



THE HONG KONG INSTITUTE OF
SURVEYORS

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Hon IP Kwok Him, GBS, JP
Chairman
Bills Committee of Buildings (Amendment) Bill 2010
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Ip,

Comments on Buildings (Amendment) Bill 2010

With reference to the latest Buildings (Amendment) Bill 2010, we are glad to learn that the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) now enter the final stage.

As a professional institute we strongly support the proposed schemes and have collected views from our members on the Bill (see attachment), which hopefully will be considered and examined while ironing out the legislative framework of MBIS and MWIS.

Thank you for your attention and we shall be very pleased to meet with your representatives on this subject should you think fit.

Yours sincerely,

Vincent Ho
Convenor
Working Group on MBIS and MWIS

Encl.

- c.c. Secretary for Development (w/e) (Fax no.: 2845 3489)
Director of Buildings (w/e) (Fax no.: 2840 0451)
The Hon Patrick Lau Sau Shing (w/e) (Fax no.: 2147 9155)
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Comments on Buildings (Amendment) Bill 2010

The Hong Kong Institute of Surveyors (HKIS) strongly supports the implementation of Mandatory Building Inspection Scheme (hereinafter referred as “MBIS”) and Mandatory Window Inspection Scheme (hereinafter referred as “MWIS”). As the debates and discussions on the Schemes have been prolonged for years and now finally enter the final stage, we urged that the process shall be expedited for the sake of public interest.

We are mindful of the general consensus on the age thresholds for MBIS and MWIS, i.e. 30 years and 10 years respectively. The purported inspection interval of 10 years is also considered to be pragmatic in general. Yet, the interval of inspections for buildings more than 40 years old should be reduced to 6 to 7 years. In practice, the inspection interval 6 to 7 years is normally recommended so as to tie in with the maintenance cycle and to allow sufficient time for the owners to plan the necessary remedial works.

We have the following views on the Bill which hopefully will be considered and examined while ironing out the legislative framework of MBIS and MWIS:

Mandatory Building Inspection Scheme

Target Buildings

- 1) It is expected that there should be some established principles and criteria for the selection of target buildings to avoid arbitrary decision giving rise to appeals by building owners.

To echo our previously stated stance, the standard of the inspections under the Schemes shall not be compromised simply to meet the targeted number of buildings to be inspected each year, and to perversely expand the pool of Registered Inspectors (hereinafter referred as “RIs”) (see 2) below).

Registered Inspector’s Qualification and Duties

- 2) We totally disagree with the notion that “the inspection requirements under the Schemes can be considered as relatively simple”, as presented under the paper of CB(1)570/08-09(06) : Legislative Council Panel on Development, Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme, Regulation of Service Providers issued on 20 January 2009.

Apart from structural stability, building safety and health must also be essential elements for the inspections. The inspection should embrace the diagnosis of building defects as well as the identification of illegal structures and alterations. More importantly, inspections shall be followed by sound and proper remedial proposals which are no simple tasks but require a high level of professional competence and expertise.



The RIs shall be capable of diagnosing the building defects during inspections and identifying the corresponding remedial methods, resembling medical doctors giving consultation to their patients. Indeed, maintenance works are much more complicated than new works and call for sophisticated knowledge and skills. The RIs must have practical knowledge on statutory requirements related to building design, building diagnosis, remedial methodology, supervision and specification of maintenance works with hands-on experience on the application.

Some repairs might not stand safe until the next MBIS inspection cycle (10 years) if defects are not properly diagnosed and rectified. For instance, if the cause of water seepage could not be identified and rectified, it is pointless only to apply cosmetic repairs to the consequential defective concrete or loose rendering. Also, construction of underground drain is much easier than drain replacement for an occupied building while the latter has to take into account issues such as access arrangement, nuisance to occupiers and neighbours, compatibility of existing and new materials, etc.

