

# **CHAPTER 1**

## **Development Bureau Buildings Department**

### **Buildings Department's actions on unauthorised building works**

**Audit Commission  
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*This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.*

Report No. 64 of the Director of Audit contains 8 Chapters which are available on our website at <http://www.aud.gov.hk>

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# **BUILDINGS DEPARTMENT'S ACTIONS ON UNAUTHORISED BUILDING WORKS**

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# **BUILDINGS DEPARTMENT'S ACTIONS ON UNAUTHORISED BUILDING WORKS**

## **Executive Summary**

1. With the exception of minor works carried out under the Buildings Department (BD)'s Minor Works Control System and exempted works, building works without the BD's approval and consent are unauthorised building works (UBWs). UBWs may pose structural and fire-safety risks to building users and members of the public. They may also cause hygiene problems and environmental nuisance. As of October 2014, 732 staff of three divisions and one section of the BD were responsible for UBW and building safety/maintenance work. The BD identifies UBWs mainly through related reports from the public and the media, and referrals from other Government departments (known as UBW public reports), and clearance operations conducted on target buildings or a group of buildings (known as large-scale operations — LSOs).

2. Since 1975, with a view to removing risk to public safety and curbing UBWs within the resources available, the Government has adopted a policy under which enforcement actions would be taken on certain types of UBWs (known as "actionable UBWs") and those on the remaining UBWs would be deferred (known as "non-actionable UBWs"). For an actionable UBW, the BD may issue a removal order requiring the owner concerned to remove the UBW within a specified period (normally 60 days) and register the order at the Land Registry (LR). If the required rectification works have not been carried out within the specified period stated under the removal order, the BD may carry out or cause to be carried out the removal works, or instigate prosecution actions against the building owners. For a non-actionable UBW, the BD may issue a warning notice notifying the owner concerned to remove the UBW, and the notice shall be registered at the LR if the owner has not complied with it within the specified period.

3. From 2001 to 2014, the number of public reports had almost tripled from 13,817 to 41,146. In the light of the increasing public concerns over the UBW problem, the Audit Commission (Audit) has recently conducted a review of the BD's actions on UBWs.

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### Implementation of Government policies on unauthorised building works

4. Under the UBW policy adopted by the Government in 2001, there were seven types of actionable UBWs, namely (a) UBWs constituting obvious or imminent danger to life or property; (b) new UBWs; (c) UBWs erected in or on buildings, on rooftops and podiums, and in yards and lanes constituting a serious hazard or a serious environmental nuisance; (d) major individual UBWs; (e) UBWs erected in or on individual buildings having extensive UBWs; (f) UBWs identified in buildings or groups of buildings targeted for LSOs or maintenance programmes; and (g) unauthorised alterations to or works in environmentally friendly features of a building for which exemption from calculation of gross floor area has been granted (paras. 2.3 and 2.4).

5. With effect from April 2011, the seven types of actionable UBWs have been expanded to include all UBWs erected on rooftops and podiums, and in yards and lanes of buildings even where these UBWs do not pose a serious hazard or environmental nuisance (known as rooftop-podium-lane UBWs) (para. 2.6).

6. A total of 405,261 UBWs had been removed from 2001 to 2010 (on average 40,526 UBWs removed a year) and 69,298 UBWs from 2011 to 2014 (on average 17,325 UBWs removed a year). In a stock-taking exercise conducted by the BD from May 2011 to December 2012, BD consultants found some 2,290,000 suspected UBWs, comprising 1,870,000 household minor works, 120,000 signboards and 300,000 other UBWs (paras. 2.9 to 2.11).

7. ***Number of actionable UBWs for planning enforcement actions not known.*** Notwithstanding that the Government has adopted a policy under which enforcement actions would be taken on actionable UBWs and such actions on non-actionable UBWs would be deferred, the BD has not taken action to ascertain the total number of actionable UBWs in existence, which might have adversely affected the BD's planning for enforcement actions on actionable UBWs. In this connection, the stock-taking exercise conducted in 2011 and 2012 did not categorise the 2,290,000 suspected UBWs found into actionable and non-actionable UBWs. Furthermore, the BD has not provided in its Controlling Officer's Reports a breakdown of the number of UBWs removed during a year into actionable and non-actionable ones, which might not be conducive to enhancing public



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accountability and transparency of the BD's effectiveness in tackling the UBW problem (paras. 2.14 and 2.17).

