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Panel on Development

Meeting on 25 October 2011

**Updated background brief on
Mandatory Building Inspection Scheme
and Mandatory Window Inspection Scheme**

Purpose

This paper provides background information on the Mandatory Building Inspection Scheme ("MBIS") and Mandatory Window Inspection Scheme ("MWIS"), and summarizes the views and concerns expressed by members during previous discussion on the subject.

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 existing Buildings Ordinance (Cap. 123) ("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 to carry out repair and rectification works. BO 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. The Administration conducted a two-stage public consultation in 2003 and 2005 to seek views of the community and various key

stakeholders on how best to tackle the long-term building neglect problem in Hong Kong. The results indicated a community consensus to pursue mandatory inspection schemes. The Administration announced in mid-2007 its plan to introduce the mandatory inspection schemes for buildings and windows through legislation to ensure that building owners would undertake the responsibility for keeping their buildings in good conditions, including shouldering the financial commitment.

5. On 3 February 2010, the Administration introduced the Buildings (Amendment) Bill 2010 into the Legislative Council ("LegCo"). The Bill aims to provide for matters relating to the regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe, by empowering BA to require owners to carry out such inspections and repairs through the introduction of MBIS and MWIS. The Bill also provides for matters relating to the appointment, control and duties of Registered Inspectors ("RIs") and Qualified Persons ("QPs") who were to deal with such inspections and repairs. A bills committee has been formed to study the Buildings (Amendment) Bill 2010. The Bill was passed by LegCo at the meeting of 29 June 2011 and was enacted as Buildings (Amendment) Ordinance 2011.

Deliberations of the Panel

6. On 22 May 2007, the Administration briefed the Panel on Planning, Lands and Works (which was renamed the Panel on Development ("the Panel") with effect from the 2007-2008 session) on the result of the consultation and the proposal to put in place MBIS and MWIS. The Panel discussed the subject with the Administration further at the meeting on 24 July 2007. On 24 June 2008, the Administration consulted the Panel on the operational aspects of the two schemes, including the criteria and mechanism for selection of target buildings, list of inspection items and operational procedures of the schemes. The Administration provided a paper on regulation of service providers under the two schemes to the Panel in January 2009. During discussion at Panel meetings, members in general expressed support for the policy direction of the two schemes. The major concerns and views expressed by members are summarized in the paragraphs below.

Financial and technical assistance for owners in need

7. Panel members were concerned about the adequacy of the financial and technical assistance available to owners in need, in particular elderly

owners. The Administration advised that the Hong Kong Housing Society ("HKHS") had agreed to set aside \$4 billion to complement the launch of the schemes for providing financial and technical assistance to eligible building owners. In addition to providing subsidies for first inspections, HKHS would offer grants or interest-free loans to eligible owners for carrying out rectification works. HKHS would also give technical assistance to owners regarding inspection and maintenance matters. In respect of elderly owners, HKHS would be flexible in addressing their concerns on a case-by-case basis. The Buildings Department ("BD") would also provide loans to owners to carry out building maintenance under its Building Safety Loan Scheme. Under BD's Building Safety Loan Scheme, elderly owners who were unable to repay the loan could apply for extension of the repayment period, or be allowed to repay the loan after their properties were sold.

Supply of Registered Inspectors and standard of their services

8. Panel members expressed concern about the supply of RIs for the building inspection work under MBIS, and pointed out that if the pool of RIs was too small, the number of maintenance works projects that could be carried out within a specific timeframe would be few and maintenance costs would be expensive.

9. The Administration advised that under the present proposal, in addition to Authorized Persons and Registered Structural Engineers, other registered professionals in the relevant fields with relevant experience would be eligible for registration as RIs. It was estimated that there were some 5 000 qualified professionals. Assuming a 50% registration rate of the 5 000 qualified professionals, there would be around 2 500 to 3 000 RIs and this would be sufficient for 2 000 target buildings each year. As there would be sufficient competition, inspection costs would not be unreasonable.

10. Taking note of the breadth and stringency of the requirements under MBIS, members also expressed concern on whether RIs would be able to carry out a comprehensive inspection capable of identifying hidden or potential problems if the fees they received were on the low side. The Administration advised that the fees for appointing RIs would be set by the market rather than the Administration. RIs would carry out their work in accordance with professional standards and the guidelines and practice notes drawn up by the Administration. Complaints from owners or deviations from the standards would be handled accordingly by the Administration and professional organizations.

Problems relating to unauthorized building works

11. On the Administration's indication that it would not remove all unauthorized building works ("UBWs") of the target buildings under MBIS, but would continue to adopt the existing policy of prioritizing the removal of UBWs based on safety factors, some members considered it unsatisfactory because UBWs might obstruct maintenance works. Members pointed out that owners' corporations ("OCs") might face difficulties when requesting some uncooperative owners to clear their UBWs, and the timing of issuing removal orders for some UBWs might not tie in with the maintenance schedule of the buildings.

