

LEGISLATIVE COUNCIL BRIEF

Buildings Ordinance
(Chapter 123)

BUILDINGS LEGISLATION (AMENDMENT) BILL 2011

INTRODUCTION

A At the meeting of the Executive Council on 22 November 2011, the Council ADVISED and the Chief Executive ORDERED that the Buildings Legislation (Amendment) Bill 2011 (the 2011 Bill) at Annex A should be introduced into the Legislative Council (LegCo) to bring in the following five new measures for further enhancing building safety -

- (a) surcharge on defaulted works;
- (b) penalty against persons who refuse to share cost of works by owners' corporation (OC) for compliance with statutory orders or notices;
- (c) warrant for entry into interior of individual premises;
- (d) signboard control system; and
- (e) registered inspectors to comprehensively report exterior unauthorized building works (UBWs) under the Mandatory Building Inspection Scheme (MBIS).

JUSTIFICATIONS

2. Building safety is a highly complex and multi-faceted issue. If not addressed properly, the problem will only become more serious as our building stock continues to age. Dilapidated concrete spalling, unauthorized or abandoned signboards, windows installed with substandard workmanship or lacking proper maintenance, illegal alterations to internal building structure, etc. are time bombs waiting to strike, and they can lead to injuries and even fatalities. The tragic building collapse incident in Ma Tau Wai in January 2010, which involved UBWs, claimed a total of four lives and made many homeless. It rang the alarm bell again and aroused grave public concern over building safety.

3. The Chief Executive announced in his 2010-11 Policy Address in October 2010 the Administration's plan to adopt a multi-pronged package of measures, comprising legislation, enforcement, support to building owners, and public education and publicity, be implemented to enhance building safety in Hong Kong. The new multi-pronged approach aims to optimize available resources and maximize synergy amongst the various stakeholders involved in building management and maintenance. The package is focused and targeted, pinpointing and addressing the roots of the problem and inadequacies identified in the building safety control regime. We have since been implementing the measures including enacting the BAO 2011 to enable the introduction of the MBIS and Mandatory Window Inspection Scheme (MWIS). The Chief Executive has further announced in his 2011-12 Policy Address that the Administration will introduce amendments to the Buildings Ordinance (Cap. 123) (BO) and the Buildings (Amendment) Ordinance 2011 (16 of 2011) (BAO 2011) to further enhance our building safety control regime.

New Measures

4. During the scrutiny of the Buildings (Amendment) Bill 2010 (the 2010 Bill), the five new measures mentioned in paragraph 1 above and detailed below in paragraphs 5 to 11 were discussed at the Bills Committee -

(a) Surcharge on Defaulted Works

5. As part of the enhanced control regime, the Buildings Department (BD) will more readily deploy its contractor to undertake the demolition or rectification works, or investigation, on behalf of the building owner upon the owner's default of the statutory order/notice issued by the Department under the BO. This is to deal with the problem of many building owners simply ignoring the statutory orders or notices, resulting in the demolition or rectification works, and investigation work, which are required to protect public safety, being left outstanding for a long time. BD will recover the cost from the owner afterwards. If the owner refuses to settle the bill, BD will register the bill against the title of the property at the Land Registry and this will create a hurdle for the owner when he sells his property. Where BD has yet to undertake the work on the owner's behalf, BD will register the statutory order/notice at the Land Registry for the same purpose.

6. To complement this enhanced action of BD, and to help prevent a moral hazard developing where the owner, particularly if he has no plan to sell his

property, chooses to leave the work to BD, we consider that a surcharge should be imposed on the owner in such defaulted cases so as to encourage him to undertake the work himself instead of relying on BD to do the work for him. Under the MBIS and MWIS, BD, as the Building Authority (BA), may impose a surcharge of not exceeding 20% of the cost incurred by BD to be recovered from an owner in default of any BD's inspection or repair notice. We propose to extend this arrangement to cover all statutory orders or notices (including all non-MBIS/MWIS notices or orders) issued under the BO. This will serve as an incentive such that owners will be more willing to properly maintain and repair their buildings and comply with the statutory orders or notices issued by BA in a timely manner.

(b) Penalty against Persons who Refuse to Share Cost of Works by OC for Compliance with Statutory Orders or Notices

7. Under the MBIS and MWIS, it is an offence if a person, without reasonable excuse, refuses to pay the relevant share of the costs of inspection and repair works for the common parts of the building that are required to be carried out by the OC for compliance with a notice issued by the BA. Offenders are liable on conviction to a fine at Level 4 (i.e. a maximum fine of \$25,000). This arrangement seeks to deter any person from refusing to contribute financially to the inspection and repair works for the common parts of the building thus resulting in non-compliance with the notices issued under the MBIS and MWIS. We propose to extend this MBIS/MWIS penalty arrangement to all works required to be carried out by OCs under any statutory orders or notices issued under the BO in respect of the common parts of a building.

(c) Warrant for Entry into Interior of Individual Premises

8. Section 22 of the BO currently empowers BA or public officers authorized by the BA to enter and, where necessary in the presence of a police officer, break into any premises or enter upon any land to ascertain the premises' safety and health condition or their compliance with the BO; or to carry out works which the BA is authorized to carry out under the BO. Nevertheless, in practice, it is difficult for BD's officers to exercise this power. The work of BD is often frustrated by uncooperative owners or occupants who refuse to grant entry to BD's staff, notwithstanding the Department's effort in deploying substantial resources in paying visits to the premises on different days and during different times of the day. Being fully mindful of the owner's private property rights, the BD only resorts to its power of forced entry in an extreme case where there is a clear sign of imminent danger or serious environmental/health hazard. Operational experience of other departments reveals that with the issue of a warrant from the Court, owners will more readily cooperate and grant entry for inspection and/or carrying out of works.

9. We therefore propose to make provision for the BA to make application to the Magistrate's Court for warrants under the BO to facilitate BA's entry into individual premises for inspection and enforcement actions. We will build in safeguards¹ to clearly define the circumstances under which the BA or authorized officers could apply to the Court for a warrant. Under our proposal, in **emergency situations**, the BA may enter into and, where necessary, break into premises in the presence of a police officer. Otherwise, unless entry to the premises is permitted, the BA would have to apply to the Court for a warrant to enter the premises for inspection or carrying out the necessary works. The BA will have to clearly demonstrate to the Court its previous attempts to contact the owners for entering the premises, and the purpose of entry before a warrant could be granted by the Court. This proposal will be particularly useful for inspections relating to sub-divided units or flats suspected to have unauthorized internal alterations. The Court will act as the gatekeeper to ensure that the warrant would only be granted in accordance with the statutory requirements and is genuinely necessary for enhancing building safety upon considering the BA's submission of the relevant information.

