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Dear Ms. LINN,

**Re: Comments on the Consultation Paper for Proposed Amendments to the Buildings Ordinance (BO) - December 2024**

The Hong Kong Institute of Architects (HKIA) wishes to share our views on the issues outlined in the consultation paper regarding the Proposed Amendments to the Buildings Ordinance (BO) dated December 2024.

Since its enactment in 1955, the Building Ordinance has undergone minimal amendments, with significant updates introduced only through the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme in 2012. As building professionals, we welcome the Government's initiative to amend the ordinance to address pressing issues related to building inspections, repairs, unauthorized building works (UBWs), and construction safety.

While we support the Government's proposals to:

- i. Enhance building works safety;
- ii. Expedite building inspections and repairs;
- iii. Rationalize the policy for handling unauthorized building works;

We would like to offer our perspectives to refine these proposals before they are presented to the Legislative Council. The following are our initial views:



## A. Enhancing Building Works Safety

The construction industry in Hong Kong has experienced a troubling number of serious accidents over the past year, leading to the tragic loss of workers' lives. In light of this, it is imperative that amendments to the Buildings Ordinance introduce new measures aimed at enhancing building works safety.

Enhancing building works safety is a complex endeavor, as the construction process involves numerous stakeholders, including building owners, professionals, contractors, and workers. Modern construction has become highly specialized, incorporating heavy machinery and equipment that necessitate skilled operators. Consequently, the causes of site incidents can vary significantly. Additionally, not all site incidents fall under the purview of the Building Ordinance, which primarily addresses compliance with building regulations, codes of practice, and approved plans; many incidents are governed by the Factories and Industrial Undertakings Ordinance. We believe that a substantial portion of past site accidents does not pertain to the works regulated by the Building Ordinance.

In this context, when amending the Building Ordinance to enhance building works safety, **the Development Bureau (DEVB) should conduct a thorough analysis of accident data to determine whether there is a genuine increase in incidents as defined by the Building Ordinance. Subsequently, they should investigate the causes of each incident**—whether it be machinery failure, non-compliance with plans or procedures, or insufficient supervision relative to the Site Safety Supervision Plan (SSSP)—to develop appropriate measures for improving building safety. Unfortunately, such critical analysis is absent from the consultation document.

Despite this lack of analysis, the document highlights specific proposals to enhance the monitoring of quality and safety on construction sites. We would like to base our comments on these proposals:

### 1. **Increase the penalty level for any offence committed by registered building professionals or registered contractors involved in the works**

Due to the increase in accidents in recent years, a sentiment has developed among the Government and the general public that, whenever accidents occur, there should be a strong push for the Government to identify which building professionals or contractors should be held responsible for accidents causing injury, death, or property damage. Holding someone accountable or pleading guilty has become a common response to public concerns about building safety. Thus, it is not surprising to see proposals for increased penalties and enhanced powers for the Buildings Department (BD) to investigate and gather evidence as key measures in the Building Ordinance Amendment.



However, the HKIA holds a different view. **We believe simply raising penalties will not effectively deter accidents. This is evident in recent legislative changes in occupational safety have not led to decrease in serious accidents.** The Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Bill 2022 was introduced on 19 April 2023 to amend the Factories and Industrial Undertakings Ordinance (Cap. 59) and the Occupational Safety and Health Ordinance (Cap. 509), among other subsidiary legislation. It came into operation on 28 April 2023, increasing the maximum penalties for occupational safety and health (OSH) offences aiming to enhance their deterrent effect. Since the enactment, we have observed that the rate of serious incidents has not decreased but is on the rise, demonstrating that increases in penalties do not have a deterrent effect on preventing site accidents.

