

**Motion on "Combating acts of bid-rigging in
repair works of private residential buildings"
passed at the Legislative Council Meeting of 2 December 2015**

Progress Report

Purpose

This paper briefs Members on the progress of work by the Government and related organisations in respect of the motion moved by Hon Christopher CHUNG as amended by Hon WU Chi-wai on “Combating acts of bid-rigging in repair works of private residential buildings” at the Legislative Council meeting of 2 December 2015 (full text at [Annex](#)).

Tackling suspected bid-rigging in repair and maintenance works of private residential buildings

2. The Government is very concerned about suspected bid-rigging in building repair and maintenance works. Despite the general community consensus that proper maintenance of buildings are their owners' responsibility, we acknowledge that the whole building rehabilitation process from inspection, determination of the scope of works, preparation of technical tender documents, tender evaluation and award of contracts, supervision of the works programme, up to the final payment upon testing and acceptance, is no easy task to ordinary owners. If the owners lack basic knowledge or experience in building works, an understanding of how the maintenance industry operates, or proactiveness and vigilance in building management and monitoring of the OCs, axe-grinders may easily take advantage and profit through bid-rigging from the project.

3. Government departments concerned and related agencies will continue to work together with various sectors of the community in a multi-pronged approach to prevent and combat bid-rigging acts in building repair and maintenance works, *viz.* to strengthen support for property owners, step up publicity and public education on various aspects of building rehabilitation, explore with professional bodies ways to enhance the ethical and professional standards of the sectors, coupled with more proactive and targeted enforcement actions against violations and misconducts.

Stepping up law enforcement to combat bid-rigging syndicates

4. Law enforcement agencies have been very concerned about illegal activities related to building management and maintenance, and are curbing them with a three-pronged strategy comprising law enforcement, education and prevention. The Independent Commission Against Corruption (ICAC) and the Hong Kong Police Force (Police) have respectively set up their dedicated units, to proactively investigate reports of offences related to building management and maintenance within their purviews in accordance with the law, and instigate prosecutions upon sufficient evidence. The Competition Commission may also launch investigations into anti-competitive conducts such as bid-rigging pursuant to the Competition Ordinance (Cap. 619) now already in full operation, and apply to the Competition Tribunal for imposing penalties.

ICAC cracked cases of corruption

5. The ICAC Operations Department has a permanent group tasked to investigate all corruption cases on building management and maintenance. In view of the extensive public concern over bid-rigging, the Commission swiftly established an ad hoc task force in April 2015 to strengthen the combat against corruption involving bid-rigging. The taskforce has investigated a number of inter-related complaints and detected a few cases of corruption in the process of tendering building renovation works contracts of several housing estates and residential buildings, involving bribes of over \$45 million. The former proprietor of an engineering company involved pleaded guilty to four counts of corruption charges pending sentence. We believe that such enforcement actions can effectively combat and deter corruption associated with bid-rigging.

6. For cases alleging corruption at the tender process, the ICAC will take prompt enforcement action in a proactive manner. The Commission regularly evaluates the trends of relevant complaints, as well as the severity and complexity of the cases, so as to deploy its internal resources and manpower flexibly to cater for its investigation needs. The following table sets out the statistics on corruption complaints and prosecutions relating to building management and maintenance handled by the ICAC in the past five years:

	2011	2012	2013	2014	2015
No. of corruption complaints	1160	1017	646	546	716
No. of pursuable complaints	961	861	475	423	568
No. of persons prosecuted	21	31	17	20	32
No. of persons convicted #	20	28	15	17	32

Figures represent persons convicted in that year, including those charged prior to that year

Police targeting at higher-risk buildings to curb criminal activities

7. The Police has set up an inter-departmental group, chaired by the Chief Superintendent of the Organised Crime and Triad Bureau, to run the “RenoSafe Scheme” since September 2013. Under the Scheme, officers of the Anti-Triad Squads pay visits to the old buildings in their respective Police Districts to offer one-stop services for OCs and owners, including:

- To educate the public on the criminal activities of perpetrators that may take place in building maintenance, and raise their awareness in guarding against bid-rigging, triad infiltration or other malpractices;
- To set out the scope of services and direct liaison channels of the departments concerned, to facilitate the OCs and owners to approach the appropriate agency for the necessary professional advice;
- To encourage the public to proactively report criminal information to the Police when faced with suspicious circumstances, stressing the importance of Police-community cooperation, as well as enhancing the intelligence gathering efforts.

