

**For discussion
on 25 October 2011**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Subsidiary Legislation for Implementation of
Mandatory Building Inspection Scheme and
Mandatory Window Inspection Scheme**

INTRODUCTION

Following the enactment in June 2011 of the Buildings (Amendment) Ordinance 2011 (16 of 2011) (“Amendment Ordinance”) which introduces the Mandatory Building Inspection Scheme (“MBIS”) and the Mandatory Window Inspection Scheme (“MWIS”) into the Buildings Ordinance (Cap. 123) (“BO”), it is necessary to make subsidiary legislation to stipulate the modus operandi of the two schemes for implementing them. This paper outlines the details of the proposed subsidiary legislation.

BACKGROUND

Existing Building Control System

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

Amendment Ordinance

3. To address the long-term building neglect problem in Hong Kong, we introduced the Buildings (Amendment) Bill 2010 (“the Bill”) 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 under the MBIS

and MWIS respectively. After detailed examination, the LegCo passed the Amendment Ordinance in June 2011.

4. The Amendment Ordinance amends the BO to outline the framework and principles of the MBIS and MWIS. We need to stipulate the detailed procedural and technical requirements of the two mandatory schemes through subsidiary legislation for implementing the schemes.

MBIS

5. The MBIS will cover private buildings aged 30 years or above, except domestic buildings not exceeding three storeys in height. Under the Amendment Ordinance, the BA may, by notice, require a prescribed inspection and prescribed repair (if necessary) in respect of the common parts, external walls, certain projections and signboards of a building to be carried out within a specified time. After compliance with the first notice served by the BA, the building owners will be required to carry out an inspection once every 10 years. Paragraphs 6 to 16 below set out these key features of the MBIS to be covered by the proposed subsidiary legislation -

- Procedural Requirements;
- Registration as Registered Inspectors (“RIs”);
- Scope and Standard of Prescribed Inspections;
- Detailed Investigation;
- Prescribed Repairs in respect of Buildings; and
- Voluntary Compliance.

Procedural Requirements

6. Under the new section 30D(1)(a) of the BO (i.e. section 20 of the Amendment Ordinance), person(s) served with a notice under the MBIS (in most of the cases, the owners or owners’ corporation (“OC”) of the building concerned)(“the person(s)”) must appoint an RI to carry out prescribed inspection. The RI must carry out the prescribed inspection personally, unless exempted by the relevant provisions of the subsidiary legislation (under certain special circumstances as explained in paragraph 12 below). Where the RI considers that a prescribed repair is required, the person(s) must appoint a registered general building contractor (“RGBC”) or a registered minor works contractor (“RMWC”) to carry out the prescribed repair under the supervision of an RI (who may be different from the RI who carried out the prescribed inspection). The RI may appoint a technical representative to supervise the prescribed repair on his

behalf while the RI is still ultimately responsible for the supervision of repair works.

7. 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 the BA for record and audit check.

Registration as RIs

8. The BA is to keep an inspectors' register under the new section 3(3B) of the BO (i.e. section 6(2) of the Amendment Ordinance). To provide more choices for building owners and enhance market competition, the pool of service providers for building inspections will not only cover authorized persons ("APs") and registered structural engineers ("RSEs"), but also registered architects, registered professional engineers and registered professional surveyors. All these professionals must possess relevant work experience in the field of building construction, repair and maintenance so as to be eligible for inclusion in the inspectors' register. The qualifications and requirements for inclusion in the inspectors' register will be provided in the Building (Administration) Regulation (Cap. 123 Sub. Leg. A). The qualification and requirements have been worked out in consultation with the professional institutes concerned.

9. The registration procedures for RIs will be similar to the existing registration procedures for APs and RSEs under the BO.

Scope and Standard of Prescribed Inspections

10. The scope of prescribed inspections and prescribed repairs in respect of buildings is provided in the proposed subsidiary legislation. A prescribed inspection seeks to ascertain whether the building concerned has been rendered dangerous or is liable to become dangerous, by making reference to the standards as listed below, whichever is the latest applicable to the concerned part of the building. Similarly, a prescribed repair in respect of a building seeks to render the building up to a state not inferior to such standards -

- (a) the standard of works as shown in any plan approved by the BA in respect of the building, according to which the building was completed;
- (b) the standard of works as shown in any plan in respect of the building submitted to the BA under the Building (Minor Works) Regulation (Cap. 123 Sub. Leg. N) ("B(MW)R");

- (c) the standard of upgrading 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); or
- (d) the standard of building design and construction prevalent at the time of construction of the building.

Detailed Investigation

11. In the course of a prescribed inspection, where there are serious defects constituting structural instability or serious health hazard, or where the extent or cause of the defects cannot be ascertained, a detailed examination or assessment may be conducted to ascertain the seriousness, or the extent or cause, of a defect. Where an RI considers that such a detailed investigation (“DI”) is necessary for the purpose of drawing up a proposal of a prescribed repair, the RI must seek BA’s endorsement before commencement of the DI. This is to ensure the necessity and appropriateness of the DI to avoid unwarranted financial burden on owners.

