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Mr WONG Siu-yee
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central

Dear Mr WONG,

Buildings (Amendment) Bill 2010

Thank you for your letter of 25 February 2010. I am pleased to provide below the Administration's response to the issues raised by Members at the first meeting of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 19 February 2010.

THE BILL

Service of Notices

Under the Bill, it is proposed that the Building Authority (BA) may serve a notice on "*any* owner" under the proposed section 30B(3) requiring a prescribed inspection and, if necessary, prescribed repair of the common parts of the building, or under the proposed section 30C(3) requiring a prescribed inspection and, if necessary, prescribed repair of the windows in the common parts of the building.

As far as the legal position is concerned, the owners of a building holding undivided shares in the building are jointly and severally liable for the common parts of the building. The use of the wording “any owner” reflects such legal position. Similar usage can be found in section 17 of the Building Management Ordinance (Cap. 344) which provides that, where the owners of a building are incorporated, a judgment given or order made against the OC may, with leave of the Lands Tribunal, be enforced against any owner of the building. For a building that does not have an owners’ corporation (OC), an order or a notice under the Buildings Ordinance (Cap. 123) (BO) in relation to the common parts of the building may be served on any owner holding an undivided share in the building or all the owners of the buildings.

When serving an order or notice under the BO, the BA must act reasonably, and at common law one is entitled to assume that the BA would act in a reasonable and responsible manner in ordering compliance of the BO¹. When using “any owner” in the proposed sections 30B(3) and 30C(3), it is not, and could not have been, the legislative intent that the BA is empowered to arbitrarily serve a notice under those sections on one or some of the co-owners. Indeed, it has all along been the BA’s practice to serve an order under the BO in relation to the common parts of a building on the OC (if one has been formed) or all of the co-owners of the building. Examples include orders under sections 26(1) (in relation to dangerous buildings), 26A(1) (in relation to defective buildings) and 28(3) (in relation to drainage of buildings) of the BO. Nevertheless, there are cases where orders have to be served on individual owners albeit the building works concerned are in the common parts. For example, where the building works in the common parts are used or occupied solely by an individual owner, the building works concerned should be inspected and repaired by that individual owner. As such, we see a need to adopt the wording of “any owner” to maintain the flexibility in relation to a notice served under the proposed section 30B(3) or 30C(3).

Registration of Notices

Under the proposed sections 30B(9) and 30C(7), the BA may cause a notice served under the proposed section 30B(3), (4), (5) or (6) or 30C(3) or (4)

¹ See *Lam Mee Hing v Leung Hing Wah* [1995] 3 HKC 247

“to be registered by memorial in the Land Registry against *the building* to which the notice relates”. These provisions follow the wording of the existing ones in the BO. Precedents include sections 26(2A), 26A(4A), 27C(6) and 28(6A) of the BO.

According to section 2(1) of the BO, ‘ “building” includes *the whole, or any part, of* any domestic or public building...’. Reference to “building” in the BO should be read in the context in order to have the exact meaning construed. Regarding a notice served under the proposed section 30B(3) or 30C(3) in relation to the common parts of a building, since the notice relates to all the undivided shares in the building held by the co-owners of the building who own the common parts by virtue of the undivided shares, the BA may register the notice against the “whole building”. Regarding a notice served under the proposed section 30B(4), (5) or (6) or 30C(4) in relation to a part of a building, “the building” should be read as “*the part of* building”, and the BA may cause the notice to be registered in the Land Registry against that part of the building.

Exemption of Domestic Buildings not exceeding Three Storeys in Height

It is proposed that the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) will not cover domestic buildings not exceeding three storeys in height. However, non-domestic buildings such as commercial and industrial buildings, though not exceeding three storeys in height, will be included in the two Schemes.

There are currently around 2 000 domestic private buildings aged 30 years or above and not exceeding three storeys in height in Hong Kong. When mapping out the proposal, reference has been made to the experience of the mandatory building inspection scheme in New York City, where all buildings not exceeding six storeys in height are exempted. According to the professional assessment of the Buildings Department (BD), domestic buildings not exceeding three storeys in height pose a smaller risk to public safety. This is because there are generally fewer occupants in such buildings, the structural designs are usually simpler, there is generally more redundancy in terms of material strength and serviceability requirements and their smaller height will reduce risk to public safety associated with fallen objects from the external walls. Exclusion of these buildings from the MBIS and MWIS will not compromise

public safety. The BD will continue to take necessary actions under the BO to ensure safety of these buildings. In particular, the BD will continue the established programme of regular inspections of pre-war buildings.

