

**Proposal for setting up
Building Repair and Maintenance
Authority for Private Buildings of
Multiple Ownership**

The Hong Kong Institute of Surveyors



10 October 2014

Proposal for setting up Building Repair and Maintenance Authority
(樓宇維修工程監管局) for Private Buildings of Multiple Ownership

Content

1. Background
2. Objectives
 - 2.1 General
 - 2.2 Visions
 - 2.3 Functions
3. Functions of the Authority
 - 3.1 Maintain Approved List of Practitioners
 - i. Consultants
 - ii. Contractors
 - iii. Criteria for Enlisting and Delisting of Consultants/Contractors in Registers
 - 3.2 Formulate Technical Guidelines and Documents
 - i. Practice standard
 - ii. Standard form of maintenance contract
 - iii. Standard form of engagement of building consultants
 - 3.3 Handle Complaints
 - 3.4 Disciplinary Power
 - 3.5 Process Appeal Cases
 - 3.6 Dispute Resolution
 - 3.7 Promote and Educate General Public
 - 3.8 Research and Publish Market Information
4. Structure of the Authority
 - 4.1 Registration Committee
 - 4.2 Technical Committee
 - 4.3 Disciplinary Committee
 - 4.4 Appeal Committee
 - 4.5 Promotion and Education Committee
 - 4.6 Dispute Resolution Advisor Appointment Committee
 - 4.7 Secretariat
 - 4.8 Appeal Board
5. Composition of the Authority
6. Complaints and Disciplinary Action
 - 6.1 Procedure of Handling Complaints
 - 6.2 Disciplinary Actions

1. Background

The presence of ageing buildings which lack proper care and maintenance in Hong Kong become alarming concerns of the government and general public. Since the full implementation of the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) in 2012, there has been growing number of building maintenance and repair works in Hong Kong. In this regards, demand for service providers including building consultants and contractors for the maintenance and repair works is increased dramatically.

However, the number of complaint and dispute cases on building maintenance and repair works has also risen rapidly in the past years. It is often found in news headlines that building owners are suffering from unreasonably high repair cost, substandard consultancy services, poor works quality, etc. Nuisances and threats are also reported in some extreme cases. This shows clearly that the market is on the edge of becoming out of control. The root causes can be summarized below:

- (1) Lack of authority to regulate the market and practice of practitioners;
- (2) Unfamiliar with the construction industry and lack of knowledge on building maintenance and repair works;
- (3) Difficulties on selection of competent and proper building consultants and contractors;
- (4) No bench marking on the quality of services / works in the market.

To tackle the problems and to improve the current situation, it is necessary to establish a Building Repair and Maintenance Authority to regulate the market and practitioners. Apart from ensuring a fair market competition amongst building consultants and contractors, the Authority can also promote professional and ethical practices in carrying out the maintenance and repair works.

2. Objectives

2.1 General

The proposed Building Repair and Maintenance Authority (hereinafter “BRMA”) is a quasi-government body established to monitor the practice of building consultants and contractors in maintenance and repair works of private buildings of multiple ownership.

The operation of BRMA will be financially supported by levy which is chargeable to contractors in the approved list.

2.2 Missions

BRMA adheres to the principle of integrity and be a transparent, impartial, and responsive regulator on building repair and maintenance works of private buildings of multiple ownership. The missions of BRMA are to uphold the integrity of practitioners and ensure a fair competition in the market.

2.3 Functions

BRMA shall regulate the practice of repair and maintenance works of private buildings of multiple ownership in Hong Kong. Its major functions include:

- (i) Maintain the approved lists of practitioners for consultants and contractors;
- (ii) Formulate technical guidelines and documents (e.g. standard forms of contract, practice standard handbook, code of practice etc.);
- (iii) Handle complaints;
- (iv) Instigate disciplinary actions against offended practitioners;
- (v) Provide secretarial support to Appeal Board;
- (vi) Advise on appointment of Dispute Resolution Advisor for contractual disputes;
- (vii) Collaborate with other government departments to cultivate the good building care culture; and
- (viii) Research and publish market information (e.g. maintenance cost data, fee range on appointment of consultant etc.)