8. In addition, the Police will employ the data on buildings served with statutory repair orders held by other departments and agencies (e.g. their number of households, the presence of OCs, the maintenance assistance schemes joined, etc.) to further assess and identify the risk of big-rigging emerging from repair works of those buildings. Police resources will be targeted at the buildings warranting priority attention, and intelligence-led operations will be mounted to curb infiltration by triads or criminal syndicates in building repair and maintenance. From September 2013 to December 2015,

a total of 1 017 buildings took part in the “RenoSafe Scheme”, and the Police hotline received 41 reports. Of the 41 reports received, 28 involved works pricing issues, and they have been referred to relevant units or other departments for follow-up.

Competition Commission launching priority enforcement actions against bid-rigging

9. The Competition Ordinance came into effect on 14 December 2015. It prohibits any undertaking from making or giving effect to an agreement the object or effect of which is to prevent, restrict or distort competition in Hong Kong. The Ordinance established the Competition Commission as the enforcement agency tasked with functions such as investigating anti-competitive conduct that may have breached the anti-competition rules, promoting businesses' adoption of appropriate internal control mechanisms, as well as conducting thematic studies on matters affecting market competition in Hong Kong.

10. The Competition Ordinance defines “bid-rigging” as a type of “serious anti-competitive conduct” (*viz.* without the knowledge of the person calling for bids, two or more competitors agreeing not to compete with each other for tender). If competitors agree to rig bids or engage in other cartel behaviour, the Competition Commission can commence investigations, and take legal proceedings at the Competition Tribunal to impose penalty on the persons concerned. Any person convicted of contravening the relevant regulations under the Ordinance is liable to fines up to 10% of the business' annual turnover, order to pay damages, disqualification from directorship or other court sanctions.

11. The Competition Commission has stated to accord priority to cases involving cartel conduct such as bid-rigging. The Commission may follow up on alleged bid-rigging cases by launching investigations to gather evidence, undertaking confidentiality and waiving prosecution to encourage whistle-blowers to give evidence; making reference to precedents under overseas competition law; and maintaining close collaboration with relevant law enforcement agencies. To better understand the current competitive environment of the building repair and maintenance sector, the Commission is conducting market studies in this regard. Members of the public should take the initiative to lodge enquiries or complaints with the Competition Commission, should they discover any suspicious bid behaviour (e.g. likely winners not submitting bids, bids containing similar errors, bids submitted in a similar format), suspicious bidding patterns (e.g. different bidders winning according to a rational pattern, or the same bidder bidding

high for some tenders but much lower for others), or suspicious pricing (e.g. identical prices or rebates).

12. To facilitate all sectors to master the Competition Ordinance, the Competition Commission has issued guidelines on its interpretation and implementation of the Ordinance, illustrated by hypothetical examples including bid-rigging. The Commission has also published the “Leniency Policy for Undertakings Engaged in Cartel Conduct” to encourage and incentivise the reporting of the conduct in question by those who conspired in bid-rigging. To promote the understanding and compliance by the construction industry in particular of the requirements under the competition law (including bid-rigging and collusion), the Construction Industry Council has uploaded to its website several FAQs, dos and don’ts, and case analyses to exemplify the conducts allowed, requiring careful consideration, or prohibited under the competition law when providing works services. The website also provides reference materials on selection of consultants and dispute resolution that help owners detect bid-rigging promptly and hold contractors accountable for failure to deliver services in accordance with the contract.

