

**Motion on
“Report on the collapse of the building at 45J Ma Tau Wai Road”
at Legislative Council meeting
on 26 May 2010**

Progress Report

At the Legislative Council (LegCo) meeting on 26 May 2010, the motion on “Report on the collapse of the building at 45J Ma Tau Wai Road” moved by Ir Dr Hon Raymond HO Chung-tai and amended by Dr Hon Priscilla LEUNG Mei-fun, Hon WONG Kwok-hing, Hon Frederick FUNG Kin-kee, Hon Starry LEE Wai-king, Hon Miriam LAU Kin-ye and Hon James TO Kun-sun was passed. The full text of the passed motion is at [Annex](#).

2. This report provides an update of the position and the follow-up actions undertaken by the Government regarding the motion.

Investigation into the Collapse of 45J Ma Tau Wai Road

3. The Buildings Department (BD) has completed the investigation into the collapse of the building on 45J Ma Tau Wai Road and referred the report to the Department of Justice (DoJ) which is considering the appropriate follow-up action. The DoJ will also take into account the findings of the Police’s investigation. We will keep Members updated of the development.

Building Maintenance

4. Subsequent to the Ma Tau Wai Road building collapse incident and with the upcoming completion of the BD’s ten-year unauthorised building works (UBWs) removal programme, the Government has completed a comprehensive review of Hong Kong’s building safety policy and measures. The Chief Executive announced in his Policy Address on 13 October 2010 that the Government will adopt a new multi-pronged approach to enhance building safety through legislation, enforcement, support and assistance to owners as well as publicity and public education. Details of the package of measures can be found in the LegCo brief entitled “Measures to Enhance Building Safety in Hong Kong” issued by the Development Bureau (DEVB) on 13 October 2010. The ensuing paragraphs provide a highlight of the various measures.

Legislation

5. We will implement the minor works control system on 31 December 2010. The system provides a simple and convenient way for building owners to carry out small-scale building works. The safety standard of such works will be enhanced. We introduced the Buildings (Amendment) Bill 2010 into LegCo in February 2010 for the implementation of the proposed Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme. The two Schemes require building owners to conduct periodic inspections and repairs of their buildings and windows to ensure proper maintenance. We are working closely with the Bills Committee, and hope to implement the two Schemes as early as possible.

6. We will pursue new legislative proposals to put in place a modernised, efficient and user-friendly statutory building control regime and at the same time provide adequate enforcement powers to deter non-compliance. For example, we will put certain works for subdividing a flat into smaller units under the minor works control system to provide better guarantee on the quality of the works and hence minimise the safety and nuisance (e.g. water seepage) problems associated with subdivision works. We will also introduce a statutory control scheme which will allow the continued use of some of the existing unauthorised signboards meeting dimensional and safety requirements.

7. To strengthen the deterrence of non-compliance against statutory orders, we propose to pursue legislative amendments to empower BD to apply for a court warrant for entry into private premises for carrying out its duties; to impose a 20% surcharge on the costs of inspection and repair works that the BD has carried out on behalf of owners upon default of the inspection and repair orders issued to them; and to sanction owners who refuse without reasonable excuse to share the costs borne by owners' corporations (OCs) in complying with statutory orders. The DEVB will seek the views of the Subcommittee on Building Safety and Related Issues established under the Panel on Development on the above proposals.

Enforcement

8. With the completion of the ten-year programme of removal of UBWs by the end of 2010/11, the BD will extend its scope of actionable UBWs to include those on rooftops, flat roofs, yards and lanes. The BD will respond to complaints and issue statutory orders requiring rectification works immediately if there are confirmed actionable UBWs after inspection. The Department will also more readily instigate prosecutions against non-compliant owners and arrange to conduct the necessary building works upon default of the repair or

removal orders. It will continue to launch large scale operations to tackle UBWs and other building disrepair problems. In particular, the BD will step up inspection of subdivided units and take enforcement action as necessary.