Principal Ordinance and Subsidiary Legislation

The BO and regulations thereunder are written in a way that the principal ordinance provides the broad legal framework while the subsidiary legislation prescribes the details. Such structure has been followed in the recent amendments of the BO. For example, the Buildings (Amendment) Ordinance 2008 provides the broad legal framework for the new minor works control system while the Building (Minor Works) Regulation prescribes the detailed procedural and technical requirements of the system, its modus operandi and the specification of minor works. The same structure is proposed to be adopted in the current Bill and associated subsidiary legislation.

The Bill will cover the major aspects of the MBIS and MWIS, including registration of inspectors; the BA's power to serve notices on owners requiring prescribed inspections and prescribed repairs; scope of prescribed inspection and prescribed repair (stipulating that common parts, external walls, projections and windows of buildings are to be covered); broad standard of prescribed inspection and prescribed repair being to render the building safe; duties of registered inspectors, qualified persons and registered contractors; and offences, etc.

Matters such as detailed qualifications and experience required for registration as inspectors; detailed scope of items to be inspected in common parts, external walls, projections and windows to be covered by prescribed inspection and prescribed repair; procedures of prescribed inspection and prescribed repair; and submissions of documents, etc. are primarily procedural and technical. We consider it more suitable to prescribe them in the subsidiary legislation. Following the existing practice, the BD will also issue practice notes from time to time to promulgate to the industry the fine details of the procedures, technical standards and latest practices in relation to the requirements of the BO and regulations thereunder. Such practice has been effective and well received by the industry.

SUPPORT MEASURES FOR OWNERS

Assistance for Owners in Organising Inspection and Repair Works

We recognise the importance and need to provide adequate support to building owners in need in order to ensure that the two Schemes can be implemented smoothly. The Government, together with the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA), will provide technical and financial assistance to owners in need.

On technical assistance, the HKHS will continue to assist owners to form OCs. The HKHS, URA and BD will provide information, professional advice and assistance to OCs and owners in carrying out inspection and repair works. With its local network, including the ten Property Management Advisory Centres, the HKHS will assist owners in coordinating and organising works, and provide professional advice and technical consultancy services.

Through the implementation of the Operation Building Bright (the Operation), the BD, HKHS and URA have further consolidated their partnership in promoting building safety. With the BD focusing on its statutory role to take enforcement actions and the HKHS and URA on the provision of practical advice and technical support, the three organisations have created much synergy in taking forward their shared goal of improving building safety in Hong Kong. We will continue to nurture such modus operandi so developed as we continue to implement the Operation, and utilise the same in pursuing the MBIS and MWIS. Whilst the Government and our partner organisations will continue to offer suitable assistance to owners, the smooth implementation of the Schemes will depend on the active participation of building owners themselves, who have the ultimate responsibility to properly maintain the conditions of their own properties. With the partnering model developed through the Operation, we will utilise our experience gained to provide advice and assistance to owners in complying with the two Schemes.

On financial assistance, we have secured the support of the HKHS, and recently the URA, to subsidise eligible owners in need the cost of first building inspection under the MBIS. The BD, HKHS and URA will also continue to

provide financial assistance under their various existing schemes for the required repair works, including the Comprehensive Building Safety Improvement Loan Scheme administered by BD, the Building Maintenance Grant Scheme for Elderly Owners and Building Management and Maintenance Scheme administered by HKHS, as well as Building Rehabilitation Materials Incentive Schemes and Building Rehabilitation Loan Schemes of the URA. We believe that the support to be provided by the Government, HKHS and URA, in particular the subsidy for first mandatory building inspection for eligible owners, would be of practical assistance to owners and would help solicit their acceptance of the Scheme. We are also considering measures to improve the user-friendliness of the various schemes and coordination among the organisations.

Voluntary Building Classification Scheme

While the MBIS and MWIS only apply to buildings aged 30 years or above and ten years or above respectively, owners of buildings of any age are encouraged to voluntarily carry out inspections and repair works. To encourage good management and proper maintenance of buildings, the Government has obtained the commitment from the HKHS to undertake the implementation of a Voluntary Building Classification Scheme (VBCS). All private domestic and composite buildings of any age may join the VBCS.