8. ***Illegal rooftop structures on 33 single-staircase buildings not yet removed.*** Rooftop is the fire refuge area for residents, and illegal rooftop structures, especially those erected on single-staircase buildings, would obstruct the fire escape route and pose serious fire-safety risk to the occupants. In April 2001, the Development Bureau (DEVB) informed the Legislative Council (LegCo) that the BD would clear all 12,000 illegal rooftop structures on the 4,500 single-staircase buildings by 2007. However, Audit noted that, as of January 2015, illegal rooftop structures erected on 33 single-staircase buildings had not yet been removed (para. 2.22).

### Handling of public reports

9. ***Long time taken in issuing removal orders on actionable UBWs.*** According to BD guidelines, BD officers should issue a removal order on a confirmed actionable UBW (other than a rooftop-podium-lane UBW) within 180 days after conducting an inspection. However, Audit examination revealed that, as of October 2014, the BD had not issued removal orders on UBWs relating to 4,522 public reports where BD inspections had been conducted for more than six months to five years (paras. 3.4 and 3.5).

10. ***Long time taken in issuing removal orders on rooftop-podium-lane UBWs.*** Audit examination revealed that, as of October 2014, of the 25,313 public reports on rooftop-podium-lane UBWs (see para. 5) received from April 2011 to October 2014, only 3,357 (13%) of such public reports had been dealt with (such as by issuing removal orders, placing related buildings in target building lists for conducting LSOs, or the UBWs had been voluntarily removed by the owners). Of the remaining 21,956 (25,313 less 3,357) public reports, as of October 2014, 17,862 (81%) reports had been awaiting enforcement actions for 10 months to 3.5 years (para. 3.12).

11. ***Long time taken in registering warning notices at LR.*** Under the Buildings Ordinance (Cap. 123), the BD shall cause a non-compliant warning notice to be registered at the LR. According to the BD, it would refer a non-compliant warning notice to the LR for registration within four months from the date of

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issuance. However, Audit examination revealed that, as of October 2014, 147 non-compliant warning notices, which had been issued for more than 4 months to 9 years, had not been referred to the LR for registration. Audit also noted that, as of October 2014, 985 non-compliant warning notices referred back from the LR (such as notices having incorrect information) had not been forwarded again to the LR for registration (paras. 3.16 to 3.18).

### **Actions through large-scale operations**

12. According to the DEVB, LSOs are more effective than handling individual public reports separately as more actionable UBWs would be cleared in one go. For each LSO on a type of UBWs, the BD specifies a number of target buildings for taking action (para. 4.2).

13. *Significant slippages in completing LSOs on rooftop-podium-lane UBWs.* From 2010 to 2014, the BD had conducted 6 LSOs on rooftop-podium-lane UBWs covering a total of 2,337 target buildings. Of the 6 LSOs, 1 was carried out by BD in-house officers and 5 by engaging 39 consultancies at a total cost of \$35.6 million. Notwithstanding that 4 of the 6 LSOs were targeted for completion from July 2011 to January 2014, as of October 2014, actions on all the buildings covered under 2 LSOs, and on more than half of the buildings covered under each of the remaining 2 LSOs, had not been completed (paras. 4.3 to 4.6).

14. *Payments prematurely made to consultants before completion of work.* According to BD consultancy agreement, upon satisfactory completion of work, the BD shall issue a completion letter and make the final payment. However, Audit examination revealed that the BD had made final payments to two consultancies before satisfactory completion of all work and issuance of completion letters (paras. 4.11 and 4.13).

15. *Significant slippages in completing LSOs on sub-divided flats (SDFs).* The Transport and Housing Bureau informed LegCo in December 2014 that the BD would continue to step up efforts to eradicate sub-divided units in industrial buildings and take enforcement actions against building and fire-safety irregularities of sub-divided units in residential and composite buildings. From 2011 to 2014, the BD had conducted 7 LSOs on SDFs covering a total of 1,092 target buildings. Of the 7 LSOs, 5 were conducted by BD in-house officers and 2 by engaging

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10 consultancies at a total cost of \$12.4 million. Notwithstanding that 4 of the 7 LSOs were targeted for completion from January 2012 to June 2014, as of October 2014, actions on more than half of the buildings covered under each of the 4 LSOs (all conducted by BD in-house officers) had not been completed (paras. 4.20 to 4.22 and 4.27).