Support and Assistance to Owners

9. Building on the experience of the Operation Building Bright, we will enhance the collaboration among the BD, Urban Renewal Authority (URA) and Hong Kong Housing Society (HKHS) to maximise their synergy. The BD will perform a regulatory role while the URA and HKHS will provide support to owners on a geographical basis. We will also consolidate the various existing technical and financial assistance schemes into one single scheme to enhance convenience to users. Regarding the problem of water seepage, we will continue to consider means to enhance the modus operandi and efficiency of the Joint Office, and at the same time explore the feasibility of adopting mediation to resolve water seepage disputes. We will also study the experience of other cities in handling similar problems.

Publicity and Public Education

10. To foster a building safety culture in Hong Kong, we will mount a large-scale publicity and public education campaign. Tailor-made promotional tactics will be developed to disseminate building safety messages to all stakeholders, including building owners, occupants, building professionals, contractors, workers, property management personnel, students and the general public. At the same time, we will launch a “community monitoring” programme to mobilise members of the community to report building safety problems. The BD will respond to complaints swiftly and issue statutory orders if irregularities are identified.

Building Management

Actively assisting owners of old buildings in organising and forming OCs, and providing support on their operation

11. The Home Affairs Bureau (HAB) has launched, in collaboration with the HKHS and professional associations of the property management industry, the Building Management Professional Service Scheme in April 2010, which will last for a year. The Scheme provides owners with free professional advice on property management and follow up services to improve the management of about 1 000 units in old buildings. This Scheme pools professionals in property management to join forces in enhancing building management and

maintenance. In particular, it will offer tailored-made support and services to owners who cannot organise themselves for action or lack the necessary professional knowledge. The HAB hopes that the Scheme will set a good example, and through this Scheme, owners will understand the positive effects of continuous management and regular maintenance of their buildings, which will bring about improvement in the living conditions of private buildings.

12. The HKHS and the property management professionals have formed expert teams, which have visited households in the target building clusters, obtained for owners the necessary technical advice, as well as produced building management audit reports that contain suggestions on methods to enhance management and maintenance conditions of buildings. The building management audit report will evaluate the conditions of various facilities including the external walls, roofs, windows in common parts, lobbies of buildings, electricity and water supply systems, fire services and lighting equipment, and illegal structures in the common areas. Expert teams will visit the target buildings in person, evaluate each item in the audit report, process the information and then propose specific and feasible suggestions.

13. Along with the visits and professional advice of the expert teams, the HKHS and relevant District Offices (DOs) will provide buildings in the clusters with strong support to form OCs, or give assistance to the owners to organise themselves to consider or approve the necessary improvement plans for their buildings. Furthermore, the expert teams will assist owners and OCs in applying for various loan and assistance schemes, give OCs assistance in preparing tender documents for improvement or maintenance works, and follow up on tender evaluation and works implementation. The expert teams will also provide office-bearers of OCs and owners with training on building management.

Implementing a licensing system for property management companies

14. With rising public concern about building management, the public expectation for the service standards of property management industry has been on the rise. There are suggestions that the Government should establish a licensing system for regulating property management companies and personnel in order to upgrade overall building management standards.

15. The Home Affairs Department (HAD) has completed a study on the regulation of property management industry. In July 2010, the Panel on Home Affairs was briefed on the findings of the study. In the light of the findings and Members' views, the HAB will –

- (a) consult the stakeholders concerned on the proposed regulatory regime;
- (b) examine the possible institutional arrangements for the regulatory authority; and
- (c) examine the financial and staffing implications of the proposal.

Improving the management of “one building with multiple OCs” and “multiple buildings with one OC”

16. An OC is formed under the legal requirement for each deed of mutual covenant (DMC), one OC should be formed. The problem of “one building with multiple OCs” is mainly attributable to the fact that some relatively old buildings have more than one DMC. Regarding this type of buildings, the respective OCs can appoint representatives to form a joint management committee to manage the common parts of the building. Building management hinges on the concerted efforts and participation of owners. If individual OCs, i.e. some owners, are not willing to form a joint management committee, even if this is made mandatory, they will still raise objections or refuse to co-operate in building management, making it impossible to manage the common parts of the building properly. Therefore, the most appropriate way is to encourage owners to co-operate sincerely and discuss actively, so as to form a joint management committee for the benefit of the entire building. DOs will continue to provide assistance in resolving any differences among the different parties.

