings in individual subdivided flats to the BA. As explained in our previous

reply (paper no. CB(1)1417/09-10(02)), requiring mandatory inspection of the interior of every individual unit in the MBIS will create serious disturbance and practical difficulties to individual owners. As individual units are private premises, not every owner is willing to grant access to a registered inspector appointed to carry out a prescribed inspection. It is more appropriate for the statutory authority, i.e. the BA, to conduct inspection of individual units and take necessary follow-up actions.

In reality, signs of subdivision of flats within individual units that constitute a structural danger can often be observed in common parts or on external walls. Such views have been confirmed by building professionals and the industry. RIs are required to report to the BA if he observes signs of distress and other indications in common parts or on external walls that subdivision of flats has affected the structural elements of a building either in the inspection report or immediately in case of emergency. We believe that such requirement will enable us to identify most buildings with serious subdivision of flats. As undertaken in our new package of measures to enhance building safety in Hong Kong, the BD will step up inspections of subdivided units, and take prompt follow-up actions upon receipt of the RIs' reports. To complement the statutory duties imposed on the RIs, we will stipulate in our codes of practice that if an RI sees further signs of suspected subdivision of flats (e.g. presence of many flat door openings or door bells), he should also inform the BA for follow-up action. We believe that our proposal has struck the right balance and can effectively tackle the problem of subdivision of flats under the MBIS.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Harry Lin', written in a cursive style.

(Harry LIN)

for Secretary for Development

c.c. DD/BD
LD/DoJ