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30 May 2011

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

I refer to your letter of 28 April 2011, which forwarded the two letters from the Hon KAM Nai-wai dated 20 April 2011 (ref. CB(1)2020/10-11(01) (“the first letter”) and CB(1)2020/10-11(02) (“the second letter”)) to the Chairman of the Bills Committee on Buildings (Amendment) Bill 2010 (the Bill). I am pleased to provide below the Administration’s response.

Best Practice on Tendering Procedures

[Question 1 of the first letter and questions 1 and 5 of the second letter]

The Buildings Department (BD) will publicize the best practices on tendering procedures to the industry through the issue of a new practice note. The aim of this practice note is to provide clear guidelines for the registered inspectors (RIs) and qualified persons (QPs) to follow throughout the whole tendering process under the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS). Besides, we will also advise owners through public education

and publicity to follow such best practices. We believe that such guidelines would provide a good reference for building owners in arranging tenders and making decisions when awarding tenders. Similar to other service contracts in relation to building management, the tendering process for selecting practitioners for inspections/repair works under MBIS/MWIS is a private commercial issue in which building owners themselves should make the final decision while we and our partner organizations (the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA)), as facilitators, would provide necessary assistance and remind owners to follow the correct procedures. We consider it inappropriate to mandate the adoption of the best practices in the current legislative exercise.

As we mentioned in the Administration's letter to the Bills Committee dated 19 April 2011 (ref. CB(1)1896/10-11(02)), we are mindful that many building owners may not have prior experience in conducting large-scale building maintenance and repair works, and may not be conversant with tendering procedures particularly in analyzing the tender prices submitted. To facilitate the work of the owners in this regard, the HKHS has developed a Building Maintenance Tool Kit in consultation with the Independent Commission Against Corruption (ICAC) which contains guidelines/ standard templates/ checklists for tendering procedures for the use of building owners. Owners may also make reference to the maintenance guidelines issued by the HKHS, URA and Hong Kong Institute of Surveyors (HKIS) containing objective points to consider their evaluation of tender submissions. Taking into account experience obtained from Operation Building Bright (OBB) and the implementation details of the MBIS, the HKHS and URA will, in consultation with the professional institutes, update the toolkit and relevant guidelines as necessary. Such documents will guide owners' corporations (OCs)/owners in requiring potential bidders to submit the essential information, including the resources of their companies, the number of hours they plan to allocate to the inspection and repair works of the building, etc. to help owners evaluate the bids and manage their agents. Building owners may also seek advice from the HKHS/URA through their Property Management Advisory Centres / resource centres on the aforementioned procedures if in doubt.

Database on Prices of Repair Works
[Questions 2 and 3 of the first letter]

As elaborated in the Administration's letter to the Bills Committee dated 19 April 2011 (ref. CB(1)1896/10-11(02)), we are continuing our discussion with the HKIS on the matter, with a view to developing a price list that will provide objective reference to owners before commencement of the two mandatory schemes. The Institute is conducting a study with the objective of formulating a set of maintenance cost data, which would summarize a range of prices of various typical items of works, for publication. Information in the list might include average total repair cost per unit for different categories of buildings classified in terms of scale and age etc. of the buildings and also the average breakdown of cost of works per unit on normal repair items. The Institute's plan is to publicize the indicative price lists for repair works in the fourth quarter of 2011 for owners' reference. The HKHS and URA have help disseminate the HKIS' list through their contacts with the OCs and owners.

As we pointed out in the letter dated 19 April 2011, we are mindful that such a list should be carefully compiled so as not to create a false impression to building owners or the building industry that the prices therein represent standard prices applicable in every repair situation. The actual costs for each inspection and repair projects might vary considerably due to a number of factors, in particular the condition of the individual buildings and volatile market condition. We will continue our discussion with the professional institutions to make the best use of information available in our database for dissemination to the public so as to provide useful reference and at the same time not to mislead owners.

Information regarding Termination of Contracts
[Question 4 of the first letter]

The decision on termination of service contract with an RI, consultant or contractor rests on the individual OC concerned. It may involve a number of factors and complicated contractual considerations. Moreover, a service contract is a private agreement signed between the

OC and the RI/consultant/contractor. In the light of the above, the URA and HKHS, not being a party to the concerned private contract, are not in the position to disclose the relevant information to the public.