**Increasing the penalty level, on the contrary, has drawbacks. It does not serve as a deterrent to committing offences but discourages younger generations from participating in the construction industry.** Due to the significant liabilities involved, young people are reluctant to pursue careers as building professionals. Those already in the profession often show a strong tendency to refuse roles as Technical Competent Persons (TCPs) for construction projects. They are also hesitant to become Authorized Persons (APs), Registered Structural Engineers (RSEs), and Registered Geotechnical Engineers (RGEs). This is evident in the declining number of registered building professionals in recent years. For registered contractors, there are also rumours that candidates for the Authorized Signatory (AS) intentionally fail interviews. If this trend continues, the number of building professionals will soon be insufficient to meet construction demands in Hong Kong.

**Given the above considerations, we object to the introduction of an indictable offence by making reference to the OSHO with a maximum fine of \$10,000,000. This penalty is deemed disproportionately high for building professionals who would bear this as personal liability.**

## 2. Empowering the Building Authority

We understand that the Buildings Department (BD) faces constraints regarding criminal prosecution. Empowering the BD to collect evidence for criminal prosecution is therefore a reasonable measure. However, we believe that the current proposal to empower the BD to request interviews, conduct searches, seize documents with warrants, and introduce new offences for refusing to attend interviews is excessive. **Such powers should be limited to occasions when serious accidents occur rather than in normal circumstances when non-conformities are merely suspected.**



### 3. Enhancing the Contractor Registration System

We support the proposal to extend the registration period from the current three years to a maximum of five years to encourage long-term investment and healthy industry development. We also support empowering the BA to consider shortening the renewal period and imposing conditions—such as requiring a more stringent site supervision system during renewal—if the contractor has caused serious injury or death as a result of a breach of duty, in order to strengthen monitoring.

### 4. Enhancing the Disciplinary Systems for Registered Building Professionals and Contractors

While we agree with the proposal to expedite the constitution and hearing of the disciplinary board by increasing the composition of the Disciplinary Board Panel from not more than 25 to not more than 40 members, we have reservations about simplifying the composition of the disciplinary boards for registered contractors by removing the existing requirement for representatives from all five professional disciplines. This would help maintain balance and fair judgment in the disciplinary board by incorporating broader perspectives from different professional disciplines.

Additionally, **we do not agree with the proposal to increase the maximum fine for disciplinary sanctions and to allow the disciplinary board to impose multiple sanctions for each charge to enhance the deterrent effect.** We believe this approach is unlikely to reduce site accidents and may inadvertently discourage younger generations from pursuing careers in the construction industry. Unless a strong correlation between the deterrent effect of reducing site accidents and the severity of penalties can be demonstrated, the Government should refrain from increasing penalties lightly.

### 5. Establishing the Legal Responsibilities of Key Personnel such as TCPs

We support the Government's intention to clearly define the roles and responsibilities of key personnel involved in building works, namely TCPs, as well as the Authorized Signatories and the Technical Directors acting on behalf of registered contractors, under the following conditions:

- a. **In assigning roles and responsibilities to building professionals, contractors, and their key personnel, it is essential to clearly define in the relevant technical memorandum how these responsibilities can be discharged in specific terms.** Otherwise, they are constantly exposed to unlimited risks and liabilities that are impossible to fulfil. It is unfair for them to bear consequences for accidents that occur outside their abilities and control.



- b. TCP duties should be assigned to suitable personnel who have adequate training, experience, and expertise. Currently, TCPs are often held by building professionals who are not trained for site safety supervision. For instance, TCP roles in the AP stream are usually taken by architects or architectural graduates who lack safety training in their university courses or professional qualifications. They are primarily trained for design and project administration, and safety training is typically acquired through on-the-job training or short courses. This arrangement is not desirable. **The Government should address this fundamental discrepancy by revisiting the entire site safety supervision structure and reassigning suitable duties to appropriate personnel.** To tackle this issue, we recommend the Government introduce qualified building safety professionals to oversee site safety supervision.

## 6. Registration of TCPs through the Construction Industry Council (CIC)

**Our members strongly oppose the necessity for TCPs to be registered through the CIC.** We do not see any benefits for the development of the TCP profession as suggested by this proposal. On the contrary, we foresee that the CIC registration requirement will create obstacles for professional firms in assigning staff as TCPs; they could use the lack of CIC TCP registration as an excuse, despite already meeting all TCP requirements.

