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Paper for the House Committee

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

Purpose

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

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 Buildings Ordinance (Cap. 123) (BO) currently in force, 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. The current legislation 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. Following a two-stage public consultation in 2003 and 2005, the Administration introduced the Buildings (Amendment) Bill 2010 into the Legislative Council (LegCo) in February 2010 to require building owners to

carry out regular inspections and repair works in respect of their buildings and windows of their buildings through the introduction of Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS). The Bill also provides for matters relating to the registration, appointment, regulation, and duties of Registered Inspectors (RIs) and Qualified Persons (QPs) who are appointed to carry out such inspections and to supervise repairs. Following examination by a Bills Committee, the Buildings (Amendment) Ordinance 2011 (Amendment Ordinance) was enacted in June 2011. The Amendment Ordinance is to commence on a date to be appointed by notice in the Gazette.

Subsidiary legislation for implementation of MBIS and MWIS

5. The Administration has introduced the following four pieces of legislation to stipulate the modus operandi for the implementation of MBIS and MWIS -

- (a) ***Building (Inspection and Repair) Regulation*** (L.N. 146) to provide for the detailed procedural and technical requirements relating to prescribed inspections and prescribed repairs in respect of buildings;
- (b) ***Building (Administration) (Amendment) Regulation 2011*** (L.N. 147) to set out the qualifications and requirements for a person to be included in the inspectors' register, and to restrict a 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*** (L.N. 148) to provide for the appointment of a RI for any prescribed repair that is class I minor works, and amend any minor works item in Schedule I 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*** (L.N. 149) to appoint 30 December 2011 as the day on which specified sections 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.

L.N. 147 and L.N. 149 will come into operation on 30 November 2011 whereas L.N. 146 and L.N. 148 will come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

The Subcommittee

6. At the House Committee meeting held on 4 November 2011, Members agreed to form a Subcommittee to study the four pieces of subsidiary legislation. Under the chairmanship of Hon Audrey EU Yuet-mee, the Subcommittee has held seven meetings. The membership list of the Subcommittee is in **Appendix I**. Apart from discussion with the Administration, the Subcommittee has also invited views from interested parties, including the relevant trades and professions. Three organizations/individuals have made written and/or oral representations to the Subcommittee. A list of these organizations/individuals is in **Appendix II**.

7. To allow sufficient time for scrutiny of the four pieces of subsidiary legislation, a resolution was passed at the Council meeting on 23 November 2011 to extend the period for amending the subsidiary legislation to 21 December 2011.

Deliberations of the Subcommittee

8. The Subcommittee has no objection in principle to the implementation of MBIS and MWIS to ensure building safety. Nevertheless, Subcommittee members have raised concerns and sought clarification on a number of policy and legal/drafting issues, and the deliberations are summarized in the ensuing paragraphs.

Target buildings

9. MBIS and MWIS will cover all private buildings aged 30 years or above, and 10 years or above respectively, except domestic buildings not exceeding three storeys in height. Owners of buildings selected will be required to carry out inspection and repair works in relation to the common parts, external walls, certain projections and signboards of buildings once every 10 years, and window inspections every five years after the first inspection. Flowcharts for prescribed inspection and prescribed repair under MBIS and MWIS are given in the Annex to LC Paper No. CB(1) 536/11-12(01).

10. Some Subcommittee members have enquired about the selection criteria for target buildings under MBIS and MWIS. According to the Administration, a total of 2 000 and 5 800 target buildings will be selected for MBIS and MWIS respectively each year. To spread out the workload for both the professional personnel and contractors in the market as well as the implementation agencies, the Buildings Department (BD) will select target buildings on a quarterly basis i.e. 500 and 1 450 target buildings per quarter respectively for the two Schemes, taking into account the following factors -

- (a) age of the building;
- (b) condition of the building (including the presence and extent of defects on external walls, building structures and drainage system in common areas);
- (c) repair and inspection records (including participation in the Voluntary Building Assessment Scheme and Operation Building Bright (OBB), inclusion in the Coordinated Maintenance of Building Scheme as well as BD's other large-scale operations, recent inspection of buildings aged 50 years or above and BD's pre-war building inspection programme, past compliance record of BD's repair orders etc.); and
- (d) location of building.

Priority will be given to buildings with more dilapidations and defects in common areas and external walls, with more exterior unauthorized building works (UBWs), or building abutting streets with heavy pedestrian or traffic flow. BD will select a combination of target buildings with different conditions and age profiles under MBIS and MWIS each year, given that buildings which are better managed and able to swiftly comply with the statutory notices under MBIS and MWIS will set good examples and inspire other building owners to speed up their repair works.

11. Noting that some buildings have already participated in OBB to have their common parts and external walls inspected or repaired under the supervision of authorized persons (APs), some members have enquired if these buildings could be exempt from MBIS. The Administration has advised that such buildings will not be normally accorded with a high priority as target buildings under MBIS. BD will keep track of the condition of these buildings and decide when to select them as target buildings at a later stage. However, it is worth noting that these buildings may still be selected under MWIS for inspection of windows within individual premises.

