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28 February 2011

Ms Annette LAM

Clerk to Bills Committee

Legislative Council Building

8 Jackson Road, Central

Dear Ms LAM,

Bills Committee on Buildings (Amendment) Bill 2010

Thank you for your letter of 21 February 2011. I am pleased to provide below the Administration's response to the issues raised by Hon KAM Nai-wai in his letter of 21 February 2011 (the letter) to the Chairman of the Bills Committee on Buildings (Amendment) Bill 2010 (the Bill).

New Sections 30D(8) and 30E(7) (Questions 1 and 2 of the letter)

The new sections 30D(8) and 30E(7) aim to require a "person for whom a prescribed inspection or prescribed repair is to be, or is being, carried out" ("某人" in the phrase "代某人或將代某人進行訂明檢驗或訂明修葺" in Chinese) (usually the owner) to appoint, under the circumstances as mentioned in those sections, another registered inspector (RI)/ qualified person (QP) to replace the original RI/QP appointed. Similar wording could be found in sections 30D(1) and 30E(1). The phrase "prescribed inspection or prescribed repair" ("訂明檢驗或訂明修葺" in Chinese) appearing in sections 30D(8) and 30E(7) are meant to refer to the action to be taken by the "person" (usually the owner) for compliance of the relevant notice. We are of the view that the existing wording of the Chinese text is able to reflect our policy intention.

New Sections 30D(4) and 40(2AF) – Penalty on Registered Inspector who Carry out Prescribed Inspection (Question 3 of the letter)

One of the purposes of a prescribed inspection is to ascertain whether (and which part of, if any) a building requires a prescribed repair. An RI has to, by making reference to the inspection results, exercise her/his professional judgment in preparing an inspection report. Such RI may be liable to disciplinary action if s/he has been negligent or has mis-conducted herself/himself in a professional way leading to a misjudgment on the condition of a building. S/he may face severe consequences including fines or permanent removal of her/his name from the RI register. Audit checks will be conducted by the Buildings Department (BD) to ensure the quality of the inspection reports and repair proposals submitted by the RIs. Disciplinary proceedings may be instigated if irregularities are identified by the BD. The disciplinary board will adjudicate whether an RI has failed to discharge the duties or abide by the requirements imposed on her/him under the Buildings Ordinance (Cap. 123) (BO), has been negligent or has mis-conducted herself/himself in a professional way, and disciplinary sanctions will be imposed as appropriate.

According to clause 27 of the Bill (i.e. section 40(2A)(c) of the BO), an RI directly concerned with any such inspection or works who knowingly misrepresents a material fact in any plan, certificate, form, report, notice or other document given to the BA under the BO shall be guilty of an offence. In the context of prescribed inspection, if an RI knowingly misrepresents her/his findings in the inspection report submitted by her/him, s/he would be liable to a the maximum fine of \$1,000,000 and imprisonment for three years.

During the course of a prescribed inspection, an RI may have to conduct detailed examination or assessment requiring the taking of samples or carrying out of on-site testing. In such case, s/he has to exercise caution not to create or cause any unsafe situation for the building. An RI is liable to an offence under the proposed section 40(2B) if s/he carries out an inspection in such a manner that it would cause injury to any person or damage to any property, or in such manner as is likely to cause a risk of injury to any person or damage to any property. The maximum penalty is the same as for section 40(2AF), i.e. a fine of \$1,000,000 and imprisonment for three years.

The above provides comprehensive control on the carrying out of prescribed inspections by RIs and offers adequate deterrent against professional misconduct or negligence.

New Section 39B(1A) – Criminal Liability of Individual Owners (Question 4 of the letter)

According to section 16 of the Building Management Ordinance (Cap. 344), when the owners of a building have been incorporated under the Ordinance, the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by, and the liabilities of the owners in relation to the common parts of the building shall, be enforceable against, the owners' corporation (OC) to the exclusion of the owners, and accordingly any notice, order or other document which relates to any of the common parts of the building may be served upon the OC at its registered office.

As such, any order or notice in relation to the common parts of the building will only be served to the OC but not the individual owners. This has been the established practice of the BD and other departments in general insofar as statutory orders or notices issued to buildings with OCs established are concerned. It is the BD's practice that a statutory order/notice will be served to the OC to its registered address and, in most cases, also be posted on a conspicuous part of the premises or land. In practice, as it is necessary for the OC to gather the owners to discuss the arrangement of the prescribed inspection and (if necessary) repair works required and collection of funds, an OC will have to inform the owners of the building. After all, section 39B(1A) of the BO will only take charge against "a person who has been notified by an owners' corporation of a building that an order or notice has been served on the owners' corporation under any provision of this Ordinance in relation to any common parts of the building". When the BD enforces section 39B(1A), there must be evidence showing that the OC has properly notified that person that an order or notice in relation to the common parts of the building has been served on the OC.