Supply of Building Professionals and Disciplinary Action against Mis-conduct

[Question 5 of the first letter and question 6 of the second letter]

As explained to the letter to the Bills Committee dated 16 May 2011 (ref. CB(1)2230/10-11(01)), we have recently consulted the professional institutes including the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers and the HKIS. All the three professional institutes are of the view that there should be adequate professionals for the registration of RIs. In particular, the HKIS estimates that that over 400 qualified building surveyors would be interested to register. The Administration's assessment is that about 6 500 building professionals in total will be qualified to register as RIs. If 15 to 20% of the 6 500 qualified personnels (i.e. about 950 to 1 300) are registered, there would be sufficient RIs to meet the demand and at the same time such number of available professionals can ensure market competition. The BD will also, in collaboration with the professional institutes, continue to encourage qualified building professionals to register as RIs and provide inspection and supervision of repair services to building owners.

As for the MWIS, the pool of service providers for window inspections, i.e. QPs, will include authorized persons, registered structural engineers, RIs, registered general building contractors (RGBCs) and registered minor works contractors (RMWCs) who are registered in respect of minor works items relating to windows. Currently, the pool comprises around 10 000 practitioners. With the full implementation of the minor works control system, we expect that the numbers of QPs will be further increase gradually. We consider that the supply of QPs should be adequate to meet the market demand for 5 800 private buildings selected for the MWIS per year.

We consider that through our consultation with the professional institutes, we have already provided substantive information and assessment on the registration of building professionals in the MBIS/MWIS. The HKIS is also developing a price list that will provide objective reference to owners. It is not necessary to conduct additional surveys with the practitioners regarding their interests in providing services as well as the concerning fee levels they plan to charge under the MBIS/MWIS.

Eligibility Criteria for Subsidy on Cost of First Mandatory Building Inspection
[Question 6 of the first letter]

Since the introduction of Integrated Building Maintenance Assistance Scheme on 1 April 2011, the previous restriction on the number of units (i.e. 400 or below) has been lifted. The HKHS and URA have agreed to apply similar arrangement for the subsidy for MBIS. In other words, irrespective of the number of units, owners of buildings will be able to apply for the subsidy on the cost of first mandatory building inspection, provided other eligibility criteria are fulfilled.

The HKHS has been regularly reviewing the eligibility criteria on rateable value of the units. The HKHS will conduct a new round of review based on the latest rateable values provided by Rating and Valuation Department.

Professional and Technical Assistance to Owners Receiving Subsidy
[Question 7 of the first letter]

Under the OBB, the HKHS and URA have appointed independent professional consultants to monitor the progress of repair works for target buildings by inspecting the buildings and scrutinising progress reports and supporting documents submitted by consultants and contractors, with a view to ensuring compliance with the requirements of the OBB before considering the release of grants.

The proposed subsidy to be provided by the HKHS and URA for the cost of first mandatory building inspection will only cover the

inspection of conditions of the buildings concerned. In other words, the cost of subsequent repair works (if required) is not covered. The HKHS and URA will not appoint independent professional consultants to monitor the inspections but will instead explore the development of a standard tender document for the use of OCs/ building owners applying for subsidy on the cost of first mandatory building inspection. Both organizations will continue to utilize their existing resources to provide practical technical advice on various issues, including the selection and appointment of consultants for building inspection and repairs, to owners in need. The standard documents and guidelines as mentioned in the above paragraphs would also assist owners to monitor the works of their agents.

Implementation Timeframe

[Questions 8 and 10 of the first letter]

The Administration aims to introduce the subsidiary legislation of the MBIS/MWIS to the Legislative Council for scrutiny soon after the Bill is passed. Depending on the progress of the legislative process, we aim to commence registration of RIs by the end of 2011 at the earliest. The selection panels will also be formed as soon as possible so as to commence the selection of target buildings. The implementation of the MBIS and MWIS is expected to be launched about six months after commencement of registration of RIs. This timeframe could ensure adequate supply of RIs in the market prior to full implementation. As a result, we intend to adopt a two-stage implementation for the schemes. Broadly speaking, the provisions regarding registration of RIs and QPs will be implemented first and the remaining will be implemented at the second stage. The technical documents and guidelines (such as the codes of practice and practice notes) as well as the implementation details have to be based on the to-be-enacted legislation for the MBIS/MWIS. As such, they would be finalized and issued upon passage of the Bill and the subsidiary legislation. The implementation of the Voluntary Building Assessment Scheme prior to the MBIS will also provide valuable experience to HKHS, URA and BD.

Number of Registered Building Practitioners

[Question 9 of the first letter]

As the registers of registered architects, registered professional engineers, registered professional surveyors, RGBCs, RMWCs and RMWCs (Provisional) are all independent of one another and are administered by different registration authorities, we do not have statistics regarding the number of practitioners who have duplicated capacities in the above registers.