Estimated inspection cost

12. According to the Administration, depending on the total number of units, the estimated cost for inspection would be around \$10,000 to \$20,000 per building block or \$400 to \$2,400 per unit with an average of \$800 per unit. Some members, including Ms Audrey EU, consider the estimated inspection cost not realistic, and enquire about the basis upon which the estimated cost is arrived at.

13. The Administration has advised that the estimated cost of \$10,000 to \$20,000 per building block is the range for buildings with less than 50 units. This is only a rough estimate based on the cost incurred from maintenance and repairs works carried out by building owners in the past. The estimated price is only for general reference and the actual cost for each inspection and repair project will vary due to a number of factors, particularly the condition of individual buildings and prevailing market condition (such as labour cost which will fluctuate over time). In order not to create a false impression to building owners or the building industry that the reference price represents the standard price applicable to every repair works, the Administration will continue its discussion with the relevant parties on how best to disseminate the available information to provide useful reference on the one hand and not to mislead owners on the other.

Registered Inspectors

14. Under the Amendment Ordinance, the owners or owners' corporation (OC) of a building must appoint a RI to carry out a prescribed inspection upon receipt of a notice under MBIS and to supervise the prescribed repair if necessary. Upon completion of the prescribed inspection and prescribed repair, the RI so appointed must submit an inspection report and a completion report respectively, together with a certificate in the specified form, to BA for record and audit check.

Supply of RI

15. Some members, including Mr Abraham SHEK and Ms LI Fung-ying, have enquired how the Administration can ensure an adequate pool of RIs as the supply of RIs will have a direct effect on the inspection cost. The Administration has advised that to provide more choices for building owners and to enhance market competition, the pool of RIs will cover APs, registered structural engineers, registered architects, registered professional engineers, and registered professional surveyors. It is estimated that there are about 7 800 building professionals who are currently qualified to register as RIs. Based on an assessment conducted by the Hong Kong Institute of Surveyors (HKIS), a

full-time RI can inspect up to four buildings per month. As the target of MBIS is to inspect some 2 000 selected target buildings per year, about 100 active RIs will be sufficient to meet the anticipated demand. To ascertain the supply of RIs, the Administration has consulted the Hong Kong Institute of Architects, Hong Kong Institution of Engineers, and HKIS. All these professional institutes have indicated that there should be adequate professionals for registration as RIs, given the enthusiastic participation and responses of their members in the course of discussion of the implementation of MBIS. In addition, BD will launch publicity programmes to encourage building professionals to register as RIs upon passage of the subsidiary legislation. To ensure healthy competition, MBIS and MWIS will fully commence when the market has a supply of at least 300 RIs which is expected to be achieved in the second quarter of 2012. As the first batch of statutory notices will only be issued in the fourth quarter of 2012, there should be more supply of RIs which should in turn lower the inspection cost as a result of keener competition.

Compliance of RIs

16. From the regulatory point of view, some members have enquired how the Administration can ensure that RIs have duly discharged their statutory duties under MBIS, and the channels through which complaints against RIs can be lodged. According to the Administration, BD will conduct audit check on around 30% of the cases at the initial stage. Such audit check will be conducted after RIs have certified completion of prescribed inspection, or during the course of or after the completion of prescribed repair to ensure compliance of RIs with the requirements under BO, its regulations and the relevant codes of practice. The audit includes checking of contents of the submitted documents and site verifications. If any irregularities which result in contravention of BO or indicate professional misconduct or negligence on the part of RIs, they may be subject to disciplinary actions and/or prosecution. As regards the complaint channels, the Administration has advised that BD (being the statutory authority to exercise the power under BO) will handle all complaints against breach of statutory requirements under BO. Any complaint about misconduct or negligence may also be directed to the professional institutes and/or registration boards which the RIs concerned belong to. These complaint handling mechanisms are stipulated in the relevant legislation and/or codes of professional institutes. Such complaint channels will also be clearly stated in the publicity materials to be promulgated.

17. To enhance deterrent against malpractices of RIs, Mr KAM Nai-wai has enquired the feasibility of requiring RIs to comply with codes of practice by legislation. According to the Administration, building safety standards and requirements in Hong Kong are regulated by a three-tier framework. The first tier is BO which provides the broad legal framework. The second tier is the

subsidiary legislation made under BO prescribing the detailed procedural and technical requirements. The third tier includes the administrative practice notes and codes of practice issued by BD, which provide the industry with details of the procedures and guidelines on technical standards as well as the latest practices for the purpose of complying with the requirements of BO and its subsidiary legislation. BD also issues general guidelines in layman terms and publicity materials to help the public and building owners understand the statutory requirements and building safety matters. This three-tier framework has been proven effective and well received by the industry and the public. Given the administrative nature of practice notes and codes of practices, non-compliance with the guidelines set out in these documents does not and should not constitute violation of BO. Nevertheless, any deviation from or non-compliance with the practice notes or codes of practice resulting in professional negligence or misconduct or contravention of BO would still render RIs subject to disciplinary action or even prosecution. There are adequate sanction and disciplinary provisions under BO against malpractice of RIs in carrying out prescribed inspections or supervising prescribed repair. The three professional institutes have also confirmed that disciplinary proceedings will be initiated by the institutes and/or respective registration boards if there is evidence showing that the members concerned have violated the relevant codes against misconduct or causing disrepute to their professions. To facilitate owners to report malpractices of RIs in carrying out prescribed inspections and supervision of prescribed repairs, the Administration has taken on board members' suggestion of including the relevant complaint channels in the publicity materials.

