

立法會
Legislative Council

LC Paper No. LS42/09-10

**Paper for the House Committee Meeting
on 5 February 2010**

**Legal Service Division Report on
Buildings (Amendment) Bill 2010**

I. SUMMARY

- 1. Objects of the Bill** To amend the Buildings Ordinance (Cap. 123) (BO) to implement a mandatory building inspection scheme (MBIS) and a mandatory window inspection scheme (MWIS), and to make related, consequential and other minor amendments.
- 2. Comments** The Bill proposes to -

 - (a) provide for regular inspection of old buildings, their windows and the associated repairs so as to prevent the buildings and windows from becoming unsafe;
 - (b) introduce two categories of persons, that is, registered inspectors and qualified persons, who are to deal with the inspection and repairs mentioned above, and provide for the appointment, control and duties of such persons; and
 - (c) repeal provisions in BO which stipulates that the decision of the Court of First Instance on appeal is final.
- 3. Public Consultation** A two-stage public consultation of the relevant professional bodies and stakeholders was conducted in 2003 and 2005. The public and stakeholders were generally supportive of the principles and direction of MBIS and MWIS.
- 4. Consultation with LegCo Panel** On 22 May 2007, the Administration briefed the then Panel on Planning, Lands and Works (renamed as Panel on Development since the 2007-2008 session) on the results of the consultation exercise and the two proposed schemes and further discussed the subject on 24 July 2007. On 24 June 2008, the Administration briefed the Panel on the selection of target buildings, inspection items and operational procedures under MBIS and MWIS. The Administration further briefed the Panel on the proposed arrangements for the regulation of service providers on 16 February 2009. Members generally supported the proposed schemes, but also expressed various concerns and views.
- 5. Conclusion** Members may wish to consider setting up a Bills Committee to study the detailed arrangements of the two proposed mandatory schemes.

II. REPORT

Objects of the Bill

To amend the Buildings Ordinance (Cap. 123) (BO) to implement a mandatory building inspection scheme (MBIS) and a mandatory window inspection scheme (MWIS), and to make related, consequential and other minor amendments.

LegCo Brief Reference

2. DEVB(PL-CR) 2-15/08 issued by the Development Bureau on 21 January 2010.

Date of First Reading

3. 3 February 2010.

Comments

4. At present, the Building Authority (BA) (i.e. the Director of Buildings) may order an owner to carry out repair and rectification works under BO only when a building becomes dangerous or is liable to become dangerous or there is any defect in or dilapidation of a building. BO does not empower BA to require an owner to carry out periodic inspections and conduct necessary preventive repair works for the regular maintenance of a building.

Mandatory Building Inspection Scheme (MBIS)

5. The proposed section 30B of BO empowers BA to serve notice in writing on any owner of a building aged 30 years or above (except domestic buildings not exceeding three storeys in height) requiring a prescribed inspection¹ and, if necessary, a prescribed repair² of the common parts, external walls, projections and signboards of the building (except windows in the building) be carried out by a registered inspector³ (defined in section 2(1) of BO as amended by the Bill) within a specified time. If an owner fails to carry out the inspection or repair, BA is empowered to carry it out and recover the cost incurred, together with a surcharge of 20% on the cost that BA may impose. A fresh notice in respect of the same part of the building must not be served before the expiry of 10 years after the date of the

¹ Defined in section 2(1) of BO as amended by clause 4(6) of the Bill to mean "an examination or assessment of a building as prescribed in the regulations".

² Defined in section 2(1) of BO as amended by clause 4(6) of the Bill to mean "a repair or testing of a building as prescribed in the regulations".

³ Defined in section 2(1) of BO as amended by clause 4(6) of the Bill to mean "a person whose name is for the time being on the inspectors' register kept under section 3(3B)", namely architects, engineers and surveyors.

preceding notice. BA is empowered to cause the notice to be registered by memorial in the Land Registry against the building to which the notice relates.

Mandatory Window Inspection Scheme (MWIS)

6. The proposed section 30C of BO empowers BA to serve notice in writing on any owner of a building aged 10 years or above (except domestic buildings not exceeding three storeys in height) requiring a prescribed inspection and, if necessary, a prescribed repair of the windows in the building be carried out by a qualified person⁴ (defined in section 2(1) of BO as amended by the Bill) within a specified time. If an owner fails to carry out the inspection or repair, BA is empowered to carry it out and recover the cost incurred, together with a surcharge of 20% on the cost that BA may impose. A fresh notice in respect of the same window must not be served before the expiry of 5 years after the date of the preceding notice. BA is empowered to cause the notice to be registered by memorial in the Land Registry against the building to which the notice relates.

Registered Inspectors

7. The proposed section 30D sets out the appointment and duties of registered inspectors in relation to the carrying out of a prescribed inspection and supervision of a prescribed repair in respect of a building (except windows in the building). The duties include notifying BA of any building works that have been or are being carried out in contravention of any provision of BO in the common parts, or to an external wall that is not in the common parts, of the building and identified during the course of the prescribed inspection.

8. Under the proposed section 30D(2), the registered inspector appointed to carry out a prescribed inspection may be appointed to supervise a prescribed repair that is required after the inspection, but under the proposed section 30D(7), a registered inspector who carries out a prescribed inspection or supervise a prescribed repair must not also act as a contractor to carry out the prescribed repair for the same part of the building.

9. The proposed section 3(3B) and (3C) seek to introduce a new register to be kept by BA, that is, the inspectors' register of all persons who are qualified to perform the duties and functions of inspectors in accordance with BO, namely architects, engineers and surveyors.