(d) Signboard Control System

10. The existence of unauthorized signboards is a persistent building safety problem in Hong Kong. It is estimated that there are about 190 000 unauthorized signboards in Hong Kong. Many of them are in active use by business operations while others are simply abandoned. We propose to introduce a statutory control system, similar to the one for prescribed building works at present (i.e. unauthorized small canopies, drying racks and supporting frames for air-conditioners) under the Building (Minor Works) Regulation (Cap. 123 sub. leg. N) (B(MW)R), under which the continued use of certain existing unauthorized signboards (e.g. those that are within stipulated dimensional requirements, or not blocking operation of emergency vehicles, etc.) will be allowed after safety checks by registered building professionals or registered contractors. Under the proposed system, the safety checking has to be

¹ Under the proposed new section 22(1B) (i.e. clause 3(3) of the 2011 Bill), a magistrate may issue a warrant authorizing the BA or any authorized officer to enter and, if necessary, break into the premises, for exercising his power if the magistrate is satisfied by information on oath that -

- (a) there are **reasonable grounds** for suspecting that -
 - (i) building works have been or are being carried out to the premises in contravention of the provisions of the BO;
 - (ii) the use of the premises has contravened the provisions of the BO;
 - (iii) the premises has been rendered dangerous or is liable to become dangerous;
 - (iv) the drains or sewers of the premises are in a defective or insanitary condition; or
 - (v) a notice or order served under the BO in relation to the premises is not being complied with;
- (b) the **entry** into the premises by the BA or any authorized officer was **refused, or could not be gained** despite a visit made to the premises on at least two different days; and
- (c) a **notice of intention** to apply for a warrant **has been served** on the owner or occupier of the premises.

conducted once every five years. Unauthorized signboards not joining the scheme will be subject to the BD's enforcement action. Details of the signboard control system will be set out in a subsidiary legislation that will be tabled at LegCo. Regarding new signboards, small ones will be taken care of by the present minor works control system, while larger ones will continue to be subject to the prior approval and consent of the BD before erection. With these comprehensive measures, the BD will in future be able to establish a database of all signboards in Hong Kong and have a firmer grasp of their safety condition to facilitate control and enforcement action.

(e) Registered Inspectors to Comprehensively Report Exterior Unauthorized Building Works under MBIS

11. Under the MBIS, the registered inspector (RI) appointed to carry out a prescribed inspection must notify the BA of any building works in the common parts or the external walls of the building, identified during the course of the prescribed inspection, that have been or are being carried out in contravention of any provision of the BO. To dovetail with the enforcement policy against UBWs which has come into operation since 1 April 2011, we propose that the RI should also notify the BA of any UBWs carried out to the roofs or podia of the building, or the yards, slopes or streets contiguous to the building. This would facilitate the BA's implementation of the new enforcement policy to take prompt actions against such UBWs with a view to creating a stronger deterrent effect against the erection of UBWs on the exterior of buildings.

12. Having consulted the Subcommittee on Building Safety and Related Issues under the Panel on Development of the LegCo, we drew up proposed committee stage amendments (CSAs) for amending the 2010 Bill and attempted to incorporate the enabling provisions for the five new measures into the 2010 Bill. Most Members of the Bills Committee expressed support for the new measures while a few expressed reservations on the proposal involving the BA's application to the court for warrants. It was only after the clause-by-clause scrutiny of the proposed CSAs by the Bills Committee when some Members questioned whether the proposed CSAs were outside the scope of the 2010 Bill. Their doubt was supported by the Assistant Legal Adviser of the LegCo providing support to the Bills Committee. In order not to delay the passage of the 2010 Bill, and as a result the implementation of the MBIS and MWIS, we decided not to pursue further the proposed CSAs. We made it clear to LegCo that we would introduce a new Bill into LegCo as soon as possible to bring in the five new measures.

PROPOSAL - THE 2011 BILL

13. The main provisions of the 2011 Bill² are as follows –
- (a) **Part 1** provides for preliminary issues;
 - (b) **Parts 2 and 3** amend the BO and BAO 2011 respectively to establish the statutory legal framework of the following five new proposals –
 - (i) **Clause 3** amends section 22 of the BO to provide for the issue of a magistrate’s warrant authorizing entry into any premises by the BA or any public officer authorized by the BA to carry out any inspection or works that the BA is authorized to carry out under the BO;
 - (ii) **Clauses 4, 8(1) and (2) and 9** amend section 33 of the BO and the new sections 30B and 30C introduced by the BAO 2011 to extend the power of the BA to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the BA for any inspection, investigation or works carried out, services provided, or abortive visits made under the BO;
 - (iii) **Clauses 5 and 6** amend sections 38 and 39C of the BO to, among others, extend the application of the existing scheme under section 39C (under which demolition orders or notices will not be made to certain unauthorized building or building works prescribed in B(WM)R) to further types of unauthorized building or building works to be prescribed in the B(MW)R, and provide for a periodic compliance with the requirements in section 39C(2), (3) and (4) for certain prescribed building or building works, with a view to formulating the legal framework for the Signboard Control System and allowing possible future expansion of the existing scheme under section 39C with further types of works;
 - (iv) **Clause 8(3)** amends the new section 30D introduced by the BAO 2011 to the effect that the scope of notification to the BA of any UBWs identified by a registered inspector during the course of a prescribed inspection be extended to cover any

² Paragraph 13 refers to the Buildings Ordinance as if the amendments made to it by the Buildings (Amendment) Ordinance 2011 (16 of 2011) had come into operation.

UBWs carried out to any roof or podium of a building (other than the common parts), or any yard or slope adjoining a building, or any street on which a building fronts or abuts; and

(v) **Clause 10** amends section 39B(1) of the BO and the new section 39B(1A) introduced by the BAO 2011 to the effect that a person must not obstruct, or refuse to contribute to the cost of, any inspection, investigation, works or other action carried out in relation to any common parts of a building for compliance with any statutory order or notice served under the BO on the OC of the building; and

(c) **Clause 3 and 6** also contain minor amendments to sections 22 and 39C of the BO.

 B 14. The existing provisions to be amended are at **Annex B**.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be –

Publication in the Gazette	25 November 2011
First Reading and commencement of Second Reading debate	7 December 2011
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

 C 16. The proposal's financial, civil service, economic, environmental and sustainability implications are set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The 2011 Bill will not change the binding effect of the BO. The proposal has no productivity or competition implications.

PUBLIC CONSULTATION

17. The Ma Tau Wai building collapse has aroused grave public concern over building safety in Hong Kong. Motion debates took place in the LegCo on 3 February, 3 March and 26 May 2010 respectively after the incident. Members were generally supportive of a stronger determination and tougher enforcement and urged the Government to take early action. A dedicated subcommittee has been established in LegCo to closely monitor the Government's progress of review on building safety. The Subcommittee was briefed on 27 April 2010, 27 July 2010 and 13 January 2011 on various aspects of our proposed package of measures, including our plan to introduce the proposed measures included in the 2011 Bill. Building maintenance was also a topical issue included in the 2010 Summit on District Administration held in June and July 2010 with participation of the Secretary for Development. The measures we are proposing are in line with the directions of the recommendations of District Councils which were presented to the Chief Executive at the Summit in July 2010. The Bills Committee on the 2010 Bill also thoroughly discussed and scrutinized the five proposed new measures between February and June 2011.

PUBLICITY

18. A press release will be issued on 23 November 2011. A spokesman will be available to answer media and public enquiries.

BACKGROUND

19. There are currently some 4 000 buildings aged 50 years or above in Hong Kong, and the number will increase by about 500 each year. Buildings in Hong Kong are mainly reinforced concrete structures designed to have a service life of around 50 years. That means if we do not act now to work together with the owners and the industry to properly inspect and maintain this group of buildings, their conditions will deteriorate rapidly and threaten public safety. Recent building inspections have confirmed this point: the BD's inspection after the Ma Tau Wai building collapse revealed that, although buildings aged 50 years or above were generally structurally sound, one in four of them was potentially hazardous to the public, while the building conditions survey carried out by the Urban Renewal Authority of 7 000 buildings aged 30 years or above in support of the Urban Renewal Strategy Review found the problems of carbonation, unprotected reinforcement and serious corrosion in some of these old buildings. Besides, many of those buildings exhibited such problems as concrete spalling, dilapidated facilities, water leakage, and the lack of building management and maintenance. The situation is indeed worrying and reflects that proper building maintenance and timely repairs are essential.