New Sections 30D(3),(4) and 30E(2),(3),(4) – Criminal Liability of Registered Inspectors and Qualified Persons (Question 5 of the letter)

According to the proposed new sections 30D(3)(b), 30D(4)(d), 30E(2)(b), 30E(3)(b) and 30E(4)(d) of the BO, RIs/QPs who carry out prescribed inspections or carry out/supervise prescribed repair should comply generally with the BO. If any RI/QP is found to be in contravention of any particular provision of the BO, the BD will take appropriate actions (including prosecution and disciplinary actions) in accordance with the offence provisions of the provision contravened. We have no intention to introduce a separate offence for sections 30D(3)(b), 30D(4)(d), 30E(2)(b), 30E(3)(b) and 30E(4)(d). Sections 30E(2)(b) and 30E(3)(b) are new provisions in the Administration's proposed CSAs. We thank the Hon KAM for making the observation. In fact, we are planning to make further refinements to section 40(2AD) in the proposed CSAs to remove offences for section 30E(2)(b) and (3)(b) with a view to reflecting the policy intent.

Separately, Members may wish to note that if any RI or QP does not comply with the proposed sections 30D(4)(b) or 30E(4)(b) regarding the proper use of repair materials, he/she will be liable for the offence under existing section 40(2A)(a) of the BO.

Submission of Documents by Registered Inspectors and Qualified Persons (Questions 6 and 7 of the letter)

The procedural requirements for MBIS/MWIS will be stipulated in the subsidiary legislation, which will require RIs and QPs to submit documents and records, including inspection reports, certificates of inspection, completion reports and certificates of completion of repair works to the BA upon completion of prescribed inspections or prescribed repairs.

As mentioned in our letter to the Bills Committee dated 29 March 2010 (ref. CB(1)1500/09-10(03)), the BA will conduct desktop and random check of the documents. Audit checks with site inspections will also be carried out to verify the accuracy of the submitted reports. The BA will consider instigating prosecution or disciplinary proceedings if irregularities or misconducts in a professional way are found. For example, an RI/QP knowingly misrepresents a material fact in any of the aforementioned documents is liable to the offence under section 40(2A)(c) of the BO. In the context of MBIS, the maximum

penalty is a fine of \$1,000,000 and imprisonment for three years. As regards MWIS, the maximum penalty is a fine of \$500,000 and imprisonment for 18 months.

Assistance to Owners (Question 8 of the letter)

As set out in our previous paper entitled “Selection of Target Buildings and Assistance to Owners in Need in Mandatory Building and Window Inspection Schemes” (ref. CB(1)1787/09-10(01)), we will provide a comprehensive range of assistance to building owners during the various stages of building inspection and repair. Our letter to the Bills Committee dated 20 May 2010 (ref. CB(1)1983/09-10(01)) confirmed that we had secured the commitment of the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA) for the provision of full subsidy, subject to a cap, to eligible owners for the first-time (i.e. first time participating in MBIS) building inspection under the MBIS. The imposition of eligibility criteria (such as rateable value of the building concerned) in the scheme is appropriate, taking into account the proper use of public resources, the demand to assist owners in need and the principle that building owners are ultimately responsible for properly maintaining their buildings. Apart from this direct financial assistance scheme, all owners could obtain a full range of technical assistance from the Administration, HKHS and URA as and when necessary. Other financial assistance under the various existing schemes, such as the BD's Comprehensive Building Safety Improvement Loan Scheme, are available to assist the carrying out of repair works under MBIS/MWIS.

Duty of Registered Inspector/Qualified Person to Notify Building Authority cases of Emergency and Unauthorized Building Works (Question 9 of the letter)

According to the proposed sections 30D(5), 30D(6) and 30E(6) of the BO, an RI/QP must notify the BA of any case of emergency and any unauthorized building works (UBWs) in common parts and exterior of the building that is revealed during the course of a prescribed inspection or prescribed repair. The BD has stipulated in the draft Code of Practice (as attached in our letter to the Bills Committee dated 11 February 2011 (ref. CB(1)1266/10-11(02))) that an RI/QP is also required to alert the owners and occupants of any case of emergency. BD will, through its publicity and public education (such as the publicity material for OCs/owners), advise owners to include such a requirement in the contracts with their RIs/QPs. In practice, it is

natural for the RI/QP to notify the person who has appointed him/her (i.e. the OC/owners in most cases) in case of emergency (usually the owner). Staff of the BD will take appropriate action to eliminate any danger upon receipt of report. For UBWs identified and recorded in the inspection reports, the BD will take enforcement actions against them under the provisions of the BO in accordance with the prevailing enforcement policy. We trust the proposed arrangement has struck a balance between the rights of the the owners and responsibility of building professionals and is adequate to ensure building safety.