The VBCS will cover a wide range of building management and maintenance aspects. It will cover the building safety items under the MBIS, and the standards and requirements of the VBCS in this aspect will be on par with, or higher than, those under the MBIS. Apart from building safety items, the VBCS will also include building management, building services (such as fire service installation systems, lifts and escalators, electrical installation systems, gas supply systems, etc.), environmental protection and other value-adding elements (e.g. energy efficiency improvement installations) in buildings.

Assessment will be made based on site inspections, interviews with related personnel and desktop studies of documentary records. A building meeting the building safety standards and requirements will be awarded a certificate under the VBCS. Additional certificates and labels will be awarded to the building with achievements in other areas. The certificates and labels

will be valid for five years and may be renewed upon further assessment and certification. Buildings with valid certificates on building safety standards may be exempted from mandatory building inspection requirements and mandatory window inspection (in respect of windows in common parts) requirements.

The HKHS and BD have been working closely together to prepare for the implementation of the VBCS. The HKHS has set up a task force with the BD and relevant professional bodies, including the Professional Green Building Council, Hong Kong Institute of Architects, Hong Kong Institution of Engineers, Hong Kong Institute of Surveyors, Hong Kong Institute of Housing and Hong Kong Association of Property Management Companies, to establish the modus operandi of the VBCS. The HKHS conducted two rounds of trial assessment in 2007 and 2008. With the results of the trials and the latest details of the MBIS, the HKHS will refine the assessment mechanism and criteria and conduct a final trial before formal launch. It is planned that the VBCS will be launched about half a year prior to the implementation of the MBIS, so that buildings with certificates under the VBCS would be exempted from the statutory requirements.

ENFORCEMENT

Inspection of Interior of Buildings

The MBIS is proposed to cover the common parts, external walls and projections of buildings. The scope of the Scheme is formulated based on safety assessment that the aforementioned components of a building pose a higher risk to public safety as they directly face the pedestrians or are areas frequented by building users. In practice, if internal alteration works conducted within an individual unit affect the structural elements of a building, signs of distress and other indications should be detectable by inspection of the common parts and external walls of the building conducted by registered personnel. A registered inspector appointed to carry out a prescribed inspection is required to report to the BA if he observes such any such signs during the inspection of the common parts or external walls of the building. The existing BO empowers the BA to take follow-up actions, including entrance of private premises for inspection and issue of repair and rectification orders. Upon the implementation of the MBIS, the BD will investigate into any suspected illegal

internal alteration works that affect the structural integrity of a building.

Requiring mandatory inspection of the interior of every individual unit in the MBIS may create serious disturbance and practical difficulties to individual owners. As individual units are private premises, not every owner may be willing to grant access to a registered inspector appointed to carry out a prescribed inspection. This will slow down the compliance of the statutory requirements for the whole building. We are of the view that the inspection of individual units should be left with the statutory authority upon referral and that the arrangements in our proposal are adequate.

Unauthorised Building Works

We have considered whether the MBIS should require the removal of all unauthorised building works (UBWs) identified during the inspection of a building. During the two rounds of public consultation, there were comments both supporting and objecting such proposal. Taking into account the comments received and considering the impact of the Scheme on building owners, we consider that UBWs should be handled in accordance with the BD's existing enforcement policy.

Under the proposed section 30D(5)(b), a registered inspector appointed to carry out a prescribed inspection in respect of the common parts and external walls of a building is required to identify UBWs in the common parts and the external walls of the building, assess the safety conditions of these UBWs, and report to the BA the same in the inspection reports. For emergency situations, the registered inspector is required to report immediately to the BA. Upon receipt of the reports, in accordance with its enforcement policy, the BA will order removal of UBWs posing imminent danger or obstructing inspection or necessary repair works. For UBWs posing no obvious or imminent danger, the BA may consider issuing warning notices and registering the same in the Land Registry.

Removing all UBWs in the context of the MBIS may create serious practical difficulties to owners. This may cause arguments and conflicts amongst the owners and the management body of a building, and eviction of occupiers and closure of business operations in UBWs such as illegal rooftop

structures or illegal extensions from private premises may be required. These will pose serious hurdles to owners in fulfilling the statutory requirements to complete the inspection and repair works within specified timeframe.

