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Report of the Bills Committee on Buildings (Amendment) Bill 2010

Purpose

This paper reports on the deliberations of the Bills Committee on Buildings (Amendment) Bill 2010 during the scrutiny of the Buildings (Amendment) Bill 2010 (the Bill).

Background

2. Building neglect has been a long-standing problem in Hong Kong. The presence of aging buildings which lack proper care and maintenance poses potential threats to residents and the public at large. The lack of proper maintenance and improper use of windows also pose a serious threat to public safety.

3. Under the existing Buildings Ordinance (Cap. 123) (BO), it is only when a building becomes dangerous or is liable to become dangerous or there is defect or dilapidation in a building that the Building Authority (BA) may order the owner to carry out repair and rectification works. BO does not empower BA to require the owner to carry out periodic inspections and conduct necessary preventive repair works for the regular maintenance of the building.

4. The Administration conducted a two-stage public consultation in 2003 and 2005, and sought views of the community and various key stakeholders on how best to tackle the long-term building neglect problem in Hong Kong. Through the consultation, the Administration noted a community consensus that mandatory inspection schemes should be pursued. The Administration announced in mid-2007 its plan to introduce the mandatory inspection schemes for buildings and windows through legislation to ensure that building owners will take up the

responsibility for keeping their buildings in good conditions, including shouldering the financial commitment.

The Bill

5. The Bill was introduced into the Legislative Council on 3 February 2010. The Bill aims at providing for matters relating to the regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe, by empowering BA to require owners to carry out such inspections and repairs through the introduction of a mandatory building inspection scheme (MBIS) and a mandatory window inspection scheme (MWIS).

6. The Bill also provides for matters relating to the appointment, control and duties of Registered Inspectors (RIs) and Qualified Persons (QPs) who are to deal with such inspections and repairs.

The Bills Committee

7. At the House Committee meeting held on 5 February 2010, Members agreed to form a Bills Committee to study the Bill. Hon IP Kwok-him and Ir Dr Hon Raymond HO Chung-tai were elected Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee has held 22 meetings with the Administration and received public views on the Bill. A list of organizations and individuals that have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

8. The Bills Committee in general supports the policy intent of the Bill to empower BA to require owners to carry out periodic inspections and repairs of their buildings through the introduction of MBIS and MWIS to ensure a better and safer building environment. The major issues discussed and concerns raised by members are summarized below.

Target buildings

9. The Bills Committee notes that except domestic buildings not exceeding three storeys in height, MBIS and MWIS will cover all private buildings aged 30 years or above, and 10 years above respectively.

Owners of the buildings selected will be required to carry out inspection and repair works in relation to the common parts, external walls and projections of buildings once every ten years, and window inspections every five years after the first inspection. Some members including Ir Dr Raymond HO, Prof Hon Patrick LAU, Hon Miriam LAU, and Hon CHEUNG Hok-ming have raised concern about the exclusion of domestic buildings not exceeding three storeys in height from MBIS and MWIS, and asked whether any risk assessment has been conducted for excluding these buildings.

10. The Administration has advised that the exclusion of domestic buildings not exceeding three storeys in height will not compromise public safety. According to the Buildings Department (BD)'s assessment, these buildings are mostly situated in suburban area, simpler in structural designs and house fewer occupants, and they pose a smaller risk to public safety. Furthermore, such buildings are usually singly-owned and hence generally better maintained. The number of repair orders issued by BD as well as the number of complaints received against such buildings in the past are much lower than those against other private buildings. In formulating the proposal, the Administration has made reference to the experience of the mandatory building inspection scheme in New York City where all buildings not exceeding six storeys high are exempted. The proposed schemes in Hong Kong have a much wider coverage when compared to that of the New York City. The Administration has undertaken to continue with the established programme of regular inspections of pre-war buildings, and to take necessary actions under BO to ensure safety of these buildings.

11. The Bills Committee notes that the Administration's plan is to select about 2 000 and 5 800 target buildings every year respectively for MBIS and MWIS and members have expressed concern about the criteria and procedures for selecting target buildings, and whether there would be input from relevant district stakeholders in the selection. The Administration has advised that to spread over the workload for professional personnel, contractors and implementation agencies, 500 and 1 450 target buildings will be selected per quarter for the two schemes respectively. The target buildings selected for each year will represent a mix of buildings in different conditions and age profiles. Relevant factors such as building age, building condition, repair records (such as past compliance record of BD's repair orders) and location will be taken into account. To enhance transparency and promote community participation, a selection panel comprising representatives from professional bodies, relevant non-governmental organisations, property management

professionals, District Council members and relevant Government departments will be established to advise BD in the selection of target buildings.

12. The Bills Committee holds the view that the requirement to conduct periodic inspections and repairs should not cause undue hassle to building owners. To minimize disturbance to the owners/owners corporations (OCs) concerned, the Administration has undertaken that arrangements will be made to synchronize the implementation of MBIS and MWIS, so that buildings selected for MBIS will also be selected for MWIS under the same cycle such that the owners can carry out inspection and repair works under both schemes concurrently.

Unauthorized building works and internal alteration works

13. Ir Dr Hon Raymond HO, Prof Hon Patrick LAU, Hon LEE Wing-tat, Hon KAM Nai-wai and Hon Starry LEE have expressed concern as to how unauthorized building works (UBWs) and unauthorized signboards (including those abandoned signboards) would be dealt with following passage of the Bill. They have also asked whether MBIS should require the removal of all UBWs identified during the inspection of a building.