Matters in relation to Tendering Procedure (Questions 10 and 11 of the letter)

We have stipulated in the draft Practice Note on Best Practices on Tendering Procedures (as attached in our letter to the Bills Committee dated 11 February 2011 (ref. CB(1)1266/10-11(02))) that all tendering documents should be issued on behalf of the owner(s) and any details of the RI/QP and his company should not be disclosed.

The HKHS and URA will provide a full range of technical assistance to OCs and owners in need to guide them in carrying out prescribed inspections and prescribed repairs. Practical advice covers details concerning the tendering process, selection of inspectors and contractors as well as monitoring of the progress of works.

Buildings which joined the Operation Building Bright (OBB) are required to adopt open tender for selection of consultants and contractors. Firstly, applicant shall advertise in newspapers to openly invite expressions of interest. To further enhance fairness and promote competition, applicants should also include in their invitation list a number of potential bidders (who have recently expressed interest in repair and renovation works to HKHS) from a name list maintained by the HKHS. Such arrangement has been accepted and welcomed by owners/OCs participating in the OBB. In the implementation of MBIS/MWIS, we will explore with the HKHS and URA to provide similar service to the OCs/owners when they prepare tenderers' lists for RIs and registered contractors.

The aforementioned draft Practice Note on Best Practices on Tendering Procedures aims to provide clear guidelines for RI/QPs to follow throughout the whole tendering process. We will also advise owners through public education

and publicity to follow such best practices. Given the fact that the tendering process is a building management and private contractual issue on which building owners themselves should make the final decision, it is not appropriate to convert the best practices into a statutory requirement for RIs/QPs under the BO, the primary focus of which is on building safety and design matters.

Matters in relation to Code of Practice and Practice Notes (Questions 12 and 13 of the letter)

As explained in our previous paper entitled “Subsidiary Legislation and Practice Notes” (paper no. CB(1)1983/09-10(02)), building safety standards and requirements in Hong Kong are regulated by a three-tier framework. The first tier is the principal ordinance, i.e. the BO, which provides the broad legal framework. The second one is subsidiary legislation made under the BO, prescribing the detailed procedural and technical requirements. The third includes the administrative practice notes, codes of practice and guidelines issued by the BD, which provide the industry with the fine details of procedures, technical standards and latest practices in relation to the requirements of the principal and subsidiary legislation. The BD also issues general guidelines in layman terms and public education materials to help the public and building owners understand the statutory requirements and building safety matters.

As regards the involvement of RIs/QPs in tendering procedures, we trust that the Practice Note on Best Practice on Tendering Procedures mentioned above, which will be provided to all RI/QPs and made available in the public domain, will provide sufficient guidelines for the industry and owners. While this practice note is advisory in nature, any deviation from or non-compliance of the same which resulting in negligence or misconduct in a professional way would render the RI/QPs subject to disciplinary actions.

We believe the combined use of the above referred three-tier framework; financial and technical support by the Government, HKHS and URA; and public education and publicity provides the most effective framework for implementation of these two mandatory schemes.

Inspectors' Register (Question 14 of the letter)

The pool of RIs will comprise authorized persons (APs), registered structural engineers (RSEs), registered architects (RAs), registered professional engineers (RPEs) of the relevant disciplines and registered professional surveyors (RPSs) of the relevant divisions. According to regulation 3 of the Building (Administration) Regulations (Cap. 123 Sub. Leg. A) (B(A)R), APs must be RAs, RPEs or RPSs, while RSEs must be RPEs. Therefore all persons whose names to be included in the inspectors' register according to either the proposed section 3(7AA)(a) or 3(7AA)(b) would be RAs, RPEs or RPSs. Furthermore, as the registration requirements for being an RI are different from those for being an AP, a separate register is necessary. In light of the above, we consider that the current arrangement as set out in section 3(3C) is appropriate.

