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Ms Annette LAM
Clerk to Bills Committee on Buildings (Amendment) Bill 2010
Legislative Council Building
8 Jackson Road, Central

Dear Ms LAM,

**Bills Committee on Buildings (Amendment) Bill 2010
Administration's Response to Follow-up Issues**

At the meeting of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 20 April 2011, the Administration was requested to explain whether the proposed committee stage amendments (CSAs) to the Bill regarding the surcharge for defaulted works; penalty for refusing to share cost of works; warrants for entry into interiors of individual premises; and the control of signboards (the "proposed initiatives") are within the scope of the Bill to make provision for regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe. We are pleased to provide below the basis upon which we consider that the CSAs are within the scope of the Bill.

Background

At the meeting of the Bills Committee on 11 February 2011, the Administration informed Members of our proposal of introducing a set of proposed CSAs to amend the Bill (and thus the Buildings Ordinance (Cap. 123) (BO)) through the paper entitled "Proposed Major Committee Stage Amendments" (ref. CB(1)1423/10-11(01)), and discussed these proposed CSAs with Members. These CSAs include the proposed initiatives which form a crucial part of the Government's new package of multi-pronged measures to

enhance building safety in Hong Kong. Prior to the introduction of the CSAs to the Bills Committee, the Subcommittee on Building Safety and Related Issues under the Panel on Development was consulted on 13 January 2011 on the proposal to include the proposed initiatives in the Bill with a view to promptly implementing the relevant building safety initiatives. Members present were in support of the Administration submitting the details of the proposal to this Bills Committee for scrutiny.

Members then discussed our proposals in detail at the five meetings of the Bills Committee on 11 February, 1 March, 16 March, 28 March and 20 April 2011. Clause-by-clause scrutiny of the CSAs (besides those in relation to warrants for entry into interiors of individual premises) was also completed at the meeting of 28 March 2011. Regarding the warrant proposal, at the request of Members, we have provided supplementary information and alternatives for Members' reference and consideration through our replies to the Bills Committee dated 25 February, 14 March, 25 March and 19 April 2011 respectively (ref. CB(1)1423/10-11(04), CB(1)1584/10-11(02), CB(1)1706/10-11(04) and CB(1)1896/10-11(02)).

Scope of the Bill

We are of the view that all our proposals introduced in the CSAs are within the scope of the Bill. There are a few references for defining the scope of the Bill. To recap, the Long Title of the Bill provides that the Bill is to –

“Amend the Buildings Ordinance to provide for matters relating to the regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe; and to make related, consequential and other minor amendments.”

The first paragraph of the Explanatory Memorandum of the Bill stipulates that –

“The object of this Bill is to amend the Buildings Ordinance (Cap. 123)(“the Ordinance”) and its subsidiary legislation to—

(a) provide for matters relating to the regular inspections of buildings and the windows in buildings, and the associated repairs, to prevent the buildings and windows from becoming unsafe;

- (b) provide for matters relating to the appointment, control and duties of persons who are to deal with those inspections and repairs;*
- (c) introduce two categories of persons, that is, registered inspectors and qualified persons, who are to deal with those inspections and repairs;*
- (d) repeal certain existing provisions in the Ordinance that provide the decision of the Court of First Instance on appeal is final; and*
- (e) make some related, consequential and other minor amendments.”*

According to the Legislative Council (LegCo) Brief issued on 21 January 2010 (ref. DEVB(PL-CR) 2-15/08), the purpose of introducing the Bill is to tackle the long-standing problem of building neglect as “[t]he BO does not empower the BA to require the owner to carry out periodic inspections and conduct necessary preventive repair works for the regular maintenance of the building... To properly maintain Hong Kong’s aging building stock and protect public safety in a sustainable manner, it is necessary to ensure that building owners will take up the responsibility for inspecting their own properties on a regular basis.” [Paragraphs 3 and 4 of the LegCo Brief refer.]

It is clear that the aim of the Bill is to introduce initiatives to enhance building safety through regular inspections and associated repair works of buildings and windows to prevent the buildings and windows from becoming unsafe. The proposed CSAs carry the same objective to enhance building safety in Hong Kong through programmes and initiatives complementing the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) on regular inspections and repairs of buildings.