### Follow-up actions on removal orders

16. ***Removal orders not yet registered at LR.*** According to the DEVB and the BD, registration of UBW information at the LR would enhance consumer protection on prospective property buyers, who will become aware of the existence of UBWs in the related premises through conducting a land search at the LR. In this connection, a legal professional association had expressed its views to the LR that some removal orders had not been sent to the LR for registration. In April 2014, the DEVB informed LegCo that the BD did not keep statistics on the number of removal orders registered at the LR. In February 2015, Audit sample check of 30 removal orders issued in May 2013 revealed that 4 had not been registered at the LR. Audit noted that the BD did not keep records in its computer system on the majority of removal orders registered at the LR. Audit also noted that, of the 2,654 removal orders having records in the BD's computer system, 80% had been sent to the LR for registration more than one month to 8 years after their issuance (paras. 5.3 to 5.6 and 5.10).

17. ***Targets on clearing removal orders not met.*** The BD had set targets of clearing all removal orders issued in 2004 by March 2008, in 2005 by March 2009, in 2006 by March 2010, in 2007 by March 2011, in 2008 by March 2013 and in 2009 by March 2014. However, as of December 2014, 1% to 25% of the removal orders issued each year from 2004 to 2009 had not been cleared (para. 5.14).

### System for supporting enforcement actions

18. ***Important information not provided by BD computer system.*** In 2002, the BD implemented a Building Condition Information System (BCIS) for recording, processing and retrieving details of complaints, referrals, planned surveys, statutory orders, works orders and consultancy assignments. However, Audit noted that some important information had not been input into or could not be provided by the BCIS (paras. 6.2 and 6.7).

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### Way forward

19. Audit noted that, as of October 2014, there were 68,134 outstanding removal orders, of which 21% had been outstanding for more than 6 years to 10 years and 1% for more than 10 years to 30 years. Furthermore, the BD has yet to ascertain the number of actionable UBWs in existence on which removal orders have not been issued. Given that owners of a large number of UBWs have not taken UBW removal actions after registration of the removal orders at the LR, the title-encumbrance arrangement alone may not be sufficiently effective in inducing these owners to remove their UBWs (paras. 7.7 and 7.8).

20. According to the BD, prosecution actions are effective means to clear UBWs and it has set estimates of issuing 2,500 to 3,300 summonses a year on outstanding removal orders. Accordingly, for the outstanding removal orders, the BD would take a long time to issue summonses to all related owners (para. 7.10).

### Audit recommendations

21. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Buildings should:**

- (a) **take actions to clear all illegal rooftop structures erected on single-staircase buildings as soon as possible (para. 2.23(c));**
- (b) **strengthen actions with a view to ensuring that removal orders are issued within BD time targets (para. 3.22(a));**
- (c) **formulate an action plan with timeframe for issuing removal orders on rooftop-podium-lane UBWs (para. 3.22(c));**
- (d) **take measures to ensure that all non-compliant warning notices are promptly referred to the LR for registration, and take prompt follow-up action on warning notices referred back from the LR (para. 3.22(d) and (e));**

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- (e) **strengthen actions with a view to ensuring that LSOs are completed by the target completion dates (para. 4.16(b));**
- (f) **take measures to prevent making the final payment to consultants before satisfactory completion of all work (para. 4.16(d));**
- (g) **conduct a review of the outstanding removal orders to identify those that have not been registered at the LR and take remedial actions as soon as possible (para. 5.20(a));**
- (h) **strengthen actions with a view to meeting BD time targets on clearing outstanding removal orders issued in each of the previous years (para. 5.20(e));**
- (i) **in implementing the BCIS revamping project, take measures to provide functions in the system for monitoring the progress of actions taken on LSOs and outstanding removal orders (para. 6.17(a)); and**
- (j) **explore other effective means to induce the owners to remove their UBWs after issuing removal orders to them (para. 7.12).**

### **Response from the Government**

22. The Secretary for Development and the Director of Buildings agree with the audit recommendations.



## **PART 1: INTRODUCTION**

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

### ***Buildings Ordinance***

1.2 Under the Buildings Ordinance (Cap. 123), all building works, with the exception of minor works and exempted works (Note 1), require prior approval and consent of the Buildings Department (BD — Note 2) before such works may commence. Building works (other than minor works and exempted works) without such approval and consent are unauthorised building works (UBWs) which are subject to enforcement actions by the BD. UBWs may pose structural and fire-safety risks to building users and members of the public. They may also cause hygiene problems and environmental nuisance.