As explained in the Administration's reply to the Bills Committee issued on 28 February 2011 (ref. CB(1)1451/10-11(01)) , there were 2 062 RMWCs (including individuals and companies) and 1 325 RMWCs (Provisional) as at 15 February 2011. The figures were updated in our response to the Special Finance Committee Questions to reflect the position as at 28 February 2011. By then, there were 2 486 RMWCs (i.e. 2 258 individuals and 228 companies) and 1 853 RMWCs (Provisional). We are pleased to inform Members that as at 30 April 2011, the figures had further increased. There were 3 650 RMWCs (i.e. 3 333 individuals and 317 companies) and 2 723 RMWCs (Provisional).

Voluntary Building Assessment Scheme

[Question 11 of the first letter]

Voluntary Building Assessment Scheme (VBAS) (「自願樓宇評審計劃」) (previously known as Voluntary Building Classification Scheme) is scheduled to be launched about half a year before the implementation of the MBIS and MWIS.

Two trial assessments had been carried out in accordance with the following assessment areas:

- External Elements and Other Physical Elements
- Structural Elements
- Fire Safety Elements
- Drainage System
- Unauthorized Building Works
- Building Maintenance Elements
- Building Management System

- Environmental Protection Elements
- Value-added Elements

The first trial assessment was conducted in 2006-07. It covered a total of 17 domestic and composite estates with 7 720 units in 47 buildings aged 6 to 52 years. Seven estates with 28 buildings were able to achieve the standards equivalent to the MBIS requirements without carrying out major repair works.

Upon modifications in the assessment criteria and award system, a second trial assessment was undertaken in 2008. It involved a total of 30 sites with 3 941 units in 30 buildings aged from 7 to 50 years. 10 buildings were able to meet the standards equivalent to the MBIS requirements without carrying out major repair works, while 9 buildings fulfilled both the VBAS and MBIS requirements.

Arising from further modifications to the assessment mechanism and refinements to the requirements of MBIS during the scrutiny of the Bill, a final trial assessment would be conducted in one of the housing estates of the HKHS shortly.

Selection of Target Buildings
[Question 12 of the first letter]

The MBIS (and MWIS) target all domestic and non-domestic private buildings aged 30 years (and 10 years) or above. Furthermore, under section 41(1)(a) of the Buildings Ordinance (BO) (Cap. 123), all Government buildings are exempted from the provisions of the BO. As a result, Government buildings are not covered by the MBIS/MWIS.

Regarding selection of target buildings under the schemes, as we elaborated in our 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)) issued on 6 May 2010, the BD will establish a selection panel comprising representatives from professional bodies, relevant non-Government organizations, property management professionals, District Council members and relevant Government departments. The selection panel will provide advice to the

BD in the selection of target buildings. Relevant factors such as building age, building condition (including the presence and extent of defects on external walls, building structures and drainage system in common areas), repair records (including participation in the VBAS and OBB; inclusion in the BD's large scale operations; inspection of buildings aged 50 years or above conducted by the BD in 2010; the BD's pre-war building inspection programme; compliance record of the BD's previous repair orders; etc.) and location (whether the buildings are abutting streets with heavy pedestrian or traffic flow) will be taken into account.

Liabilities of Owners upon Change in Ownership

[Question 13 of the first letter]

The ultimate goal of the MBIS/MWIS is to enhance safety of the target building through regular inspection and repair. Therefore, the Administration will endeavour to assist owners to comply with the MBIS/MWIS notices.

For buildings that are without any form of management and are most in need of assistance, the Government, the HKHS and URA will proactively approach and contact the building owners to encourage and help them organize the inspection and repair works. Our goal is to encourage building owners to organize themselves to coordinate maintenance and repair works for their buildings in the long run. With this objective in mind, the Government, the HKHS and URA will help owners in buildings without proper management to establish OCs.

Nevertheless, even if an OC is not formed, the owners could still comply with the MBIS/MWIS notices for the common part of the building under the guidance of the URA/HKHS. In the non-compliance scenario, according to the proposed new sections 30B(10) and 30C(8), if a MBIS/MWIS notice is not complied with, the Building Authority (BA) may carry out or cause to be carried out any inspection and repair works of the building/window that the BA considers necessary for the purpose of the notice. According to the proposed new sections 30B(11) and 30C(9), the cost of the inspection and repair works that the BA has carried out or has caused to be carried out is recoverable as a debt due to the Government from –

- (a) if the notice served has not been registered with the Land Registry (LR), the person on whom the notice is served; or
- (b) if the notice served has been registered with the LR, the person who is the owner of the relevant part of the building –
 - (i) as at the date of completion of the inspection if the BA has carried out or has caused to be carried out inspection only; or
 - (ii) as at the date of completion of the repair works if the BA has carried out or has caused to be carried out the repair works.