ENQUIRY

20. Any enquiry on this brief may be addressed to Mr. Ryan Chiu, Principal Assistant Secretary for Development (Planning and Lands) on 2848 6288.

Development Bureau
23 November 2011

Buildings Legislation (Amendment) Bill 2011

Annexes

Annex A - Buildings Legislation (Amendment) Bill 2011

Annex B - Existing Provisions to be amended

Annex C - Implications of the Proposal

Buildings Legislation (Amendment) Bill 2011

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A BILL

To

Amend the Buildings Ordinance and the Buildings (Amendment) Ordinance 2011 to provide for matters relating to the issue of warrants authorizing entry into premises or upon land; to require registered inspectors to notify the Building Authority of certain unauthorized building works; to provide for surcharges on costs recoverable by the Building Authority under the Buildings Ordinance; to extend the application of sections 39B and 39C of that Ordinance; and to make minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Buildings Legislation (Amendment) Ordinance 2011.
 - (2) This Part and Part 3 come into operation on the day on which this Ordinance is published in the Gazette.
 - (3) Part 2 comes into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.
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Part 2

Amendments to Buildings Ordinance

2. Buildings Ordinance amended

The Buildings Ordinance (Cap. 123) is amended as set out in sections 3 to 6.

3. Section 22 amended (powers of Building Authority)

(1) Section 22(1)—

Repeal

“The Building Authority or any public officer authorized in writing by him in that behalf”

Substitute

“Subject to subsection (1A), the Building Authority or an authorized officer”.

(2) Section 22(1)(b)—

Repeal

“or drainage system”

Substitute

“, drainage system, sewerage works or sewerage system”.

(3) After section 22(1)—

Add

“(1A) Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into the premises, or enter upon the land under subsection (1) unless—

- (a) the entry is permitted by the owner, occupier, or person who appears to have control or management of the premises or land; or

(b) a warrant is obtained under subsection (1B).

(1B) A magistrate may issue a warrant authorizing the Building Authority or an authorized officer to enter and, if necessary, break into any premises or enter upon any land for any of the purposes mentioned in subsection (1) if the magistrate is satisfied by information on oath that—

(a) there are reasonable grounds for suspecting that—

- (i) building works have been or are being carried out to the premises or land in contravention of any provision of this Ordinance;
- (ii) the use of the premises or land has contravened any provision of this Ordinance;
- (iii) the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous;
- (iv) the drains or sewers of the premises or land are in a defective or insanitary condition; or
- (v) a notice or order served under this Ordinance has not been complied with;

(b) the entry into the premises or upon the land by the Building Authority or an authorized officer—

- (i) was refused; or
- (ii) could not be gained despite a visit made to the premises or land on at least 2 different days; and

(c) notice of the intention to apply for a warrant has been served on the owner or occupier of the premises or land.

(1C) A warrant issued under subsection (1B) must specify—

- (a) the premises or land to be entered;
- (b) the purpose of the entry;

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- (c) the name and capacity of the person authorized to enter the premises or land; and
- (d) the date of the issue of the warrant.
- (1D) If the Building Authority or an authorized officer enters or breaks into any premises, or enters upon any land, under a warrant issued under subsection (1B), the Building Authority or authorized officer must produce to the owner, occupier, or person who appears to have control or management of the premises or land the warrant for inspection.
- (1E) When entering any premises or land under this section, the Building Authority or an authorized officer may be accompanied by any person that the Building Authority or authorized officer considers necessary for the purpose of the entry.
- (1F) On leaving any unoccupied premises or land entered under this section, the Building Authority or an authorized officer must leave the premises or land as effectually secured against trespassers as the premises or land was found at the time of entry.
- (1G) A warrant issued under subsection (1B) continues in force until the purpose for which entry is necessary has been fulfilled.”.
- (4) Section 22(2)(b)—
- Repeal**
- “a public officer authorized under this section may take such steps as he may deem”
- Substitute**
- “an authorized officer may take any steps that he or she considers”.
- (5) After section 22(4)—
- Add**

“(5) In this section—

authorized officer (獲授權人員) means a public officer authorized in writing by the Building Authority for any of the purposes mentioned in subsection (1).”.

4. Section 33 amended (recovery of costs of works by Building Authority)

Section 33(1)—

Repeal

“he may”

Substitute

“the Building Authority may impose a surcharge of not exceeding 20% on the cost due and may”.

5. Section 38 amended (regulations)

After section 38(1)(ke)(i)—

Add

“(ia) the prescription of a date in relation to any prescribed building or building works for the purposes of section 39C(1A)(a);

(ib) the prescription of the requirement for periodic compliance with the requirements in section 39C(2), (3) and (4) in respect of any prescribed building or building works for the purposes of section 39C(1A)(c);”.

6. Section 39C amended (Building Authority shall not serve order under section 24 or notice under section 24C)

(1) Section 39C, English text, heading—

Repeal

“shall”

Substitute

“**must**”.

(2) Section 39C—

Repeal subsection (1)

Substitute

- “(1) Despite sections 24 and 24C, the Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that the building or building works have been completed or carried out in contravention of section 14(1), if—
- (a) the building or building works were completed or carried out before 31 December 2010; and
 - (b) with respect to the building or building works, the requirements in subsections (2), (3) and (4) have been complied with.
- (1A) Despite sections 24 and 24C, the Building Authority must not serve an order under section 24 or a notice under section 24C in respect of a prescribed building or building works on the ground that the building or building works have been completed or carried out in contravention of section 14(1) or not in compliance with the simplified requirements, if—
- (a) the building or building works were completed or carried out before a date prescribed in the Minor Works Regulation in relation to the prescribed building or building works;
 - (b) with respect to the building or building works, the requirements in subsections (2), (3) and (4) have been complied with; and

(c) with respect to the building or building works, if periodic compliance with those requirements is required by the Minor Works Regulation, those requirements are complied with in accordance with the Minor Works Regulation.”.

(3) Section 39C(2)—

Repeal

“regulations”

Substitute

“Minor Works Regulation”.

(4) Section 39C(3)—

Repeal

“regulations”

Substitute

“Minor Works Regulation”.

(5) Section 39C(5)—

Repeal

“(1)”

Substitute

“(1) or (1A)”.

(6) Section 39C(6)—

Repeal paragraph (a).

(7) Before section 39C(6)(b)—

Add

“(aa) *Minor Works Regulation* (《小型工程規例》) means the Building (Minor Works) Regulation (Cap. 123 sub. leg. N);”.

(8) Section 39C(6)(b)—

Repeal

“regulations”

Substitute

“Minor Works Regulation”.

(9) Section 39C(6)(b)—

Repeal

“definition”

Substitute

“definition in relation to this section or a provision of this section”.

Part 3

Amendments to Buildings (Amendment) Ordinance 2011

7. Buildings (Amendment) Ordinance 2011 amended

The Buildings (Amendment) Ordinance 2011 (16 of 2011) is amended as set out in sections 8 to 10.

8. Section 20 amended (Part IIA added)

(1) Section 20, new section 30B(11)—

Repeal

“, together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose,”.

(2) Section 20, new section 30C(9)—

Repeal

“, together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose,”.