1.3 When a UBW is identified, the BD may take the following enforcement actions:

- (a) issuing a removal order requiring the owner of identified UBWs to remove such works within a specified period, and registering the removal order at the Land Registry (LR) (sections 24 and 24AA of the Buildings Ordinance);

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**Note 1:** *Minor works are additions or alterations to buildings carried out under the Minor Works Control System implemented since December 2010 (see para. 2.25). Examples include erection of drying racks and supporting structures for air-conditioners. Exempted works are building works in a building not affecting the building structures such as removal of non-structural partition walls.*

**Note 2:** *Under the Buildings Ordinance, the authority to approve a building plan and give consent to commence building works is vested in the Building Authority, who is the Director of Buildings. For simplicity, the Building Authority is referred to as the BD in this Audit Report.*

## **Introduction**

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- (b) carrying out or causing to be carried out the removal works or instigating prosecution action against building owners if the required rectification works have not been carried out within the specified period stated under a removal order (sections 24(3), 24AA(7) and 40 of the Buildings Ordinance);
- (c) issuing a warning notice notifying the owner of identified UBWs to remove such works within a specified period. The BD shall register the warning notice at the LR if the owner has not complied with the notice within the specified period (section 24C of the Buildings Ordinance); and
- (d) for UBWs constituting a public nuisance or an imminent danger to life or property, applying for a court order for expeditious demolition or rectification of the UBWs (section 24B of the Buildings Ordinance).

### ***Government policies on UBWs***

1.4 Since 1975, the Government has adopted a policy under which enforcement actions would be taken on certain types of UBWs and those on the remaining UBWs would be deferred. The BD has used the terms “actionable UBWs” and “non-actionable UBWs” to refer to the former and latter types of UBWs respectively. The aim was to remove risks to public safety and to curb UBWs within the resources available. Over the years, the BD has taken various initiatives to tackle the UBW problem.

### ***Minor Works Control System***

1.5 With effect from 31 December 2010, under the Building (Minor Works) Regulation (Cap. 123N), building owners are allowed to carry out designated minor works by adopting simplified procedures without obtaining prior BD approval and consent. Under the BD’s self-regulatory Minor Works Control System (MWCS), the above mentioned minor works (such as installing drying racks) can be carried out by registered contractors without prior approval of the BD. These contractors have to notify the BD and submit records and certification of completion of works to the BD. Under the MWCS, the BD has introduced validation schemes, namely Household Minor Works Validation Scheme (see para. 2.30) and Validation Scheme for Unauthorised Signboards (see para. 2.15), to facilitate the public to retain certain kinds of UBWs after their validation. The BD will not take enforcement action against the validated UBWs unless their safety conditions change.



***Identification and classification of UBWs***

1.6 The BD identifies UBWs mainly from the following sources:

- (a) reports on UBWs from the public and the media, and referrals from other Government departments (hereinafter referred to as UBW public reports); and
- (b) clearance operations conducted on target buildings or a group of buildings (known as large-scale operations — LSOs) covering certain types of UBWs (such as UBWs on rooftops and podiums) for each operation.