⁴ Defined in section 2(1) of BO as amended by clause 4(6) of the Bill to mean "a person whose name is for the time being on any of the following registers -

(a) authorized persons' register kept under section 3(1);

(b) structural engineers' register kept under section 3(3);

(c) inspectors' register kept under section 3(3B);

(d) register of general building contractors kept under section 8A;

(e) register or provisional register of minor works contractors, under the class, type and item of minor works in respect of windows, kept under section 8A,

and who is not subject to any disciplinary order under section 7(2)(bb) or (d) or 13(4)(d) or (e)".

10. The proposed section 3(5CB) and (5GB) seek to set up an Inspectors Registration Committee consisting of 5 members to deal with the registration of inspectors, and provide for the quorum for its meetings. Clause 11 specifies the time period within which an aggrieved person may appeal to the Court of First Instance against a decision of a Registration Committee (which includes an Inspectors Registration Committee)⁵, and repeals section 9A(4) which stipulates that the decision of a judge of the Court of First Instance is final.

11. Clause 7 provides for the appointment of a disciplinary board consisting of 5 persons (4 of which must be members of a Registered Inspectors' Disciplinary Board Panel) to conduct hearing of disciplinary proceedings against registered inspectors.

12. Clause 10 adds new grounds on which BA may refer the conduct of an authorized person, a registered structural engineer, a registered geotechnical engineer or a registered inspector in cases relating to prescribed inspections or prescribed repairs to the disciplinary board.

Qualified Persons

13. The proposed section 30E sets out the appointment and duties of qualified persons in relation to the carrying out of a prescribed inspection and supervisions of a prescribed repair in respect of windows in a building. A qualified person appointed to carry out a prescribed inspection must also be the same person appointed to supervise a prescribed repair that is required after the inspection.

14. A qualified person who carries out a prescribed inspection or supervises a prescribed repair and who is a registered general building contractor (RGBC) or registered minor works contractor (RMWC) may also act as a contractor to carry out the prescribed repair. The proposed section 30F provides for the duties of RGBCs and RMWCs in relation to the carrying out of a prescribed repair.

15. Clause 13 adds new grounds on which BA may refer the conduct of a contractor in cases relating to prescribed inspections or prescribed repairs to the disciplinary board. The time period within which an aggrieved person may appeal to the Court of First Instance against an order of the disciplinary board is also specified. Section 13(10) which stipulates that the decision of a judge of the Court of First Instance is final is repealed.

Regulation making power of the Secretary for Development

16. Clause 23 adds a power to the Secretary for Development to make regulations for matters relating to, inter alia, the registration and control of registered inspectors, the scope, standard and requirements of prescribed inspections and prescribed repairs, the requirements of the appointments and duties of registered

⁵ Defined in section 2(1) of BO as amended by clause 4(3) of the Bill.

inspectors, qualified persons, RGBCs and RMWCs for and in relation to prescribed inspections and prescribed repairs.

17. Section 39A(1)(f) of BO is proposed to be amended to empower the Secretary for Development to issue a technical memorandum dealing with the circumstances in which a registered inspector is permitted to notify in retrospect for minor deviations from a supervision plan.

Offences and Penalties

18. Section 39B(1) of BO is proposed to be amended to prohibit obstruction to the carrying out of, and refusal to contribute to the cost of, inspection or repair works under MBIS or MWIS. This is an offence under section 40(4B) of BO.

19. Section 40 of BO is proposed to be amended to provide for the penalties for the offences relating to non-compliance of the notices served under the proposed sections 30B and 30C, and the offences relating to the duties in relation to prescribed inspections and prescribed repairs under the proposed sections 30D, 30E and 30F.

20. Clause 36 adds a new Schedule 7 to BO to include provisions relating to a penalty notice that is served under the proposed section 40(1BE) of BO in the case of an owner failing to comply with the proposed section 30C of BO requiring payment of a fixed penalty of \$1,500 within 21 days after the date of the penalty notice.

Public Consultation

21. According to paragraph 25 of the LegCo Brief, a two-stage public consultation of the relevant professional bodies and stakeholders was conducted in 2003 and 2005. The public and stakeholders were generally supportive of the principles and direction of MBIS and MWIS. According to paragraph 27 of the LegCo Brief, there was general community support towards the introduction of mandatory inspection schemes as a practicable solution to ensure a better and safer building environment.

Consultation with LegCo Panel

22. On 22 May 2007, the Administration briefed the then Panel on Planning, Lands and Works (renamed as Panel on Development since the 2007-2008 session) on the results of the consultation exercise and the two proposed schemes. The Panel further discussed the subject with the Administration on 24 July 2007. On 24 June 2008, the Administration briefed the Panel on the selection of target buildings, inspection items and operational procedures under MBIS and MWIS. The Administration further briefed the Panel on the proposed arrangements for the regulation of service providers on 16 February 2009. Members generally supported the proposed schemes. Some members were however concerned that less affluent

property owners, in particular elderly property owners, could not afford the necessary costs. Some of them opined that the Administration should put in place a mechanism to ensure the quality of work carried out by service providers. They also made a number of suggestions relating to prioritization among different types of maintenance works, co-ordination with the Urban Renewal Authority, provision of technical advice and assistance to property owners, public education on owners' responsibility, enlarging the pool of eligible service providers, and a mechanism for dispute resolution.

Conclusion

23. Members may wish to consider setting up a Bills Committee to study the detailed arrangements of the two proposed mandatory schemes.

Prepared by

LO Wing-yee, Winnie
Assistant Legal Adviser
Legislative Council Secretariat
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