Additionally, there is concern that the CIC may impose conditions beyond those required by the BO, such as mandating attendance at CIC events, seminars, and training for registration. Members believe this may present a conflict of interest, as the CIC's views on construction site safety in the past have not always aligned with those of professional institutes.

We propose to maintain the existing TCP system, which has proven effective over the years.

Beyond the proposals suggested by the Government, we recommend that the Building Ordinance Amendment consider the following:

1. As building construction becomes increasingly complex, **the Government should consider introducing a new category of Registered Building Safety Professionals**, who should possess adequate safety training and relevant site safety supervision experience, to oversee construction site safety for projects of a certain scale. The owner should engage such a Registered Building Safety Professional to supervise site safety at the commencement of construction. We remain open to exploring further with the Government and other industry stakeholders regarding whether this new professional should be supervised by the owner, AP/RSE/RGE, or the RGBC. We would like to emphasize that selecting the right personnel with the necessary knowledge and experience to perform site safety duties is essential for ensuring building safety.



2. Whenever site accidents occur, there is a strong sentiment among the Government and the public to focus on the liability of supervisory personnel and whether they were negligent in site supervision. There is little mention or prosecution of workers or operators who may commit offences while carrying out construction work in a dangerous manner. This is undesirable, **as the primary focus should be on preventing accidents at the source rather than blaming the supervisory system, which serves as a secondary layer of protection.** It is more effective to prosecute a driver who drives dangerously than to prosecute a passenger for failing to supervise the driver's careless and dangerous driving. The same principle applies to site safety supervision. We therefore look forward to the Government leading a cultural shift in this regard.
3. We believe that the Government should take proactive initiatives in safety training and updating precautionary measures. This includes enhancing safety training for all professional levels and revising designs to accommodate new construction methods, such as Modular Integrated Construction (MIC) systems with extensive high-level lifting operations. Such initiatives represent a more effective strategy for ensuring safety and precaution in the construction industry.

**Due to the reasons outlined above, the HKIA believes that the current proposals are not the most effective means to enhance building works safety. We look forward to exploring alternative measures in the upcoming amendments to the Building Ordinance to improve safety in the construction industry.**

## **B. Expediting Building Inspection and Repair**

The HKIA fully supports the Government's commitment to expediting building inspections and repairs of existing buildings, as dilapidated or defective structures pose safety hazards to the general public. We also agree with the Government's view that it is the owners' responsibility to maintain their properties in good condition. The Government's two-pronged approach—encouraging and supporting owners in maintaining and repairing their properties while also proactively enforcing strict law compliance—strikes a good balance.

The following are our views on specific proposals concerning building inspection and repair:

1. The primary incentive for failing to comply with Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) notices is monetary. People may mistakenly believe they can save money by ignoring these notices, thereby jeopardising building safety. Imposing penalties for non-compliance is an effective measure, as individuals will incur additional costs if they do not adhere to the notices. We therefore support the introduction of a fixed penalty for non-compliance with MBIS notices, which is currently not included in the prevailing Building Ordinance. We also support proposals to increase penalties for (i) non-compliance with building inspection, window inspection, and other notices/orders, and (ii) uncooperative owners obstructing building inspections, investigations, or works.



2. Currently, there are no provisions to address the dilapidation of external walls or projections (e.g., windows) that may cause personal injury or property damage. We fully support the introduction of a new offence to cover this gap, as incidents of fallen concrete from building external walls have occurred in the past, often with serious consequences.