1.7 After identifying and confirming a UBW, the BD will classify it for taking the following actions:

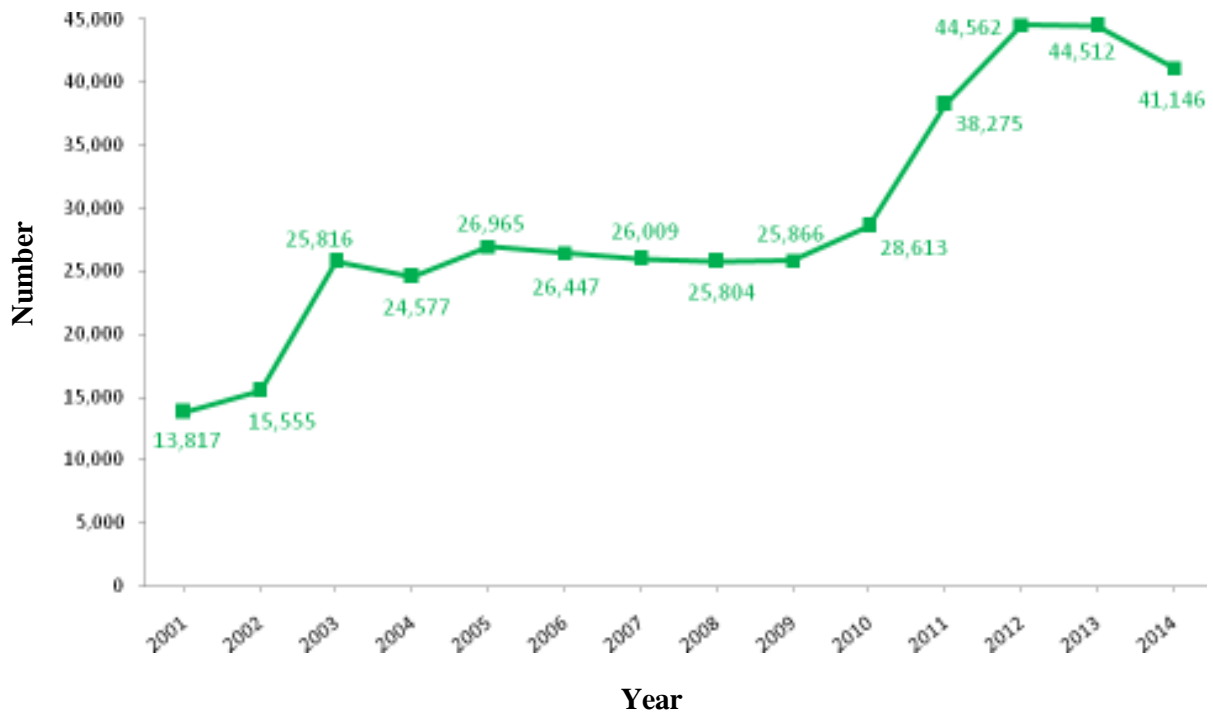
- (a) for an actionable UBW, issuing a removal order requiring the owner concerned to remove the UBW within a specified period (normally 60 days). The BD at times also issues an advisory letter advising an owner to remove his UBW; and
- (b) for a non-actionable UBW, issuing a warning notice notifying the owner concerned to remove the UBW within a specified period (normally 60 days) or an advisory letter advising the pertinent owner/occupant (without specifying a time for rectification action) to remove the UBW.

***UBW public reports***

1.8 The BD identifies UBWs mainly through related reports from the public and the media, and referrals from other Government departments. The numbers of UBW public reports from 2001 to 2014 are shown in Figure 1.

Figure 1

UBW public reports  
(2001 to 2014)



Source: *BD Controlling Officer's Reports*

***BD's staff resources and recurrent expenditures***

1.9 As of October 2014, the BD had 1,739 staff, comprising 1,456 civil servants and 283 non-civil service contract staff. Existing Buildings Divisions 1 and 2, with the support of the Mandatory Building Inspection Division and the Minor Works and Signboard Control Section under the Corporate Services Division (hereinafter referred to as the three divisions and one section) are responsible for handling UBW cases (see BD organisation chart at Appendix A) and implementing the building safety and maintenance enforcement programme on existing buildings.

As of October 2014, the three divisions and one section had 732 staff responsible for UBW and building safety/maintenance work (Note 3), comprising:

- (a) 565 professional and technical grade staff; and
- (b) 167 general and common grade staff.

1.10 According to the BD, it could not provide a breakdown of the staff resources solely responsible for UBW work because the 732 staff in the three divisions and one section (see para. 1.9) are responsible for multi-tasks, including:

- (a) handling UBW reports, implementing a scheme for carrying out repair and maintenance works for old and dilapidated buildings, handling public reports on dangerous buildings and building defects, and issuing repair and investigation orders; and
- (b) acting as building coordinators for providing a one-stop service to the public on UBWs and building dilapidation issues, as threats to building safety can be caused by a lack of proper repair and maintenance or the erection of UBWs, and a case involving UBWs often involves other kinds of building safety issues at the same time.

For 2013-14, the BD's annual recurrent expenditure was \$1,106 million.

### Audit review

1.11 In 2003 and 2013, the Audit Commission (Audit) conducted two reviews related to UBWs, namely:

- (a) in 2003, a review of the BD's efforts to tackle the UBW problem, the results of which were included in Chapter 6 of the Director of Audit's Report No. 41 of October 2003; and

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**Note 3:** *According to the BD, staff in: (a) the Fire Safety Section (under the Mandatory Building Inspection Division), (b) a special team responsible for handling water seepage problems causing environmental nuisance, and (c) the Slope Safety Section (both under the Existing Buildings Divisions), were not responsible for implementing the BD's building safety and maintenance enforcement programme, including actions on UBWs.*

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- (b) in 2013, as part of a review of the Government's efforts in enhancing fire safety of old buildings, UBWs found during fire-safety inspections were covered in the review and the results were included in PART 5 of Chapter 7 of the Director of Audit's Report No. 61 of October 2013.