14. The Administration holds the view that the removal of all UBWs in the context of MBIS may create a lot of practical difficulties to owners, and cause arguments and conflicts among the owners and the management body of a building. This will pose serious hurdles to owners in fulfilling the statutory requirements to complete the inspection and repair works within the specified timeframe. Taking into account the comments received and the impact of MBIS on building owners, the Administration considers that UBWs should be handled in accordance with the prevailing enforcement policy, i.e. priority would be given to those that create a risk to public safety. Under the proposed new section 30D(5)(b) in the Bill, an RI appointed to carry out a prescribed inspection in respect of the common parts and external walls of a building is required to identify UBWs, including unauthorized signboards, in the common parts and the external walls of the building, assess the safety conditions of these UBWs, and report to BA either in the inspection report or immediately in case of emergency. Upon receipt of the reports, BA will take necessary actions under the provision of the BO in accordance with its enforcement policy against UBWs and abandoned signboards. Statutory orders may be issued to remove UBWs posing imminent danger or obstructing inspection or necessary repair works.

15. The Administration has further advised that it will encourage owners to remove UBWs together with other rectification works to be carried out in the common parts/external walls of the buildings on a voluntary basis and provide appropriate technical and financial assistance to the owners concerned. Under the Household Minor Works Validation Scheme, owners may retain three types of commonly found small-scale household UBWs (i.e. supporting frames for air conditioners, drying racks and small canopies over windows) for continued use, after safety inspection and necessary remedial works are conducted. Validated UBWs will be subject to periodic inspections under MBIS in the future cycles.

16. Hon LEE Wing-tat, Hon KAM Nai-wai and Hon Starry LEE have questioned whether the two mandatory schemes could effectively tackle building safety problems, in particular those arising from internal alteration works and sub-division of units.

17. The Administration has advised that RIs appointed to carry out prescribed inspection are required under the Bill to report to BA, if they observe any sign posing building safety risks during the inspection of the common parts or external walls of the building, either in the inspection report or immediately in case of emergency. If internal alteration works conducted within an individual unit (including subdivision of flats) adversely affect the structural integrity of a building, signs of distress and other indications should also be detectable during inspection of the common parts and external walls of the building conducted by RIs. BD will also stipulate in the Code of Practice (an extract of which has been provided by the Administration) 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. Upon receipt of the reports, BD will investigate into any suspected illegal internal alteration works to ascertain if the structural integrity of a building is affected, and then take follow-up actions, including entry into the private premises for inspection and issue of repair and rectification orders. The Administration considers that requiring mandatory inspection of the interior of every individual unit under MBIS may create serious disturbance to individual owners and practical difficulties to RIs, and will slow down the compliance of the statutory requirements for the whole building. Therefore, the inspection of individual units should be left with the BA on receipt of complaints or reports from RIs. The Administration is of the view that the arrangements in its current proposal are adequate.

18. Ir Dr Hon Raymond HO and Hon Prof Patrick LAU have sought clarification on whether and how RIs would be required under the Bill to report to BA any signs of subdivision of flats identified during an inspection under the MBIS and MWIS. The Administration has clarified that RIs are not required to give detailed assessment on structural safety of any building works inside individual private premises from the observations. An RI's duties are considered to be discharged when he has reported his visual observations of signs of structural defects in common parts and on external walls to BA.

19. In response to members' enquiry, the Administration has advised that the notices of inspection and repair of signboards will be issued to the parties as prescribed under the proposed new section 30B(6), i.e. the person for whom the signboard is erected, or if that person cannot be found, the person who would receive any rent if the signboard is hired out; or if the above persons referred to could not be found the owner of the premises in the building on which the signboard is erected.

Definitions and meanings of "projection" (proposed new section 30A(1) under clause 19)

20. Hon Margaret NG has expressed concern about the definitions and meanings of "projection" in other parts of BO, its regulations and in other legislation, and questioned whether it is necessary to separately define "projection" in the proposed new section 30A(1), as the details of which are to be prescribed in the regulations.

21. The Administration has explained that the word "projection" appears in various provisions in the existing BO and its regulations but is not particularly defined. Generally, a projection could mean anything projecting from a building, such as balconies, verandahs, canopies, eaves, cornices, mouldings, pipes, gutters, drying racks, structures supporting building service installations (such as air-conditioners), etc. The Bill defines "projection" in the proposed new section 30A(1) in order to clarify the scope of the power of the BA under the proposed new section 30B(5) for the implementation of MBIS. The provision does not alter the meaning of "projection" in other parts of BO or the regulations thereunder as it is only applicable to the proposed new Part IIA of BO. After reviewing the provisions, the Administration has proposed to move a Committee Stage amendment (CSA) to delete the definition of "projection" in the proposed new section 30A(1) and amend the proposed new section 30B(5) by replacing "other than a signboard" with "as

prescribed in the regulations". The definition of "projection" and the types of "projection" covered by MBIS would be specified in the subsidiary legislation and would make it clear that "projection" would not cover "signboard".

Qualifications and experience requirements for Registered Inspectors

22. Ir Dr Hon Raymond HO considers that experienced technical personnel should be allowed to register as RIs, and that the registration eligibility should be widened to cover associate members of Hong Kong Institution of Engineers (HKIE) and affiliate members of Hong Kong Institute of Architects (HKIA). The Administration has advised that the BD is now finalizing the details of the proposed qualification and experience requirements in consultation with the professional institutes (i.e. the HKIE, HKIA and Hong Kong Institute of Surveyors (HKIS)), and the Building Sub-committee of the Land and Development Advisory Committee and will continue to engage stakeholders in the process.