18. Given that building owners may not have the technical knowledge to assess the performance of RIs, some members have enquired whether a marking scheme similar to the performance assessment scheme for registered lift/escalator contractors can be adopted for RIs. According to the Administration, the Registered Lift Contractors' Performance Rating Scheme (CPR) launched by the Electrical and Mechanical Services Department in June 2009 aims to provide reference for lift owners to choose appropriate lift contractors for maintenance of the lifts in their premises. Under CRP, performance monitoring (PM) points will be recorded and accumulated in the event of inferior performance or delivery of non-compliant items by registered lift contractors. Warning letters will be issued to the contractors if the PM points for a single lift inspection or the average PM points within a 12-month period have exceeded a certain level. While a similar rating scheme has been implemented for registered escalator contractors since September 2011, there is no similar rating scheme for registered lift/escalator engineers. After studying the CPR system, BD has concluded that it is not appropriate to adopt a similar marking scheme for RIs under BO due to the following reasons –

- (a) the number of active RIs will be much larger than active lift/escalator contractors of around 50 under the CPR scheme. It will be difficult if not fair to conduct regular assessment on each and every RI given the great variance of the volume of work of RIs; and
- (b) the assessment of non-compliant items under the CPR Scheme is relatively straightforward and objective, while the assessment of the quality of work of RIs in respect of prescribed inspection which involves professional judgment is a very different matter and it is difficult to formulate an objective benchmark for a marking scheme.

To facilitate owners to assess the performance of RIs, BD will provide a checklist in layman terms on the major duties of RIs in the publicity materials. Efforts will also be stepped up to advise the industry and the public on the statutory requirements and building safety matters in relation to MBIS and MWIS through public education and publicity campaign.

Assistance to building owners

Prevention of malpractice

19. Noting that some owners may not possess adequate knowledge, expertise or financial ability to fulfill the requirements of prescribed inspection and repair, the Subcommittee urges the Administration to provide suitable assistance to owners in need, given that smooth implementation of MBIS and MWIS will hinge on the active participation of owners. Some members, including Miss Tanya CHAN, are particularly concerned about measures to prevent tender-rigging activities in building maintenance and repair works as in the case of OBB.

20. The Administration has advised that together with the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA), a comprehensive range of assistance will be provided to building owners during various stages of building inspection and repair. Owners may obtain information from HKHS and URA on matters concerning MBIS and MWIS as well as other building maintenance issues. They may also seek advice from HKHS and URA through their Property Management Advisory Centres or resource centres if in doubt. Practical advice covers issues relating to the tendering process, selection of registered inspectors and registered contractors as well as monitoring of progress of works with particular reference to anti-corruption and anti-tender-rigging procedures will be provided. To facilitate the owners in arranging building maintenance works, HKHS and the

Independent Commission Against Corruption (ICAC) have developed a Building Maintenance Toolkit, which contains guidelines/standard templates/checklists for tendering procedures for use by building owners. They may also make reference to the maintenance guidelines issued by HKHS, URA and HKIS on the objective points to be considered in evaluating tender submissions. BD, HKHS and URA will explore with professional institutes and ICAC on how best the aforesaid materials should be updated in the light of the implementation of MBIS and MWIS.

Buildings without any form of management

21. The Subcommittee notes that owners of buildings without any form of building management may have difficulty in organizing and arranging for the prescribed inspection and repairs works under MBIS and MWIS. Some members, including Ms LI Fung-ying, have enquired about the means through which the Administration can approach and contact such owners to help them to fulfill the statutory requirements.

22. The Administration acknowledges that owners of buildings without any form of building management are most in need of assistance. In this connection, ample time will be given to building owners, particularly those without OCs or proper management bodies, in organizing themselves for the prescribed inspection and repair works under MBIS and MWIS. Building owners will be given prior notice through a notification letter six months before the issuance of statutory notices under MBIS to get prepared and plan ahead, including the appointment of RIs. Each building will be assigned a single contact point, either from HKHS or URA, to provide for "one stop" enquiries and assistance. For buildings without OCs, owners will be given additional three months for appointment of RIs. If the appointment has not been made towards the end of the compliance period, BD will send a reminder to the owners suggesting them to approach the contact point assigned to them. HKHS and URA will also be alerted so that they will try to reach the owners through different means and channels, including the local networks built over the years, with a view to finding out the difficulties of the owners in complying with the statutory requirements. The two organizations will work out appropriate follow-up strategies taking into account the unique situation of those owners with special needs. If the owners are still unable to coordinate and organize to fulfill the statutory requirements after repeated attempts by HKHS and URA, BD may consider as a last resort, for public safety reasons, carrying out the prescribed inspection or repair work and subsequently recovering the cost and surcharge from owners. This is indeed an undesirable option as BD may impose supervision fee and surcharge on the owners. This will be contrary to the original objective of the two Schemes to require owners to take up their own responsibilities to properly maintain their properties.