12. The Administration advised that as the clearance of UBWs, such as illegal rooftop structures, might invite strong objections and involve rehousing of the residents, to dovetail the clearance of UBWs with mandatory building inspection might create unnecessary obstacles to the smooth implementation of MBIS. However, BD would be given flexibility in responding to reports on UBWs made during mandatory building inspections. RIs had to report the details of UBWs identified during the inspection under MBIS to BA. As synchronization of the timing of issuing removal orders for UBWs with the maintenance schedule of the buildings would reduce the total costs required, BD would, where possible, try to complement OCs in this regard.

Co-ordination with the Urban Renewal Authority

13. Members pointed out that as the target buildings might also be potential buildings for redevelopment by the Urban Renewal Authority ("URA"), there should be good coordination between MBIS and URA's work to avoid the situations where some buildings might be included in URA's redevelopment projects shortly after maintenance works had been carried out, or where some owners refrained from carrying out maintenance works for their buildings in anticipation of redevelopment while such buildings were not included in URA's redevelopment projects in the end.

14. The Administration assured members that it would ensure good coordination with URA to avoid subjecting buildings under URA's planned redevelopment projects to MBIS.

Penalty arrangement

15. Members considered that the proposed penalty arrangement should be carefully drawn up to avoid creating undue hardship to owners or OCs. The Administration advised that the penalties would target at uncooperative owners, such as those who deliberately obstructed the necessary inspection or maintenance works without reasonable excuses. The Administration would work out the appropriate penalty level carefully.

Dispute resolution mechanism

16. Some members suggested that a simple dispute resolution mechanism which dispensed with legal representation should be established to handle disputes on building management and maintenance so as to save the cost and time required to settle such disputes.

17. The Administration explained that since the proposal to dispense with legal representation might give rise to constitutional and human rights implications, and might duplicate the roles and duties of existing judicial courts and tribunals, the Government needed to study the feasibility of the proposal further. The Administration also advised that to facilitate a more efficient and expeditious disposal of building management and maintenance cases in the Lands Tribunal, the Judiciary was considering possible improvement measures, including the greater use of case management and the feasibility of voluntary mediation.

Deliberations of the Bills Committee on Buildings (Amendment) Bill 2010

18. Major views and concerns expressed by members of the Bills Committee on the Buildings (Amendment) Bill 2010 are summarized in the ensuing paragraphs. The Bill was passed (with amendments) at the Council meeting of 26 June 2011.

Target buildings

19. Some members expressed concern about the exclusion of domestic buildings not exceeding three storeys in height from MBIS and MWIS. The Administration advised that the exclusion would not compromise public safety. According to BD's assessment, these buildings were mostly situated in suburban areas, simpler in structural designs and housed fewer occupants, and posed a smaller risk to public safety. The number of repair

orders issued by BD as well as the number of complaints received was much lower than those against other private buildings. The Administration would continue with the established programme of conducting regular inspections of pre-war buildings, and would take appropriate actions under BO to ensure safety of these aged buildings.

20. Members were concerned about the selection criteria for the target buildings under MBIS and MWIS and whether there would be input from relevant stakeholders at district level in the selection. The Administration advised that the target buildings selected for each year would represent a mix of buildings in different conditions and age profiles. Other factors such as building age, building conditions would be taken into account. A selection panel comprising representatives from professional bodies, relevant non-governmental organizations, property management professionals, District Councils and relevant Government departments would be established to render advice to BD in the selection of target buildings.

Unauthorized building works and sub-division of flats

21. Members expressed concern as to how UBWs would be dealt with under MBIS, and whether MBIS would help address the problem of sub-division of flats. The Administration pointed out that removal of all UBWs in a building under MBIS might create practical difficulties and hence pose serious hurdles to owners in fulfilling the statutory requirement to complete MBIS and repair works. As such, UBWs should be handled separately from MBIS in accordance with the prevailing enforcement policy with priority given to those posing higher risks to public safety. The Administration would encourage owners to remove UBWs together with other rectification works to be carried out in the common parts/external walls of the buildings on a voluntary basis and provide appropriate technical and financial assistance to owners concerned. As regards concern about control of subdivided flats, the Administration advised that RIs appointed to carry out prescribed inspection were required under the Bill to report to BA, if they observed any sign posing building safety risks during the inspection of the common parts or external walls of the building. If internal alteration works conducted within an individual unit (including sub-division of flats) adversely affected the structural integrity of a building, signs of distress and other indications should also be detectable during inspection of the common parts and external walls of the building conducted by RIs. BD would stipulate in the Code of Practice that if an RI discovered further signs of suspected subdivision of flats (e.g.

presence of many flat door openings or door bells), he should also inform BA for follow-up action.