Providing property owners with appropriate professional support (including technical information on works supervision and cost estimation for building repair and maintenance)

13. The Development Bureau has made concerted efforts with the Buildings Department (BD), the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) over the years to roll out a number of assistance schemes to support property owners in building maintenance, including the “Integrated Building Maintenance Assistance Scheme” to provide owners in need with one-stop financial assistance and technical support; the “Building Maintenance Grant Scheme for Elderly Owners” to cater specifically for the needs of elderly owners; the “Mandatory Building Inspection Subsidy Scheme” to facilitate owners in discharging their mandatory building inspection notices; the “Building Safety Loan Scheme” to offer low-interest loans for voluntary or mandatory building or slope repairs, maintenance and upgrading of fire services, lift, electrical and gas risers installations, and removal of unauthorised building works *etc.* In the past few years, thousands of buildings and property owners benefitted from these schemes.

14. In the implementation of these building rehabilitation support schemes, the URA has particularly accumulated a wealth of practical experience in ensuring that the tender

process is fair, impartial and competitive; and collected a lot of useful market reference information on tender evaluation and works supervision. In view of the public concerns over suspected bid-rigging in building maintenance works, the URA will sum up its relevant experience and launch a pilot scheme in the second quarter this year to enhance the technical support for property owners with a view to facilitating them to make appropriate and well-informed decisions on building repair and maintenance works, thereby reducing the risk of bid-rigging. The technical support to be provided under the pilot scheme will mainly cover the following three aspects —

- First, as many property owners lack relevant knowledge and experience in building repair and maintenance, the URA will provide participating owners with a set of “DIY tool-kit” to guide them in organising building repair and maintenance works. The tool-kits will include various types of guidelines and pro-forma documents to facilitate the proper procurement of professional consultants who will advise on the appropriate scope and requirements of works and oversee the project implementation. Besides, owners will also be reminded of the essential points to note and provided with some useful “tips”.
- Second, the URA will line up professionals to provide participating owners with independent advice on pre-tender matters such as the general scope of works required and estimated cost of such works based on which the owners may assess whether the tender prices received are reasonable or not.
- Third, the URA will establish an electronic tendering platform for property owners to conduct the tendering exercise for engaging contractors. By inviting and receiving expressions of interest and issuing tender documents via the new platform and keeping the bidders' identities confidential until the opening of tenders, the risk of manipulation and interference by axe-grinders with ulterior motives in the tendering process can be reduced.

The URA will make further announcement once details of the scheme such as the eligibility criteria and the fees for participation have been worked out.

15. On another front, the ability to coordinate and organise the owners to come to a consensus and pass resolutions on key issues is essential for multi-storey residential buildings with fragmented titles to carry out repair and maintenance works. Through multi-pronged measures, the Home Affairs Department (HAD) seeks to facilitate,

encourage and assist owners in setting up a suitable representational body to help them discharge the management responsibility in respect of the building's common parts, such as appointment, termination and monitoring of property management companies. The Department also set up District Building Management Liaison Teams in the 18 District Offices to provide outreach services to OCs and property owners, including assisting them to incorporate under the Building Management Ordinance (Cap. 344) (BMO), attending owners' meetings to give advice and assistance, organising training courses and workshops and offering assistance in mediation of disputes etc. The details are as follows:

- The “Building Management Professional Advisory Service Scheme” has been implemented since 2011 by engaging professional property management companies to support owners of old buildings (in particular the “three-nil” buildings, *i.e.* buildings without OC or any form of owners/residents organisation or property management company) to conduct management audits for the fire services, electrical, piping, external wall and other common facilities of the targeted buildings; to assist in forming OCs and applying for various maintenance subsidies; and to help with commencing the works and follow through the tendering exercise. 163 OCs have been assisted so far in securing maintenance subsidies for commencing the necessary works.
- The “Resident Liaison Ambassador (RLA) Scheme” was rolled out in November 2011 to target at old buildings facing difficulties with forming OCs and its proper day-to-day management because most of the owners are not residing there. RLAs are recruited to assist in liaising with the owners and residents of their respective buildings, to gather them to deliberate on routine building management, security and fire safety issues on one hand, and to reflect to government departments concerned the potential safety problems of the buildings for swift follow-up on the other. The Scheme has so far appointed a total of 2 206 RLAs for 982 “three-nil” buildings aged 30 years or above.
- The “LEAD Programme” has been organised since 2011 to engage tertiary institutions to enhance the knowledge of OC management committee members in building management and their rights and responsibilities, so as to facilitate them to discharge their duties more confidently and effectively. Advanced programmes are conducted by experienced legal practitioners to look into the common building management problems (*e.g.* water seepage, unauthorised building works) in depth

