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Paper for the House Committee

**Subcommittee on Buildings (Amendment) Ordinance 2011
(Commencement) Notice 2012, Building (Inspection and Repair)
Regulation (Commencement) Notice and Building (Minor Works)
(Amendment) Regulation 2011 (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2012, Building (Inspection and Repair) Regulation (Commencement) Notice and Building (Minor Works) (Amendment) Regulation 2011 (Commencement) Notice (the Subcommittee).

Background

2. Following the enactment in June 2011 of the Buildings (Amendment) Ordinance 2011 (the Amendment Ordinance) which provides for the legislative framework of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS) under the Buildings Ordinance (Cap. 123) (BO), the Administration has introduced the following four pieces of legislation to stipulate the modus operandi for the implementation of the MBIS and the MWIS -

- (a) Building (Inspection and Repair) Regulation (B(I&R)R) to provide for the detailed procedural and technical requirements relating to prescribed inspections and prescribed repairs in respect of buildings and windows;
- (b) Building (Administration) (Amendment) Regulation 2011 (B(A)(A)R) to set out the qualifications and requirements for a person to be included in the inspectors' register, and to restrict a Registered Inspector (RI) from receiving advantage or benefit

of any kind from any contractor, subcontractor or supplier of building materials, unless the RI has disclosed the fact to his/her client;

- (c) Building (Minor Works) (Amendment) Regulation 2011 (B(MW)(A)R) to provide for the appointment of an RI for any prescribed repair that is Class I¹ minor works, and amend any minor works item in Schedule 1 to the Building (Minor Works) Regulation (Cap. 123 sub. leg. N) that may also be a prescribed repair or any of its associated demolition works; and
- (d) Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011 (Commencement Notice) to appoint 30 December 2011 as the day on which sections 1, 2, 4, 5, 6, 9, 11, 12, 13, 15, 16, 18, 22, 23, 24, 25(2), (3), (4), (5), (6) and (7), 29, 38, 39, 40, 41, 42, 43, 44 and 46 of the Amendment Ordinance come into operation.

The four pieces of subsidiary legislation were published in the Gazette on 28 October 2011 and tabled at the Council meeting on 2 November 2011. A Subcommittee was formed to study the four pieces of subsidiary legislation. The B(A)(A)R and the Commencement Notice came into operation on 30 December 2011 whereas the B(I&R)R and the B(MW)(A)R will come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

3. The MBIS and the MWIS cover all private buildings aged 30 years or above and 10 years or above respectively, except domestic buildings not exceeding three storeys in height. Under the MBIS, building owners are required, within a specified timeframe, to appoint an RI to carry out a prescribed inspection and to appoint a registered contractor to carry out a prescribed repair found necessary of the common parts, external walls, projections and signboards of the building once every 10 years. Under the MWIS, building owners are required, within a specified timeframe, to appoint a qualified person (QP) to carry out a prescribed inspection and to appoint a registered contractor to carry out a prescribed repair found necessary of the windows in the building once every 5 years.

¹ Under the Building (Minor Works) Regulation, minor works are classified into 3 classes (Classes I, II and III) with more controlling measures imposed on Class I. Irrespective of their classification, all minor works are required to be carried out by prescribed registered contractors.

Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2012

4. Under section 2 of the Amendment Ordinance, the Secretary for Development has appointed 30 June 2012 as the day on which sections 3, 7, 8, 10, 14, 17, 19, 20, 21, 25(1), 26, 27, 28, 30, 31, 37, 45, 47, 48 and 49 of the Amendment Ordinance come into operation. By the Commencement Notice 2011 gazetted on 28 October 2011, most of the other provisions of the Amendment Ordinance came into operation on 30 December 2011.

Building (Inspection and Repair) Regulation (Commencement) Notice and Building (Minor Works) (Amendment) Regulation 2011 (Commencement) Notice

5. Under section 1 of the B(I&R)R and B(MW)(A)R, the Secretary for Development has appointed 30 June 2012 as the day on which they come into operation.

The Subcommittee

6. At the House Committee meeting on 11 May 2012, members agreed to form a subcommittee to study the three pieces of subsidiary legislation. Hon Audrey EU Yuet-mee was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix I**. The Subcommittee has held a meeting with the Administration to examine the Commencement Notices.

7. To allow sufficient time for the scrutiny of the three pieces of subsidiary legislation, the Chairman of the Subcommittee has given notice to move a motion at the Council meeting of 6 June 2012 to extend the scrutiny period of the Commencement Notices. However, the motion could not be dealt with given the many Government bills on the Agenda of the Council meeting on that day. The scrutiny period of the Notices subsequently expired on 6 June 2012.

Deliberations of the Subcommittee

8. The Subcommittee generally supports the implementation of the MBIS and the MWIS. The major concerns raised by members about the preparatory work for the rollout of the MBIS and the MWIS are summarized in the ensuing paragraphs.