Therefore, expertise in defect diagnosis and knowledge on supervision and specification of maintenance works are of paramount importance for the RIs to discharge their duties under the Schemes. It is conceived that RIs would be comparable to Maintenance Surveyors in the Housing Department and the Architectural Services Department, who are mostly members of the Hong Kong Institute of Surveyors (hereinafter referred as “HKIS”) in the building surveying division. They are in charge of the maintenance of public housing and government buildings respectively, which make up a substantial part of the building stock in the city.

According to the paper addressed to Legislative Council which outlines the proposed arrangement of MBIS, we note the current plan is to select 2,000 target buildings per year. We also expect some building owners will voluntarily engage professional personnel to inspect and upkeep their buildings or participate the proposed Voluntary Building Classification Scheme (VBCS), and we assume 1,000 voluntary buildings in this regards. The following table demonstrates the required number of professional personnel for handling the total 3,000 buildings every year:

| <u>Tasks of RIs under MBIS</u> | <u>Estimated Time Spent by RIs for a Typical 6-Storeys Building</u> |
|---|--|
| Desk Study, On Site Condition Survey & Report Preparation | 6 – 8 Man-days |
| Periodic Supervision of Repair Works | 16 – 20 Man-days |
| Total Man-days / Building : | 22 – 28 Man-days |
| Total Man-days for 3,000 Buildings : | 66,000 – 84,000 Man-days |



Assuming each RIs spends 140 man-days every year for MBIS works, which obviously is not a heavy workload for the RIs, the required number of RIs to handle inspections and repair works of 3,000 buildings would be :

$66,000 / 140$ to $84,000 / 140 = \mathbf{472}$ to $\mathbf{600}$ RIs required every year

The following table also summaries the existing number of professional personnel who may be qualified as a RIs:

| <u>Professional Personnel</u> | <u>Total number</u> | <u>Last updated</u> | <u>Source</u> |
|--|--------------------------------------|---------------------|-------------------------------|
| Authorized Persons (Architect) | 1,122 | 14/06/2010 | Buildings Department |
| Authorized Persons (Engineer) | 144 | 14/06/2010 | Buildings Department |
| Authorized Persons (Surveyor) | 164 | 14/06/2010 | Buildings Department |
| Registered Structural Engineers not being an Authorized Person | $411 - 144 = 267$ ¹ | 14/06/2010 | Buildings Department |
| Registered Architects not being an Authorized Person | $2,627 - 1,122 = 1,505$ ² | 13/05/2010 | Architects Registration Board |
| Registered Professional Engineers (Structural Discipline) not being an Authorized Person or a Registered Structural Engineer | $1,323 - 411 = 912$ ³ | 15/06/2010 | Engineers Registration Board |
| Registered Professional Surveyor (Building Surveying) not being an Authorized Person | $873 - 164 = 709$ ⁴ | 13/05/2010 | Surveyors Registration Board |
| Total Quantity : | <u>4,823</u> | | |

Assuming 40% discount for personnel having multiple professional qualifications, personnel working in government sector and those professionals who have no interest for the MBIS works, there is still around 2,900 professional architects, engineers and surveyors in the market who may potential RIs subject to necessary skills and assessment checks.

¹ It is assumed all Authorized Persons (Engineer) also process Registered Structural Engineer qualification.

² It is assumed that all Authorized Persons (Architect) are also Registered Architects.

³ It is assumed that all Authorized Persons (Engineer) or a Registered Structural Engineer are also Registered Professional Engineers (Structural Discipline).

⁴ It is noted that almost all Authorized Persons (Surveyor) are also Registered Professional Surveyors (Building Surveying).



Based on the above figure, it clearly reflects the actual situation that the existing pool of professional personnel is more than enough to handle the task. It also maintains a high degree of competitiveness for the benefit of building owners. Therefore, the government should stress on the expertise of the RIs, instead of their numbers. The qualification requirement of RIs should stress on experience related to defect diagnosis and supervision and specification of maintenance works. If such qualification threshold is relaxed merely for the sake of expanding the pool of RIs, it will allow incompetent persons to carry out building inspections and handling the maintenance works at the expense of the quality of inspections and repairs, i.e. building safety, hence defeating the purpose of MBIS.