(3) Section 20, new section 30D(5)—

Repeal

everything after “must”

Substitute

“—

- (a) notify the Building Authority of any case of emergency that is revealed during the course of the prescribed inspection; and
- (b) if the prescribed inspection is carried out under section 30B(3), also notify the Building Authority of any building works—

- (i) that have been or are being carried out in contravention of any provision of this Ordinance to—
 - (A) the common parts of the building;
 - (B) any external wall, roof or podium of the building (other than the common parts);
 - (C) any yard or slope adjoining the building; or
 - (D) any street on which the building fronts or abuts; and
- (ii) that are identified during the course of the prescribed inspection.”.

9. Section 21 amended (recovery of costs of works by Building Authority)

Section 21—

Repeal subsection (3).

10. Section 26 amended (obstruction of owners’ corporation)

(1) Section 26(1)—

Repeal

everything after “order” and before “in relation”

Substitute

“or notice has been served on the owners’ corporation under any provision of this Ordinance”.

(2) Section 26(4), new section 39B(1A)—

Repeal

everything after “building that” and before “in relation”

Substitute

“an order or notice has been served on the owners’ corporation under any provision of this Ordinance”.

(3) Section 26(4), new section 39B(1A)—

Repeal

“with the notice”

Substitute

“with the order or notice”.

Explanatory Memorandum

Note—

In this Explanatory Memorandum, the expression *the Ordinance* refers to the Buildings Ordinance (Cap. 123) with the amendments enacted by the Buildings (Amendment) Ordinance 2011 (16 of 2011) incorporated into it.

The object of this Bill is to amend the Buildings Ordinance (Cap. 123) and the Buildings (Amendment) Ordinance 2011 (16 of 2011) in the following 5 aspects for the rendering safe of dangerous buildings and land or for preventing buildings from becoming unsafe, that is to say, to—

- (a) provide for the issue of a magistrate's warrant authorizing entry into any premises or upon any land by the Building Authority or any public officer authorized by the Building Authority;
- (b) extend the scope of the duty of a registered inspector under section 30D(5)(b) of the Ordinance (being a duty to notify the Building Authority of any unauthorized building works that are identified during the course of a prescribed inspection) to include any unauthorized building works carried out to the roof or podium of a building, or any yard, slope or street contiguous to a building for notification;
- (c) enable the Building Authority to impose a surcharge on the cost recoverable by the Building Authority under the Ordinance for any inspection, investigation or works carried out, services provided, or abortive visit made, by the Building Authority;
- (d) extend the obligations under section 39B of the Ordinance (namely, not to obstruct, and not to refuse to contribute to the cost of, any inspection, investigation, works or other action carried out by the owners' corporation in relation to any common parts of the building for the compliance with certain orders

or notices served under the Ordinance) to the effect that such obligations apply not only in relation to certain orders or notices but in relation to any orders or notices served under the Ordinance;

- (e) extend the scheme under section 39C of the Ordinance (under which demolition orders or notices will not be made by the Building Authority in respect of certain unauthorized building or building works) to allow inclusion of further types of unauthorized building or building works.

2. Clause 1 sets out the short title and provides for commencement.
3. Clauses 3 to 6 set out the amendments to the Buildings Ordinance (Cap. 123) (*the principal Ordinance*).
4. Clause 3 amends section 22 of the principal Ordinance to provide for the issue, when certain conditions are satisfied, of a magistrate's warrant authorizing entry into any premises or upon any land by the Building Authority or any public officer authorized by the Building Authority. It also makes a minor amendment to subsection (1)(b) of that section.
5. Clause 4 amends section 33(1) of the principal Ordinance to extend the power of the Building Authority to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the Building Authority under any provision of the Ordinance.
6. Clause 5 amends section 38(1) of the principal Ordinance to provide for regulation making powers concerning the prescription of a date for the purposes of section 39C(1A)(a) of the Ordinance, and prescription of the requirement for periodic compliance for the purposes of section 39C(1A)(c) of the Ordinance.

7. Clause 6 amends section 39C of the principal Ordinance to allow inclusion of further types of unauthorized building or building works to be regulated by the scheme under that section under which demolition orders or notices will not be made by the Building Authority.
8. Clauses 8 to 10 set out the amendments to the Buildings (Amendment) Ordinance 2011 (16 of 2011) (*the Amending Ordinance*).
9. Clause 8(1) and (2) amends section 20 of the Amending Ordinance (in relation to the new sections 30B(11) and 30C(9) of the Ordinance) to repeal the power of the Building Authority to impose a surcharge of not exceeding 20% on the cost incurred and recoverable by the Building Authority under sections 30B(11) and 30C(9) of the Ordinance only.
10. Clause 8(3) amends section 20 of the Amending Ordinance (in relation to the new section 30D(5) of the Ordinance) to the effect that the scope of notification to the Building Authority of any unauthorized building works identified by a registered inspector during the course of a prescribed inspection be extended to cover any unauthorized building works carried out to any roof or podium of a building (other than the common parts), or any yard or slope adjoining a building, or any street on which a building fronts or abuts.
11. Clause 9 amends section 21 of the Amending Ordinance to repeal the amendment made under section 21(3) in relation to section 33(1) of the Ordinance.
12. Clause 10 amends section 26 of the Amending Ordinance (in relation to section 39B(1) and the new section 39B(1A) of the Ordinance) to the effect that a person must not obstruct, or refuse to contribute to the cost of, any inspection, investigation, works or other action carried out in relation to any common parts of a building for compliance with any order or notice

Buildings Legislation (Amendment) Bill 2011

Explanatory Memorandum

Paragraph 12

C4337

served on the owners' corporation of the building under the Ordinance.

**Existing Provisions under Buildings Ordinance (Cap. 123)
to be amended by
Buildings Legislation (Amendment) Bill 2011**

Legend:

Amendments made under Buildings (Amendment) Ordinance 2011 (which were enacted by the Legislative Council on 29 June 2011 and are pending for commencement)

Section 22 Powers of Building Authority

- (1) The Building Authority or any public officer authorized in writing by him in that behalf may at any time enter and where necessary, in the presence of a police officer, break into any premises or enter upon any land-
 - (a) to ascertain whether any building, structure, street or natural, formed or man-made land is dangerous or liable to become dangerous; (Amended 72 of 1980 s. 7)
 - (b) to inspect or test any groundwater drainage works, drainage works or drainage system; (Amended 44 of 1959 s. 8; 41 of 1982 s. 7)
 - (c) to ascertain whether the provisions of this Ordinance or of any notice order or regulation hereunder are being complied with;
 - (d) to carry out or cause to be carried out any work which he is authorized to carry out under this Ordinance. (Amended 44 of 1959 s. 8)
- (2) For the purposes of subsection (1)-
 - (a) access to every part of any building works or street works shall be provided by the registered general building contractor, registered specialist contractor or registered minor works contractor; and (Replaced 20 of 2008 s. 18)
 - (b) the Building Authority or a public officer authorized under this section may take such steps as he may deem necessary, including the making of openings and the taking of reasonable samples. (Amended 44 of 1959 s. 8)
- (3) The Building Authority may by order in writing require an authorized person to carry out such tests as may be specified in the order. (Amended 52 of 1974 s. 9)
- (4) The Building Authority may specify any form for the purposes of this Ordinance. (Added 68 of 1993 s. 13)

Section 30B Obligation on owners to carry out prescribed inspection and prescribed repair in respect of buildings

- (1) This section applies to any building aged 30 years or above.**
- (2) The age of a building mentioned in subsection (1) is to be determined by the Building Authority—**
 - (a) if an occupation permit in respect of the building is issued by the Building Authority under section 21(2), according to the date the occupation permit is issued; and**
 - (b) in any other case, according to the evidence available to the Building Authority.**
- (3) The Building Authority may by notice in writing served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the common parts of the building to be carried out within a specified time.**
- (4) If an external wall of a building is not in the common parts of the building, the Building Authority may by notice in writing served on the owner of the external wall require a prescribed inspection and, if necessary, prescribed repair in respect of the external wall to be carried out within a specified time.**
- (5) Without limiting subsections (3) and (4), the Building Authority may by notice in writing served on an owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of any projection as prescribed in the regulations that is connected to that owner's premises in the building and is occupied or used by that owner or any occupier of that premises to be carried out within a specified time.**
- (6) Without limiting subsections (3) and (4), if a signboard is erected on a building, the Building Authority may by notice in writing served on—**
 - (a) the person for whom the signboard is erected;**
 - (b) if that person cannot be found, the person who would receive any rent or other money consideration if the signboard were hired out or the person who is receiving such rent or money consideration; or**
 - (c) if the persons referred to in paragraphs (a) and (b) cannot be found, the owner of the premises in the building on which the signboard is erected,**

require a prescribed inspection and, if necessary, prescribed repair in respect of the signboard to be carried out within a specified time.