Prevention of malpractice

22. Some members expressed concern about possible corruption and malpractice arising from the works under MBIS and MWIS. The Administration advised that Practice Notes on Best Practices on Tendering Procedures would be issued for building professionals to follow. The building owners, OCs and building management companies would be advised, through publicity and public education, to follow the best practices and incorporate ethical commitment clauses in the tender documents, and in the contracts/agreements with the building professionals. According to BD's experience, practice notes were an effective tool to promote good practices and building professionals would follow the recommendations stipulated under such notes upon promulgation by BD.

The Administration's proposal to introduce another Buildings Amendment Bill to include new building safety initiatives

23. The Bills Committee had discussed proposed Committee Stage Amendments ("CSAs") to the Buildings (Amendment) Bill 2010 to incorporate new initiatives to further strengthen the existing statutory safety control regime. The new initiatives included --

- (a) extension of the surcharge for defaulted works to cover all statutory orders (including non-MBIS/MWIS orders) or notices issued under BO;
- (b) extension of the penalty provision for refusing to share cost of works to all works required by statutory orders/notices in respect of common parts of the building that are undertaken by OCs under BO;
- (c) introduction of a statutory signboard control scheme to allow the continued use of certain existing unauthorized signboards after safety checks and necessary strengthening by registered personnel;
- (d) requiring RIs to notify BA of any UBWs on roofs, podiums, yards and lanes that are not in the common parts of the buildings; and

- (e) empowering BD to apply to the Court for a warrant to enter a flat for inspection ("the warrant proposal").

24. While members of the Bills Committee indicated general support for the new building safety related CSAs proposed by the Administration, a number of members expressed concern about the warrant proposal. These members opined that although the proposal would help tackle problems of UBWs and sub-division of flats, there was concern about whether the proposal was within the scope and coverage of the Bill which mainly concerned the maintenance and repair of common areas and exterior parts of buildings. After discussion with the Bills Committee, the Administration agreed to withdraw the CSAs in question and decided to pursue these new initiatives through another Buildings Amendment Bill to be introduced in the 2011-2012 session.

Council questions

25. Two Council Questions on MBIS were raised by Hon Albert CHAN and Dr Hon Raymond HO on 22 February 2006 and 10 May 2006 respectively. Hyperlinks of the two questions and the Administration's response are provided in the **Appendix**.

Latest developments

26. While the Building (Amendment) Ordinance 2011 provides the legislative framework for MBIS and MWIS, the Administration has to prepare a subsidiary legislation to set out the detailed procedural and technical requirements of the two schemes. The Administration will brief the Panel on its proposals at the meeting on 25 October 2011.

Relevant papers

27. A list of relevant papers is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
24 October 2011

Appendix

Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme

List of relevant papers

Council/ Committee	Date of meeting	Paper
PLW Panel	22 May 2007	<p>Information paper on "Public Consultation on Mandatory Building Inspection" provided by the Administration (LC Paper No. CB(1)1643/06-07(03)) http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0522cb1-1643-3-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)2122/06-07) http://www.legco.gov.hk/yr06-07/english/panels/plw/minutes/pl070522.pdf</p>
PLW Panel	24 July 2007	<p>Information paper on "Mandatory Building Inspection Scheme & Mandatory Window Inspection Scheme" provided by the Administration (LC Paper No. CB(1)2148/06-07 (01)) http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0724cb1-2148-1-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)2404/06-07) http://www.legco.gov.hk/yr06-07/english/panels/plw/minutes/pl070724.pdf</p> <p>Letter dated 24 August 2007 from the Administration on to the Panel (LC Paper No. CB(1)2299/06-07(01)) http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0724cb1-2299-1-e.pdf</p>

Council/ Committee	Date of meeting	Paper
Development Panel	24 June 2008	<p>Administration's paper on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme -- Target buildings, inspection items and operational procedures (LC Paper No. CB(1)1602/07-08(05)) http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0624cb1-1602-5-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)2322/07-08) http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080624.pdf</p>
Development Panel	20 January 2009	<p>Administration's paper on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme -- Regulation of Service Providers (LC Paper No. CB(1)570/08-09(06)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-6-e.pdf</p> <p>Paper on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme prepared by the Legislative Council Secretariat (Background brief) (LC Paper No. CB(1)570/08-09(07)) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-7-e.pdf</p>
House Committee	17 June 2011	<p>Report of the Bills Committee on Buildings (Amendment) Bill 2010) (LC Paper No. CB(1)2468/10-11) http://www.legco.gov.hk/yr10-11/english/hc/papers/hc0617cb1-2468-e.pdf</p>

Hyperlinks to relevant Council Questions:

Date	Council Questions
22 February 2006	Council question raised by Hon Albert CHAN http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_2457.html
10 May 2006	Council question raised by Dr Hon Raymond HO http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_2406.html