Registered inspectors and qualified persons

9. Under the BO, the Building Authority (BA) must keep a register of all persons who are qualified to perform the duties and functions of inspectors. To allow more choices for building owners and enhance market competition, the pool of candidates eligible for registration as RIs under the BO to provide service for mandatory building inspections will not only cover authorized persons and registered structural engineers, but also registered architects, registered professional engineers in the building, structural, civil, building services (building) or materials (building) engineering discipline, and registered professional surveyors in the building surveying or quantity surveying division. All these building professionals possessing adequate relevant working experience in the field of building construction, repair and maintenance are eligible for inclusion in the inspectors' register, i.e. registration as RIs.

10. The Subcommittee notes that registration of RIs for the MBIS has commenced since 30 December 2011, and an Inspectors Registration Committee has been established for considering applications for registration. As at 6 June 2012, a total of 311 applications for registration as RI had been received, of which 195 applications had been approved. To ensure fair competition, the Administration considers that the market should have a supply of at least 300 RIs initially when the first prescribed inspection under the MBIS is to commence, with 500 buildings for the MBIS to be selected in each quarter. Hon KAM Nai-wai opines that a supply of 300 RIs for the first prescribed inspection is inadequate as this may have a negative effect on the inspection cost. In this connection, he urges the Administration to take active measures to encourage qualified building professionals to register as RIs, such as by waiving the relevant registration fees for the first year.

11. The Administration has advised that considering the present progress of registration and taking reference from the registration of minor works contractors under the minor works control system² which came into full operation on 31 December 2010, the Administration is confident that the target of having at least 300 RIs registered before the issuance of the statutory notices for the first batch of target buildings under the MBIS in early 2013 could be achieved in the second half of 2012. Under the "user-pays" principle, fee charged by the Administration should be set at levels adequate to recover the full cost of providing the registration services. The Administration has no plan to waive the relevant fees for registration as RI.

² The minor works control system aims to facilitate building owners and occupants in carrying out minor works in private buildings without the need to obtain prior approval of plans and consent in writing for the commencement of the works from the BA. Any person, whether the owners themselves or their agents, is required to appoint prescribed building professionals or prescribed registered contractors to carry out the minor works.

12. Hon KAM Nai-wai has enquired how the owners/owners' corporation (OC) of target buildings could verify the eligibility of the QPs for the MWIS. The Administration has advised that a QP may be an authorized person, registered structural engineer, RI, registered general building contractor and registered minor works contractor registered for the class, type and item of minor works in respect of windows. The various registers of these building professionals and contractors are available in the Building Department (BD)'s website. The BD will enhance its website to facilitate searching for information on QPs by members of the public.

Financial and technical assistance to building owners

13. The Subcommittee has enquired about the financial assistance to be provided to facilitate compliance with the MBIS and the MWIS by building owners/OCs. According to the Administration, the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA) will jointly implement the "Mandatory Building Inspection Subsidy Scheme" (MBISS) to subsidize eligible owners the full cost of the first building inspection under the MBIS, subject to a cap. The MBISS will be offered to eligible owners/OCs covering the cost of first inspection of the common parts of their buildings under the MBIS. The cost of first inspection of windows in the common parts under the MWIS will also be covered under the MBISS provided that the actual cost of inspection of the common parts of the building under MBIS does not exceed the subsidy cap. The cost of any detailed investigation and subsequent repair works will not be covered by the subsidy scheme.

14. Under the MBISS, buildings will be categorized into various groups according to the number of units, and each group will have its respective cap limit. To assist in working out the level of the cap, the HKHS and URA have over the past few months conducted a market survey by inviting a number of private building consultancy firms and three professional institutes, namely, the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers and the Hong Kong Institute of Surveyors, to provide estimated cost for carrying out building inspection under the MBIS. These firms and institutes were invited to provide estimated man-days and unit professional fee based on the technical requirements for inspection and the duties of an RI stipulated in the draft Code of Practice on the MBIS and the MWIS promulgated by the BD. The HKHS and URA have completed an analysis of the data collected in the survey and are in the process of finalizing the proposed level of the cap under the MBISS³.

³ The survey revealed a wide range of estimated inspection cost in the industry. To ensure a fair analysis, extreme cost estimates provided by individual participating parties compared with the rest (i.e. either considered too low or too high) were excluded from the calculation. On that basis, according to the survey, the estimated inspection cost for buildings with 49 units or below ranges from \$20,000 to \$50,000; buildings with 50 to 200 units from \$30,000 to \$80,000; and buildings with 201 to 400 units from \$40,000 to \$110,000. The level of the cap will be determined having regard to the average inspection cost obtained in the survey.