Beyond the proposals suggested by the Government, we recommend that the Building Ordinance Amendment consider the following:

1. There are several common challenges related to the MBIS and MWIS Orders that lead to prolonged compliance times. Many Incorporated Owners and individual owners lack the necessary knowledge to understand the required actions. For example, delays may arise in appointing Authorised Persons or Registered Inspectors. Additionally, obtaining URA subsidies for MBIS and MWIS can take longer because most building renovation contracts include various non-mandatory inspection items, extending the overall completion timeline. Some Incorporated Owners or individual owners may also attempt to avoid compliance with the orders to save costs. We recommend the following:
  - a. The BD should establish a dedicated section to provide guidance to Incorporated Owners and individual owners, advising them on the necessary actions if they have any doubts.
  - b. The BD should consider providing a list of Authorised Persons and Registered Inspectors, along with their contact details, in the MBIS and MWIS Orders. This would facilitate quicker appointments of building professionals.
  - c. The BD should proactively intervene when Incorporated Owners and individual owners fail to comply with the MBIS and MWIS Orders. For outstanding works that pose risks of injury or danger to the public, the BD should consider adopting a "3-zero" building approach and carry out the necessary MBIS and MWIS work on their behalf to mitigate potential hazards for both the general public and owner-occupiers.

### **C. Rationalising the Policy for Handling Unauthorised Building Works**

The HKIA supports the Government's pragmatic and facilitating approach to handling minor UBWs, striking a balance between the essential daily needs of the public and the low risk associated with "minor UBWs." Enforcement actions regarding essential daily needs that pose lower safety risks would cause public nuisance. Implementing a system to validate these minor UBWs while focusing resources on addressing serious UBWs that pose significant risks to the public is a logical approach. However, we must emphasise that public safety is a priority that cannot be compromised.

Regarding specific proposals for handling UBWs, we have the following views:



1. We support the proposal to add more work items related to daily life and of low risk as Designated Exempted Works (DEWs). We also support the consolidation of the three existing Validation Schemes into an integrated scheme and extending the scope of validation to allow owners to validate “minor UBWs” erected before the commencement of the amendment ordinance and specified in the law. Currently, the DEW criteria focus primarily on dimensional requirements and controls. We believe the Government should also consider structural stability, material use, and other aspects that contribute to overall safety. **We would appreciate it if the Buildings Department collaborated with industry stakeholders to provide simple standard designs and details for small contractors**, as DEWs often lack input from registered building professionals due to their simplicity.
2. Apart from minor unauthorized building works (UBWs), the BD should consider extending validation schemes to include items that previously did not need to be shown on General Building Plans (GBP) or structural plans, such as certain roof-level structures. Since these works were previously supervised by registered building professionals, the associated risks are relatively low. This extension could clarify any ambiguity regarding their status as UBWs and is justified by the increased control the BD aims to implement in response to new legislation, such as the new requirements on access for external maintenance.
3. For serious UBWs, we support increasing penalties for non-compliance with removal orders and introducing penalties for subsequent convictions. We also support lowering the prosecution threshold and increasing penalties for the offence of erecting UBWs.
4. We support the proposal to introduce a new indictable offence whereby an owner commits an offence if a “serious UBW” is found on a property purchased after a specified date following the commencement of the amendment ordinance, regardless of whether the UBW was erected by the owner. This aims to close the loophole that allows owners to evade liability by claiming that the UBWs existed prior to their purchase. This provision can be seen as a response to the Government’s determination to address serious UBWs revealed in Redhill Peninsula after the heavy rainstorm in 2023. While we generally support this proposal, we believe the following issues need to be addressed before legislation and implementation:
  - a. Since this is a serious and indictable offence with a higher penalty, **it is crucial for the public to fully understand the definition of “serious UBWs.” An exhaustive list of serious UBWs with explanatory notes should be published** through a Practice Note and updated periodically to address new UBWs that may emerge in society. In defining what constitutes serious UBWs, we recommend setting a high threshold. While it is universally acknowledged that some UBWs pose serious or imminent danger, leading to potential injury and property damage, we would like to collaborate with the DEVB and BD to review the criteria for defining “serious UBWs.”



