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20 July 2010

Mr. Wong Siu Yee,
 Clerk to Bills Committee on
 Buildings (Amendment) Bill 2010,
 Legislative Council Building,
 8 Jackson Road,
 Central,
 Hong Kong.

Dear Mr. Wong,

BUILDINGS (AMENDMENT) BILL 2010

We are pleased to attach the Law Society's submissions on the Buildings (Amendment) Bill 2010 for consideration by the Bills Committee.

Yours sincerely,

Christine W. S. Chu
 Assistant Director of Practitioners Affairs

Encls.

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THE LAW SOCIETY'S SUBMISSIONS ON THE BUILDINGS (AMENDMENT) BILL 2010

The Law Society's Property Committee has reviewed the Buildings (Amendment) Bill 2010 and supports the policy intent of the proposed legislation to tackle the long-term building neglect problem in Hong Kong, particularly in view that the safety of the occupants and the public are at stake. There are, however, concerns on the following aspects of the proposals:

1. Information for Owners, Prospective Buyers and Other Interested Parties

- 1.1 Clause 19 of the Bill adds a new Part IIA to the Buildings Ordinance ("BO") to provide for the regular inspections and repairs of buildings under the proposed 2 schemes, namely, Mandatory Building Inspection Scheme ("MBIS") and Mandatory Window Inspection Scheme ("MWIS").
- 1.2 The new Section 30B of the BO provides for the MBIS and empowers the Building Authority ("BA") to serve written notices to require any owner of a building aged 30 years or above to carry out within a specified time prescribed inspections and, if necessary, prescribed repairs of the "*common parts, external walls, projections and signboards*" of the building.
- 1.3 The MWIS was provided for in the new Section 30C of the BO, which gives a similar power to the BA to serve written notices on any owner in respect of a building aged 10 years or above regarding prescribed inspections and repairs of the "*windows*" in the building.
- 1.4 The Administration indicated in the "*Operational Procedures*" of the 2 schemes in Annexes B and C of their LegCo Brief on the Bill that the BA will respectively select 2,000 and 5,800 private buildings every year for the purpose of the MBIS and MWIS and that the list of buildings selected each year will be gazetted.

- 1.5 Clauses 27 and 36 of the Bill provide for offences and penalties against non-compliance with the inspection and repair notices issued by the BA, and against an owner who obstructs an owners' corporation in carrying out or refuses to contribute to the cost. Additionally, under the new S.30B(10) & (11) and S. 30C (8) & (9), the BA may carry out an inspection and repair works specified in the relevant notice and recover the cost of inspection and the repair works that it has carried out or caused to be carried out together with a surcharge of 20% of the cost from the owners.

2005 Consultation

- 1.6 During the Government's public consultation on the legislative proposal in 2005, the Committee has submitted, inter alia, on the importance for prospective purchasers/mortgagees to have access to relevant information under the proposed 2 mandatory inspection schemes. The Committee suggested that the Administration should consider keeping the following documents on a register for the information of interested parties:

- inspection notice issued by the Buildings Department
- inspection reports
- detailed investigation reports (where appropriate)
- completion report

- 1.7 In its *May 2007 Report on the Public Consultation on Mandatory Building Inspection*, the Government advised in paragraph 3.31 that *"To ensure that the proposed mandatory building inspection scheme is operated in an open and transparent manner, BD intends to maintain a register accessible by the public, containing information on buildings covered by the scheme. The information will be a convenient and useful reference for prospective property buyers and in turn provide incentives to owners to comply with the mandatory requirements"*.

Concerns with the 2010 Bill

- 1.8 The Committee noted with concern that there has been no mentioning by the Government whether in the Bill or in any of the Administration papers to LegCo about their previous agreement to keep a register of relevant data for public information.
- 1.9 The Administration only indicated in the *"Operational Procedures"* in Annexes B & C of their LegCo Brief that it would publish details of the buildings

selected to undertake the relevant inspection in the Gazette and that upon completion of the repair works, the relevant service providers should submit a certificate/report confirming satisfactory completion of repair work. However, these are not embodied in the Bill.