Development of Proposals

The building collapse incident in Ma Tau Wai Road raised grave concerns over safety of old buildings and the need for further measures to enhance building safety in Hong Kong. The incident happened after the preparation of the Bill but coincides in the timing of the introduction of the Bill into LegCo. It highlights the importance of regular inspections of buildings and their associated repairs and is very relevant to the principal objective of the Bill as stated in the first paragraph of the Explanatory Memorandum, namely to amend the BO and its subsidiary legislation to “(a) provide for matters relating to the regular inspections of buildings and the windows in buildings, and the

associated repairs, to prevent the buildings and windows from becoming unsafe". Under this background, Members have during the scrutiny of the Bill expressed their view that although the MBIS/MWIS would help improve the safety condition of common parts of old buildings (aged 30 years or above), the Administration should put other follow-up measures in place to complement the schemes, in particular to cover problems that have been widely discussed in the community after the Ma Tau Wai building collapse incident, such as building works associated with sub-divided units and unauthorized building works (UBWs) affecting building safety. Adequate regular inspections and repairs to these buildings, either initiated by owners (through their appointed building professionals) or by the Buildings Department (BD), should be conducted so that the MBIS/MWIS could comprehensively improve the safety conditions of buildings in Hong Kong.

MBIS and MWIS are certainly not the only measures to be adopted for the purpose of enhancing building safety in Hong Kong. The Long Title of the Bill clearly covers all regular inspection and repair measures to enhance building safety in Hong Kong and they are not only restricted to MBIS and MWIS.

As far as building inspections and repairs are concerned, the initiative and cooperation of building owners and the enforcement by the Building Authority (BA) also play an important and integral part to enhance building safety in Hong Kong. Although regular inspections will be carried out by building professionals (e.g. registered inspectors (RIs) or qualified persons (QPs)) appointed by owners of buildings (whether under the MBIS/MWIS or through voluntary building inspections) upon the implementation of the MBIS/MWIS, the BD will continue to exercise its statutory functions under the BO to regularly identify building safety problems and to issue statutory orders/notices to require building owners to take up their responsibility to inspect/repair/maintain their buildings as and when necessary. Currently, repair works are mostly carried out by registered contractors (RCs) appointed by building owners, but the BD will also engage its contractors to carry out repair works on behalf of the owners in cases of default of statutory orders/notices. We should therefore not narrowly construe and confine the meaning of "regular inspections and repairs" to only inspections and repairs in the realms of the MBIS/MWIS. The Long Title also does not contain any such restriction.

Members are concerned that the problem of building safety (especially structural safety) could exist in all parts of the buildings irrespective of the ownership, and have asked the Administration for a complete programme to deal with the UBWs and building safety problems in the interior of buildings. As such, the BD will have to sustain its duties to maintain building safety through regular inspections and repairs of buildings upon the implementation of the MBIS/MWIS. The inspections and repairs made by the BD are unarguably intertwined with the MBIS/MWIS, especially in the cases of non-compliance of notices. As private practitioners who are responsible for the inspection/repair works of the common parts of a building under the MBIS/MWIS (i.e. RIs, QPs and RCs) have no power to enter private premises for inspections/repair works, we need to facilitate the conduct of this task by the BD. Another action to be covered is that the MBIS/MWIS will not require owners to demolish UBWs in the schemes per se. Nevertheless, RIs engaged by owners are required to report all UBWs in the common parts and the exterior of the building identified to the BD, and are advised to report suspected cases of sub-divided units. It is necessary for the BA to have suitable and adequate power to take timely and appropriate enforcement action to ensure public safety, and a system to allow the BD to apply to the Court for entry into premises is one of the requirements enabling the BD to do this.

Members present at the Bills Committee meeting held on 28 March 2011 also raised concerns that the MBIS/MWIS would be incomplete without a practical solution to tackle prominent problems such as building works associated with sub-divided units which very often could lead to building safety concerns.

The detailed justifications for each initiative are set out in the ensuing paragraphs.

(i) Surcharge on Default Works

The Bills Committee supported the proposal stipulated in the Bill to impose a surcharge of not exceeding 20% on the cost incurred by the BA to be recovered from an owner who has failed to comply with an MBIS/MWIS notice. We propose in the CSAs that this arrangement should cover all statutory notices/orders (including all non-MBIS/MWIS orders) issued under the BO so as to create a stronger deterrent effect against non-compliance.

Our proposal is closely related to the MBIS/MWIS. It is estimated that there would be many cases where the BA, after serving a statutory order (other than a notice under the MBIS/MWIS) on an owner of a building requiring repairs of the building, will also serve an MBIS/MWIS notice on the same owner at a later stage. Vice versa, based on the findings in the inspection reports submitted by RIs under the MBIS (e.g. cracks in common parts extending to individual units, defective drain pipes suspected in individual flats, UBWs found in the exterior of the buildings, etc.), the BD will take follow-up actions and may issue statutory orders under the BO to the individual owners requiring rectifications. Building owners and owners' corporations (OCs) will practically carry out works related to the MBIS notice and other orders at the same time. Where an owner fails to comply with both the statutory order and MBIS/MWIS notice, the BA may carry out the works required by the order and notice on behalf of the owner at the same time. It will be inconsistent that surcharge will only be imposed for the defaulted inspection and repair works for non-compliance with the MBIS/MWIS notices but not for the defaulted works for non-compliance with the statutory orders issued to the same owner. In practice, it may not be possible to differentiate the cost of the works required by the order and that required by the notice, and consequently it would not be possible to apply the surcharge on the latter alone. The new proposal will address this problem.