- b. The proposal includes a provision in the amendment ordinance allowing reasonable defences raised by concerned owners to be accepted by the court. This includes proof that they took all reasonable steps, including appointing a building professional to confirm the absence of UBWs on the property prior to purchase. Since the general public lacks the expertise to identify serious UBWs, having the option to appoint a building professional for confirmation before purchase is crucial. Although this arrangement may mitigate legal liability, it will undoubtedly increase the overall cost of property transactions in the future. **An exhaustive list promulgated by the Buildings Department will help streamline the verification process by registered building professionals, allowing their checks to be more focused and helping control fees.** Given the significant responsibility in confirming the absence of UBWs before purchase, it is more appropriate for Authorized Persons, Registered Structural Engineers, and, in special cases, Registered Geotechnical Engineers to carry out this confirmation.
- c. The amendment ordinance proposes that aiding an offence is tantamount to committing an offence, meaning that a person who assists an owner in purchasing a property with a “serious UBW” after a specified period post-commencement of the amendment ordinance could be liable. For instance, estate agents or solicitors who fail to inform the purchaser about the existence of “serious UBWs” may become liable. While this provision appears straightforward, it has significant implications for property purchase procedures. Estate agents and solicitors are not building professionals and may lack the knowledge to determine the existence of serious UBWs. To mitigate their liability under this new provision, they may require confirmation from a Registered Building Professional (i.e., APs, RSEs, RGEs) before proceeding with transactions. This confirmation will become essential in property transactions, and ensuring an adequate number of Registered Building Professionals to meet demand is crucial. **The Government should assess the required number of Registered Building Professionals based on previous transaction records and maintain this number by encouraging future generations to enter the profession rather than deterring them due to the prosecution of building safety issues. In addition to the points mentioned, it may be challenging to define or prove who has aided in an offence and in what capacity. This complexity is compounded by the difficulty in determining whether an UBW was constructed before or after the purchase. Without allowing for appropriate defences, this amendment could have significant implications. We recommend that the DEVB conduct thorough consultations with stakeholders and undertake a comprehensive review.**
5. We understand that there are significant reservations regarding the proposal that aiding an offence is equivalent to committing an offence. Concerns have also been raised that future purchasers may be held liable for unauthorized building works (UBWs) that existed prior to the transaction, potentially discouraging participation in the real estate market, especially during an economic downturn. As an alternative, we recommend that the Government consider requiring registered building professionals to prepare “Due



Diligence Reports" for property sales. This would help protect the public from purchasing properties with illegitimate issues and enable buyers to identify any irregularities. By doing so, purchasers would not be able to claim ignorance of existing UBWs at the time of purchase. Instead, they would retain the responsibility to rectify any irregularities within a specified timeframe, thereby facilitating transactions without adverse knock on effect on the economy.

6. We do not support the empowerment of the Building Authority to request interviews, conduct searches, and seize documents under warrant, or to introduce a new offence for refusal to attend interviews during normal circumstances, except in cases of serious UBWs. The frequent use of such powers in ordinary situations could become a nuisance for the industry and the public.
7. We are concerned about the Government's intention to re-launch the administrative scheme to allow owners who did not report their UBWs in 2012 to do so unless there are strong justifications. Otherwise, this sends a troubling message regarding the Government's commitment to addressing UBWs in New Territories village houses. It is possible that new UBWs constructed after 28 June 2012 could be registered under the new administrative scheme, leading to ambiguity regarding the circumstances under which these UBWs were built. Stakeholders' views should also be considered.

The above are the initial views of the HKIA on the proposed amendments. The HKIA is eager to maintain an ongoing dialogue with the DEVB and BD and to provide further suggestions in the next stage of the consultation until the Bill is finalised. Together, we can work towards making Hong Kong a better place.

Should there be any enquiries, please contact Mr. Nick KONG of the HKIA Secretariat at 3155 0407 or email to [council@hkia.org.hk](mailto:council@hkia.org.hk).

Yours Sincerely,

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