and examine relevant legal regulations and court judgments. The HAD also set up the “BM Link” for the graduates to serve as “mentors of the public” to promote building care culture in the community, through regular gatherings where they share their experience and insights in building management, and outreach activities organised from time to time. 325 OC management committee members have completed the above training or advanced programmes so far. Besides, the HAD also conducts seminars for OCs to explain in depth the methods for appointment of consultants / Authorized Persons.

- The “Subsidy for Owners’ Corporations of Old Buildings” was rolled out under the Community Care Fund (CCF) in October 2012 for three years to subsidise owners of old buildings with low rateable values to form OCs. Eligible OCs may apply for subsidy, on an accountable basis, in respect of expenses procured during the implementation period of third party risks insurance for the common parts, inspection of fire services and electrical equipment and clearance of fire escapes. The CCF enhanced the Subsidy in October 2015 by including the expenses for purchasing public liability insurance and lift inspection into its scope of subsidy. The subsidy provided for each grant item application is capped at half of the actual expenditure, and each eligible OC may receive a grant of up to \$20,000, for a period of three years.
- The one-year pilot “ ‘AP Easy’ Building Maintenance Advisory Service Scheme” was implemented in April 2014 in collaboration with the Hong Kong Institute of Surveyors, the Hong Kong Institution of Engineers and the Hong Kong Institute of Architects, where members of these professional bodies formed expert teams to offer tailor-made professional advice to OCs intending to carry out building maintenance works but without the support of property management companies, on a voluntary basis, on appointing appropriate works consultants/ Authorized Persons, drafting tender/contract documents and assessing tenders. As many participating OCs are still planning for their building maintenance works, HAD has obtained the three professional bodies’ consent to extend the Scheme for another year till March 2016, so as to continue supporting the above OCs and more. So far, 73 OCs have been found eligible per the criteria of the Scheme, and all been arranged meetings with the expert teams.

16. HAD’s front-line officers at the district level would pay more attention to buildings and housing estates intending to carry out repair and maintenance works, with a

view to offering OCs support and relevant advice where possible at an early stage of their planning, such as recommending suitable assistance schemes run by relevant organisations for qualified works items, supplying reference materials issued by relevant government departments and agencies on building maintenance, and where necessary, referring the property owners to the Police for direct liaison through the “RenoSafe Scheme”. If disputes appear in the course of building maintenance, the HAD will intervene as early as practicable, with a view to liaising proactively with both disputed parties to resolve their differences; and suggesting to refer the case to join its two dispute resolution schemes as follows:

- The “Panel of Advisor on Building Management Disputes”, comprising members of various professional backgrounds such as lawyers, accountants, surveyors and property managers, to provide neutral and authoritative advice on cases involving persistent and difficult disputes.
- The “Free Mediation Service Pilot Scheme for Building Management” run by HAD in collaboration with the Hong Kong Mediation Council and the Hong Kong Mediation Centre, aimed to assist the disputed parties to reach a settlement through professional mediation services

17. If illegal activities or professional misconduct is suspected, the HAD will also proactively offer assistance to refer the case to relevant law enforcement agencies and professional bodies for follow-up.

18. On some Members’ suggestions made during this motion debate on amending the Building Management Ordinance, the HAD had proposed in its public consultation document on the review of the Ordinance published in November 2014, in respect of the OC general meeting convened for building maintenance, to raise the meeting quorum and impose a higher threshold for passing resolutions on building repair works; extend the notice period of OC meetings; allow inspection of the tender documents by owners; and tighten the requirements on various arrangements relating to proxy instruments, with a view to strengthening the role and participation of flat owners in maintenance issues, as well as minimising the disputes among owners, OCs and property management companies. The above proposals are generally welcomed by various sectors in the community. The HAD is consolidating the views collected during the consultation period. Given the time needed to amend the Ordinance and for the sake of responding to the public concern as soon as possible, the HAD is studying and considering that certain

proposals, such as the arrangements for collecting proxy instruments and improving OC meetings, be incorporated into administrative guidelines for the adoption by OCs voluntarily.