23. Some members have expressed concern about the training of personnel for undertaking works required under MBIS and MWIS, and whether training programmes on the essential skill-set and knowledge necessary for registration as RIs would be organized. The Administration has advised that none of the three professional institutes has the plan to organize top-up courses to train up their associate/affiliate members to become RIs. The HKIS considers that in general the duties of RIs would be performed by professionally-qualified personnel (paragraph 25 refers) and top-up courses would not be sufficient to equip a practitioner at technical grade with necessary knowledge to conduct prescribed inspections or supervising prescribed repairs.

Supply of service providers of acceptable quality

24. Ir Dr Hon Raymond HO, Prof Hon Patrick LAU and Hon KAM Nai-wai have questioned whether there would be sufficient supply of registered building professionals who are interested to provide professional services to meet the demand for building and window inspections. They are concerned that with a small pool of service providers, it would be difficult to achieve a given number of inspections and repairs within a specific timeframe, and the fees for professional services would be high.

25. The Administration envisages that the supply of RIs and QPs should be adequate to meet the market demand and ensure market

competition. According to the Administration, HKIA, HKIE and HKIS are of the view that there should be adequate professionals for the registration of RIs. In particular, the HKIS estimates that over 400 qualified building surveyors would be interested to be registered. The Administration explains that there are about 1 800 authorized persons (APs) and registered structural engineers (RSEs) currently registered. The Administration's assessment is that with the expansion of the pool to include registered architects, registered professional engineers and registered professional surveyors of the relevant disciplines, about 6 500 building professionals in total will be qualified to register as RIs. If 15% to 20% in such pool (i.e. about 950 to 1 300) are registered, there would be sufficient RIs to meet the demand and at the same time ensure market competition. The HKIS assesses that a full-time RI should be able to conduct inspections for up to four buildings per month. Taking into account the target for the implementation of MBIS (i.e. 2 000 selected target buildings and 1 000 buildings under voluntary inspections and repairs per year), about 100 active RIs would be sufficient to meet the anticipated demand. The BD will, in collaboration with the professional institutes, continue to encourage qualified building professionals to register as RIs.

26. As for the MWIS, the pool of service providers, i.e. QPs, will include APs, RSEs, RIs, registered general building contractors (RGBCs) and registered minor works contractors (RMWCs) who are registered in respect of minor works items relating to windows. Currently, the pool comprises around 10 000 practitioners. With the rising number of registration of RMWCs with the full implementation of the minor works control system, the Administration expects that the number of QPs to undertake window inspections and maintenance should be adequate to meet the market demand of 5 800 private buildings per year.

Manpower resources within Government departments

27. Members including Hon KAM Nai-wai, Prof Hon Patrick LAU, Hon WONG Kwok-hing and Hon Starry LEE have expressed concern whether relevant Government departments have sufficient manpower resources to support and enforce MBIS and MWIS, as adequate manpower support is essential to the success of the schemes. These members urge the Administration to draw up a staffing plan to prepare for the implementation of MBIS and MWIS, and to assess the manpower requirement for coping with the anticipated increase in workload, such as assisting owners to form OCs and carrying out audit checks on the works conducted under MBIS and MWIS. They are also concerned whether the

Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) have the resources to cope with massive requests for assistance upon the implementation of the two schemes.

28. The Administration has advised that sufficient resources will be provided to cope with the additional workload arising from the implementation of the two schemes. In the District Offices, Liaison Officers of the District Building Management Liaison Teams will continue to assist and advise owners on building management matters, such as encouraging the owners of buildings without OCs to form OCs, advising on the procedures for the formation of OCs, providing support on building management issues, handling enquiries and complaints related to building management and acting as mediators to help resolve disputes among owners, OCs and management companies. Community Organizers who are non-civil service contract staff are also employed to promote building management among building owners and OCs.

29. As regards BD, additional manpower resources will be necessary under the new statutory requirements to undertake duties including selection of target buildings, issuance of notices to concerned owners, monitoring of compliance status, conducting audit checks on reports and documents submitted by inspectors and contractors, arranging inspection and repair works in owners' default (where necessary), maintaining the inspectors' register, instigating prosecution and disciplinary actions in non-compliant cases, conducting public education programmes, etc. BD will re-prioritise its resource deployment, putting its focus on the implementation of the new statutory regimes, public education programme as well as the preventive inspection and repair initiatives. The Administration will ensure that BD will have sufficient resources to handle the additional workload, and will arrange for the required resources for the operation of BD in accordance with the established procedures. The HKHS and URA will also reserve adequate manpower and resources to support the implementation of MBIS and MWIS.

Legal liabilities of owners/owners corporation/property managers and related penalties

30. The Bills Committee notes that an owner who has been notified by an OC and, without reasonable excuse, refuses to contribute to his share of cost of inspection or repair works that is required by the OC for the purpose of complying with the statutory notices under MBIS and MWIS, shall be guilty of an offence and be liable on conviction to a fine

at level 3 (\$10,000) and to imprisonment for 6 months. Some members including Hon KAM Nai-wai, Hon WONG Kwok-hing, Hon Cyd HO and Hon James TO consider the proposed imprisonment penalty too heavy for an offence of refusing to share the cost of inspection or repair works.

31. To allay members' concern, the Administration has proposed to remove the imprisonment term but increase the fine to level 4 (\$25,000) to retain a significant deterrent effect against uncooperative owners. The Bills Committee supports the proposed amendment.

32. According to the proposed new section 40(1BC) and (1BD) of the Bill, any person who fails to comply with a statutory notice served on him/her (requiring a prescribed inspection of the building or windows owned by that person) commits an offence with a maximum penalty of a fine at level 5 (\$50,000) and imprisonment for 1 year, and a fine at level 4 (\$25,000) and imprisonment for 3 months respectively. Members have asked whether the owners in the management committee of an OC and property managers who, without reasonable excuse, fail to comply with a notice served on the OC, will be liable to imprisonment under the proposed section 40(1BC) or (1BD).