3. Functions of the Authority

3.1 Maintain Approved List of Practitioners

- (i) The following lists of Practitioners are proposed to be set up and maintained:-
 - (a) Building Consultants

Unlike the Registers of Authorized Person (AP) or Registered Inspector (RI) under the Buildings Ordinance maintained by the Buildings Department (BD), there is no explicit list of building repair consultants maintained by the government or other public body. Furthermore, the general public is also puzzled in selecting the right consultants from the AP or RI Register as they are only a list of individual professionals instead of professional firm. From the experience, only few registered professionals are willing to participate in the building repair and maintenance works. Setting up a recognized list of competent consultants can facilitate the public to identify the appropriate and interested consultants.
 - (b) Repair and Maintenance Contractors

Although there are Registers of General Building Contractors or other kinds of Contractors maintained by the BD, there is no formal list of repair and maintenance contractor offering services to private building owners under the management of any government bodies that the building owners may make reference. Setting up a recognized list of Repair and Maintenance Contractors could help the building owners to invite competent and trustworthy contractors into their tenderer list.
- (ii) Criteria for enlisting and delisting of consultants/contractors
 - (a) Listing and delisting criteria of consultant may include the following aspects:-
 - 1) Availability of sufficient member of professional surveyors, architects or engineers as the senior management of the company
 - 2) Relevant registration with BD
 - 3) Collusion records
 - 4) Criminal records of the company or person-in-charge

Proposal for setting up Building Repair and Maintenance Authority

- 5) Record of complaints
 - 6) Quality of works/ services
- (b) Listing and delisting criteria of contractor may include the following aspects:-
- 1) Availability of sufficient number of recognized building professional
 - 2) Relevant registration with BD
 - 3) Collusion records
 - 4) Criminal records of the company or person-in-charge
 - 5) Safety records
 - 6) Record of complaints
 - 7) Quality of works / services

Consultants and contractors in the respective list shall submit prescribed documents to BRMA for record and audit purpose upon completion of each works contract. BRMA should be empowered to audit the quality of services/ works delivered by the consultants/contractors. The audit results will be one of the critical considerations in renewal/delisting of the consultants/contractors in the recognized lists.

(iii) Mandatory inclusion into the lists

In the first 5 years since the establishment of BRMA, building owners are recommended, on a voluntarily basis, to appoint building consultants and contractors in the lists. However, it would be the ultimate goal of BRMA to set up a mandatory list for the building consultants and repair and maintenance contractors. Upon the expiry of the initial stage, building consultants and repair and maintenance contractors should have been duly included in the respective list before they can participate in the building repair and maintenance works, Building owners who intend to carry out repair and maintenance works should appoint these listed building consultants and repair and maintenance contractors.

3.2 Formulate Technical Guidelines and Documents

(i) Practice Standards

General public may not have good knowledge of the practice standard of the building maintenance sector of the construction industry. It is utmost important for the building owners to be aware of the need for good practice standard during their sourcing of consultant. It is also essential to have a fair bench marking of professional performance of building consultants.

The professional practice regarding repair and maintenance of private building of multiple ownership shall include but not limited to the following aspects:-

- 1) Condition survey for building including defects identification and formulation of repair and improvement works
- 2) Cost estimation and budgeting
- 3) Procurement methods in appointing consultant and contractor
- 4) Specifications for common repair and maintenance works
- 5) Contract administration during the course of the works including progress monitoring and interim payment assessment
- 6) Contract administration upon practical completion of works and during defect liability period

(ii) Standard form of maintenance contract

A suitable and fairly drafted standard form of contract shall be adopted so as to protect the interest of contractual parties and minimise future disputes. BRMA may make reference to the recently published Standard Forms of Contract for Maintenance and Renovation works published by HKIS in 2013 which is specifically prepared to cater for the particular nature and complexity of the repair and renovation works.

(iii) Standard form of engagement of building consultants

A well and fairly prepared form of engagement of building consultants shall be promoted so as to protect the best interest of contractual parties, in which a comprehensive scope of services and roles and duties of the consultant shall be included to avoid future disputes. BRMA may make reference to the Conditions of Engagement of Building Surveyors (May 1998 1st Ed, English and Chinese) published by HKIS to formulate a standard form of engagement of building consultants.

3.3 Complaints Handling

BRMA shall be empowered to handle complaints in respect of malpractice of building consultants and repair and maintenance contractors.

3.4 Disciplinary Power

BRMA shall also be empowered to enforce regulatory or instigate disciplinary actions against the offended consultants and contractors in the lists.

3.5 Disputed Resolutions

BRMA shall establish and maintain a list of recognized Dispute Resolution Advisors (DRA) in order to assist building owners to appoint DRA to resolve contractual disputes in building repair and maintenance contract.

3.6 Promotion and Education

BRMA shall collaborate with other Government Departments and organizations to cultivate the general public in building a positive building care culture in Hong Kong.