23. Noting from the flowcharts for prescribed inspection and repair under MBIS and MWIS that different time limits are imposed on the statutory notices for completion of different stages of prescribed inspection and repair, members have enquired about the consequences in the event of non-compliance with these time limits by owners/OC. The Administration has advised that BD will take necessary follow-up and enforcement actions. In gist, upon expiry of the stipulated time limit, BD would issue warning letter to the owners/OC concerned. If non-compliance continues without reasonable excuse, BD would consider instigating prosecution against the owners/OC under MBIS. For MWIS, BD would serve a penalty notice to the owners/OC concerned requiring payment of a fixed penalty of \$1,500. Further penalty notices may be served on or prosecution may be instigated against the owner/OC of the premises if non-compliance persists without reasonable excuse. BD would also consider arranging for the prescribed inspection and repair works in default of owners/OC, the cost of which together with a surcharge of not exceeding 20% of the total cost may be imposed and recovered from the owners/OC.

24. The Subcommittee has enquired about the role of the Home Affairs Department (HAD) in assisting building owners. According to the Administration, while HAD will not directly participate in MBIS and MWIS, it will, as in the past, continue to provide advice to OCs/owners on other general building management issues outside the scope of these two schemes. On the other hand, the concerned bureaux and departments will continue to make a concerted effort in providing assistance to the owners/OCs in respect of issues related to building safety and building management.

25. Some members have enquired about the circumstances where tenants cannot locate the owners to carry out the prescribed inspection and repair as required under the statutory notices. The Administration has advised that all statutory notices will be issued to owners (i.e. OCs or co-owner for common parts) of the target buildings. Buildings with OCs or where owners can organize the prescribed inspection and repair for the common parts under MBIS and MWIS can still proceed with the necessary arrangements despite that individual owners cannot be located. In any event, tenants have no obligation to comply with the statutory notices for the premises in which they are residing even if the landlord (i.e. the owner) cannot be located.

Financial assistance

26. The Subcommittee has enquired about the financial assistance to be provided to facilitate compliance with MBIS and MWIS by building owners. According to the Administration, HKHS and URA will subsidize owners in need the cost of first building inspection under MBIS. The subsidy will be provided to OCs/co-owners subject to a cap which will be set taking into

account the price levels for building inspection in the market. Moreover, the financial assistance provided under various existing schemes for the required repair works will continue. These include the Integrated Building Maintenance Assistance Scheme (IBMAS) jointly administered by HKHS and URA, the Comprehensive Building Safety Improvement Loan Scheme (CBSILS) administered by BD, and the Building Maintenance Grant Scheme for Elderly Owners (BMGSEO) administered by HKHS.

27. Noting that the eligibility criteria for the various schemes referred to in the preceding paragraph are mainly based on the rateable values of properties, members have questioned the adequacy of the subsidy to be offered under MBIS and MWIS if the same criteria are adopted, bearing in mind that the cost of prescribed repair could be quite substantial. Some members, including Mr KAM Nai-wai, suggested that instead of using rateable values as the eligibility criteria, consideration should be given to setting a target percentage for buildings to be eligible for the assistance to be provided under MBIS and MWIS.

28. According to the Administration, it may not be appropriate to set a target percentage for buildings to be eligible for the assistance to be provided under MBIS and MWIS as this may not be the best use of public resources lest some eligible buildings may not be those in genuine need. For the sake of clarity and convenience, a single set of eligibility criteria is more desirable for owners. To ensure that suitable financial support will be provided to owners in genuine need, HKHS and URA will review the eligibility criteria from time to time to keep abreast with the prevailing circumstances. In view of the rising trend of rateable value in recent years, HKHS and URA are conducting a new round of review based on the latest rateable values provided by the Rating and Valuation Department. The eligibility criteria for the subsidy for first inspection fee under MBIS will make reference to this review, the result of which should be available in early 2012. The Administration has also highlighted that the repair cost is unlikely to be included in the inspection cost as the scope of repair works, if any, could only be confirmed upon completion of the prescribed inspection. BD will make it clear in the publicity materials to owners that the cost of prescribed repair is not part of the inspection cost. Eligible owners who need to carry out repair works could obtain financial and technical assistance from BD, HKHS and URA through the existing assistance schemes for maintenance works, including IMBAS and CBSILS. Apart from IBMAS, eligible elderly owners could also apply for the grant under BMGSEO.

29. Given that some building owners may have obtained financial assistance for previous maintenance works, members have enquired if these owners would still be entitled to the assistance to be offered under MBIS. The Administration has advised that under BMGSEO, an applicant could obtain a

maximum subsidy of \$40,000 within five years. As regards IBMAS, the subsidy/loan for the proposed maintenance works for the common parts of building is not applicable to those items for which previous maintenance works have been subsidized and were completed within the past five years, unless the items have become defective or dangerous again. The arrangement is considered appropriate as it is quite unlikely that major defects will be found during prescribed inspection under MBIS if maintenance works have been completed shortly before then.

Publicity materials

30. The Administration has also taken on board members' suggestion of using larger font size in publicity materials for MBIS and MWIS to make these materials easier to read, particularly for elderly building owners.