33. The Administration has advised that if the notice is served on the OC, the OC, being a body corporate formed under the Building Management Ordinance (Cap. 344)(BMO), would be directly liable under the proposed section 40(1BC) or (1BD) if the statutory notice served on it is not complied with. According to the existing section 40(6) of the BO, members of the management committee (falling within the definition of "any director, manager, or other officer concerned in the management of the body corporate") may be liable for the offences if they fail to comply with the notice without reasonable excuse. However, any prosecution against those members of management committee would be subject to section 29A(1) of the BMO which stipulates that "no member of a management committee, acting in good faith and in a reasonable manner, shall be personally liable for any act done or default made by or on behalf of the corporation". As regards liability of property managers, the Administration has clarified that if the property manager is not a director, manager, or other officer concerned in the management of the OC, or any person purporting to act in any such capacity, the property manager would not be liable under the proposed section 40(1BC) or (1BD) by the mere fact that he/she is an agent of the owner. Nevertheless, the property manager may be liable under the Deed of Mutual Covenant (DMC) and/or the management contract signed between the OC and the

manager. Therefore, the manager will need to bear civil responsibility to a certain extent, depending on the circumstances of each case.

Surcharge for defaulted works under the proposed new sections 30B and 30C

34. The Bills Committee notes that the new sections 30B(11) and 30C(9) in the Bill provide for the imposition of a surcharge of 20% on the cost incurred by the BA to be recovered from an owner who has failed to comply with a notice served under MBIS or MWIS. While supporting the proposal, Hon KAM Nai-wai, Hon WONG Kwok-hing and Hon Abraham SHEK have suggested that the surcharge should be capped at 20%, i.e. the Administration would have the flexibility to impose a lower surcharge subject to a ceiling of 20% on the cost incurred by the BA. The Administration will introduce CSAs to the effect.

35. Some members have requested the Administration to consider alternatives to assist OCs where some of the owners refuse to contribute to the cost of the prescribed inspection and repair works, by meeting the shortfall of the amount to enable the specified works to commence.

36. The Administration has explained that where OCs have difficulties in complying with statutory notices, the Administration would engage government inspectors/contractors to conduct the works on behalf of the owners upon default and then recover the costs from the owners at a later stage. The above arrangement will ensure timely completion of necessary inspection and repair works of buildings in case of default to ensure public safety. Such approach has been adopted by the BD in handling default orders under the BO and has proven to be effective. Before doing so, the Government's partner organisations, the HKHS and URA will offer technical advice and assistance to the OCs with a view to facilitating the owners to resolve their problems, so that they can carry out the works themselves. Individual owners who have financial difficulties in meeting the share of repair costs may consider applying for loan and grants of up to \$1million under the Comprehensive Building Safety Improvement Loan Scheme administered by the BD or the financial assistance schemes (such as the Integrated Building Maintenance Assistance Scheme) provided by HKHS and URA. Eligible elderly owner-occupiers may also apply for a grant up to \$40,000 each under the Building Maintenance Grant Scheme for Elderly Owners. In case of default of a small number of owners, an OC may still decide to proceed with the repair works, and seek reimbursement from those uncooperative owners through civil action. The Administration has

further pointed out that members' suggestion for the Government to advance payment on behalf of the uncooperative owners' share of inspection and repair cost would require additional legal provisions to define the timing for intervention by the Administration, and also introduction of an appeal mechanism to those defaulting owners. Introducing such additional provisions and appeal mechanism would inevitably delay the current legislative process and hold up the implementation of MBIS and MWIS.

Penalty Notice for Mandatory Window Inspection Scheme under the proposed new section 40(1BE)

37. The Bills Committee notes that under the proposed new section 40(1BE), BA will serve a fixed penalty notice on any person who, without reasonable excuse, fails to comply with a notice served on him/her to carry out a prescribed inspection and, if necessary, prescribed repair in respect of the windows in the building. Some members express concern about the mechanism of the proposed fixed penalty arrangement which is currently not provided for in BO.

38. The Administration has explained that given the expected large number of windows that require inspection and repair, there is a need for quicker and simpler enforcement procedure for relatively minor offences under MWIS. To address members' concern, the Administration has provided a flowchart on the procedure and timing for service and enforcement of a penalty notice. The draft penalty notices and the accompanying explanatory letters to be issued to the owners concerned are also provided for members' information.

Assistance to owners' corporations and owners

39. Some members are concerned that many building owners, particularly elderly owners of old buildings, may not have the financial means and technical know-how to fulfil the requirements of regular inspection and repair. They consider that adequate support including financial and technical assistance should be provided to OCs and owners in need, to facilitate owners to carry out mandatory inspection and mandatory repair. These members have enquired how the Administration would co-ordinate among various departments and partner organizations, and urged the Administration to consolidate the various assistance schemes available and streamline their application procedures. Hon KAM Nai-wai and Hon Starry LEE have also sought clarification on

whether buildings with more than 400 residential units would be eligible for the Subsidy on Cost of First Building Inspection.

40. The Bills Committee has been advised that the Government, together with HKHS and URA, will provide a comprehensive range of assistance to building owners during the various stages of building inspection and repair. The HKHS and URA will subsidize eligible owners in need the full cost (subject to a cap) of first inspection under MBIS. Since the introduction of Integrated Building Maintenance Assistance Scheme on 1 April 2011, the previous restriction on the number of units has been lifted. Irrespective of the number of units, owners of buildings will be able to apply for subsidy on the cost of first mandatory building inspection, provided other eligibility criteria are fulfilled. Eligible owners may apply for further assistance under other schemes if necessary.