Registration of Registered Inspectors (Questions 15 and 16 of the letter)

We will make legislative amendments in the B(A)R to prescribe the relevant experience required for APs or RSEs to apply for inclusion in the inspectors' register. According to the proposed section 3(7AA)(a), any person who is an AP or a RSE with relevant experience as prescribed in the regulations may be included in the inspectors' register without recommendation by an Inspectors Registration Committee. Since APs and RSEs already possess experience in design and construction of buildings, such experience requirements are rather simple (mainly cover repair and maintenance of buildings). The BD is working out the detailed requirements in consultation with the stakeholders, including the professional institutes concerned.

According to the proposed section 3(7AA)(b) of the BO, within the period of 12 months from the commencement of the clause 6 of the Bill after enactment (i.e. the Amendment Ordinance concerned), a person may be included in the inspectors' register without recommendation by an Inspectors Registration Committee if the person is an RA, RPE or RPS nominated by his/her respective registration board with not less than five years of experience in building design, construction, repair and maintenance before the nomination. This is a transitional arrangement which allows a small number of experienced professionals to become RIs as soon as the Amendment Ordinance comes into effect so that the registration committee could be formed at the initial stage to scrutinize the applications for inclusion in the inspectors' register. The experience requirements in 3(7AA)(b) are set for a transitional purpose, they are

more stringent.

On the other hand, an Inspectors Registration Committee will consider the proof of experience submitted by an applicant according to the experience requirements as stipulated in the to-be-amended B(A)R. It will also examine the knowledge of the applicant of the BO and relevant professional matters through interviews. As regards renewal of registration of RIs, the BD will scrutinize whether the applicant is still a registered member of the respective registration board.

Section 3(5H) stipulates that the registration committee must include at least one building professional on the same list in the register as that on which the applicant wishes to be included. This arrangement intends to ensure that there would be the expertise of the applicant's specialty in the registration committee concerned. Regarding RIs, the required expertise of applicants from different disciplines on building inspection and repair is identical. Taking into account the composition (i.e. five members with three RIs) and quorum (at least three members) of an Inspectors Registration Committee as stipulated in the proposed sections 3(5CB) and 3(5GB) of the BO, there will be at least one RI present at the meeting of registration committee concerned. Therefore a provision similar to section 3(5H) is not necessary for the Inspectors Registration Committee. The BD will nevertheless endeavor to arrange at least one building professional who is on the same list in the inspectors' register as that on which the applicant wishes to be included in actual practice.

Supply of Practising Building Professionals and Registered Contractors in Market (Questions 17, 18 and 19 of the letter)

We do not have statistics regarding the numbers of APs and RGBCs who have involved in the tenders of OBB projects. But as at January 2011, as for the 313 Category 1 and Category 2 target buildings whose owners/OCs are carrying out or have completed repair works by themselves, a total of 73 consultant companies with APs and 88 registered general building contractors (RGBCs) are involved, amounting to about 5% (assuming that each consultant company has only one AP) and 14% of the total numbers of APs on the APs' Register and RGBCs on the General Building Contractors' Register of the BD respectively.

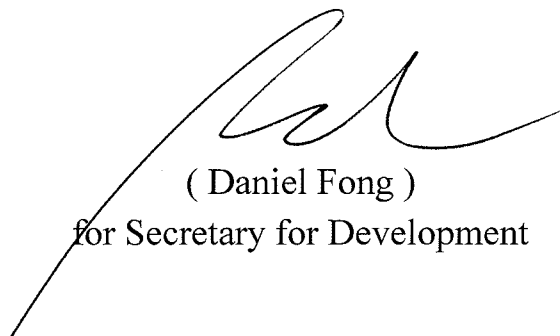
There are at present 2 578 RAs, 1 560 RPSs (in building surveying and quantity surveying divisions) and 3 252 RPEs (in structural, civil and building engineering disciplines). There is no information about the experience of these professionals in building design, construction, repair and maintenance.

We will launch a large-scale publicity and promotion campaign to encourage interested building professionals to register as RIs in due course. We envisage that the supply of RIs should be adequate to meet the market demand and will reach our estimated number in two to three years after commencement of MBIS/MWIS.

As regards the number of registered contractors in the market, as at mid-February 2011, there are 637 registered general building contractors (RGBCs), 2 062 registered minor works contractors and 1 325 registered minor works contractors (provisional).

BD has prepared lists of APs, RSEs and registered contractors who had expressed an interest in providing services to building owners in respect of building repairs and removal of UBWs. Such lists are available for public inspection on the BD's website and in District Offices. As at January 2011, 446 APs and 469 RGBCs have indicated interest in providing services in maintenance and repair of buildings and drainage, equivalent to 31.4% and 73.2% of the total number of such practitioners respectively.

Yours sincerely,



(Daniel Fong)

for Secretary for Development

c.c.

Director of Buildings
Department of Justice