1.10 The Bill only “*empowers*” but not “*mandates*” the BA under the new Ss. 30B(9) and 30C(7) to register the relevant notices issued by the BA under these sections against the property in the Land Registry and it is unclear under what circumstances the BA will register these notices. Nor does the Bill provide for the registration of the inspection or repair reports or certificate from the relevant service providers confirming satisfactory completion of the inspection and/or repair works.

1.11 *The Committee submits that it should be made a statutory duty for the service providers to issue relevant paper such as the certificate/report confirming satisfactory completion of inspection and/or repair work.*

1.12 *The Committee further submits that the Government should maintain a register containing all relevant data for public access. It would otherwise be difficult for the owners and potential purchasers / mortgagees to search through different issues of the Gazette in the future to ascertain whether a notice of inspection or repair has been issued in respect of a property, and to ascertain the status of compliance of a prescribed inspection and a prescribed repair.*

2. Household Minor Works Validation Scheme (“HMWV Scheme”)

2.1 The Committee has concern on the proposed “*Household Minor Works Validation Scheme*” (“*HMWV Scheme*”) mentioned in paragraph 8 and footnote 2 of the Administration’s LegCo Brief. Under the HMWV scheme, for 3 types of “*unauthorized*” small-scale minor works carried out in buildings, the BD would not take enforcement action after “*inspection and/or strengthening*” of these minor works.

2.2 The effect of the validated “*unauthorized*” structures on property title raises doubt. The Administration paper stated that these validated minor household structures will nevertheless remain “*unauthorized*” although enforcement action will not be taken by BD against these structures unless there is a change in their

safety conditions.

2.3 As a breach of the Buildings Ordinance and/or regulation is generally a breach of the relevant Land Grant, the Government's entitlement under the Land Grant to exercise its right of re-entry as a result of the "unauthorized" structures will remain despite its validation under the HMWV Scheme and this will pose problem to conveyancing transactions.

2.4 *The Committee submits that the details of the proposed HMWV scheme should be considered and discussed further and that the Government should pronounce the policy that it will not take re-entry action for cases which have complied with the HMWV Scheme.*

3. **Dispute Resolution**

3.1 The Committee noted in paragraphs 18 to 20 of the Administration's LegCo Brief that the Government is considering the feasibility of a proposal to establish a Building Affairs Tribunal ("BAT") as a simple and low-cost dispute resolution mechanism to resolve disputes relating to building management and maintenance; the proposal will dispense with legal representation.

3.2 The Committee would like to reiterate its concern made in response to the Government's 2005 Consultation that given that building management disputes could involve complex legal issues such as the interpretation of the Deed of Mutual Covenant, the public should not be denied the right to have legal representation.

3.3 The Committee also agrees with the Government that there are doubts on the constitutionality of denying the public the right to have legal representation absolutely in building management litigation.

4. **Prevention of Corruption and Malpractice**

4.1 It is obvious that with the inspection and repair works involved each year under the proposed MBIS and MWIS and the amount of costs involved, this would become a corruption-prone area.

4.2 The Committee noted that to avoid conflict of interest, the Bill provides that the “Registered Inspectors” appointed to supervise the repair works under the MBIS should not act as the contractor for the repair work. However, for MWIS, the “Qualified Persons” appointed to carry out the inspection may also act as the contractor for the repair work.

4.3 *The Committee would like to ascertain what measures the Government would introduce to prevent possible abuse and corruption in building inspection and repair projects.*

5. **Limited Scope of Application of the Proposed Legislation**

5.1 The MBIS seems to concentrate on identification and repair of building defects in the common parts of buildings rather than areas under the exclusive use of owners.

5.2 Whilst it is appreciated that there are limits on the capacity of the market to take on the work related to the inspections and repairs required under the 2 schemes and on the Government’s resources, it would appear that the proposed legislation would not have helped to prevent incidents like the recent collapse of a building in To Kwa Wan from happening.

5.3 *The Committee would like to ascertain the Government’s policy to ensure there will not be a repeat of the To Kwa Wan type of incident.*

**The Law Society of Hong Kong
Property Committee
20 July 2010**