41. The Bills Committee has noted that financial assistance is provided under various schemes administered by BD, HKHS and URA, including the Comprehensive Building Safety Improvement Loan Scheme, the Building Maintenance Grant Scheme for Elderly Owners and Building Management and Maintenance Scheme, as well as Building Rehabilitation Materials Incentive Schemes and Building Rehabilitation Loan Schemes. Building owners can obtain information on all the assistance schemes by calling a telephone hotline jointly operated by HKHS and URA. To improve the user-friendliness of the various schemes, the Administration will continue to explore room to consolidate the various assistance schemes, and co-ordinate the efforts among Government departments and partner organizations.

42. As the majority of building owners may not be conversant with tendering procedures, and in particular, analyzing the tender prices submitted, Hon KAM Nai-wai, Hon Starry LEE and Hon Audrey EU urge the Administration to explore the most appropriate way to provide building owners with professional advice on arranging for tenders and assessing the prices of building inspection and repair, as well as to develop a database on prices to provide objective reference to owners. The Administration has advised that the HKHS (through its ten Property Management Advisory Centres (PMACs)), and the URA (through its district agencies) will provide information, professional advice and technical assistance to OCs and owners to guide them in carrying out inspection and repair works. Practical advice on the tendering process and selection of inspectors and contractors as well as monitoring of the progress of works will also be provided to OCs and building owners. The

HKHS, in consultation with the Independent Commission Against Corruption, has developed a Building Maintenance Tool Kit which contains guidelines/standard templates/checklists for tendering procedures for the use of building owners to assist owners in considering the tender bids, selecting suitable building professionals and managing their agents. The HKIS has published a set of "Standard Form of Contract for Decoration, Repair and Maintenance Works" with the essential terms and conditions for building owners, so that they can adequately protect their interests and may make claims should the RIs /contractors fail to deliver their services satisfactorily in accordance with the contracts. Such documents will guide OCs/owners in requiring potential bidders to submit the essential information, and help owners evaluate the bids and manage their agents. HKHS and URA will also explore developing a standard tender document for the use of OCs applying for subsidy of first building inspection. Building on the experience of the Operation Building Bright (OBB), the Administration has undertaken to explore with the HKHS, URA and the professional institutes to provide a list of building professionals who have indicated interest in providing inspection and repair services to facilitate building owners/OCs in preparing bidders' lists of RIs and registered contractors.

43. Regarding members' suggestion of providing an indicative price range for various professional services and to develop a database on the cost involved in various building inspection and repair for the reference of building owners/OCs, the Administration has explained that the actual costs for each inspection and repair project might vary considerably due to a number of factors, in particular the condition of the individual buildings. The HKIS is conducting a study with the objective of formulating a set of maintenance cost data which would summarize a range of prices for publication. The HKIS's plan is to publicize the indicative price lists for of various typical items of works in the fourth quarter of 2011. The HKHS and URA will help disseminate the HKIS' list through their contacts with the OCs and owners.

Legal liabilities and responsibilities of professionals

44. The proposed new sections 30D(5), 30D(6) and 30E(6) provide respectively that an RI and a QP must notify BA of any case of emergency and any UBWs in common parts and external wall of the building that is revealed during prescribed inspection and prescribed repair. Some members have raised concern that the Bill does not require the reports to be provided to owners/ OCs, and that it would be up to the respective owners/OCs to specify such requirements in their service

contracts with RIs. As many owners/OCs may not be aware of their rights to demand a copy of the inspection reports from RIs, Hon KAM Nai-wai considers that the Bill should impose an obligation on RIs to provide the information and alert the respective OCs and building owners of any case of emergency.

45. The Administration has advised that a requirement will be stipulated in the subsidiary legislation that the RI and QP must deliver a copy of the documents submitted to the BA (such as inspection report and completion report) to the person for whom the prescribed inspection and prescribed repair has been carried out (i.e. the owners/OCs in most of the cases), no later than the date when the documents are submitted to the BA. The BD has also stipulated in the draft Code of Practice requiring an RI/QP to alert the owners and occupants of any case of emergency. BD will, through its publicity and public education, advise owners/OCs to include such a requirement in the contracts with their RIs/QPs. The Administration has, in response to members' request, explained and provided examples of "case of emergency" specified in the proposed new sections 30D(5)(a), 30D(6) and 30E(6).

46. The Bills Committee notes that under the proposed new sections 30D(3) and 30E(2), an RI or QP must carry out the prescribed inspection personally; and that under the new section 30D(7), an RI must not act, at the same time, as a contractor to carry out the prescribed repair for the same part of the building. Some members have expressed concern about the enforcement and measures to ensure compliance.

47. The Administration has advised that BD will require the RIs and QPs to certify in a specified form that the prescribed inspections have been carried out by them personally. The RIs will also be required to keep daily inspection records, in which details including the time and date of inspections, locations and items or parts of buildings that have been inspected etc. should be recorded. Upon completion of the prescribed inspection, the RIs have to submit inspection reports together with those daily inspection records to BD. The BD will conduct desktop and random check of the documents. Audit checks with site inspections will also be carried out to verify the accuracy of the submitted reports to ensure compliance. In the initial stage after the launch of MBIS and MWIS, the BD will audit about 30% of the reports received. The procedural requirements for MBIS/MWIS in respect of the submission of documents and records, inspection reports, certificates of inspection, completion reports and certificates of completion of repair works to the BA upon

completion of prescribed inspections or prescribed repairs will be stipulated in the subsidiary legislation.