However, as it would be more convenient and less costly for individual owners to remove UBWs in one go together with other rectification works to be carried out in the common parts/external walls of the buildings, we will encourage the owners to do so on a voluntary basis and provide appropriate technical and financial assistance. We will also invite owners to join the “Household Minor Works Validation Scheme”² under the minor works control system. Under the Scheme, owners may retain three types of commonly found small-scale household UBWs (i.e. supporting frames for air conditioners, drying racks and small canopies over windows) for continued use after safety inspection and necessary remedial works are conducted. Validated UBWs will be subject to periodic inspections under the MBIS in the future cycles.

The Administration briefed the Panel on Development on 23 February on the progress of the Government’s enforcement action against UBWs and the future policy directions and measures for tackling the problem. The Government will continue to adopt a multi-pronged approach to tackle the building safety problem. The minor works control system to be implemented within this year will curb the proliferation of new UBWs in future, impose better control on signboards as well as rationalise certain existing minor household UBWs. The MBIS to be introduced by the Bill will enable the BD to have a better grasp of the UBWs conditions of old buildings in Hong Kong and facilitate the Department in prioritising its enforcement actions. The Government will continue to cultivate positive attitudes towards building safety among owners through public education programmes, and, together with our partner organisations such as the HKHS and URA, provide financial and technical support to help owners in need maintain their buildings, including the

² Currently, there exist small-scale building works carried out in buildings without obtaining prior approval and consent from the BA and are hence unauthorised. Some of these items are of practical use for the households concerned. A Household Minor Works Validation Scheme will be established to rationalise three types of minor works carried out under such circumstances, viz. supporting frames for air conditioners, drying racks and small canopies over windows. Under the Scheme, we will allow owners to retain these features for continued use after inspection and/or strengthening, if necessary. Enforcement action will not be taken by BD against the validated minor household structures unless there is a change in their safety conditions. Nevertheless, the legal status of such structures will remain unauthorised and will not change by joining the validation scheme.

removal of UBWs. The BD will also continue to take immediate enforcement action against UBWs constituting obvious and imminent danger to life and properties, newly erected UBWs and UBWs under construction.

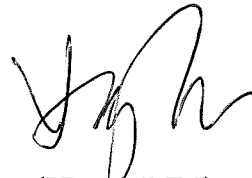
Manpower of Buildings Department

There are currently 262 permanent professional and technical staff members in the BD to handle building safety problems, including enforcement actions against dangerous and defective buildings, advertisement signboards, defective drains, UBWs etc. Such staff will continue to perform the above duties after the commencement of the MBIS and MWIS. The foci of the BD's current enforcement programmes and the MBIS/MWIS are not entirely the same. While the Department currently takes enforcement action when irregularities are detected, the two Schemes will require the preventive maintenance of buildings. The Department's inspection and enforcement actions will have to be continued. For instance, the BD will continue to handle buildings not covered by the two Schemes (such as buildings not selected as target buildings under the two Schemes for a particular year, buildings aged below 30 years old (MBIS) or ten years old (MWIS), and domestic buildings not exceeding three storeys in height), as well as take enforcement actions against UBWs identified under the MBIS, reported by the public or detected by BD's inspection.

The BD will require additional resources to undertake enforcement actions under the new statutory requirements. Duties will include selection of target buildings, issuance of notices to concerned owners, monitoring of compliance status, conducting audit checks on reports and documents submitted by inspectors and contractors, arranging inspection and repair works in owners' default (where necessary), maintaining the inspectors' register, instigating prosecution and disciplinary actions in non-compliant cases, conducting public education programmes, etc. The scale of work will also greatly increase. Comparing with the Coordinated Maintenance of Building Scheme with 150 buildings and large scale operations with 1,000 buildings that the BD has been undertaking every year, it is planned that the MBIS and MWIS would cover 2,000 and 5,800 buildings every year respectively.

We are comprehensively reviewing the Administration's strategy to tackle the issue of building safety in Hong Kong. The BD will re-prioritise its

resource deployment, putting the Department's focus on the implementation of the new statutory regimes, public education programme as well as the preventive inspection and repair initiatives. The Administration will ensure that the BD will have sufficient resources to handle the additional workload. We will arrange for the required resources for the operation of the BD in accordance with the established Government procedures.



(Harry LIN)

for Secretary for Development

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DD/BD
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SGC/CD/DoJ