12. If the BA endorses the DI proposal, the RI must arrange to conduct the DI in accordance with the DI proposal endorsed by the BA. The findings of the DI and repair proposal (if any) must be included in the inspection report to be submitted to the BA upon completion of the prescribed inspection. In conducting the DI, the RI may engage specialist(s), and is exempted from the statutory duty to carry out inspection personally as referred to in paragraph 6 above. In case the BA refuses to endorse the DI proposal, the RI may still arrange to carry out the DI if the owner has been informed of the BA’s decision and still decides to carry out the DI. It should be noted that the RI has to supervise the work of the specialist(s) and is ultimately responsible for the assessment of the findings of the DI when formulating repair proposals.

Prescribed Repairs in respect of Buildings

13. An RI must be appointed to supervise a prescribed repair, whilst the prescribed repair must also be carried out in accordance with the statutory and procedural requirements under the BO. It is anticipated that most of such repair works are minor works and hence could be carried out in accordance with the simplified requirements under the B(MW)R. Under the existing B(MW)R, an AP must be appointed in respect of Class I minor works. In order to streamline the requirements for a prescribed repair, the B(MW)R is to be amended to the effect that if a prescribed repair or any of its associated demolition works are Class I

minor works, the RI appointed to supervise the prescribed repair could be appointed to take up the role of an AP under the B(MW)R.

Voluntary Compliance

14. We encourage building owners to carry out prescribed inspections and prescribed repairs to their buildings voluntarily, i.e. not pursuant to a notice served by the BA. Unless otherwise stated in the subsidiary legislation, the scope, standard and requirements of prescribed inspections and prescribed repairs in respect of buildings, whether or not carried out pursuant to a notice served by the BA, should be generally the same. In this connection, the Hong Kong Housing Society (“HKHS”) will implement the Voluntary Building Assessment Scheme (“VBAS”) to give positive recognition to buildings with proper management and maintenance. The HKHS has been working with the Buildings Department (BD) and related professional bodies in developing the implementation mechanism of the VBAS. Buildings or the relevant part thereof certified by the VBAS will be recognized by the BD for having fulfilled the requirements under the MBIS and MWIS within the respective inspection cycles. The HKHS aims to start receiving applications from building owners for participating in the VBAS in the second quarter of 2012.

MWIS

15. The MWIS will cover private buildings aged 10 years or above, except domestic buildings not exceeding three storeys in height. Under the Amendment Ordinance, the BA may, by notice, require a prescribed inspection and, if necessary, prescribed repair in respect of the windows in a building to be carried out within a specified time. After compliance with the first notice served by the BA, the owners will be required to carry out inspections of the windows once every five years.

16. Paragraphs 17 to 23 highlight the major aspects of the MWIS to be covered by the proposed subsidiary legislation, which include -

- Procedural Requirements;
- Qualification and Representative of Qualified Persons (“QP”);
- Scope and Standard of Prescribed Inspections;
- Prescribed Repairs in respect of Windows; and
- Voluntary Compliance.

Procedural Requirements

17. Under the new section 30E(1) of the BO (i.e. section 20 of the Amendment Ordinance), person(s) served with a notice under the MWIS must appoint a QP to carry out the prescribed inspection. The QP must carry out the prescribed inspection personally. Where the QP considers that a prescribed repair is required, the person(s) must appoint a RMWC (who is registered for the minor works in respect of windows) or a RGBC to carry out the prescribed repair under the supervision of a QP (who could be different from the QP that carried out the prescribed inspection). Under the newly added definition of “qualified person” in section 2(1) (i.e. section 4(6) of the Amendment Ordinance) and the new section 30E(6) of the BO, the QP may also be a RMWC or RGBC, and in such case, the QP may also act as the contractor to carry out the prescribed repair in respect of the windows.

18. Upon completion of the prescribed inspection and prescribed repair, the appointed QP must submit a certificate in the specified form to the BA for record and audit check. In the case where a different QP is appointed for the supervision of prescribed repair, the QP appointed for prescribed inspection should, upon completion of the prescribed inspection, submit an inspection report together with a certificate in the specified form to the BA for record and audit check.

Qualification and Representative of QP

19. Under the new definition of “qualified person” in section 2(1) (section 4(6) of the Amendment Ordinance) of the BO mentioned in paragraph 17 above, APs, RSEs, RIs, RGBCs, and RWMCs (under the class, type and item of minor works in respect of windows) registered under the BO could be QPs for carrying out prescribed inspections and prescribed repairs for windows and there will be no separate register for QPs.

20. A QP must carry out a prescribed inspection of windows personally. Where a QP is not a natural person (e.g. a company), the representative of the QP, being a natural person, must carry out the prescribed inspection personally. Detailed requirements of the representative are to be provided in the subsidiary legislation. For example, if a QP is a registered contractor, the representative of the QP must be the person appointed by the QP to act for him for the purposes of the BO as a contractor, i.e. the authorized signatory.