- (7) In a notice served under subsection (3), (4), (5) or (6), the Building Authority may specify for a relevant part of a building—
- (a) the date by which a registered inspector must be appointed to carry out a prescribed inspection in respect of that part of the building;
 - (b) the date by which a prescribed inspection in respect of that part of the building is required to be completed; and
 - (c) the date by which a prescribed repair in respect of that part of the building, as may be required under subsection (8), is required to be completed.
- (8) If a prescribed inspection in respect of a relevant part of a building shows that that part of the building has been rendered dangerous, or is liable to become dangerous, the owner on whom the notice is served must carry out a prescribed repair in respect of that part of the building, in accordance with this Ordinance, to render that part of the building safe.
- (9) The Building Authority may cause a notice served under subsection (3), (4), (5) or (6) to be registered by memorial in the Land Registry against the building to which the notice relates.
- (10) If a notice served under subsection (3), (4), (5) or (6) is not complied with, the Building Authority may, without further notification, carry out or cause to be carried out—
- (a) any inspection in respect of the common parts, external wall, projection or signboard of the building that the Building Authority considers necessary for the purpose of that notice; and
 - (b) any repair works that the Building Authority considers necessary or expedient to render the building safe, having had regard to the findings of an inspection in respect of the building, whether the inspection is carried out or caused to be carried out by the Building Authority under paragraph (a), or by a registered inspector appointed under section 30D(1)(a).
- (11) The cost of the inspection and repair works that the Building Authority has carried out or has caused to be carried out under subsection (10), together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose, is recoverable as a debt due to the Government from—
- (a) if the notice served under subsection (3), (4), (5) or (6) has not been registered with the Land Registry under subsection (9), the person on whom the notice is served; or
 - (b) if the notice served under subsection (3), (4), (5) or (6) has been registered with the Land Registry under subsection (9), 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 Building Authority has carried out or has caused to be carried out the inspection mentioned in subsection (10)(a) only; or
 - (ii) as at the date of completion of the repair works mentioned in subsection (10)(b) if the Building Authority has carried out or has caused to be carried out the repair works, whether or not the Building Authority has also carried out or has also caused to be carried out the inspection mentioned in subsection (10)(a).
- (12) After a notice under subsection (3), (4), (5) or (6) (the “preceding notice”) has been complied with, a fresh notice in respect of the same part of the building must not be served under that subsection before the expiry of 10 years after the date of the preceding notice.
- (13) In this section, a reference to an inspection or repair of any part of a building does not include an inspection or repair of the windows in the building.

Section 30C Obligation on owners to carry out prescribed inspection and prescribed repair in respect of windows

- (1) This section applies to any building aged 10 years or above.**
- (2) The age of a building mentioned in subsection (1) is to be determined by the Building Authority –**
 - (a) if an occupation permit in respect of the building is issued by the Building Authority under section 21(2), according to the date the occupation permit is issued; and**
 - (b) in any other case, according to the evidence available to the Building Authority.**
- (3) Subject to subsection (4), the Building Authority may by notice in writing served on any owner of a building require a prescribed inspection and, if necessary, prescribed repair in respect of the windows in the building to be carried out within a specified time.**
- (4) If any window in a building is exclusively used by an owner of the building or any occupier of that owner’s premises, the Building Authority may by notice in writing served only on that owner require a prescribed inspection and, if necessary, prescribed repair in respect of the window to be carried out within a specified time.**
- (5) In a notice served under subsection (3) or (4), the Building Authority may specify for a window in a building –**
 - (a) the date by which a qualified person must be appointed to carry out a prescribed inspection in respect of that window;**
 - (b) the date by which a prescribed inspection in respect of that window is required to be completed; and**
 - (c) the date by which a prescribed repair in respect of that window, as may be required under subsection (6), is required to be completed.**
- (6) If a prescribed inspection in respect of a window in a building shows that the window has been rendered dangerous, or is liable to become dangerous, the owner on whom the notice is served must carry out a prescribed repair in respect of the window, in accordance with this Ordinance, to render the window safe.**
- (7) The Building Authority may cause a notice served under subsection (3) or (4) to be registered by memorial in the Land Registry against the building to which the notice relates.**
- (8) If a notice served under subsection (3) or (4) is not complied with, the Building Authority may, without further notification, carry out or cause to be carried out –**
 - (a) any inspection in respect of the window concerned that the Building Authority considers necessary for the purpose of that notice; and**
 - (b) any repair works that the Building Authority considers necessary or expedient to render the window safe, having had regard to the findings of an inspection in respect of the window, whether the inspection is carried out or caused to be carried out by the Building Authority under paragraph (a), or by a qualified person appointed under section 30E(1)(a).**
- (9) The cost of the inspection and repair works that the Building Authority has carried out or has caused to be carried out under subsection (8), together with a surcharge of not exceeding 20% on the cost that the Building Authority may impose, is recoverable as a debt due to the Government from—**
 - (a) if the notice served under subsection (3) or (4) has not been registered with the Land Registry under subsection (7), the person on whom the notice is served; or**
 - (b) if the notice served under subsection (3) or (4) has been registered with the Land Registry under subsection (7), 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 Building Authority has carried out or has caused to be carried out the inspection mentioned in subsection (8)(a) only; or**
 - (ii) as at the date of completion of the repair works mentioned in**

subsection (8)(b) if the Building Authority has carried out or has caused to be carried out the repair works, whether or not the Building Authority has also carried out or has also caused to be carried out the inspection mentioned in subsection (8)(a).

- (10) After a notice under subsection (3) or (4) (the “preceding notice”) has been complied with, a fresh notice in respect of the same window must not be served under that subsection before the expiry of 5 years after the date of the preceding notice.