Building (Inspection and Repair) Regulation

Proposed section 4 – Scope of prescribed inspection

31. Proposed section 4(1)(a) to (d) provides that a prescribed inspection in respect of a building covers the common parts, external walls and projections of the building as well as signboards erected on the building. Some members, including Prof Patrick LAU, have enquired if the structure of building and presence of unauthorized building works (UBWs) and subdivision of flats are also covered under the prescribed inspection.

32. The Administration has advised that items for prescribed inspection are listed out in the Schedules to the Regulation. While the standard of prescribed inspection has been clearly set out in proposed section 5 of the Regulation, the detailed inspection requirements will be covered by BD's "Code of Practice for MBIS and MWIS" (CoP), the draft of which has been issued in August 2011. According to CoP, inspection should be carried out to building structures, including columns, walls, beams, slabs, protective barriers, hanging structures and other structural elements exposed in the building under inspection. These should be inspected from ground level and other vantage points or by other non-destructive methods (such as hammer-tapping, infrared thermography, cover meter survey, crack width measurement or other feasible means) for identifying defects (such as dampness, rust stains or corrosion of reinforcement, cracks, spalling, delamination, deformation or displacement of structure etc). Detailed investigation (DI) may be required in case more serious defects are found (such as structural cracks on beams/slabs, crushing of columns, extensive concrete spalling or excessive deformation or movement of the building structure). It is a statutory requirement under MBIS that RIs should identify and report to BA the existence of UBWs in common parts and external walls.

The operational details for compliance with the requirement have also been set out in the draft CoP (which contains examples of common UBWs such as rooftop/flat roof/land/yard structures, projections erected on the exterior of buildings, unauthorized alterations of external wall or parapets, and unauthorized alterations or additions affecting fire safety etc.). As regards subdivision of flats, the Administration advised that it has taken on board the request of the then Bills Committee on Buildings (Amendment) Bill 2010 to include in the draft CoP an advice for RIs to report to BA signs of suspected subdivision of flats (such as presence of many flat door openings, door bells or drain pipe connections) during the course of inspection.

33. To facilitate RIs to ascertain the presence of UBWs for inclusion in the reports to BA, some members, including Prof Patrick LAU, consider that the Administration should, in consultation with the professional institutes, provide clear guidelines on UBWs in CoP. According to the Administration, BD has consulted the industry, including the professional institutes concerned, prior to the release of the draft CoP. BD will continue to engage the industry in finalizing CoP upon passage of the subsidiary legislation to ensure that CoP provides clear guidance to RIs in discharging their statutory duties, including how to identify the presence of UBWs in the course of inspection.

34. The Subcommittee notes that proposed section 4(1)(e) provides that a prescribed inspection in respect of a window covers the components of the window. Some members have enquired if there is an existing definition for "window" and if not, consideration should be given to providing one in the Regulation or CoP to facilitate public understanding on the scope of prescribed inspection for windows.

35. According to the Administration, "window" commonly refers to an opening on the wall of a building with a frame and glass panes on it that lets in air or light. It is a generic term well understood by the public and the industry. As such, it may not be necessary to provide a definition for "window". The Administration has further advised that the components of windows (such as rivets and screws, hinges, sliding tracks, shoes and window stays, glass panes, sealant and putty, frames etc.) to be inspected and repaired have been given in the draft CoP for MBIS and MWIS for the guidance of the industry and the public.

36. The Subcommittee notes that apart from RIs, qualified persons (QPs) can be appointed to carry out window inspection. Subcommittee members have enquired about the requirements and responsibilities of QPs, and whether QPs are required to ascertain the existence of unauthorized windows as their RI counterparts. The Administration has advised that the policy intent of a prescribed inspection for window is to, among others, ascertain whether a

window is safe or liable to become dangerous, or has been rendered dangerous. Apart from ensuring the safety of the windows under inspection, QPs are required under the Amendment Ordinance to notify BA of any case of emergency in relation to window safety as revealed during the course of prescribed inspection or supervision of window repair works. BD will handle the emergency cases in accordance with the relevant provision of BO. Unlike RIs appointed to carry out building inspection under MBIS who are required under BO to notify BA of any UBWs in the common parts and external wall of a building, it is not a statutory requirement for QPs to report to BA any UBWs in relation to windows, unless such windows constitute a case of emergency during the course of prescribed inspection or repair.

37. Some members, including Ms Starry LEE, are concerned that owners may be under the impression that compliance with MWIS will "legalize" windows that are not constructed according to the approved plans. It is also necessary for the Administration to make it clear that the policy intent of MWIS is on the safety of window rather than its legal status which should be considered under MBIS. Taking into members' views, the Administration has advised that BD will add a note to the compliance letter of MWIS notice, reminding building owners that compliance with the notice does not have the effect of conferring a "legalized" status to a window that is not constructed according to the approved plans.

Proposed section 5 – Standard of prescribed inspection

38. Proposed section 5(2)(c) provides for the use of the standard of improvement works completed in respect of the building in accordance with the Fire Safety (Commercial Premises) Ordinance (Cap. 502) or the Fire Safety (Buildings) Ordinance (Cap. 572) (collectively known as the two Fire Safety Ordinances (FSOs)). Some members have enquired about the application of the proposed section to target buildings given the different fire safety provisions under BO and FSOs.