3.7 Public publication of market information

BRMA shall be empowered to collect the final contract sum and other related cost and project particulars after completion of repair and maintenance works from contractors in the list. With the collected information, BRMA can update and publish the maintenance cost data including both consultant fee and construction cost from time to time for the reference of the general public. The published cost data may be in simplified form such as price per unit of particular sizes or price per household area. With the unit cost range for certain common trades or work items may also be compiled for public reference. Tender of exceptionally high or low tender price or exceptionally low consultancy fee could then be detected and highlighted for further investigation.

3.8 Secretarial support to Appeal Board

In order to allow necessary check and balance to the decision of the BRMA, an appropriate appeal mechanism is to be derived such as by way of an independent appeal board. The BRMA shall provide secretarial support to the appeal board.

4. Structure of the Authority

Six committees, namely (A) Technical Committee; (B) Registration Committee; (C) Investigation Committee; (D) Disciplinary Committee; (E) Dispute Resolution Advisor Appointment Committee; (F) Promotion and Education Committee; together with the Secretariat are proposed to be established under BRMA. An independent Appeal Board is also proposed with secretarial support by BRMA.

4.1 Registration Committee

The Committee processes applications, examine and verify the qualifications of applicants; and make recommendations to BRMA on the acceptability of applicants for inclusion into the recognised lists.

4.2 Technical Committee

The Committee advises BRMA all technical matters including the establishment, formulation and review of (i) List Management and (ii) Technical Guidelines and Documents.

(i) List Management

Establish and review of the enlisting and delisting criteria for Consultants and Contractors in respective recognised list.

(ii) Technical Guidelines and Documents

Compile and update relevant technical guidelines and reference documents including the following:-

- a) Practice standard
- b) Standard form of maintenance contract
- c) Standard form of engagement of building consultants
- d) Other practice guides and standards
- e) Layman guides

4.3 Investigation Committee

Proposal for setting up Building Repair and Maintenance Authority

- (i) The Committee may investigate complaints related to listed Consultants and Contractors and refer cases to Disciplinary Committee or BRMA for follow up if necessary.
- (ii) The Committee may conduct audit check against the quality of works/services delivered by the consultants/contractors and refer cases to Disciplinary Committee or BRMA for follow up if necessary.

4.4 Disciplinary Committee

The Committee shall process regulatory or disciplinary cases referred by Investigation Committee and recommend follow up actions to BRMA

4.5 Dispute Resolution Advisor Appointment Committee

The Committee shall establish and maintain a list of recognized Dispute Resolution Advisors (DRA). Maintenance and repair works of certain scale specified by the BRMA shall appoint a DRA before commencement of work. The employer and the contractor (hereinafter called “the parties”) may select a DRA from the list and agree on the DRA. Should the parties be unable to agree on a DRA, the committee may nominate a DRA to the parties.

4.6 Promotion and Education Committee

The Committee, in collaboration with other Government Departments and organizations, organizes public activities to promote BRMA and cultivate the public awareness of a fair and competitive market in building repair and maintenance industry and good building repair culture in Hong Kong.

4.7 Secretariat

The Secretariat shall provide all secretarial and administrative works of BRMA including the research and publication of market information.

4.8 Appeal Board

The Board, with the secretarial support by the Secretariat but independent to the BRMA, considers / processes appeals against any decision made by the BRMA and the decision of the Board should be final and binding.

5. Composition of the Authority

Members of the BRMA shall be appointed by the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) and consist of a Chairman, a Vice Chairman, and a number of ordinary members coming from various sectors in the community at large, including government officials, lay-members and other professional bodies and industry practitioners.

It is proposed 2/3 of the members are Government officials, lay-members and academia and 1/3 of the members are nominated by Professional Institutions and Contractor Associations.

Government officials and lay-members include those public officers and citizen nominated by Development Bureau and Home Affairs Bureau. Professional Institutions include The Hong Kong Institute of Surveyors, The Hong Kong Institute of Architects, The Hong Kong Institution of Engineers and other relevant professional institutes and associations.

6. Complaints and Disciplinary Actions

6.1 Complaints Handling

The Authority shall set out fair and appropriate complaints handling procedure and rules. BRMA shall be empowered to carry out investigation of received complaints and present the findings to the Investigation Committee. The Investigation Committee shall consider investigation findings and the recommendations and refers the case to Disciplinary Committee as appropriate.

Remarks: BRMA may seek the assistance from other government authorities or law enforcement agencies if required.

6.2 Disciplinary Actions

The Disciplinary Committee shall consider the case referred by the Investigation Committee and make recommendation to BRMA for necessary and appropriate disciplinary sanctions.