Scope and Standard of Prescribed Inspection

21. A prescribed inspection and prescribed repair in respect of windows in a building must cover the components of all the windows in the owners' premises in the building. The prescribed inspection seeks to ascertain whether the windows have been rendered dangerous or are liable to become dangerous.

Prescribed Repair in respect of Windows

22. Prescribed repairs seek to render the windows safe. A QP must be appointed to supervise a prescribed repair, unless the QP is simultaneously the RGBC or RMWC appointed to carry out the prescribed repair works. Where a prescribed repair is required, it must be carried out in accordance with the existing repair procedures provided under the BO. It is anticipated that most window repair works are minor works and hence could be carried out in accordance with the simplified requirements under the B(MW)R.

Voluntary Compliance

23. Similar to the MBIS, building owners may carry out a prescribed inspection and prescribed repair to their windows voluntarily. Unless otherwise stated in the subsidiary legislation, the scope, standard and requirements of prescribed inspections and prescribed repairs in respect of windows in buildings, whether or not carried out pursuant to a notice served by the BA, should be generally the same.

DELIBERATIONS OF THE BILLS COMMITTEE

24. Prior to enactment of the Amendment Ordinance, the Bills Committee had held 22 meetings to discuss the Bill and in general supported the policy objectives of the two mandatory schemes. At those meetings, the proposed content of the subsidiary legislation was discussed and we agreed that the following requirements would be stipulated therein -

- (a) to prescribe clearly the meaning of "projection" as referred to in the new section 30B(5) of the BO (section 20 of the Amendment Ordinance);
- (b) to impose a duty on an RI and QP to deliver copies of the documents which were submitted to the BA (such as the inspection report and completion report) to the person for whom the prescribed inspection and prescribed repair has been carried out, i.e. the OCs/building owners; and

- (c) to prescribe the scope of the building elements covered in a prescribed inspection.

Details of these requirements will be included in the proposed subsidiary legislation.

IMPLEMENTATION PLAN OF MBIS AND MWIS

Implementation Timetable

25. The Administration's plan is to commence the registration of RIs so that eligible building professionals could submit applications for RI registration as soon as the scrutiny of the proposed subsidiary legislation is completed. The operation of MBIS and MWIS will then fully commence when an adequate number of RIs is available in the market and the first quarterly batch of 500 and 950 target MBIS and MWIS buildings respectively are confirmed by the Selection Panel ("SP")¹. The BD is now inviting nomination of members from the professional registration boards² for the BA to establish an Inspectors Registration Committee ("IRC") for processing applications for RIs. To ensure fair competition, we consider that the market should have a supply of at least about 300 RIs initially when the first prescribed inspection under the two schemes are to commence. We expect that this will take about three months to realize after the establishment of the IRC.

26. The BD will convene the inaugural SP meeting to select the first batch of target buildings for the commencement of MBIS and MWIS in the 2nd quarter of 2012. Upon confirmation of the target buildings by the SP, the BD will issue advisory letters to the respective building owners notifying them of the statutory requirement of the prescribed inspection and, if necessary, the prescribed repair. The MBIS/MWIS Notices will be served six months after the advisory letters are issued. It is anticipated that the first batch of statutory notices of MBIS and MWIS will be issued in the last quarter of 2012. In general, the BD will withhold the issuance of MBIS/MWIS Notices to those buildings accredited by VBAS within an inspection cycle when the recognition under the VBAS is still valid.

¹ The SP comprises representatives from the relevant government departments, professional bodies, non-government organizations, and property management associations; and one District Council ("DC") member from each of the 18 DCs. It will consider the nominations of target buildings by the BD and other parties, including Hong Kong Housing Society, Urban Renewal Authority, Home Affairs Department and District Councils.

² The Architects Registration Board, the Engineers Registration Board and the Surveyors Registration Board as prescribed in section 6(6) of B(A)O 2011.

Support to Owners and Industry

27. The BD will collaborate with the HKHS and the Urban Renewal Authority to offer technical advice and financial assistance to facilitate compliance by the building owners with the statutory notices under the two schemes, in particular on tendering procedures for the appointment of RIs and registered contractors, and also the management of these personnel.

28. Before the implementation of the MBIS and MWIS, the BD will launch publicity and public education programmes to promote the two schemes to both the general public and the industry. A draft administrative Code of Practice on the MBIS and MWIS, which provides guidelines relating to the technical standards and procedural requirements for the reference of the building professionals and registered contractors, was issued by the BD in August 2011. A final edition of the code will be published upon the coming into effect of the Amendment Ordinance and the subsidiary legislation. Practice notes providing guidelines on the requirements of the two mandatory schemes will be issued for the reference of building professionals and registered contractors. Tailor-made leaflets and guidelines will also be produced to facilitate building owners and management companies to understand the two schemes.

ADVICE SOUGHT

29. Members' advice is sought in respect of the above proposals for the subsidiary legislation. Subject to Members' views, we will introduce the subsidiary legislation as soon as possible.

**Development Bureau
October 2011**