

**LEGISLATIVE COUNCIL
BILLS COMMITTEE ON BUILDINGS (AMENDMENT) BILL 2010**

Subsidiary Legislation and Practice Notes

PURPOSE

At the meetings of the Bills Committee on the Buildings (Amendment) Bill 2010 (the Bill) on 19 February 2010 and 19 April 2010, and as one of the issues agreed by Members for detailed discussion in the Bills Committee¹, Members requested the Administration to provide more information on –

- (a) the content of the subsidiary legislation to be made in association with the Bill;
- (b) scope of prescribed inspection and prescribed repair and the meaning of “projection” in the proposed section 30A(1); and
- (c) how the Buildings Department (BD) issues practice notes to the building professionals and contractors.

Further to the Administration’s reply of 18 March 2010 to the Bills Committee (LC paper CB(1)1417/09-10(02)), this paper provides further information on the above matters.

EXISTING PRACTICE

2. In general, building safety standards and requirements are regulated by a three-tier framework in Hong Kong. The first tier is the principal ordinance, i.e. the Buildings Ordinance (Cap. 123) (BO), which provides the broad legal framework. The second one is the 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 the 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. This three-tier framework has been effective and well received by the industry and the public. It has also been adopted in recent legislative exercises, for example, the Buildings (Amendment) Ordinance 2008, Building (Minor Works) Regulation and Building (Minor Works) (Fees) Regulation for the new minor works control system.

¹ Members agreed to include “subsidiary legislation” in the “Outline of major topics to be discussed” for the Bills Committee.

Issuance of Practice Notes

3. In formulating administrative practice notes, codes of practice and guidelines, the BD will consult the concerned industry through the established channels, namely the Building Subcommittee established under the Land and Development Advisory Committee as well as the Authorized Persons and Registered Structural Engineers Committee. These Committees are widely represented, comprising representatives from the industry (including the Association of Architectural Practices, Hong Kong Construction Association, Hong Kong Institute of Architects, Hong Kong Institution of Engineers, Hong Kong Institute of Surveyors and Real Estate Developers Association of Hong Kong) and relevant government departments (including the Architectural Services Department, Civil Engineering and Development Department, Department of Justice, Fire Services Department, Housing Department, Labour Department and Lands Department). After consultation with the industry and incorporation of the industry's views, the BD will issue the practice notes, codes of practice and guidelines through letters to individual building professionals and contractors. The Department will also upload the same onto its website for public information.

MANDATORY BUILDING AND WINDOW INSPECTION SCHEMES

4. We propose to adopt the three-tier framework in the current legislative exercise. While the Bill will cover the major aspects of the Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme, the subsidiary legislation will cover detailed procedural and technical matters. A table outlining and comparing the proposed content of the principal ordinance and subsidiary legislation, including a description of the scope of prescribed inspection and prescribed repair, and the meaning of "projection" under the proposed section 30A(1) in the Bill, is at Annex.

ADVICE SOUGHT

5. Members are invited to note and comment on the proposals outlined above.

Development Bureau
May 2010

Buildings (Amendment) Bill 2010
Mandatory Building and Window Inspection Schemes
Proposed Coverage of Principal Ordinance and Subsidiary Legislation

	Major Aspects Provided for in Buildings (Amendment) Bill 2010	Matters to be Prescribed in Subsidiary Legislation
Registration of inspectors	[Clause 6 of Bill] establishment of inspectors' register and Inspectors Registration Committee	detailed qualifications and requirements for registration as inspectors, including academic and professional qualifications, number of years of work experience, etc.
Disciplinary proceedings against building professionals and contractors	[Clauses 7–10 and 12–13 of Bill] <ul style="list-style-type: none">● appointment of disciplinary boards● disciplinary proceedings	–
Power of the Building Authority (BA)	[Clause 19 of Bill] major powers including – <ul style="list-style-type: none">● power to serve notices on owners requiring prescribed inspections and prescribed repairs● power to carry out prescribed inspections and prescribed repairs in owners' default and recover costs, supervision charges and surcharges from defaulted owners	miscellaneous powers including – <ul style="list-style-type: none">● general power to require additional information in respect of documents submitted to the BA● general power to inspect records of prescribed inspections and prescribed repairs

	<p align="center">Major Aspects Provided for in Buildings (Amendment) Bill 2010</p>	<p align="center">Matters to be Prescribed in Subsidiary Legislation</p>
<p>Scope of prescribed inspections and prescribed repairs</p>	<p>[Clause 19 of Bill] definition of scope being common parts, external walls, projections, signboards and windows of buildings</p>	<p>details of items subject to prescribed inspections and repairs, including (exact wording of provisions to be determined) building structures (e.g. columns, walls, beams, slabs, staircases and their finishes etc), external walls and elements (e.g. curtain walls, skylight, cladding, tiling, rendering, metal gates, etc), fire safety provisions (e.g. means of escape, means of access for fire fighting and rescue, fire resisting construction, etc) and drainage system, as well as projections (structures projecting on the exterior of buildings, including common projections such as balconies, window canopies, drying racks and structures supporting building service installations such as air-conditioners, etc.)</p>
<p>Standard of prescribed inspections and prescribed repairs</p>	<p>[Clause 19 of Bill] major standard being to render the buildings safe</p>	<p>detailed reference standards for prescribed inspection and prescribed repair (e.g. building provisions stipulated in approved plans and minor works plans, and the standards of design and construction at the time when the buildings were constructed, etc)</p>

	<p align="center">Major Aspects Provided for in Buildings (Amendment) Bill 2010</p>	<p align="center">Matters to be Prescribed in Subsidiary Legislation</p>
<p>Requirements of prescribed inspections and prescribed repairs</p>	<p>[Clause 19 of Bill] requirement of appointment of Registered Inspectors (RIs) and Qualified Persons (QPs) to carry out prescribed inspections and supervise prescribed repairs</p>	<p>detailed procedural requirements including –</p> <ul style="list-style-type: none"> ● notification of appointment and change of appointment of RIs and QPs ● submission of documents and records to BA upon completion of prescribed inspections and prescribed repairs ● types of documents and records to be submitted
<p>Duties of RIs, QPs and Registered Contractors in relation to prescribed inspections and prescribed repairs</p>	<p>[Clause 19 of Bill] major duties including –</p> <ul style="list-style-type: none"> ● duty to carry out prescribed inspection personally ● duty to supervise prescribed repair ● duty to report unauthorised building works revealed during prescribed inspection ● duty to ensure the building safe 	<p>detailed description of duties including –</p> <ul style="list-style-type: none"> ● duty to submit documents ● duty to notify the BA of their appointment and change of appointment ● duty to provide information in relation to prescribed inspections and prescribed repairs to BA upon request ● duty to keep records of prescribed inspections and prescribed repairs carried out