17. As for “multiple buildings with one OC”, it is a common phenomenon in building management, particularly for buildings with shared common facilities such as car parks or clubhouses. Therefore, it is not realistic and not in line with the present modes of building management to stipulate that an OC can only manage one building.

Examining the establishment of mechanisms for modifying unreasonable provisions in the DMCs and for approving Sub-DMCs

18. A DMC is a private contractual agreement among the owners, managers and developer of a building, stipulating the rights and obligations of the parties to the agreement. As in the case of any other private contracts, no party to a DMC shall unilaterally modify any provisions of the DMC without the consent of all the other parties. This is a contractual principle.

19. The Government is aware that some DMCs in the past might not have taken into full account the interests of various parties in the drafting. The Building Management Ordinance (BMO) contains provisions that override those set out in DMCs. In 2007 amendments were made to the provisions about the determination of the total amount of building management expenses, keeping of accounts and termination of managers' appointment, in order to enhance the protection to owners' interests. The Government does not object in principle to the revision of the provisions of DMCs or the introduction of a mechanism for revising the provisions of DMCs through legislative means. However, any alteration to the DMC will inevitably have an impact on the rights and responsibilities of the parties to the agreement. The impact such a mechanism may have on property rights and ensuring proper protection to those owners who are affected by or who oppose to such changes will have to be carefully considered.

20. As to sub-DMCs, since they regulate only a certain part of a building, such as the commercial part or residential part or even just a unit in the building, they do not apply to the whole building. Like normal principal DMCs, sub-DMCs are private agreements and require the approval of the Lands Department under the Guidelines for DMCs.

Development Bureau
Home Affairs Bureau
November 2010

**Motion on
“Report on the collapse of the building at 45J Ma Tau Wai Road”
moved by Ir Dr Hon Raymond HO Chung-tai
at the Legislative Council meeting
of Wednesday, 26 May 2010**

Motion as amended by Dr Hon Priscilla LEUNG Mei-fun, Hon WONG Kwok-hing, Hon Frederick FUNG Kin-kee, Hon Starry LEE Wai-king, Hon Miriam LAU Kin-ye and Hon James TO Kun-sun

That, regarding the accident involving the collapse of the building at 45J Ma Tau Wai Road, To Kwa Wan, Kowloon - K.I.L. 8627 which took place on 29 January 2010, this Council notes that the Buildings Department released an investigation report on 26 April 2010, but is gravely dissatisfied that the report has failed to explain in detail the causes and circumstances leading to the collapse of the building and to give a clear account of the responsibility issue regarding the collapse of the building, and demands the Buildings Department to further submit a more comprehensive and detailed final report expeditiously; this Council also urges that, in addition to the Development Bureau, other relevant government departments should also step up collaboration to implement crisis prevention and monitoring measures on building safety, and achieve synergy to help improve the maintenance and management of old-type and aged buildings, including:

- (a) to allocate more resources to support the work on maintenance of old buildings, building management and redevelopment of old districts;
- (b) to review the Buildings Department’s manpower deployment to step up regular inspections and safety oversight of old buildings, and explore ways to implement an efficient collapse alert system for old buildings, thereby safeguarding the life and property of the public;
- (c) to comprehensively review and increase the manpower resources for the liaison officers responsible for building matters in the Home Affairs Department, so as to effectively improve the support, education, training and co-ordination in respect of building maintenance and management;
- (d) to upgrade the standard of the property management trade and expeditiously study the establishment of a licensing and supervisory regime for property management companies, with a view to

improving the work quality of property management personnel in building maintenance and management;