Section 30D Appointment and duties of registered inspectors

- (1) Any person for whom a prescribed inspection or prescribed repair in respect of a building is to be carried out must appoint –
- (a) a registered inspector to carry out the prescribed inspection; and
 - (b) a registered inspector to supervise the prescribed repair.
- (2) The registered inspector appointed under subsection (1)(b) may be the same registered inspector appointed under subsection (1)(a).
- (3) A registered inspector appointed under subsection (1)(a) must –
- (a) carry out the prescribed inspection personally unless otherwise exempted by the regulations; and
 - (b) comply generally with this Ordinance.
- (4) A registered inspector appointed under subsection (1)(b) must –
- (a) provide proper supervision of the carrying out of the prescribed repair;
 - (b) ensure the repair materials to be used –
 - (i) are not defective and comply with this Ordinance; and
 - (ii) have been mixed, prepared, applied, used, erected, constructed, placed or fixed in the manner required for such materials under this Ordinance;
 - (c) ensure the building, for which the registered inspector is appointed to supervise the prescribed repair, is safe or has been rendered safe; and
 - (d) comply generally with this Ordinance.
- (5) A registered inspector appointed under subsection (1)(a) to carry out a prescribed inspection must notify the Building Authority of –
- (a) any case of emergency that is revealed during the course of the prescribed inspection; and
 - (b) any building works that have been or are being carried out in contravention of any provision of this Ordinance in the common parts, or to an external wall that is not in the common parts, of the building, that are identified during the course of the prescribed inspection.
- (6) A registered inspector appointed under subsection (1)(b) to supervise a prescribed repair must notify the Building Authority of any case of emergency that is revealed during the course of supervision of the prescribed repair.
- (7) A registered inspector appointed under subsection (1)(a) or (b) must not act, at the same time, as a contractor to carry out the prescribed repair for the same part of the building.
- (8) If a registered inspector appointed under subsection (1)(a) or (b) becomes unwilling to act or unable, whether by reason of termination of appointment or for any other reason, to act, the person for whom the prescribed inspection or prescribed repair is to be, or is being, carried out must appoint another registered inspector to act instead of the original registered inspector.
- (9) A registered inspector appointed under subsection (1)(a) is not allowed to nominate another registered inspector to act in his or her stead even though he or she is temporarily unable to act by reason of illness or absence from Hong Kong.
- (10) If a registered inspector appointed under subsection (1)(b) is temporarily unable to act by reason of illness or absence from Hong Kong, he or she may nominate another registered inspector to temporarily act in his or her stead for the period of illness or absence.
- (11) In this section, a reference to an inspection or repair of a building does not include an inspection or repair of the windows in the building.

Section 33 **Recovery of costs ~~of works~~ and surcharge by Building Authority**

Remarks:

Adaptation amendments retroactively made - see 62 of 2000 s. 3

- (1) In any case where under this Ordinance the Building Authority is authorized to recover the cost of **any inspection, investigation or** works carried out by him or caused to be carried out by him or to recover the costs of services provided by him or caused to be provided by him or to recover the cost of any abortive visit made by him **or to recover any surcharge**, he may certify under his hand the cost **and surcharge** due and names of the persons liable therefor, and may by such certificate apportion such cost **and surcharge** among such persons. (Amended 57 of 1987 s. 6; 42 of 1992 s. 6)
- (2) Such cost may include-
 - (a) the cost of materials supplied by the Building Authority for the purpose of carrying out such **any inspection, investigation or** works; and
 - (b) supervision charges.
- (3) A copy of the Building Authority's certificate shall be served upon each person affected thereby.
- (4) Interest at the rate of 10 per cent per annum from the expiry of 1 month from the date of such service shall be recoverable as part of such cost **or surcharge**.
- (5) The payment of such cost **or surcharge** by any person shall be without prejudice to his right to recover the same from any person liable to pay the expenses of the repair of, or of other building works in connexion with, any building or land. (Amended 72 of 1980 s. 11)
- (6) Without prejudice to any other remedy of the Building Authority for the recovery of such cost **or surcharge**, the same may be recovered as a debt due to the Government. (Replaced 13 of 1966 Schedule. Amended 62 of 2000 s. 3)
- (7) The writ of summons in connexion with such action shall be taken to have been duly served if it appears, to the satisfaction of the Court, that the writ was left at the defendant's residence or place of business, or in case the same is unknown, that it was left at the building or on the land in respect of which the claim is made. (Amended 72 of 1980 s. 11)
- (8) A certificate purporting to be under the hand of the Building Authority, made under the provisions of subsection (1), and setting forth that the cost **or surcharge** claimed is due or payable to the Building Authority and that the person sued is liable for the payment thereof, and specifying the nature and particulars of the claim shall be prima facie evidence of the facts certified therein and of the signature of the Building Authority thereto.
- (9) At any time before such costs **or surcharge** and any interest accrued thereon has been wholly recovered, a memorial of the certificate referred to in subsection (1) may be registered in the Land Registry against the title of any premises or land in respect of which such cost **or surcharge** arose, and upon such registration the cost **or surcharge** and any interest accrued or thereafter accruing shall- (Amended 8 of 1993 s. 2)
 - (a) be recoverable by action in Court in accordance with the provisions of this section from any person who from such Land Registry register then or thereafter appears to be the owner of such premises or land: (Amended 8 of 1993 s. 2)

Provided that –

 - (i) the amount recovered by virtue of this subsection shall not exceed the value of that person's interest in the premises or land charged; and
 - (ii) where the amount so recovered is equal to the value of the premises or land the charge created under paragraph (b) shall become void; and
 - (b) constitute a first charge on the said premises or land which shall give the Building Authority the same powers and remedies in respect thereof as if he

were a mortgagee under a mortgage by deed in common form having power of sale and lease and of appointing a receiver: (Amended 37 of 1961 s. 5)

Provided that the charge shall be void and no liability shall accrue under this subsection against a bona fide purchaser or mortgagee of the premises or land for valuable consideration who, subsequent to the completion of the works specified in the certificate and before the registration of the memorial thereof, has acquired and registered an interest in the premises or land to be charged. (Replaced 44 of 1959 s. 15. Amended 72 of 1980 s. 11)

- (10) Upon the recovery of any sum under this section the Building Authority shall lodge in the Land Registry an appropriate memorial of satisfaction against any memorial lodged there by him under subsection (9). (Amended 8 of 1993 s. 2)
(Amended 13 of 1966 Schedule)

Section 38 Regulations

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) The Secretary may by regulation provide for- (Amended L.N. 330 of 1999; L.N. 106 of 2002; L.N. 130 of 2007; 20 of 2008 s. 25)
- (a) registration and control of-
 - (i) authorized persons;
 - (ii) registered structural engineers;
 - (iia) registered geotechnical engineers; (Added 15 of 2004 s. 28)
 - (iib) registered inspectors;**
 - (iii) registered general building contractors; (Amended 54 of 1996 s. 20)
 - (iv)-(v) (Repealed 43 of 1987 s. 44)
 - (vi) registered specialist contractors; (Replaced 52 of 1974 s. 10. Amended 54 of 1996 s. 20)
 - (vii) registered minor works contractors; (Added 20 of 2008 s. 25)
 - (aa) restoration to and removal from the register of any person referred to in paragraph (a); (Added 20 of 2008 s. 25)
 - (b) the manner of making application for and granting of approval of plans of building works or street works, and the giving of consent to commence or carry on such works, including cases where it is desired-
 - (i) to add to or alter building works or street works the commencement of which has already been consented to, or
 - (ii) to commence certain parts of building works or street works before other parts;
 - (ba) the planning, design and construction of site formation works; (Added 72 of 1980 s. 14)
 - (bb) the planning, design and carrying out of ground investigation in the scheduled areas; (Added 41 of 1982 s. 9. Amended 52 of 1990 s. 7)
 - (c) planning and design of buildings including-
 - (i) streets;
 - (ii) projections;
 - (iii) heights, site coverage, plot ratio and open spaces including service lanes; (Amended 23 of 1969 s. 9)
 - (iv) lighting and ventilation;
 - (v) sanitation;
 - (vi) staircases and fire-escapes;
 - (vii) domestic buildings;
 - (viii) buildings for special uses including industrial buildings, places of public entertainment and schools;;
 - (ix) any sea-wall, breakwater, jetty, mole, quay, wharf or pier; (Amended 6 of 1995 s. 4)
 - (x) exceptional structures;