39. The Administration has advised that when the necessary fire safety improvement works have already been completed in a building according to the standards as stipulated under FSOs, the prescribed inspection and repair works under MBIS will have to be carried out in accordance with the standards of the improvement works. If a building is subject to fire safety directions but the improvement works under FSOs have not yet been completed, the standard of improvement works would not apply since no such works have been completed in the building. The same will apply to buildings not subject to fire safety directions. Any works that should be carried out with a view to complying with the requirements under FSOs will only be considered as additional improvement/upgrading works, and not the prescribed repair required under

MBIS. Notwithstanding, BD would advise owners to consider taking the opportunity to carry out other improvement/upgrading works concurrently with the basic repair works under MBIS so as to further enhance building safety.

Proposed sections 11 to 14 – Documents to be submitted to BA for prescribed inspection and prescribed repair

40. Noting that RIs and QPs are required to submit specified forms during different stages of prescribed inspection and repair under MBIS and MWIS, members have requested the Administration to provide the draft specified forms, which are given in the Annex to LC Paper No. CB(1) 567/11-12(01). The Subcommittee is aware that these draft forms are subject to further amendment upon passage of the subsidiary legislation.

Proposed sections 15 to 21 – Duty of RI in respect of detailed investigation

41. The Subcommittee notes that a RI may propose a DI for the purpose of prescribed repair if he, during the course of a prescribed inspection, identifies any serious defect constituting structural instability/serious health hazard or cannot ascertain the extent/cause of a defect. However, the RI concerned is required to notify and obtain the prior endorsement of BA before conducting DI.

42. Some members have enquired whether BD will check all DI proposals. According to the Administration, BD will scrutinize all the information in each and every DI proposal before deciding whether this should be endorsed. Some other members consider that owners should not be liable to pay RIs for DIs conducted without BA's prior endorsement. The Administration has advised that in anticipation of the implementation of MBIS and MWIS, BD will invite HKHS, URA and professional institutes to update their reference materials for building owners, including the "Standard Form of Contract for Decoration, Repair and Maintenance Works" published by HKIS. It will also discuss with these organizations on how best to advise owners to include a specific clause in their contracts to the effect that the owners/OC will not be liable to pay a RI who fails to obtain BA's prior endorsement before conducting a DI.

Proposed section 22 – Duty of RI in respect of supervision of prescribed repair

43. Proposed section 22(2) provides that if, during the course of a prescribed repair, certain matter is revealed or circumstance arises in response to which a RI considers it necessary to revise the proposal, the RI concerned must submit a revised proposal to BA within seven days after the matter is revealed or circumstance arises.

44. Some members, including Mr IP Kwok-him, have enquired the liabilities of the RI concerned if the revised proposal contains repair for apparent defects/deficiencies not found in the original prescribed inspection, and the additional repair cost is beyond the affordability of building owners. The Administration has advised that if there is evidence showing that apparent defects/deficiencies have not been identified by the RI concerned in carrying out prescribed inspection, this may constitute a misconduct or negligence in discharging his duties under the Regulation and hence could be subject to disciplinary actions. The owners/OC may also lodge civil action against the RI concerned for the damages arising from the delay in identifying the apparent defects not found in the original inspection. To better control the cost and prevent disputes arising from larger than expected subsequent repair works, it is advisable to include a schedule of unit rates for possible repair items in the contract. The total repair cost may then be worked out according to the actual work finished. BD will explore with HKHS, URA and the professional institutes the feasibility of including such schedule in the standard tender document/contract.

Proposed sections 24 to 25 – Duty of RI in respect of appointment of representative

45. Noting that a RI may appoint a technical representative to supervise prescribed repair, the Subcommittee has enquired about the means through which the performance of the technical representative and specialist (under DI) could be monitored.

46. The Administration has advised while a RI is allowed to appoint a technical representative to perform on his behalf the duty in supervising a prescribed repair, he is personally responsible for supervision of the prescribed repair. While a RI is exempt from the statutory duty to personally carry out the inspection in case a specialist is engaged to carry out a DI, he still has to assume all the responsibilities under BO regarding the inspection reports he has signed and submitted, which include results of DI. As such, a RI is duty bound to supervise and monitor the performance of technical representatives and specialists engaged in his inspection and repair works. Another means to monitor the performance of representatives and specialists is through auditing of the inspection and completion report or during the course of repair work. Although technical representatives and specialists are under the supervision of RIs, they are still personally liable if there is evidence proving that they have committed an offence under the provisions of BO such as section 40(2D) under which the representatives or specialists may be liable for knowingly misrepresenting a material fact in any report submitted to BA.

Proposed section 30 – Duty of RI and QP to deliver copy of documents

47. Proposed section 30(1)(a) provides that a RI must deliver a copy of each document submitted to BA to the person for whom the prescribed inspection is carried out within seven days after completion of the prescribed inspection.