- 3) Under Buildings Ordinance (hereinafter referred as “BO”) s.3(5GB), the quorum for a meeting of the Inspectors Registration Committee is only 3 members including the chairman and the Building Authority’s representative. This is considered too loose and inadequate. In view of the need to assess applicants their required skills of defect diagnosis and supervision and specification of maintenance works, we opine that this quorum should at least also include the RI nominated by the Surveyors Registration Board, as surveyors have long been recognized as experts in these fields. In BOs.3(7AA)(a), “relevant experience” should be “relevant experience in building repair and maintenance”. Likewise for “grandfather arrangement” under BOs.3(7AA)(b), experience should only refer to “building repair and maintenance”, rather than “building design, construction, repair and maintenance” since pure experience in “building design or construction” may not possess sufficient knowledge and skills in repair and maintenance works.

In order to guarantee the standard of RIs, interview-based assessments may not be an appropriate means to maintain the threshold, especially the Bill intends to include a number of disciplines which prima facie do not possess the relevant core training or working experience on building defect diagnosis and maintenance management. Nonetheless, we agree that deficiencies in these areas may be remedied by well-designed Continuous Professional Development or on-job training under proper supervision.

- 4) What is the mechanism for resolving situation when a RI for repair does not agree with the Repair Proposal prepared by a RI for inspection? Employing different RIs for inspection and repair may also give rise to liability disputes if the repair works are eventually proved ineffective. There shall be provision for the submission of supplementary inspection report to Buildings Department (hereinafter referred as “BD”) by the RI for repair so as to distinguish the liabilities of the two RIs. Likewise, there may be dispute between the owners and the RI for inspection on the scope of repair.



- 5) Can the RI recommend deferring repairs from maintenance point of view? For instance, if an aboveground drainage system still has 3-5 years serviceable life, deferring replacement to line up with the next painting cycle should be more economical and environmental friendly, rather than sticking to MBIS inspection cycle (10 years). Premature repairs should be discouraged.

Unauthorized Building Works (hereinafter referred as “UBWs”)

- 6) Building works not shown on the latest approved building plans may be exempted from approval and consent under BOs.41(3) and 41(3A). The RIs should be capable of distinguishing between exempted works and non-exempted works, and in either case, identifying the contraventions under the BO and allied regulations. Upon identifying the contraventions and hence the consequences, e.g. inadequate means of escape or inadequate natural lighting, the owners would be more prepared to remove the UBW.
- 7) There should be an “upgrading policy” in BD for UBWs that will hinder effective repair under MBIS. For instance, a flat roof structure causing water seepage and defective concrete to the unit below should be removed, and BD should issue corresponding order for removal of the subject UBW in time for the repair under MBIS.
- 8) Apart from UBW, unsuitable or unauthorized changes in use should also be included in the MBIS report.

Scope of Inspection

- 9) The proposed MBIS targets on inspection and repair of “common parts”, “external walls” and “projections”. We note that “common parts” and “external walls” are defined under BOs.2(1) in terms of *the whole Ordinance* whilst “projections” is defined under the new BOs.30A(1) *for MBIS only* and it in fact refers to regulations that are not available at this stage. We cannot understand the rationale for the different treatment.

“Common parts” is defined by referring to Section 2 of the Building Management Ordinance, which will include load bearing walls, columns, beams and other structural supports inside individual flats. It is contradictory because areas within private premises are expressly excluded under the MBIS. On the other hand, it is arguable if there is any “common parts” for buildings under single ownership. Moreover, such definition will exclude roof, flat roof and carparks that are under private ownership but their conditions will inevitably have implications on the associated “common parts”, e.g. the floor slab underneath. There are also other ambiguities on the definition of “common areas”, e.g. enclosing wall of a lightwell, parapet wall, etc.