- (e) to further expand and expedite the skills training for and registration of personnel engaged in building repair works;
- (f) to support the Urban Renewal Authority in stepping up efforts to promote the redevelopment of old districts;
- (g) to allocate more resources to improve the legal advice and mediation services for building management and maintenance; and
- (h) the Independent Commission Against Corruption must, in the light of the upward trend of corruption cases arising from building management and maintenance works, further enhance the promotion of and education on corruption prevention in building management and maintenance works, raise the awareness of integrity and standard of conduct among the personnel of the trade, and rigorously combat corruption crimes in the field of building management and maintenance, thereby ensuring the quality of building management and maintenance works;

this Council also demands the relevant government departments to further investigate and pursue the responsibility issue regarding the incident expeditiously, with a view to restoring justice to the families of the deceased and injured, and review and improve the existing relevant rules and legislation, so as to prevent the recurrence of similar tragedies; this Council also urges the Government to give an undertaking to adopt the following measures to improve the condition and management of old buildings:

on building maintenance,

- (a) to expeditiously co-ordinate the various subsidy and loan schemes to provide one-stop services and perfect the relevant schemes, so as to assist more owners with financial difficulties;
- (b) to enhance regulation of renovation works which involve structural alterations, and carry out extensive publicity and education work to enhance public awareness of the effect of structural alteration to units on building safety, and encourage the public to provide information on works involving structural alterations to facilitate the Government in early detection of illegal structural alteration works, so as to avoid the building structure being affected;

- (c) focusing on water seepage problems of ceilings of old buildings, to review the existing practice of using colour dyes as the main testing tool and improve the relevant follow-up procedures of government departments, so as to enhance processing efficiency;
- (d) to expedite the clearance procedures for handling unauthorized building works, and enhance the exercising of powers conferred on the Building Authority under section 22 of the Buildings Ordinance, in particular focusing on old and notably dilapidated buildings, to enter into units of such buildings to inspect whether there are unauthorized building works that may affect the building structure, so as to ensure building safety; and should serious cases of inter-linked unauthorized building works be detected, the Government should take the initiative to assist the affected owners in carrying out rehabilitation works together and then share the costs among the owners, so as to avoid continuous potential hazards in the building structure and safeguard building safety;

on improving building management,

- (e) to actively assist owners of old buildings in organizing owners' corporations or hiring management companies, including exploring the engagement of the Hong Kong Housing Society or other non-government organizations to act as agents and let these organizations to take over the management work or hire management companies, so as to assist the residents in resolving management and maintenance problems;
- (f) to review the existing Building Management Ordinance, so as to alleviate the problem of inefficiency in building management of 'one building with multiple owners' corporations' and 'multiple buildings with one owners' corporation';
- (g) to set up a 'building affairs tribunal' to resolve the existing problems of lengthy building management disputes, expensive legal costs, etc.;
- (h) to actively examine the creation of a commissioner for management of old buildings to co-ordinate the existing work of various departments, so as to avoid fragmented administration of such departments;

- (i) to establish a mechanism for modifying unreasonable provisions in the deeds of mutual covenant, so as to assist owners in managing the buildings more effectively; and
- (j) to actively consider establishing an approval mechanism to assist small property owners under sub-deeds of mutual covenant in obtaining the right to deal with building management problems covered by sub-deeds of mutual covenant;

in addition, this Council is gravely dissatisfied that the Administration has still failed to put forward improvement proposals to prevent the recurrence of similar incidents; this Council also urges the Government to expeditiously give a clear account of the responsibilities of the various parties involved in the incident of the collapse of the building, and strengthen regulation of and provide assistance to facilitate the maintenance and management of old buildings, so as to safeguard the life and property of the public, including penalizing the non-complying contractors and the property owners who have failed to comply with the removal orders; enhancing the exercising of powers conferred on the Building Authority under section 22 of the Buildings Ordinance to enter into units of such buildings to inspect whether there are partitioned flats, so as to ensure building safety; and allocating additional funding to 'Operation Building Bright', and relaxing the restrictions on application and terms of funding support for various building maintenance subsidy and loan schemes, so as to assist more owners with financial difficulties in carrying out building maintenance works.