Furthermore, the imposition of a surcharge on all default works will create a much bigger deterrent effect on irresponsible owners. In the long run, such initiative should also benefit the implementation of the MBIS/MWIS, as buildings will generally be kept in a better condition and the inspections/repair works needed (when they are required to join the MBIS/MWIS) will be minimized.

(ii) Penalty for Refusing to Share Cost of Works

The Bills Committee supported the proposal in the Bill to introduce an offence if an owner/occupier, without reasonable excuse, refuses to pay the relevant share of the inspection and repair costs for the common parts for works being undertaken by his/her building's OC in compliance with an MBIS/MWIS notice issued by the BA. We propose in the CSAs that this offence should be applicable to all works required by statutory notices/orders in respect of common parts of the building that are undertaken by OCs under the BO.

Similar to the proposed new arrangement on imposition of surcharge, the proposal will enhance overall building safety by facilitating compliance by OCs with statutory orders for common parts. It will also cover the practical situation as mentioned in (i) above. An OC may have been served with a repair order earlier and then an MBIS/MWIS notice, and it will naturally carry out the works required by the order and notice concurrently, such that it may not be possible to differentiate the cost of the works required by the order and that required by the notice. Should there be an uncooperative owner refusing to pay the share of repair cost, the same level of penalty should be applied.

Moreover, the fact that the OCs are being facilitated to comply with the statutory orders in respect of the common parts of the building is crucial to their full compliance with the MBIS/MWIS notices. According to the Bill, an RI must notify the BA of any UBWs in the common parts and the exterior identified during a prescribed inspection under MBIS. Based on the inspection report submitted by the RI, the BA may issue statutory orders requiring rectification of such contravention of the BO. Often these irregularities would physically obstruct the access to the common parts, e.g. an unauthorized structure on flat roof covers up a defective roof slab below and obstructs the carrying out of repair works to the slab. The OCs may need to rectify the irregularities (e.g. removal of UBWs) in the common parts in conjunction with the prescribed repair works under the MBIS/MWIS, otherwise the OCs' responsibility under the MBIS/MWIS could not be fulfilled.

The proposed new offence will, again, create a much bigger deterrent effect on irresponsible owners. In the long run, this policy should also benefit the implementation of the MBIS/MWIS as buildings will generally be kept in a better condition and the inspections/repair works needed (when they are required to join the MBIS/MWIS) will be minimized. The safety of the public and occupants will also be better protected.

(iii) Control of Signboards

Unauthorized signboards are another persistent building safety problem in the territory. The MBIS deals with part of it by requiring the inspection of authorized signboards (under the proposed section 30B(6)) and identification of unauthorized ones (under the proposed section 30D(5)(b)) for BD's further action. To ensure safety of existing unauthorized signboards, we propose to

introduce a system to effectively tackle the existing unauthorized signboards in a practical manner. The proposed system is similar to the one for certain types of minor building works under the Household Minor Works Validation Scheme. It will allow the continued use of certain unauthorized signboards (e.g. within stipulated dimensional requirements, not blocking operation of emergency vehicles, etc.) after safety checks by registered personnel. The safety validation for a signboard has to be renewed once every five years. Owners will be encouraged to join the scheme for the unauthorized signboards identified during prescribed inspections. Unauthorized signboards not joining the scheme will be subject to BD's enforcement actions.

It is clear that the proposed system is in nature a sequel to the MBIS to enhance building safety through regular inspections and associated repair works. The proposed system will oblige the owners of such unauthorized signboards to bear their responsibility to inspect and repair the signboards at regular intervals, which dovetails with the spirit of the MBIS. The system builds on the MBIS' concept of preventive inspections and repairs, and indeed complements the MBIS. It is in fact an improvement of the original scheme concerning signboards enshrined in the Bill. It provides an alternative and more practical means to handle unauthorized signboards in buildings. Without such a scheme, many of the unauthorized signboards identified during prescribed inspection under the MBIS may have to be demolished in accordance with the BO, which would pose a very negative impact on the existing business operations.