Enhancing public education to publicise the perils of bid-rigging

19. Publicity and education is an important element of government departments' multi-pronged strategy in preventing and combating bid-rigging in building repair and maintenance works. In taking forward the various measures above, the departments and partner organisations concerned would complement with extensive publicity campaign to provide property owners with relevant information and heighten their vigilance against all sorts of misconduct. The Government's major publicity and public education efforts in this regard include:

- The HAD launched a new round of territory-wide major publicity and education campaign, comprising a series of television announcement of public interest, thematic leaflets and talks on building repair and maintenance, in September 2015, with the aim of further enhancing public education on building management and repairs, encouraging owners to defend their own interests and appointing project consultants and maintenance contractors in compliance with the provisions under the Building Management Ordinance.
- The “RenoSafe Scheme” coordinated by the Police as mentioned above provides OCs intending to carry out building repair and maintenance works with an information package, listing crimes that may arise from improper handling of building maintenance works and offering advice on preventive measures. At the same time, posters or banners are displayed at conspicuous positions of the participating buildings to strengthen publicity and yield deterrence;
- The ICAC has produced corruption prevention toolkits respectively on building maintenance, financial management and day-to-day building management, whilst strengthening the education and promotional efforts on clean building management. In December 2013, the ICAC also updated the “Building Maintenance Toolkit” to provide advice on effective corruption prevention measures, checklists on points-to-note and templates of documents for the reference of OCs and owners. The Commission will continue to enhance the knowledge in anti-corruption laws and corruption prevention measures of building managers and owners through various

channels, such as visits, seminars and symposiums, and proactive liaison with OCs newly established, and those having served with repair orders or fire safety directions by the BD. It will also extensively promote messages on clean building management through a dedicated website, consultation hotline, and district activities, etc. The ICAC made 83 visits, held 71 seminars, 37 district symposia/workshops and other promotional and educational activities, reaching over 8 600 people and about 800 OCs/building management bodies in 2015. Besides, it handled a total of 858 enquiries related to building management; whereas its thematic website recorded a view count of 380 774.

- The BD issues publicity materials on reporting of malpractices of registered professionals, and also provides enquiry and reporting channels to the public. Property owners are reminded through various channels to exercise caution when selecting and appointing Qualified Persons to carry out prescribed inspection and repair works under the two mandatory inspection schemes;
- The URA launched in early 2014 a resources website on building maintenance, the “Building Rehab Info Net”, to provide property owners with a wealth of information on building rehabilitation such as successful OBB cases. New contents will be constantly added to the website.
- To tie in with the full implementation of the Competition Ordinance, the Competition Commission included bid-rigging as a key topic of its publicity and advocacy efforts to highlight the harms of bid-rigging; and produced educational videos shown on television and social networking media, and also available for download from the Commission’s website.

The HAD will continue to join hands with all relevant departments and organisations to enhance publicity and education, so as to provide property owners of all districts with more comprehensive and detailed information on building management and maintenance, and to heighten their awareness about crime and corruption prevention, as well as bid-rigging.

Regulating the service quality of building repair and maintenance service providers

20. Common building repair and maintenance (mostly considered as “minor works” under the Buildings Ordinance) and prescribed repairs under the Mandatory Building

Inspection Scheme should be carried out and supervised by registered contractors and registered building professionals respectively. Currently, the BD maintains registers for at least seven types of professionals or contractors according to the respective prerequisites for carrying out different duties of works under the Buildings Ordinance. Under these registration regimes, “registration committees” comprising BD officers and a number of representatives from the relevant sectors were established to assess whether the professional expertise of the applicants meets the requisite level of technical skills and experience.