- (xi) timber yards and hoardings; (Amended 23 of 1969 s. 9; 43 of 1993 s. 8)
- (xii) fire fighting equipment; (Added 37 of 1961 s. 6. Amended 43 of 1993 s. 8; 39 of 2000 s. 5)
- (xiii) matters relating to the installation of lifts and escalators; (Added 43 of 1993 s. 8. Amended 39 of 2000 s. 5; 15 of 2004 s. 28)
- (xiv) matters relating to the provision of access facilities for telecommunications and broadcasting services; and (Added 39 of 2000 s. 5. Amended 15 of 2004 s. 28)
- (xv) matters relating to the provision of emergency vehicular access; (Added 15 of 2004 s. 28)
- (d) the construction of buildings including-
 - (i) materials;
 - (ii) loads and stresses;
 - (iii) foundations, floors and sites;
 - (iv) walls and piers;
 - (v) roofs, flues and chimneys;
 - (vi) structural steel work, reinforced concrete, and timber;
 - (vii) fire-resisting construction;
 - (viii) retaining walls;
 - (ix) plumbing and drainage;
 - (x) wells;
 - (xi) matters relating to the installation of lifts and escalators; (Amended 43 of 1993 s. 8; 15 of 2004 s. 28)
 - (xii) refuse chutes, refuse storage chambers, and floor space and facilities for material recovery and separation of refuse; and (Replaced 39 of 2000 s. 5. Amended 15 of 2004 s. 28)
 - (xiii) matters relating to the provision of emergency vehicular access; (Added 15 of 2004 s. 28)
- (e) the supply of water to buildings for all purposes, including the connexion thereof to buildings and the arrangement, size, construction and type of piping therefor and the power of the Building Authority to require that the supply of water be obtained from a particular source or to prohibit or restrict the supply of water from any particular sources; (Added 16 of 1966 s. 9)
- (f) (Repealed 43 of 1993 s. 8)
- (g) the construction, inspection, testing and safe working of ventilating systems; (Added 27 of 1964 s. 5)
- (h) the testing of drainage works and matters ancillary thereto;
- (i) the demolition of buildings and the safety precautions to be taken in respect thereof; (Added 37 of 1961 s. 6)
- (ia) the design, construction, licensing, inspection, testing and maintenance of oil storage installations and matters connected therewith, including the imposition of restrictions and conditions relating to the use of such installations for the storage of petroleum products; prohibiting the use of any oil storage installation, requiring any petroleum products to be removed from any oil storage installation, the seizure, removal and detention of any petroleum products not removed from any oil storage installation as required, the power of entry, inspection and examination; and for the establishment of a Standing Advisory Committee to advise the Building Authority on such matters relating to oil storage installations as may be specified in the regulations; (Added 16 of 1978 s. 3. Amended 5 of 1983 s. 3)
- (ib) as regards the conservation of energy-
 - (i) requirements relating to the planning, design and construction of any building or buildings of a class or description specified in the regulations, including the furnishing of information regarding these matters;
 - (ii) as regards buildings complying with or required to comply with regulations under subparagraph (i), exemptions from specified requirements in any other regulation made under this subsection;

(Added 77 of 1994 s. 11)

- (j) the granting of permits for and control of buildings required for a limited time or constructed of short-lived materials;
- (k) plans, notices and certificates to be delivered to the Building Authority;
- (ka) matters relating to minor works, including-
 - (i) the designation of any building works as minor works for the purposes of the definition of “minor works” in section 2(1);
 - (ii) the classification of minor works into different classes, types or items;
 - (iii) the appointment of prescribed building professionals in respect of different classes, types or items of minor works; and
 - (iv) the appointment of prescribed registered contractors to carry out different classes, types or items of minor works; (Added 20 of 2008 s. 25)
- (kb) the prescription of any requirements as simplified requirements for the purposes of the definition of “simplified requirements” in section 2(1), including-
 - (i) the duties of any prescribed building professionals and prescribed registered contractors, appointed in respect of minor works commenced under the simplified requirements (whether to be performed before or after the commencement of the minor works);
 - (ii) the requirements for the commencement, carrying out, completion and certification of minor works under the simplified requirements; and
 - (iii) the requirements for the submission or delivery of prescribed plans, certificates, notices or other documents to the Building Authority or other persons; (Added 20 of 2008 s. 25)
- (kc) matters relating to the enforcement of or other matters concerning the simplified requirements; (Added 20 of 2008 s. 25)
- (kd) matters relating to the display or indication of information relating to-
 - (i) the registration number of any prescribed registered contractor; and
 - (ii) the class, type and item of the minor works in respect of which any prescribed registered contractor is registered, in order to facilitate any member of the public to ascertain whether he is, in relation to any matter connected with any activity under this Ordinance, dealing with a contractor registered under this Ordinance; (Added 20 of 2008 s. 25)
- (ke) matters relating to section 39C, including matters relating to-
 - (i) the appointment of persons including a registered minor works contractor to inspect any building or building works for the purposes of that section;
 - (ii) the prescription of any building or building works for the purposes of the definition of “prescribed building or building works” in section 39C(6)(b); and
 - (iii) any plans, certificates, notices or other documents that are required to be submitted or delivered to the Building Authority or other persons; (Added 20 of 2008 s. 25)
- (kf) the designation of any building works as designated exempted works for the purposes of section 41(3B); (Added 20 of 2008 s. 25)
- (kg) matters relating to a prescribed inspection or prescribed repair in respect of a building including—**
 - (i) the scope, standard and requirements of a prescribed inspection or prescribed repair in respect of a building;**
 - (ii) the requirements of the appointment of registered inspectors, qualified persons, registered general building contractors and registered minor works contractors for a prescribed inspection or prescribed repair;**
 - (iii) the duties of registered inspectors, qualified persons, registered general building contractors and registered minor works contractors in relation to a prescribed inspection or prescribed**

repair;

(iv) the prescription of any exemption for the purposes of section 30D(3)(a); and

(v) the prescription of representatives of qualified persons for the purposes of section 30E(4);

(l)-(m) (Repealed 68 of 1993 s. 18)

(n) the better carrying into effect of the provisions of this Ordinance.
(Replaced 44 of 1959 s. 18)

(1AA) Without limiting the generality of subsection (1), the Secretary may by regulation provide for the registration of persons as registered minor works contractors in the provisional register (whether or not as supplemental or transitional arrangements).
(Added 20 of 2008 s. 25)

(1A) The Chief Executive in Council may by regulation provide for the imposition of fees in respect of any matter with regard to which provision is made in this Ordinance or in regulations made under this Ordinance. (Added 68 of 1993 s. 18. Amended 62 of 2000 s. 3)

(1B) The Chief Executive in Council may by regulation provide for- (Amended 62 of 2000 s. 3)

(a) the procedure as regards the exercise of the right of appeal conferred by section 44;

(b) the practice and procedure of an Appeal Tribunal constituted under section 48; and

(c) matters ancillary or incidental to those specified under paragraph (a) or (b).
(Added 77 of 1994 s. 11)

(1C) Regulations made under subsection (1)(ib) may provide that any requirement in such regulations applies to a building, any part of a building or parts of a building as are specified. (Added 77 of 1994 s. 11)

(2) Regulations under this section may provide for the carrying out by the Building Authority of all building works required to be carried out therein, and for the recovery of the costs thereof from the person required to carry out such building works.