48. The Subcommittee has enquired if the person for whom the prescribed inspection is carried out refers to individual owners of the building and if not, whether and how owners can have access to and obtain these documents from BD. The Administration has advised that depending on the circumstances, the person referred to may be the owner (including individual owner, co-owners or OCs) or the management company acting as the agent of the owners, as the case may be. As such, the duty of RI to deliver copy of inspection report is discharged when he has given such copy to the person who appoints him to carry out prescribed inspection. In case a RI is appointed by an OC or management company, he has no obligation to give copies of the inspection to individual owners. Notwithstanding, the Administration agrees that owners should generally have the right to have access to the documents in relation to the statutory notice of their buildings. This right is enshrined in section 36G of BO, which allows individuals to apply to BD to obtain a copy of the inspection report and repair proposal submitted by RI. As individual owners have direct interest and statutory involvement in the building inspection and repair proposal in respect of the common parts and external walls of the building, BD would accede to owners' request in general. However, BD will have to exercise discretion for such requests according to the merits of each case since the requested documents may contain third party information.

Schedule 1 – List of items for prescribed inspection in respect of common parts (other than external walls) of buildings

49. Paragraph 2 of Schedule 1 provides that fire safety provisions including means of escape, means of access for fire fighting and rescue, and fire resisting construction. Some members, including Ms Audrey EU, have expressed concern that Schedule 1 as drafted may be construed to include other provisions such as fire service installations or equipment.

50. According to the Administration, BO only governs matters (such as planning, design and construction) that are in relation to "buildings". Accordingly, any fire safety provisions regulated by the Regulation are only those that are related to the planning, design or construction of a building. On the other hand, matters that are related to the installation, repair, maintenance or inspection of fire service installations or equipment are under the purview of Fire Services Ordinance (Cap. 95), the long title of which has provided for, among other things, the control of the sale, supply, installation, repair,

maintenance and inspection of fire service installations or equipment. These two Ordinances actually deal with different aspects i.e., the "building" itself as opposed to the "installations or equipment" in the building, for the purpose of fire safety and there is no overlapping between them. In fact, there is no provision in BO (including its regulations) that provide for the design standards or requirements on the fire service installations or equipment which is subject to the control of FSOs. Therefore, the use of the term "fire safety provisions" in paragraph 2 of Schedule 1 of the Regulation, which is a piece of subsidiary legislation under BO, cannot be construed to cover fire service installation or equipment in the common parts of buildings, which is outside the purview of BO. The exclusion of fire service installations from the scope for inspection has been specifically stipulated in the draft CoP. In addition, the word "including" in paragraph 2 of Schedule 1 is used consistently in all the items in the same schedule. It is indeed the policy intent to make the list non-exhaustive to cover any item which should fall within the purview of BO but is not specifically mentioned or is unintentionally omitted.

Other issues

51. The Subcommittee notes that there is no offence provision in the Regulation. Any breach of the provisions in the Regulation by RI or QP may only subject to disciplinary proceedings. Some members have enquired about the liabilities and penalties for non-compliance with the Regulation.

52. The Administration has advised that during the course of prescribed inspection and repair, certain acts of RI or QP may be subject to prosecution under the offence provisions in BO. Examples are set out in Annex A to LC Paper No. CB(1) 589/11-12(02).

Building (Administration) (Amendment) Regulation 2011

Proposed section 5A – RI not to deal in building materials etc. without disclosure to client

53. Proposed section 5A provides that a RI must not deal in building materials or receive any payment, commission, advantage or benefit of any kind, whether directly or indirectly, from any contractor, sub-contractor or supplier of building materials or other goods used in or in connection with any building works without disclosing the fact, in writing, to the RI's client. Some members have enquired about the consequences in the event of non-compliance with the proposed section 5A.

54. The Administration has advised that the proposed section is modeled on the existing section 5 of the Building (Administration) Regulation (Cap. 123 sub. leg. A) which is applicable to registered building professionals, including APs, registered structural engineers (RSEs) and registered geotechnical engineers. Having similar professional background and status as the aforesaid building professionals, RIs should be subject to similar requirements on disclosure to their clients if they deal in building materials or receive any payment, commission, advantage or benefit of any kind, whether directly or indirectly, from any contractor, sub-contractor or supplier of building materials or other goods. While improper dealing between RI and contractor or supplier may result in criminal offences, say under the Prevention of Bribery Ordinance (Cap. 201), any breach of proposed section 5A by RI may be subject to disciplinary proceedings and the maximum penalty is removal from the register of RI permanently. The RI concerned may also be subject to disciplinary actions by the professional institute or registration board to which he belongs.

55. As regards members' query on whether proposed section 5A is applicable to contractors or suppliers who are relatives of RIs, the Administration has advised that this will depend on the circumstances of each case such as the pecuniary interest between RIs and the contractors or suppliers. In any case, RIs should disclose all relevant facts, in writing, to their clients where in doubt.

Building (Minor Works) (Amendment) Regulation 2011

Schedule 1 – Minor works

56. Noting that the existing designation for repair works to column and shear wall will be amended from Class I to Class II, the Subcommittee has enquired the rationale behind the amendment lest this would lower the level of supervision required for such works.