1.12 As shown in Figure 1 (see para. 1.8), from 2001 to 2014, UBW public reports had almost tripled, and there were 41,146 such reports in 2014. In the light of the increasing public concerns over the UBW problem, Audit commenced conducting a review in May 2014 to examine the issue. The review focused on the BD's actions to tackle the UBW problem, covering the following areas:

- (a) implementation of Government policies on unauthorised building works (PART 2);
- (b) handling of public reports (PART 3);
- (c) actions through large-scale operations (PART 4);
- (d) follow-up actions on removal orders (PART 5);
- (e) system for supporting enforcement actions (PART 6); and
- (f) way forward (PART 7).

Audit has identified areas where improvements can be made by the Government in the above areas, and has made recommendations to address the issues.

## Acknowledgement

1.13 Audit would like to acknowledge with gratitude the cooperation of the staff of the Development Bureau (DEVB — Note 4) and the BD during the course of the audit review.

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**Note 4:** *Before July 2002, the then Planning and Lands Bureau was responsible for the policy portfolio on buildings matters. In July 2002, the then Housing, Planning and Lands Bureau was set up and took over the policy portfolio on buildings matters. In July 2007, the DEVB was formed to take over the buildings policy portfolio. For simplicity, all previous policy bureaux responsible for the policy on buildings matters are referred to as the DEVB in this Audit Report.*

## **PART 2: IMPLEMENTATION OF GOVERNMENT POLICIES ON UNAUTHORISED BUILDING WORKS**

2.1 This PART examines BD actions on implementing Government policies on UBWs.

### **Government policies on UBWs**

#### ***1975 UBW policy***

2.2 In 1975, the Government announced that all buildings issued with an occupation permit after 31 July 1975 would be kept under surveillance and immediate action would be instituted when UBWs were found. In addition, the BD would take action on UBWs posing a hazard to life and limb and keep record of the other UBWs for possible future action.

#### ***1988 UBW policy***

2.3 In 1988, the Government adopted a policy on UBWs, superseding that of 1975, under which UBWs were divided into actionable UBWs for enforcement action and non-actionable UBWs for deferment of action. The aim was to remove risk to public safety and to curb UBWs within the resources available. Under the 1988 policy, actionable UBWs mainly comprised:

- (a) UBWs constituting obvious or imminent danger to life or property; and
- (b) new UBWs (see para. 2.19), irrespective of the date of completion of the buildings concerned.

#### ***2001 UBW policy***

2.4 In 2001, in order to provide greater scope and flexibility for the BD to carry out enforcement actions on a large number of UBWs, the Government revised the enforcement policy, under which actionable UBWs, in addition to the two types stated in paragraph 2.3(a) and (b), were expanded to include the following works:

## **Implementation of Government policies on unauthorised building works**

- (a) UBWs erected in or on buildings, on rooftops and podiums, in yards and lanes constituting a serious hazard or a serious environmental nuisance;
- (b) major individual UBWs;
- (c) UBWs erected in or on individual buildings having extensive UBWs;
- (d) UBWs identified in buildings or groups of buildings targeted for LSOs or maintenance programmes; and
- (e) unauthorised alterations to or works in environmentally friendly features of a building (e.g. balconies and podium gardens) for which exemption from calculation of gross floor area has been granted.

For non-actionable UBWs, the BD may issue warning notices (effective from December 2004) and shall register those non-compliant notices at the LR, or may issue advisory letters on which the BD would not take follow-up actions for the time being.

### ***2001 BD targets on removing UBWs***

- 2.5 In April 2001, the DEVB informed the Legislative Council (LegCo) that:
- (a) the Government was committed to providing a safe and healthy built environment and an attractive outlook worthy of a dynamic world-class city;
  - (b) in 2001, there were 42,000 private buildings, 800,000 UBWs (including illegal rooftop structures — Note 5) and 220,000 signboards;
  - (c) the BD would continue its LSOs to clear at one go all external UBWs on 900 and 1,000 buildings in 2001 and 2002 respectively;

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**Note 5:** *The estimated 800,000 UBWs were projected from the number and types of UBWs identified in 24 sample buildings selected for conducting LSOs at that time (UBWs located inside the buildings were not covered because, according to the BD, UBWs erected on the exterior of buildings posed greater safety concern to the public).*

## **Implementation of Government policies on unauthorised building works**

- (d) the BD would remove 150,000 to 300,000 UBWs in five to seven years (namely from 2001 to 2005 and to 2007); and
- (e) the BD would clear all 12,000 illegal rooftop structures (Note 6) on the 4,500 single-staircase buildings within seven years (namely by 2007). The Housing Department had agreed to rehouse affected occupants according to their eligibility.