As the BD's established practice in handling statutory orders, when a MBIS/MWIS notice is in default, it would be referred to the LR for registration. During the registration process, if the LR advises that there is a change in ownership for a certain unit in a building without OC, the BD would inform the new owners of the existence of the notice accordingly.

Audit Check

[Question 14 of the first letter and question 3 of the second letter]

To enable owners to carry out necessary repair works in a smooth manner, it is not necessary to obtain the BD's prior acceptance of the inspection report and the repair proposal. The necessary prescribed repair works may commence upon completion of the prescribed inspection and formulation of the repair proposal in accordance with the BO and its regulations. The RI must also provide a copy of the inspection report to the owner who engaged him in carrying out the prescribed inspection.

The BD will carry out audit checks on the inspection reports and other documents submitted by the RIs to ensure compliance with the mandatory requirements. The BD will conduct detailed audit checks on such reports. In the initial stage after the launch of the MBIS and MWIS, the BD will audit about 30% of the reports received. The audit rate is subject to regular review.

The inspection reports will be available for public inspection at the Building Information Centre and through the Building Record Access and Viewing Online (BRAVO) System. The Administration will keep Members informed of the progress of the implementation of MBIS/MWIS.

Additional Works on top of Prescribed Repairs
[Question 2 of the second letter]

As explained in our reply to the Bills Committee on 8 November 2010 (ref. CB(1)367/10-11(01)), we share Members' views that prescribed repair works under the MBIS and MWIS should be clearly stated and distinguished from additional works that an OC or co-owners may wish to carry out at the same time. It has been our intention that the MBIS and MWIS would only require repair works that are essential and adequate to render the building safe. We will stipulate in the subsidiary legislation the list of building elements that prescribed inspection needs to be carried out and require that if any repair works are necessary, they must be clearly listed in the repair proposal in the inspection reports. The repair works should be carried out to render the building up to the statutory standard at the time when the building was constructed or subsequent enhanced standards as required by the law. This will provide a clear basis on which a repair proposal is formulated.

Technical details on prescribed inspection and prescribed repair will be further stipulated in the codes of practice and practice notes in consultation with the industry. The BD will also provide guidance through such codes and notes that, for any additional works (which is beyond the mandatory requirement) that the OC or co-owners may require, the RI should provide a separate list on top of the repair proposal for the reference of the OC or co-owners. As explained in the previous paragraphs, the BD will conduct audit checks on inspection reports to ensure compliance. Where malpractice and irregularities are identified, the BD may consider instigating prosecution against the RI as appropriate. In addition, the BD and the professional institute/registration board to which the RI concerned belongs may consider instigating disciplinary proceedings against the RI concerned. Besides, as additional safeguards, the Bill also proposes that an RI who has carried out inspection for a

building cannot act as a contractor to carry out repair for the same building, and the OC or co-owners may appoint different RIs to carry out inspection and supervise repair. This will effectively prevent RIs from proposing unnecessary repair works.

Requirement on Engagement of Building Professionals

[Question 4 of the second letter]

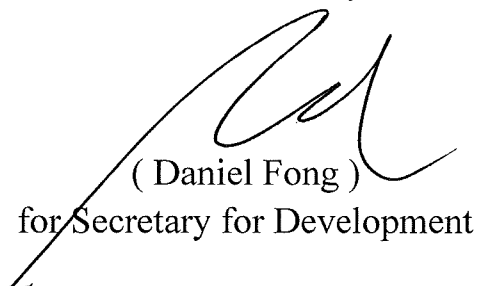
All prescribed repair works under the MBIS should be conducted in accordance with the prevailing control regimes (either the “approval and consent” mechanism or the minor works control system) under the BO. An OC or co-owners may choose to appoint different RIs to carry out inspection and supervise repair works. We anticipate that in general almost all prescribed repair works are minor works, which RIs are capable of supervising (who is a prescribed building professional as proposed under the Bill under proposed revised section 4B of the BO in respect of minor works commenced under the simplified requirements). On the other hand, in the unlikely event where an RI engaged for supervision of prescribed repair possesses views on the necessary repair which differ from those of the RI who carries out the inspection, the owner may consider seeking assistance and advice from the BD, HKHS, URA or an independent third party.

Operation Building Bright

[Questions 15 to 20 of the first letter and question 7 of the second letter]

Facts and figures relating to the building repair/maintenance projects carried out under the OBB are unlikely to be within the scope of the Bill. We will nevertheless provide the information requested by the Honourable Members in a separate reply.

Yours sincerely,



(Daniel Fong)
for Secretary for Development

c.c.

Buildings Department

Department of Justice

Hong Kong Housing Society

Urban Renewal Authority