21. The relevant legislation underpinning the Mandatory Building Inspection Scheme provides that the registered inspector appointed shall certify that he is not a partner, director or authorised signatory of the registered contractor tasked to carry out the subject repair works, in order to prevent conflict of interests in their roles. The BD has in place a comprehensive regime of guidance, audit and disciplinary actions for registered inspectors, to ensure their roles, technical skills and work procedures are in line with the Building Authority’s requirements under the Buildings Ordinance. Registered inspectors must fully comply with the detailed requirements and standards under the Buildings Ordinance, and those issued by the Building Authority in respect of various types of works. Apart from following up on public reports alleging the technical standards of registered inspectors, the BD selects about 15% of completed cases of prescribed inspections and repairs for audit including field checks. A person who is alleged of irregularities, professional misconduct or negligence is liable to orders for rectification, the issue of warning letters, disciplinary actions (e.g. reprimand, fine, restrictions on the scope of work or removal from relevant registers, etc.) and prosecution, or the BD may refer the relevant cases to the respective professional institutes/registration boards. For cases involving building management matters, corruption or impropriety of the OCs, the BD will refer such cases to the relevant law-enforcement agencies for follow-up.

22. We understand that the professional institutes of the relevant sectors have in place stringent codes of practice and disciplinary regimes with a view to requiring their members to act and conduct business in a manner that upholds the dignity and reputation of their professions, and with the highest standard of business ethics. Investigation panels formed by members of these professional bodies will investigate, hear and adjudicate suspected cases of improper or unethical professional judgment and behaviour; and the relevant professional registration boards may impose penalties on the registered

professionals concerned for any substantiated misconduct. The Construction Industry Council also has a statutory role to promote self-regulation, formulate and enforce codes of conduct, establish registration or rating schemes that improve the performance of persons connected with the construction industry, compile performance indicators to assess improvements made by the construction industry, ascertain the value of construction operations, *etc.* We will maintain communication with these professional bodies, and explore ways to strengthen their regulation of their members' professional standards and commercial behaviour.

23. As regards the proposal in the motion to set up an independent regulatory body on building repairs matters, having regard to the fact that the above law enforcement agencies, regulatory and professional bodies are already equipped with appropriate statutory powers to deal with corrupt practices, organised crimes, bid-rigging and anti-competitive conduct, various types of building works not meeting the requisite technical standards, as well as professional misconduct or acts violating the industry's code of conduct, our view is that a separate independent body would not be more direct and effective than the above bodies in handling the matters in question. Furthermore, since building repairs are often inextricably linked with building management matters, it would be difficult for an independent body if so established to intervene in the owners' disputes associated with repair and maintenance or other building management matters. Therefore, the Government has no plan to set up an independent body on building repair and maintenance matters.

Development Bureau
Buildings Department
Urban Renewal Authority

Home Affairs Bureau
Home Affairs Department

Security Bureau
Hong Kong Police Force

Administration Wing, Chief Secretary for Administration's Office
Independent Commission Against Corruption

Commerce and Economic Development Bureau
Competition Commission
February 2016

(Translation)

**Motion on
“Combating acts of bid-rigging in repair works of
private residential buildings”
moved by Hon Christopher CHUNG
at the Council meeting of 2 December 2015**

Motion as amended by Hon WU Chi-wai

That, because of the varying standards of repair and maintenance service providers for private residential buildings at present, bid-rigging activities are rampant (including exaggerating the works costs by illegal means such as corruption, which has rendered some property owners suffering monetary and other unnecessary losses); in this connection, this Council urges the Government to adopt effective measures, which include:

- (1) stepping up law enforcement to combat bid-rigging syndicates;
- (2) providing small property owners with appropriate and professional support;
- (3) enhancing public education to give publicity to the perils of bid-rigging;
- (4) setting up a building repair works authority to regulate the service quality of repair and maintenance service providers for residential buildings; and
- (5) commissioning statutory bodies with credibility (such as the Hong Kong Housing Society and the Urban Renewal Authority) to provide property owners with professional building repair works services of authorized persons, such as information on works supervision and costs estimation, etc.,

to combat illegal acts of bid-rigging in repair works of private residential buildings (including subsidized sale flats).