(3) (a) Regulations under this section may provide that where the Building Authority issues permits thereunder he may-

(i) endorse conditions on such permits;

(ii) cancel such permits for breaches thereof; and

(iii) require the permittee to deposit a sum not exceeding \$500 as security for the due compliance with such conditions.

(b) Upon the breach of any such condition, any deposit required by this subsection shall upon application to a magistrate be declared by him to be forfeited to the Government. (Amended 62 of 2000 s. 3)

(3A) The amount of fees provided for in regulations made under subsection (1A) in respect of the making of application for or granting of approval of plans of building works or street works may be fixed at levels which provide for the recovery of expenditure incurred or likely to be incurred generally by the Government in relation to such application or approval and need not be limited by reference to the administrative or other costs incurred or likely to be incurred in the processing of any individual submission of plans. (Added 68 of 1993 s. 18)

(4) Regulations under this section may provide that a contravention of any specific provision thereof shall be an offence and may prescribe penalties therefor of-

(a) a fine not exceeding level 6;

(b) in the case of a continuing offence, a daily fine not exceeding \$5000 for each day during which the offence continues; and

(c) imprisonment for a period not exceeding 2 years. (Replaced 39 of 2000 s. 5)

(5) Regulations under this section shall be published once in the Gazette at least 3 weeks before coming into operation:

Provided that where the Secretary or the Chief Executive in Council, as the case may be, deems it expedient such publication may be dispensed with. (Amended L.N. 330 of 1999; 62 of 2000 s. 3; L.N. 106 of 2002; L.N. 130 of 2007; 20 of 2008 s. 25)

(Amended 44 of 1959 s. 18; 68 of 1993 s. 18)

Section 39B Obstruction of owners' corporation

~~(1) No person who has been notified by an owners' corporation of a building that an order has been served on the owners' corporation under sections 24(1), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4) or 28(2)(a), (3) or (5) in relation to any common parts of the building shall~~

~~A person who has been notified by an owners' corporation of a building that an order has been served on the owners' corporation under section 24(1), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4) or 28(2)(a), (3) or (5), or a notice has been served on the owners' corporation under section 30B(3), (5) or (6) or 30C(3), in relation to any common parts of the building must not—~~

- ~~(a) obstruct a person employed or engaged by the owners' corporation in the carrying out of any works or other action that is required for the purpose of complying with the order inspection, investigation, works or other action that is required for the purpose of complying with the order or notice; or~~
- ~~(b) refuse to allow a person employed or engaged by the owners' corporation access to or the use of any premises, which is reasonably necessary for the carrying out of any works or other action that is required for the purpose of complying with the order inspection, investigation, works or other action that is required for the purpose of complying with the order or notice.~~

~~(1A) A person who has been notified by an owners' corporation of a building that a notice has been served on the owners' corporation under section 30B(3), (5) or (6) or 30C(3) in relation to any common parts of the building must not refuse to contribute to the cost of the inspection, investigation, works or other action that is required for the purpose of complying with the notice.~~

~~(2) In this section—~~

~~"common parts" (公用部分) has the meaning assigned to it in section 2 of the Building Management Ordinance (Cap 344);~~

~~"owners' corporation" (業主立案法團) means a corporation registered under section 8 of the Building Management Ordinance (Cap 344).—~~

~~(2) In this section, "owners' corporation" (業主立案法團) means a corporation registered under section 8 of the Building Management Ordinance (Cap. 344).~~

(Added 15 of 2004 s. 30)

Section 39C Building Authority shall not serve order under section 24 or notice under section 24C

- (1) Notwithstanding sections 24 and 24C, if the requirements in subsections (2), (3) and (4) have been complied with in respect of a prescribed building or building works that have been completed or carried out before the date of commencement, the Building Authority shall not serve an order under section 24 or a notice under section 24C in respect of that building or building works on the ground that they have been completed or carried out in contravention of section 14(1).
- (2) An authorized person, a registered structural engineer, **a registered inspector**, a registered general building contractor, a registered specialist contractor or a registered minor works contractor as required by the regulations is to be appointed to inspect the prescribed building or building works.
- (3) The person appointed under subsection (2) is to submit or deliver to the Building Authority or other persons prescribed plans, certificates, notices and other documents as required by the regulations.
- (4) Where the person appointed under subsection (2) considers that for the safety of the prescribed building or building works, it is necessary to carry out minor works to alter, rectify or reinforce the prescribed building or building works, such works are to be carried out by a prescribed registered contractor under the simplified requirements.
- (5) Nothing in this section affects the power of the Building Authority to serve an order under section 24 or a notice under section 24C on the grounds other than those

referred to in subsection (1).

(6) In this section –

- (a) “date of commencement” (生效日期) means the date of commencement* of section 27 of the Buildings (Amendment) Ordinance 2008 (20 of 2008);
- (b) “prescribed building or building works” (訂明建築物或建築工程) means a building or building works prescribed in the regulations as prescribed building or building works for the purposes of this definition.

(Added 20 of 2008 s. 27)

Note:

* Commencement date: 31 December 2010.

Implications of the Proposal

Financial and Civil Service Implications

Additional resources have been earmarked for the Buildings Department (BD) to implement the various new initiatives under the new package of measures (including the implementation of the proposed new measures covered by the 2011 Bill). The major areas of work include more vigorous enforcement against unauthorized building works (UBWs), selecting buildings for large scale operations; issuing orders, attending to complaints and conducting site inspections, conducting audit checks on submissions by professional personnel, conducting public education activities and providing support to owners, as well as dealing with non-compliant cases by instigating disciplinary proceedings and prosecutions. It entails additional resources to engage consultants to undertake inspections and patrol to identify suspected UBW construction activities and building deterioration/ defects, order serving and compliance inspections. A consultant will also be employed to assist in the bulk of public education and publicity work. In addition, BD has engaged external consultants to conduct a stock-taking exercise of UBWs and signboards in Hong Kong. The proposal of warrant for entry into interior of individual premises may give rise to additional workload to the Judiciary. Where necessary, additional resources will be sought through the established resource allocation mechanism.

Economic Implications

2. The implementation of the multi-pronged package of measures will reduce threat to public safety and economic costs arising from building neglect and dilapidation, including cost of remedial repairs, personal injury and property damage. There will be economic benefits in terms of improved utility, durability, safety and appearance of the buildings involved. Thus, while there will be an increase in Government expenditure and owners' expenses on building enforcement, inspection and repair works, these costs are to be incurred for the benefit of public safety and a better living environment.

3. In respect of the job market, the implementation of the package of measures as proposed in the Bill will generate additional demand for building management and maintenance services, thereby creating employment opportunities in the building industry.

Environmental Implications

4. Proper building maintenance will slow down the dilapidation of buildings. Pollution and hygiene problems caused by building defects, such as defective drainage system, would be minimised. While the inspection and repair works may pose some impacts on the environment (such as noise pollution and increase in demolition waste), these activities will be subject to relevant environmental regulations and have to meet all applicable requirements and standards. Overall speaking, the multi-pronged package of measures, including the proposed new measures covered by the Bill, will bring about improvement to the built and living environment.

Sustainability Implications

5. The implementation of the multi-pronged package of measures will address the long-standing problem of building neglect and dilapidation and improve building safety in Hong Kong. The measures will promote a building care culture in the society. In the long run, the number of prematurely aging buildings would be reduced, the overall life span of private buildings prolonged, and the living and working environment of Hong Kong improved. This is in line with the sustainability principle of providing a living and working environment and pursuing policies which promote and protect the safety of the people of Hong Kong.

Development Bureau

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