48. RIs will also be required to certify in a specified form that he/she is not a partner, director, or an authorized signatory, of the contractor appointed to carry out the prescribed repair for the same part of the building. If there is evidence showing that he/she actually is, the maximum penalty is a fine of \$1,000,000 and imprisonment for three years. As a further measure, under the draft Practice Notes on Best Practices on Tendering Procedures, RIs are advised to sign a declaration on compliance with the ethical commitments which include, among others, that the RI, the directors and employees of his company, agents and sub-consultants must in written form disclose any conflict of interest or potential conflict of interest, whether personal or financial, in relation to their duties under the contract. After making such disclosure, those persons must take all reasonable steps or measures to alleviate or remove any opportunity of conflict of interest. BA may take disciplinary and prosecution actions against RIs and personnel registered under the BO if they breach the relevant requirement on building safety under BO and where irregularities, malpractice and professional misconduct are identified. Apart from the criminal penalty provisions under section 40 of the BO, the Disciplinary Board, after due inquiry, may order that the name of the person be removed from the register either permanently or for any period that the Disciplinary Board thinks fit or that the person be reprimanded or fined.

Additional works on top of prescribed repairs

49. Some members have suggested that to prevent RIs from proposing unnecessary repair works, the prescribed repair works under MBIS and MWIS should be clearly stated and distinguished from additional works that an OC or co-owners may wish to carry out at the same time.

50. The Administration has explained that under MBIS and MWIS, only repair works that are essential and adequate to render the building safe are required. The Administration will stipulate in the subsidiary legislation the list of building elements that needs to be carried out in the prescribed inspection and require that, if any repair works are necessary, they must be clearly listed in the repair proposal in the inspection reports. This will provide a clear basis on which a repair proposal is formulated. Technical details on prescribed inspection and prescribed repair will be further stipulated in the codes of practice and practice notes in

consultation with the industry. BD will also provide guidance through such codes and notes that, for any additional works (which is beyond the mandatory requirement) that the OC or co-owners may require, the RI should provide a separate list on top of the repair proposal for the reference of the OC or co-owners. The requirement under the Bill that 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 OC or co-owners may appoint different RIs to carry out inspection and supervise repair, would serve as additional safeguards to effectively prevent RIs from proposing unnecessary repair works.

Prevention of malpractice

51. Some members including Hon LEE Wing-tat, Hon WONG Kwok-hing, Hon KAM Nai-wai, and Hon Starry LEE have expressed concern about possible corruption and malpractice arising from the works carried out under MBIS and MWIS, and they have enquired about measures to prevent tender-rigging activities in building maintenance and repair works.

52. The Administration has advised that Practice Notes on Best Practices on Tendering Procedures, based on the experience of OBB, will be issued to provide clear guidelines for building professionals to follow throughout the whole tendering process. The tendering of RIs/QPs should be conducted by open tendering. Any RI/QP and Registered Contractor (RC) who submits a tender is required to make a declaration on integrity and anti-tender-rigging. The building owners, OCs and building management companies (in particular those target buildings under MBIS and MWIS) will be advised, through publicity and public education, to follow the best practices and incorporate ethical commitment clauses in the tender documents, and in the contracts/agreements with the building professionals. According to BD's experience, practice notes are an effective tool to promote good practices and building professionals will follow the recommendations stipulated under such notes upon promulgation by the BD. The Administration has provided a draft Practice Note on Best Practices on Tendering Procedures for members' reference.

53. Hon KAM Nai-Wai has expressed grave concern that the code of practice and the practice notes are not legally enforceable. He is of the view that the code of practice should have legal status similar to the codes of practice issued by the Secretary for Home Affairs under section

44 of the BMO. The RIs/QPs should be required in BO to comply with the practice note relating to the best practices on tendering procedures.

54. The Administration has advised that in general, building safety standards and requirements are regulated by a three-tier framework (the BO which provides the broad legal framework, the subsidiary legislation prescribing the detailed procedural and technical requirements, and the administrative practice notes, codes of practice and guidelines providing the industry with the fine details of the procedures, technical standards). The three-tier framework has been effective and well received by the industry and the public. The Administration holds the view that matters such as duties of the RIs/QPs, the scope, standard and requirements of the prescribed inspection and repair, technical standards and administrative procedures may be updated and revised from time to time, and are more appropriate to be prescribed in the subsidiary legislation and codes of practice. As the tendering process is a building management and private contractual issue on which building owners themselves should make the final decision, it is not appropriate to mandate the adoption of the best practices in the BO, the primary focus of which is on building safety and design matters.

55. The Administration has further pointed out that while practice note is advisory in nature, any deviation from or non-compliance resulting in negligence or misconduct in a professional way would render the RI/QP subject to disciplinary action. The three professional institutes have confirmed that complaints concerning non-compliance with the ethical commitment as required under the Best Practice on Tendering Procedures will be handled, while complaints on unethical practices in tendering will be dealt with in accordance with the respective professional codes. Disciplinary proceedings will be initiated if there is evidence showing that members of the professional institutes have infringed the relevant codes against misconduct or caused disrepute to their professions.

The Administration's proposal to include new building safety initiatives in the Bill

56. At the Bills Committee meeting on 11 February 2011, the Administration, having consulted the Subcommittee on Building Safety and Related Issues under the Panel of Development, proposed that CSAs relating to a number of new building safety initiatives be included in the Bill in order to further strengthen the existing statutory building safety control regime. These include:

(i) *Surcharge for defaulted works*

The Administration proposed to extend the surcharge for defaulted works to cover all statutory orders (including non-MBIS/MWIS orders) or notices issued under BO, so as to create a stronger deterrent effect against non-compliance by uncooperative owners. The Administration considered that the proposal would facilitate the implementation of MBIS/MWIS since buildings would generally be kept in a better condition, if they are required to join MBIS/MWIS, thus minimising the inspection/repair works needed.

