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**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**

Background brief

Purpose

This paper provides a summary of views and concerns expressed by Members during previous discussions on the implementation of the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS).

Background

2. Following the enactment in June 2011 of the Buildings (Amendment) Ordinance 2011 (the Amendment Ordinance) which introduces MBIS and MWIS into 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 MBIS and 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;
- (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 a 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.

3. A Subcommittee has been 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.

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 Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011 gazetted on 28 October 2011, most of the other provisions of the Amendment Ordinance came into operation on 30 December 2011.

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.

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 the B(I&R)R and B(MW)(A)R come into operation.

Previous discussions

Bills Committee on Buildings (Amendment) Bill 2010

6. The Bills Committee formed to study the Buildings (Amendment) Bill 2010 held 22 meetings with the Administration and received public views on the Bill. While members of the Bills Committee supported in general the policy intent of the Bill to empower BA to require owners to carry out periodic inspections and repairs of their buildings through the introduction of MBIS and MWIS to ensure a better and safer building environment, they discussed with the Administration and raised concerns on a number of issues. These included control of unauthorized building works and internal alteration works in buildings, definitions and meanings of "projection" from buildings, qualifications and experience and requirements for RIs, supply of service providers of acceptable quality, legal liabilities of owners/owners' corporations (OCs)/property managers and related penalties, assistance to OCs and owners, legal liabilities and responsibilities of professionals, and additional works on top of prescribed repairs, etc. The details of the deliberations are set out in the report of the Bills Committee².

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

7. During the scrutiny of the four pieces of subsidiary legislation as stated in paragraph 2, members of the Subcommittee had no objection in principle to the implementation of MBIS and MWIS to ensure building safety.

8. Some members of the Subcommittee had enquired about the selection criteria for target buildings under MBIS and MWIS. They also expressed concern about the estimated inspection cost. According to the Administration,

² Please refer to <http://www.legco.gov.hk/yr09-10/english/bc/bc04/reports/bc040629cb1-2587-e.pdf> for the report of the Bills Committee.

a total of 2 000 and 5 800 target buildings would be selected for MBIS and MWIS respectively each year. The Buildings Department would select target buildings taking into various factors including the age, condition, repair and inspection records, and location of the building. The estimated cost of inspection would be around \$10,000 to \$20,000 per building block with less than 50 units, or \$400 to \$2,400 per unit with an average of \$800 per unit. This was 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 was only for general reference and the actual cost for each inspection and repair project would vary due to a number of factors, particularly the condition of individual buildings and prevailing market condition (such as labour cost which would fluctuate over time).

9. Since the supply of RIs would have a direct effect on the inspection cost, some members of the Subcommittee urged the Administration to ensure an adequate pool of RIs, thus providing more choices for building owners when fulfilling the requirements of prescribed inspection and repair, and enhancing market competition. The Administration advised that to ensure healthy competition, MBIS and MWIS would fully commence when the market had a supply of at least 300 RIs which was expected to be achieved in the second quarter of 2012.

10. Given that building owners might not have the technical knowledge to assess the performance of RIs, some members of the Subcommittee had enquired about the feasibility of requiring RIs to comply with codes of practice by legislation, so as to deter against malpractices of RIs. The Administration explained that given the administrative nature of practice notes and codes of practice, non-compliance with the guidelines set out in these documents did 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 were adequate sanction and disciplinary provisions under BO against malpractice of RIs in carrying out prescribed inspections or supervising prescribed repair. To facilitate owners to report malpractices of RIs, the Administration had taken on board members' suggestion of including the relevant complaint channels in the publicity materials.

11. Noting that some owners might not possess adequate knowledge, expertise or financial ability to fulfill the requirements of prescribed inspection and repair, the Subcommittee urged the Administration to provide suitable assistance to owners in need, given that smooth implementation of MBIS and MWIS would hinge on the active participation of owners. They also expressed concern about the adequacy of the subsidy to be offered under MBIS and MWIS.

The Administration advised that together with the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA), a comprehensive range of assistance would be provided to owners, in particular those of buildings without any form of building management, during various stages of building inspection and repair. HKHS and URA would subsidize owners in need the cost of first building inspection under MBIS. In view of the rising trend of rateable values in recent years, HKHS and URA were conducting a new round of review of the eligibility criteria for their various existing schemes 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 would make reference to this review.

The Subcommittee

12. At the House Committee meeting on 11 May 2012, members agreed that a subcommittee should be formed to study the following three pieces of subsidiary legislation:

- (a) Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2012;
- (b) Building (Inspection and Repair) Regulation (Commencement) Notice; and
- (c) Building (Minor Works) (Amendment) Regulation 2011 (Commencement) Notice.

Relevant papers

Report of the Bills Committee on Buildings (Amendment) Bill 2010
<http://www.legco.gov.hk/yr09-10/english/bc/bc04/reports/bc040629cb1-2587-e.pdf>

Legislative Council Brief on Subsidiary Legislation for Implementation of Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme
http://www.legco.gov.hk/yr11-12/english/subleg/brief/146-149_brf.pdf

Building (Inspection and Repair) Regulation
<http://www.legco.gov.hk/yr11-12/english/subleg/negative/ln146-11-e.pdf>

Building (Minor Works) (Amendment) Regulation 2011

<http://www.legco.gov.hk/yr11-12/english/subleg/negative/ln148-11-e.pdf>

Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011

<http://www.legco.gov.hk/yr11-12/english/subleg/negative/ln149-11-e.pdf>

Report 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

<http://www.legco.gov.hk/yr11-12/english/hc/papers/hc1209cb1-622-e.pdf>

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