57. According to the Administration, minor repair works (mainly patch repair) to columns and shear walls may be carried out in general repair and maintenance of buildings. Such repair works are currently designated as Class I, the carrying out of which requires the appointment of an AP or RI (subject to the passage of the Regulation), RSE and registered general building contractor (RGBC) or registered minor works contractor (RMWC). After consultation with the industry, it is proposed to amend the existing designation for repair works to column and shear wall from Class I to Class II so that building owners could appoint RGBC or RMWC registered for Class II minor works to carry out such works without the need to appoint an AP (or RI) and RSE. The proposed amendment is considered appropriate since such repair works normally involve small-scale patch up works carried out in accordance

with the original design of the building. The current edition of the Technical Guidelines on Minor Works Control System containing recommended design and details for Class II repair works has already shown that the works under this item are patch repairs (Annex B to LC Paper No. CB(1) 589/11-12(02). Besides, the registered contractors have adequate competence to check and understand the building records (mainly plans approved by BA) as the basis for carrying out such repair works. Nevertheless, BD is planning to issue an updated edition of the Technical Guidelines in 2012 to provide guidelines showing clearer distinction between patch repair works from large-scale reconstruction or recasting for which building professional should be engaged. For the purpose of MBIS and MWIS, a RI is still required to be appointed to supervise all prescribed repair works. Thus, repair works so carried to columns and shear walls of buildings are still under the supervision of RIs despite the proposal to amend the designation for such repairs works to Class II minor works.

Drafting

58. The Subcommittee notes that gender-neutral drafting (by adding references to the female gender) is adopted for those provisions to which amendments are required. Some members, including Ms Audrey EU and Miss Tanya CHAN, have enquired the rationale behind gender-neutral drafting, particularly when the Interpretation and General Clauses Ordinance (Cap. 1) has already provided that words and expressions importing the masculine gender include the feminine and neuter genders.

59. The Administration has advised that historically, legislation tended to be drafted using words of the masculine gender only. While it is still legally effective to do so, in terms of gender equality and socially inclusive language, it is generally accepted that gender-neutral drafting is more appropriate. Some common law jurisdictions (such as Australia, Canada, New Zealand, Ireland) have pursued a gender-neutral drafting policy for several years. Other jurisdictions (including England, Scotland, Wales) are now increasingly practicing gender-neutral drafting. The Law Drafting Division of the Department of Justice (DoJ) has also adopted a policy of gender-neutral drafting in tune with the gender mainstreaming policies of the Administration. Currently gender-neutral language is used in all new principal Bills and subsidiary legislation. Gender-neutral language is also used in amending legislation. As regards the Regulation, amendments to provisions with references of masculine gender to achieve gender-neutrality are only made if there are other amendments to these provisions. This follows the current drafting practice which has been adopted in a number of other legislation. While there are different techniques to achieve gender-neutrality in amending an existing provision, DoJ would adopt the technique which would have the

minimum effect on brevity and intelligibility in the particular context. The addition of references to the female gender adopted in the Regulation is considered appropriate.

60. The Subcommittee has raised concerns over the possible inconsistency in the same Regulation between existing provisions containing references of masculine gender and amended provisions with gender-neutral references. Taking into account the Subcommittee's view, the Administration has subsequently advised that instead of adding reference to the female gender in amendments to provisions with references of masculine gender, the phrase of "the person or inspector" would be used.

Amendments to the subsidiary legislation

61. The Administration has proposed to amend the Building (Minor Works) (Amendment) Regulation 2011 to replace the proposed addition of references to the female gender with the phrase "the person or inspector" in the relevant sections. The draft amendments are given in **Appendix III**.

Advice sought

62. Members are requested to note the deliberations of the Subcommittee.

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

Membership list

Chairman Hon Audrey EU Yuet-mee, SC, JP

Members Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan (up to 2 December 2011)
Hon Starry LEE Wai-king, JP
Hon IP Kwok-him, GBS, JP
Hon Tanya CHAN

(Total : 11 Members)

Clerk Miss Becky YU

Legal Adviser Mr Kelvin LEE

Date 2 December 2011

Appendix II

List of organizations/individuals which/who have made written and/or oral representations to the Subcommittee

- (1) A member of the public
- (2) Institute of Clerks of Works and Construction Inspectorate
(Hong Kong)
- (3) Ms CHUI Ling-chi

Interpretation and General Clauses Ordinance

Resolution

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

Building (Minor Works) (Amendment) Regulation 2011

Resolved that the Building (Minor Works) (Amendment) Regulation 2011, published in the Gazette as Legal Notice No. 148 of 2011 and laid on the table of the Legislative Council on 2 November 2011, be amended as set out in the Schedule.

Schedule

Amendments to Building (Minor Works) (Amendment) Regulation 2011

- Section 5 amended (section 31 amended (documents to be submitted on completion of class I minor works other than demolition works))**

Section 5(3)—

Repeal
“his or her opinion”

Substitute
“the opinion of the person or inspector”.
- Section 6 amended (section 32 amended (documents to be submitted on completion of class I minor works that are demolition works))**

Section 6(3)—

Repeal
“his or her opinion”

Substitute
“the opinion of the person or inspector”.
- Section 11 amended (section 52 amended (duty of authorized person on being delivered notice under section 51(1)))**

Section 11(2), Chinese text—

Repeal
“他或她”

Substitute

“該人士或人員”。