### ***2011 Government enhanced policy on UBWs***

2.6 In October 2010, the Government announced a new multi-pronged approach to enhance building safety including tackling the problem of UBWs, namely:

- (a) enacting new legislation to enable the BD to apply for court warrants for gaining access to individual premises for taking enforcement actions, introducing a surcharge on default works and putting common building works associated with sub-division of flats under the control of the MWCS;
- (b) extending the scope of actionable UBWs and conducting a stock-taking exercise on the exterior of buildings to facilitate enforcement;
- (c) providing support and assistance to UBW owners; and
- (d) conducting publicity and public education on UBWs.

The DEVB informed LegCo that, in response to community views that the Government needed to take a tougher stance against non-compliant owners to create a stronger deterrent effect, with effect from April 2011, the seven types of actionable UBWs (see paras. 2.3 and 2.4) would be extended to include all UBWs erected on rooftops, podiums, as well as yards and lanes of buildings even where these UBWs did not pose a serious hazard or environmental nuisance (hereinafter referred to as rooftop-podium-lane UBWs).

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**Note 6:** *The 12,000 illegal rooftop structures erected on single-staircase buildings had been identified by the Fire Services Department in its survey.*

## **Implementation of Government policies on unauthorised building works**

### ***BD resources for handling UBWs***

2.7 In March 2011, February 2012, April 2013 and April 2014, in response to LegCo questions about the number of BD staff responsible for carrying out action on UBWs in recent years, the BD said that:

- (a) the enforcement action on UBWs was carried out by the existing resources of professional and technical staff of the two Existing Buildings Divisions, supported by staff of the Mandatory Building Inspection Division and the Minor Works and Signboard Control Section of the BD (both established in July 2011) as part of their overall duties to implement the BD's building safety and maintenance enforcement programme (totalling 477 professional and technical staff in March 2011, 488 staff in February 2012, 530 staff in April 2013 and 576 staff in April 2014); and
- (b) the BD was not able to provide a breakdown of the manpower or expenditure involved solely for the enforcement action on UBWs.

2.8 From 2001-02 to 2014-15, the Government allocated additional funding to the BD mostly for employing additional staff (mainly non-civil service contract staff) and engaging consultants to take UBW enforcement actions and implement measures to enhance building safety (see Table 1).



## Implementation of Government policies on unauthorised building works

**Table 1**

**Additional funding for UBW enforcement actions  
and enhancing building safety  
(2001-02 to 2014-15)**

Period	Funding allocated (million)	Purpose
2001-02 to 2006-07	\$839	Taking enforcement actions on UBWs erected on external walls of buildings and illegal rooftop structures on single-staircase buildings (see para. 2.5(c) to (e)).
2006-07 to 2011-12	\$830	Implementing measures to enhance building safety and carrying out UBW-related tasks, including: <ul style="list-style-type: none"> <li>• removing illegal rooftop structures on the remaining 1,310 single-staircase buildings in two years (i.e. 2007-08 and 2008-09); and</li> <li>• removing 180,000 UBWs in 5 years (i.e. by 2010-11).</li> </ul>
2011-12 to 2014-15	\$1,261	Taking UBW removal measures, including conducting LSOs, implementing the MWCS (see para. 1.5) and conducting the 2011 stock-taking exercise (see para. 2.10), and other building safety measures, such as implementing the Mandatory Building Inspection Scheme (Note).

*Source: BD records*

*Note: Under the Scheme (implemented in June 2012), the BD would serve statutory notices on the owners and owners' corporations of some selected target buildings aged 30 years or above, requiring them to carry out the prescribed inspections within six months and the prescribed repair works within 12 months. According to the BD, it was unable to divide the funding between that for implementing UBW removal measures and that for building safety measures.*