(ii) *Penalty for refusing to share cost of works*

The Administration proposed to extend the penalty provision for refusing to share cost of works to all works required by statutory orders/notices in respect of common parts of the building that are undertaken by OCs under BO. The Administration held the view that the proposed new offence would create stronger deterrent effect on irresponsible owners and also benefit the implementation of MBIS/MWIS in the long run.

(iii) *Control of signboards*

The Administration proposed to introduce a statutory signboard control scheme under which the continued use of certain existing unauthorized signboards (including those within stipulated dimensional requirements, or not blocking operation of emergency vehicles) would be allowed after safety checks and necessary strengthening by registered personnel. The safety validation for a signboard would have to be renewed every five years. Unauthorized signboards not joining the scheme would be subject to BD's enforcement actions. As for new signboards, those small ones up to a certain dimension could be erected by registered minor works contractors without BA's prior approval under the minor works control system, while larger ones would continue to require the prior approval and consent of BD before installation.

(iv) *Registered Inspectors to comprehensively report exterior unauthorized building works*

In addition to building works that have been or are being carried out in contravention of BO in common parts, or to an external wall that is not in common parts, the Administration proposed that the RI should also notify the BA of any UBWs on roofs, podiums, yards and lanes that are not in the common parts of the buildings. This would facilitate BA to take prompt actions against such

UBWs with a view to creating a stronger deterrent effect against UBWs on the exterior of buildings.

- (v) *Warrants for entry into private premises (the "warrant proposal")*
The Administration proposed to introduce legislative amendments to provide for application to the Court for warrants under BO to facilitate BD's enforcement actions, in particular, against non-compliance of MBIS/MWIS notices and UBWs relating to subdivided units or flats suspected to have illegal internal alterations and other building problems within individual premises. Operational experience of other departments revealed that with the issue of a court warrant, owners would more readily co-operate and grant entry for inspection and / or necessary repair works.

57. The Bills Committee has held thorough discussions on the proposed new building safety initiatives and conducted clause-by-clause examination of these proposed CSAs. Members in general support the principles of the proposed initiatives and have no adverse comment on the CSAs except that for the "warrant proposal" at paragraph 56(v) above.

58. Members of the Bills Committee have expressed divergent views towards the "warrant proposal". Some members including Ir Dr Hon Raymond HO, Prof Hon Patrick LAU and Hon Abraham SHEK hold strong views against introducing the "warrant proposal" for entry into private premises, and they are concerned whether this may give the BA too wide a power. These members consider that as the "warrant proposal" might have wide implications on the modus operandi of the BD and might infringe on private property rights of the individual owners, such amendment will require consultation with the public and stakeholders. Hon Miriam LAU cautions that careful deliberations would be required in taking forward the proposal. Hon Miriam LAU and Hon Cyd HO have suggested refinements and further safeguards to the provisions concerning the application of warrants from the Court. Some members including Hon KAM Nai-wai, Hon LEE Wing-tat and Hon Starry LEE appreciate the practical problems encountered by the BD in enforcement, and consider the "warrant proposal" useful in enhancing BD's efficiency and effectiveness in tackling problems such as building works associated with sub-divided units which very often could lead to building safety concerns.

59. The Administration has explained that the "warrant proposal" to amend the existing section 22 is NOT an expansion of power of the BA. The existing section 22 empowers the BA to enter into private premises,

and where necessary, in the presence of a police officer, to break into such premises for the purposes specified therein without defined restrictions or circumstances. The proposed CSA is only to rationalize BA's power. Under the proposed amendment, except under emergency situations whereby the BA can break into premises in the presence of police officers, the BA will have to apply to the Court for a warrant for entry into premises for inspection or carrying out necessary works. The Administration has pointed out that the proposal was formulated with reference to the experience of other departments with similar power of entry (e.g. investigation of water seepage cases by the Food and Environmental Hygiene Department).

60. Having regard to members' views, the Administration has proposed two options for members' consideration and discussion. The first option is to take the "warrant proposal" out from the proposed CSAs in the current exercise, and introduce it in a separate bill within the next legislative year. Since some members have expressed concern about the time constraint for processing a separate bill in the last session of the current term, the Administration has proposed, as a second option, to retain the "warrant proposal" with further safeguards to clearly define the circumstances where the BD staff could apply to the Court for a warrant, so as to address members' concern about the private property rights. The Administration has stressed that under the "warrant proposal", the BA will have to clearly demonstrate to the Court the reasons for application and provide information on previous attempts by BD to contact the owners and the purpose of inspection. The Court will act as the gatekeeper to ascertain that the warrants will only be granted in accordance with statutory requirements in force and are genuinely necessary for enhancing building safety.

61. As regards the proposed signboard control system under paragraph 56(iii) above, the Bills Committee notes that the OC's consent is not required prior to the erection and validation of signboards in the common parts of the building. Hon KAM Nai-wai and Hon James TO have expressed concern whether implementation of this proposal would have any impact on the rights of OCs and building owners under a building's Deed of Mutual Covenant (DMC) regarding action to demand the operator of an unauthorised signboard to demolish the signboard. These members are of the view that prior consent of the owners/OCs concerned should be obtained to help ensure safety of the works and better protect the interests of owners.