15. For the sake of convenience and clarity to owners, the Administration has advised that the HKHS and URA will adopt the same eligibility criteria on rateable value limits of the Integrated Building Maintenance Assistance Scheme (IBMAS)⁴ in the MBISS. In view of the rising trend of rateable values in recent years, the HKHS and URA have since 1 April 2012 raised the rateable value limits under the IBMAS to benefit more property owners. The average annual rateable value limit of residential units in urban areas (including Tsuen Wan, Kwai Tsing and Shatin) has been lifted from \$100,000 to \$120,000, and that in the New Territories from \$76,000 to \$92,000. About 80% of buildings aged 30 years or above are covered by these revised rateable value limits. At the request of Hon KAM Nai-wai, the HKHS and URA have undertaken to jointly review the rateable value limits under the IBMAS and the MBISS once a year based on the latest rateable values provided by the Rating and Valuation Department.

16. As for the repair works found necessary according to the inspection, the Administration has advised that the Government, together with the HKHS and URA, will continue to provide financial assistance under the various existing schemes, including the IBMAS jointly administered by the HKHS and URA, the Building Safety Loan Scheme⁵ administered by the BD, and the Building Maintenance Grant Scheme for Elderly Owners⁶ administered by the HKHS. In line with the spirit of provision of one-stop service, owners can simply complete one set of application forms under the IBMAS for making multiple applications covering various types of grants/loans in the above schemes. A summary of these assistance schemes provided by the Administration is in **Appendix II**.

17. The Subcommittee has also enquired about the technical assistance to be provided to building owners under the MBIS and the MWIS. According to the Administration, the BD, together with the HKHS and URA, will provide technical assistance to owners in need during the various stages of the inspection schemes, including offering support on tendering and appointment of RIs and contractors. The Code of Practice on the MBIS and the MWIS specifies the technical standards and procedural requirements for the RI and QP to carry out inspection of buildings and windows and for the

⁴ Under the IBMAS, various assistance schemes will be provided to domestic property owners and owners of composite buildings to rehabilitate their buildings. These schemes include cash subsidy for formation of OCs, cash subsidy for rehabilitation work to common areas of buildings, interest-free loan to individual owners, and interest-free loans to individual owners for safety-and hygiene-related repair works to their units.

⁵ Building Safety Loan Scheme provides loans to individual owners of private buildings who wish to obtain financial assistance in carrying out maintenance and repair works to reinstate or improve the safety conditions of their buildings and/or private slopes.

⁶ The Building Maintenance Grant Scheme for Elderly Owners provides financial assistance to elderly owner-occupiers to repair and maintain their buildings and improve building safety.

registered contractor to carry out any necessary repair works for compliance with statutory requirements under the MBIS and MWIS. The BD will, in collaboration with the HKHS and URA, organize district briefing sessions for owners of target buildings to explain the details of the inspection schemes and assistance packages available. An information kit will also be provided to owners as handy reference materials covering basic information on the two inspection schemes and the statutory requirements and procedures, statutory duties of RIs and complaint channels, details of the various assistance schemes and application forms, guidelines/checklists/standard templates on tendering procedures, etc. In this connection, the Administration has advised that new publicity materials including a new Announcement in the Public Interest targeting at the requirements of the inspection schemes, leaflets, posters and outdoor advertisements will be launched in June 2012 to publicize the full implementation of the schemes.

Procedures after commencement

18. The Subcommittee notes that after the commencement of the relevant legislative provisions, the BD will start issuing in July 2012 pre-notification letters to the owners/OC of the first quarterly batch of target buildings selected for the MBIS and the MWIS concurrently to alert them that their buildings have been so selected so as to give them ample time to get prepared for the future inspection that they will be required to arrange. The statutory notice requiring the owners/OC to carry out the inspection will be issued, at the earliest, six months (i.e. in early 2013) after the issuance of pre-notification letter. The owners/OC should appoint an RI within three months, and complete the prescribed inspection within 6 months, from the date of the statutory notice. If repairs works are to be carried out, they should be completed within 12 months from the date of the statutory notice. An extra three months will be allowed for buildings without an OC to organize the required inspection and repair works. In respect of buildings selected for the MWIS only, the BD will start issuing pre-notification letter in July 2012 to the OC or post the letter at a conspicuous part of the target building to alert the owners/OC to get prepared and organized for the future inspection. One to two months after the issuance or posting of the pre-notification letter, the BD will issue statutory notices to the owners/OC of the target buildings. The owners/OC should appoint a QP within three months, and complete the prescribed inspection and repair (if necessary) within six months, from the date of the statutory notice. Same as for buildings selected for the MBIS and the MWIS concurrently, an extra three months will be allowed for buildings without an OC to organize the required inspection and repair works under the MWIS. At the request of the Subcommittee, the Administration has undertaken to update the relevant Panel on the progress of the full implementation of the MBIS and the MWIS around the end of 2013.

