

香港特別行政區政府

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25 March 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
Administration's Response to Follow-up Issues**

In response to the discussions at the meetings of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 11 February and 16 March 2011, we are pleased to provide below information in relation to the matters about which Members enquired.

Warrants for Entry into Interiors of Individual Premises

At the meeting of the Bills Committee on 11 February 2011, Members discussed the Administration's proposal (the proposal) to enable the Buildings Department (BD) to apply to the Court for warrants to enter into private premises under certain circumstances. The reaction towards the proposal was mixed. Some Members were of the view that the amendment might have wide implications on the modus operandi of the BD as well as the property rights of the individual owners, and cautioned that careful deliberations would be required in taking forward the proposal. Some also pointed out that the Bill

concerned the maintenance and repair of common areas and exterior parts of buildings, and proposals related to individual premises and interiors of buildings should be considered separately.

As Members will agree, enforcement is a key part of any strategy to enhance building safety. The purpose of the proposal is to enable the BD to respond to complaints and take enforcement actions against building safety problems. Based on operational experience, it is very difficult and protracted for BD staff to be given access to premises under complaint, let alone the resources incurred. On the other hand, present day public expectations are making it almost inconceivable for BD to invoke current power in the Buildings Ordinance (Cap. 123) (BO) to break into private premises accompanied by the Police. Our proposed amendment of applying to the Court for warrant will enhance the Department's efficiency to inspect suspicious cases, in particular unauthorized building works relating to sub-divided units in old buildings. As explained at the Bills Committee meeting, this proposal has been formulated with reference to the experience of other departments with similar power of entry (e.g. investigation of water seepage cases by the Food and Environmental Hygiene Department). Such arrangements have been operating smoothly with no particular adverse comment from the community. In addition, the Court would act as the gatekeeper to ascertain that the warrants would only be granted in accordance with statutory requirements in force and are genuinely necessary for enhancing building safety. We trust that the proposal has attained a fine balance between public concerns over building safety and those over private property rights.

That said, we take on board some Members' concern that the scope and coverage of the Bill relates mainly to the exterior and common parts of buildings and this subsequently add-on proposal concerning the interior of individual units, if adopted, might cause unnecessary confusion. Furthermore, we are mindful that more time might be needed for Members to discuss the proposal more thoroughly while we would not like to see such further discussion delaying the passage of the Bill and hence the implementation of the mandatory building inspection scheme (MBIS) and mandatory window inspection scheme (MWIS). We therefore propose for Members' consideration the option of taking the "warrant" proposal out from the proposed committee stage amendments in the current exercise. We will separately discuss with the Development Panel our

proposal together with the other legislation exercise in the pipeline to include works related to the sub-division of flats in the minor works control regime (by way of amending the Schedules of the Building (Minor Works) Regulation (Cap. 123 sub. leg. N)). In other words, at the same time when the Amendment Regulation is ready for Members' scrutiny, we will introduce a separate amendment bill to pursue this "warrant" proposal. We aim to kick start this separate legislative exercise early in the 2011/12 legislative session.

We would like to seek the considered views and advice of the Bills Committee on the above alternative approach.

Qualifications and Experience Requirements for Registered Inspectors

We propose that the following professionals registered by the statutory registration boards under the respective professional registration ordinances will be eligible to apply for registration as registered inspectors (RIs):-

- (i) registered architects with one year's practical experience in building construction, repair and maintenance;
- (ii) registered professional engineers (RPEs) in the building discipline or structural discipline with one year's practical experience in building construction, repair and maintenance;
- (iii) RPEs in the civil discipline, building services (building) discipline and materials (building) discipline with three years' practical experience in building construction, repair and maintenance;
- (iv) registered professional surveyors (RPSs) in the building surveying division with one year's practical experience in building construction, repair and maintenance; and
- (v) RPSs in the quantity surveying division with three years' practical experience in building construction, repair and maintenance.

For authorized persons (APs) and registered structural engineers (RSEs) registered under the BO, it is proposed that an AP or a RSE will be qualified for registration as a RI if he has experience in a building repair and maintenance project as considered appropriate by the Building Authority. He is required to have performed a professional role in that project, i.e. as an AP, RSE, RA, RPE or RPS.

The above proposed qualification and experience requirements are worked out in consultation with the professional institutes and the Building Sub-Committee of the Land and Development Advisory Committee. The BD is now finalizing the details of the above proposal and would continue to engage stakeholders in the process.

Best Practice on Tendering Procedures

The draft practice note on the best practice on tendering procedures for engagement of RIs/qualified persons (QPs) and registered contractors (RCs) for prescribed inspections/repairs has been provided in our previous letter to the Bills Committee dated 10 February 2011 (ref. CB(1)1423/10-11(02)). The practice note advises that tendering of RIs/QPs and RCs should be conducted by open tendering. In particular, any RI/QP and RC who submits a tender should at the same time submit a declaration on integrity and anti-tender-rigging to confirm that before any tendering result is announced by the owner(s), the RI/QP/RC, the directors and employees of his company, agents and sub-consultants have not and will not:-

- disclose the tender price to any persons other than the owner(s);
- adjust the tender price by arrangement with any other persons;
- make any agreement on tendering with any other persons; and
- commit any fraud in any way or with any other persons in respect of the tender.

Such requirements are modeled on the guidelines on maintenance works issued by the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA) (in consultation with the Independent Commission Against Corruption) for the Operation Building Bright (OBB).

Upon implementation of the MBIS and MWIS, the Government will enhance publicity and public education for building owners, owners' corporations and management companies, in particular those of target buildings under the MBIS/MWIS, on the above best practice guidelines. They will be advised to incorporate ethic commitment clauses in the tender documents, and ensure that the commitment/declarations submitted by the RIs, QPs and RCs form part of the contracts/agreements of their appointments.

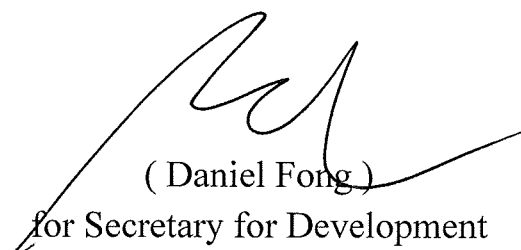
Consultants and Contractors Engaged in OBB

At the Bills Committee meeting on 16 March 2011, Members requested further information regarding the engagement of consultants and contractors for repair works under OBB. We are checking with the HKHS and URA the detailed information and will provide such to the Bills Committee as soon as practicable.

Further Consultation with Professional Institutes

Upon request of the Bills Committee, the BD is liaising further with the Hong Kong Institute of Architects, Hong Kong Institution of Engineers and Hong Kong Institute of Surveyors, on issues concerning the adequacy of building professionals to support the MBIS/MWIS, including the estimation of building professionals interested to register as RIs, the need for organizing top-up training courses for registration of RIs, and whether disciplinary actions would be instigated upon receipt of complaints against RIs/QPs for malpractice in tendering. The consultation is ongoing and the BD will report the latest progress to the Bills Committee at its meeting.

Yours sincerely,



(Daniel Fong)
for Secretary for Development

c.c.

Director of Buildings
Department of Justice