Difficulty in gaining access to individual unit for inspection of these building elements, if considered as common parts, may impede the inspection. On the other hand, inspection to some individual units would certainly provide valuable information for compiling the remedial proposal. In this regard, the intention of inclusion/exclusion of inspections to individual units should be clarified. Further, the possibility of granting RIs the authority to inspect common parts within individual units and the requirement for inspection to cover certain percentage of individual units should be explored.

- 10) This discussion also applies to party walls between two adjoining buildings. The maintenance responsibility shall therefore be addressed for such cases.

Dispute Resolution

- 11) It is envisaged that there can be increasing numbers of appeal cases after the introduction of the Schemes. While the existing Building Appeal Tribunal has already been overloaded with appeals against BOs.24 orders, it is imperative to review the existing appeal mechanism under BO and to explore the possibility of having a separate system for cases arising from MBIS and MWIS.
- 12) To this end, our long standing proposal of the establishment of a Building Affairs Tribunal (hereinafter referred as “BAT”) should be further explored. An essence of our proposal on BAT is that the grieving party may on his own submit a case to BAT with justifications and/or expert report. Alternatively, it is perceived that this means could be incorporated into the existing judiciary system readily.

Mandatory Window Inspection Scheme

Qualified Person’s Qualification and Duties

- 13) The Bill allows both individuals and RGBC to register as Qualified Persons (hereinafter referred as “QPs”) under MWIS. We opine that such provision may cause complication on identification of legal liability and assurance of QPs’ quality. As the inspection of windows also requires a high level of competence as that of RIs under MBIS, the same registration regime should apply to MWIS.
- 14) Under the MWIS, those QPs not acting as the Registered Contractor for the window repair will be required to provide supervision for the works while there is no equivalent requirement for the Registered General Building Contractor registered QPs. In fact, there is no requirement for independent supervision of repair works carried out by RGBC under the Minor Works regime. The different requirements for the two streams of QPs should be reconciled and there should also be synchronization between MBIS and Minor Works regime.



Code of Practice

- 15) A comprehensive yet practical Code of Practice should be in place to set out the framework of the Schemes for the use of practitioners. During the drafting of the proposed Code, we have already offered our comments and we hope the comments can be fully addressed in the finalized version.
- 16) Furthermore, it is worth to review if a prescriptive or a performance based Code of Practice should be adopted. While vast parts of the current draft Code are dedicated to various testing and repair methods, a performance based approach would allow the RIs to exercise their professional judgment and to apply more advanced repair technology only when the need emerges.
- 17) Whilst the Code of Practice may be more relevant to the practitioners and property managers, there should be some brief and simple guidelines on the requirements and scope of the Schemes for the easy reference of building owners.

Ensuring Compliance

- 18) As the inspection and completion reports are required to be lodged with BD, it is believed that there will be a mechanism for random audit of the reports and repair works in order to assure the quality of inspections and repair recommendations as well as the effectiveness of implementing the subsequent repair and maintenance works.

Operation of the Schemes

- 19) A flexible approach should be adopted when assessing building owners' applications for subsidy to carry out inspections. Lack of owners' corporation should never be the reason for barring the owners from applying for the subsidy. The thrust of the Schemes is to assure timely inspections and repairs could be carried out to the aged buildings, which are usually without owners' corporation or building managers. Imposing such a restriction on the subsidy application requirements will be contrary to the aim of the Schemes. As such, sufficient resources should be allocated to assist the building owners receiving notices from BD to organize among themselves for the employment of RIs and subsequent implementation of repair works.
- 20) The government should also study if BD can appoint RIs and engage contractors for the subsequent remedial works in default of those owners who fail to comply with the inspection notices.
- 21) Although we consider that the reference fee range per unit for inspection (\$800-\$2400) is reasonable, the actual fee would depend on the scope of inspection. In particular, the need and scope of material and structural testing should depend on the findings of the preliminary inspections instead of compulsory in order not to incur unnecessary financial burden on building owners.