(iv) Warrants for Entry into Interiors of Individual Premises

In our previous paper for the Bills Committee entitled "Proposed Major Committee Stage Amendments" (ref. CB(1)1423/10-11(01)) and the letters to the Bills Committee dated 25 March and 19 April 2011 (ref. CB(1)1706/10-11(04) and CB(1)1896/10-11(02)), we have explained that the purpose of the proposal is to enable the BD to respond to complaints and take enforcement actions more efficiently and effectively against building safety problems to protect public safety. The proposal aims to address the current problem faced by the BD that in practice it could hardly exercise the existing power under section 22 of the BO to enter into any individual premises and where necessary, in the presence of a police officer, break into such premises to ascertain their safety given the public's general concern over the disturbance this may cause and private property rights. Upon request of Members, we propose

further safeguards as outlined in our letter dated 19 April 2011 to clearly define the circumstances where the BD staff could apply to the Court for a warrant. The Court would act as the gatekeeper to ascertain upon the BA's submission of relevant information that the warrants would only be granted in accordance with statutory requirements in force and are genuinely necessary for enhancing building safety.

We have to emphasize that the proposal to amend the existing section 22 is **NOT** an expansion of power of the BA. The current section 22 empowers the BA to enter into private premises, and where necessary, in the presence of a Police officer, break into the same for the purposes specified therein without defined restrictions or circumstances. The proposed CSA rationalizes the BA's power. Only under emergency situations can the BA break into premises in the presence of Police officers. Otherwise, the BA would have to apply to the Court for a warrant for entry into premises for inspection or carrying out necessary works. The BA will have to clearly demonstrate to the Court the reasons, its previous attempts to contact the owners and its purpose of inspection before making an application. Such practice is present in the legislation for other law enforcement authorities. Among other similar existing legal provisions empowering the relevant authorities to enter into private premises for inspection or law enforcement purposes, our latest revised proposal (as outlined in our letter dated 19 April 2011) has provided adequate safeguards and requirements.

As we have previously explained, enforcement is a key part of our strategy to enhance building safety. Our proposed amendment to provide that the BA may apply to the Court for a warrant will enhance the Department's efficiency and effectiveness in following up on cases with uncooperative owners and occupiers. It is directly related to the operation of the MBIS/MWIS. The following illustrates why the BD needs such power to take follow-up actions for the MBIS/MWIS:-

- Under the proposed MBIS, the BA may issue the MBIS notices to owners of individual flats for inspection of projections connected to their flats. Similarly, the BA will issue the MWIS notices to owners of individual flats for inspection of their windows. If the owners refuse to conduct the inspections, the BA may need to enter into the flats to verify

if the notices have been complied with. Upon confirmation of non-compliance, the BA may need to carry out inspections and necessary repair works in default of the owners.

- In some cases, structural defects such as spalling/cracking of concrete elements in the common parts and at external walls could in fact be spalling/cracking extended from inside the individual premises. Based on the inspection reports submitted by an RI under the MBIS or upon notification by an RI, the BA may need to carry out inspections to verify if the relevant part of the building within individual flats has been rendered dangerous or liable to become dangerous.
- Based on the inspection reports submitted by an RI under the MBIS, the BA may need to verify any suspected UBWs at or in individual flats, e.g. subdivision of flats, replaced or altered flat entrance doors with inadequate fire resistance, to ascertain whether any building works in contravention of the provision of the BO have been or are being carried out.
- The MBIS also covers non-domestic buildings such as industrial buildings. Where there is evidence (e.g. many drain pipes connections, door openings) shown in the inspection report submitted by an RI indicating suspected change in use of individual units for domestic use, the BA may need to enter the units concerned to carry out inspection to verify if there is any change in use that has contravened the BO.
- Leakage from defective drains pipes of individual flats may cause structural defects to the common parts e.g. spalling of concrete elements. Based on the inspection report submitted by an RI under the MBIS, the BA may need to enter the flat to carry out inspections to verify the conditions of the drainage.

It should be noted that the meaning of “individual premises” is not limited to individual flats/units within a building. There may also be extreme cases that the BA has to exercise its power under Section 22 of the BO to enter into the common parts of a building for carrying out its aforementioned duties if

the OC or management company of the building concerned refuses the entry of the BD's staff.

All in all, the proposed amendment for applying for warrants is to be exercised to inspect the premises concerned only when there is reasonable suspicion that there are irregularities in the premises, or when it is necessary to carry out rectification works (e.g. repair of defective building components, demolition of UBWs, etc.) upon default by the owners concerned. The warrant for entry is indeed for the purpose of inspection and repair. Without this warrant application mechanism to facilitate necessary entry into individual premises, the follow-up actions on irregularities (that are identified a prescribed inspection under the MBIS) within private premises would become extremely difficult, if not impossible.

Conclusion

To conclude, all of the proposed initiatives fall within the objective of the Bill, i.e. to introduce initiatives to arrest the building safety problem through regular inspections and associated repairs to prevent the buildings and windows from becoming unsafe.

Yours sincerely,



(Daniel Fong)

for Secretary for Development

c.c.
Secretary for Justice
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