62. The Administration holds the view that the BO might not be the appropriate tool to address a building management issue. Signboards erected without the BA's approval remains to be an unauthorised signboard under the BO. The question of whether the proposed signboard control system would affect enforcement of the DMC by the owners or OC will depend on the terms and conditions of the DMC and the circumstances of the case. The Administration has also advised that the DMC is a private contract between the co-owners of a building. If there is a provision in the DMC to the effect that no owner may convert any of the common areas to his own use and benefit unless the consent of the owners/OC is obtained, the erection of a signboard on the common part of a building without the consent of the owners/OC would be a breach of the DMC. As a measure to facilitate BD's enforcement against abandoned signboards, a note will be included in the specified form for the signboard control system to remind the owner of the signboard to seek prior agreement from the concerned OC/other owners, if the unauthorised signboard is erected on the common parts of the building. The particulars of the person for whom the signboard is to be erected will be included in the specified form for the record.

63. Some members including Ir Dr Hon Raymond HO, Prof Hon Patrick LAU, Hon Abraham SHEK, Hon KAM Nai-wai, Dr Hon Margaret NG and Hon Audrey EU have questioned whether the new proposals, in particular "the warrant proposal" empowering BA to enter into private premises to deal with UBWs and sub-division of flats, are related to building safety and within the scope and coverage of the Bill which mainly concerns the maintenance and repair of common areas and exterior parts of buildings. As the public has not been consulted on the new proposals, some of these members consider that the new building safety initiatives particularly those relating to individual premises and interiors of buildings should be considered separately following proper consultation by the Administration.

64. To address members' concern, the Administration has, in its letter dated 13 May 2011 (CB(1)2177/10-11(02)), provided detailed explanations and justifications for its stance that the proposed CSAs are within the scope and the objective of the Bill which is to introduce initiatives to arrest the building safety problem through regular inspections and associated repairs to prevent buildings and windows from becoming unsafe. The Administrations maintains that the Bill clearly covers all regular inspection and repair measures to enhance building safety in Hong Kong and they are not only restricted to MBIS and MWIS. The MBIS/MWIS would be incomplete without a practical solution to

tackle prominent problems such as building works associated with sub-divided units which very often could lead to building safety concerns.

65. To assist the Bills Committee in considering the matter, the legal adviser to the Bills Committee has been invited to provide legal advice on whether the Administration's proposed amendments in paragraph 56 might be made to the Bill given the scope of the Bill. The legal adviser has advised in LS62/10-11 that the Bill provides for MBIS and MWIS only. Therefore, any "related" amendments referred to in the long title should relate to MBIS or MWIS and must be incidental and necessary. It appears that the Administration's proposed amendments in paragraph 56 above involve measures to enhance building safety other than MBIS and MWIS and matters relating to the existing provisions of BO other than those included in the Bill. On that basis, the legal adviser to the Bill Committee advises that it is difficult to see how the proposed amendments relate to MBIS and/or MWIS.

66. The Bills Committee has further discussed with the Administration the proposed amendments in the light of the legal adviser's advice. While members in general have no objection to the principles of the new building safety related CSAs proposed by the Administration, only a few members have expressly indicated support for the introduction of the proposed CSAs in the context of the present Bill. Although the Administration maintains its stance that the proposed CSAs are within the scope of the Bill, having regard to members' diverse views and in order not to delay the passage of the Bill, the Administration has decided to remove all the proposed CSAs as stated in paragraph 56 above from the current legislative exercise. The Administration has indicated that it will pursue the provisions of the proposed CSAs through a separate bill as soon as possible.

Committee Stage amendments

67. The Bills Committee will not move any CSAs to the Bills in its name. Hon Kam Nai-wai will move a CSA to provide that an RI/QP must comply with the practice note on the best practices on tendering procedures for engagement of RIs/QPs and RCs (paragraph 53 refers).

Resumption of the Second Reading Debate

68. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 29 June 2011.

Consultation with the House Committee

69. At its meeting on 17 June 2011, the House Committee noted the deliberations of the Bills Committee.

Council Business Division 1
Legislative Council Secretariat
22 June 2011

Bills Committee on Buildings (Amendment) Bill 2010

Membership list

Chairman	Hon IP Kwok-him, GBS, JP
Deputy Chairman	Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Members	Dr Hon Margaret NG Hon James TO Kun-sun Hon CHAN Kam-lam, SBS, JP Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Hon Miriam LAU Kin-yee, GBS, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon WONG Kwok-hing, MH Hon LEE Wing-tat Hon CHEUNG Hok-ming, GBS, JP Prof Hon Patrick LAU Sau-shing, SBS, JP Hon KAM Nai-wai, MH Hon Cyd HO Sau-lan Hon Starry LEE Wai-king, JP Dr Hon Priscilla LEUNG Mei-fun Hon Tanya CHAN (Total: 18 members)
Clerk	Ms Annette LAM
Legal Adviser	Miss Winnie LO

Appendix II

Bills Committee on Buildings (Amendment) Bill 2010

List of organizations and individuals who have given views to the Bills Committee

1. Hong Kong General Building Contractors Association Limited
2. Hong Kong Institute of Real Estate Administrators
3. The Chartered Institute of Building (Hong Kong)
4. The Hong Kong Association of Property Management Companies
5. The Hong Kong Construction Association, Limited
6. The Hong Kong Institute of Architects
7. The Hong Kong Institute of Surveyors
8. The Hong Kong Institution of Engineers
9. The Institute of Clerks of Works and Construction Inspectorate (Hong Kong)
10. The Law Society of Hong Kong
11. The Real Estate Developers Association of Hong Kong
12. Eastern District Council
13. Kwun Tong District Council
14. Miss Jacqueline CHUNG Ka-man, Wan Chai District Council member
15. Mr SUEN Kai-cheong, Chairman of Wan Chai District Council
16. Dr YANG Mo, Southern District Council member
17. Mr YEUNG Wai-sing, Eastern District Council member