Follow-up actions required

19. During the deliberations of the Subcommittee, the relevant parties have undertaken to take the following actions –

- (a) the HKHS and URA will jointly conduct a review of the rateable value limits under the IBMAS and the MBISS once a year (paragraph 15 above); and
- (b) the Administration will report to the relevant Panel progress of the full implementation of the MBIS and the MWIS around the end of 2013 (paragraph 18 above).

Advice sought

20. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
18 June 2012

**Subcommittee on Buildings (Amendment) Ordinance 2011 (Commencement)
Notice 2012, Building (Inspection and Repair) Regulation (Commencement)
Notice and Building (Minor Works) (Amendment) Regulation 2011
(Commencement) Notice**

Membership List

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Hon Abraham SHEK Lai-him, SBS, JP Hon CHEUNG Hok-ming, GBS, JP Prof Hon Patrick LAU Sau-shing, SBS, JP Hon KAM Nai-wai, MH Hon IP Kwok-him, GBS, JP Hon Tanya CHAN
	(Total : 7 members)
Clerk	Ms YUE Tin-po
Legal Adviser	Ms Clara TAM
Date	29 May 2012

A summary of the existing assistance schemes for subsidizing building and window repair works under the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme

	Owners' Corporations Formation Subsidy	Common Area Repair Works Subsidy	Loans for Individual Owners		Building Safety Loan Scheme	Building Maintenance Grant Scheme for Elderly Owners
			Common Area Repair Works Interest-free Loan	Home Renovation Interest-free Loan		
Building Eligibility	<ul style="list-style-type: none"> Private residential or composite (residential and commercial) building 	<ul style="list-style-type: none"> Private residential or composite (residential and commercial) buildings 20 years old or above Average annual rateable value for domestic unit should not exceed \$120,000 in urban areas (including Shatin, Kwai Tsing and Tsuen Wan) or \$92,000 in the New Territories With OCs (those without OCs will be considered on a case-by-case basis) 			<ul style="list-style-type: none"> Private residential/composite/commercial/industrial buildings 	<ul style="list-style-type: none"> Domestic unit in private residential /composite building
Application Criteria		<ul style="list-style-type: none"> Application resolved in Management Committee meeting 	<ul style="list-style-type: none"> Application resolved in an OC general meeting; Approval-in-Principle granted to the OC; Domestic unit solely or jointly owned by individual 	<ul style="list-style-type: none"> Only property in Hong Kong; Domestic unit solely or jointly owned by individual 		<ul style="list-style-type: none"> Owner-occupiers at aged 60 or above Meeting income and asset limits¹ or receiving CSSA/NOAA²
Subsidy/ Loans/ Grant Amount	<ul style="list-style-type: none"> Maximum subsidy at \$3,000 	Amount of subsidy (within 5 years): <ul style="list-style-type: none"> <u>20 units or below</u>: 30% of the approved cost of works up to \$150,000 <u>21 - 49 units</u>: 20% of the approved cost of works up to \$150,000 <u>50 units or more</u>: 20% of the approved cost of works or not more than \$3,000 per unit capped at \$1,200,000/OC 	Amount of Loan: <ul style="list-style-type: none"> Interest free loan up to \$100,000/domestic unit Repayment up to 60 months 	Amount of Loan: <ul style="list-style-type: none"> Interest free loan up to \$50,000/ domestic unit Repayment up to 60 months 	Amount of Loan: <ul style="list-style-type: none"> Low interest loan up to \$1 million/unit Repayment up to 36 months 	Amount of Grant: <ul style="list-style-type: none"> Maximum grant of \$40,000 per owner per unit within a period of 5 years
		Other Subsidies for OCs: <ul style="list-style-type: none"> 50% Authorized Person/consultant fee up to \$20,000 50% Public Liability Insurance /Third party risks insurance premium subsidy up to \$6,000 p.a. for 3 consecutive years 				
Special Grant and Relieve		<ul style="list-style-type: none"> Owners aged 60 or above meeting income & asset limits or those receiving disability allowance/CSSA/NOAA/medical fee waiver: <ul style="list-style-type: none"> - hardship grant of 100% cost up to \$10,000 per unit within a period of 5 years 			<ul style="list-style-type: none"> CSSA/NOAA recipients or owners meeting income & asset limits: <ul style="list-style-type: none"> -interest-free loan and up to 72 months extended repayment period 	

¹ According to the current income and asset limits which take effect from February 2012, the monthly income limits for applications by singletons and couples are \$6,660 and \$10,520 respectively, while the asset limits (excluding the property in which the applicant resides and to which the grant relates) for the two types of applications are \$372,000 and \$562,000 respectively.

² CSSA and NOAA refer to Comprehensive Social Security Assistance and Normal Old Age Allowance respectively. Both schemes are provided by the Social Welfare Department.