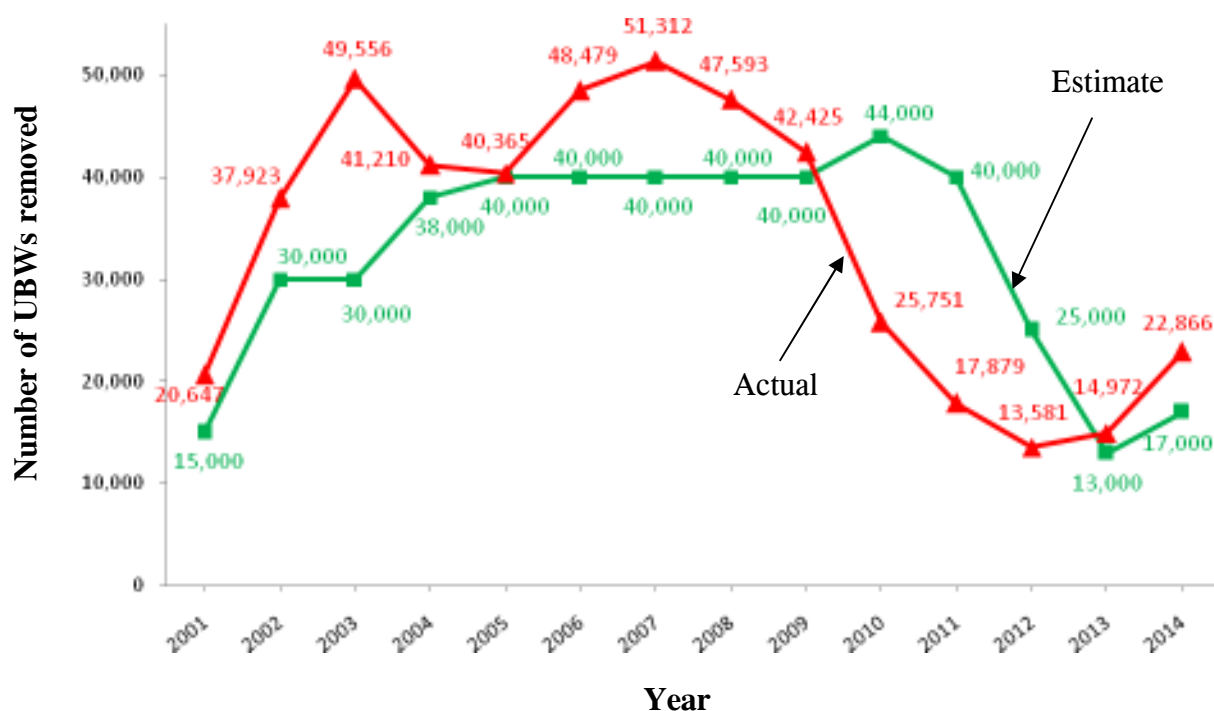
## Implementation of Government policies on unauthorised building works

### UBWs removed

2.9 In June 2011, the DEVB informed LegCo Panel on Development that, by the end of March 2011, nearly 12,000 buildings had been covered in the various enforcement programmes, with over 400,000 UBWs identified and demolished and most of the high-risk UBWs had been removed. Furthermore, as shown in the Controlling Officer's Reports (CORs) of the BD, a total of 474,559 UBWs had been removed from 2001 to 2014 (see Figure 2), comprising 405,261 UBWs from 2001 to 2010 (on average 40,526 a year) and 69,298 UBWs from 2011 to 2014 (on average 17,325 a year).

Figure 2

Removal of UBWs  
(2001 to 2014)



Source: BD CORs

Remarks: The total numbers of UBWs removed from 2001 to 2010 and from 2011 to 2014 were 405,261 (20,647 + 37,923 + 49,556 + 41,210 + 40,365 + 48,479 + 51,312 + 47,593 + 42,425 + 25,751) and 69,298 (17,879 + 13,581 + 14,972 + 22,866) respectively. Therefore, the total number of UBWs removed from 2001 to 2014 was 474,559.

## **Implementation of Government policies on unauthorised building works**

According to the BD, the decreases in the number of removal of UBWs since 2010 were mainly because:

- (a) after removal of over 400,000 UBWs from 2001 to 2010, the number of non-civil service contract staff employed for the task had been reduced;
- (b) enforcement actions on the remaining UBWs were relatively difficult to be taken; and
- (c) some staff resources had been directed to inspect: (i) dilapidated buildings subsequent to the collapse of a building at Ma Tau Wai Road in January 2010; (ii) cantilevered slab canopies after the Kin Kwan Street canopy collapse incident in June 2011; and (iii) sub-divided flats (SDFs) after the Fa Yuen Street fire incident in November 2011.

### ***2011 stock-taking exercise***

2.10 In May 2011, the BD commissioned 15 consultants under 35 consultancy agreements at an estimated total cost of \$27.4 million to conduct a territory-wide stock-taking exercise on the number of different types of suspected UBWs (including signboards) erected on the exterior of the 41,000 private buildings in Hong Kong, and conduct visual inspections of the identified suspected UBWs. During inspections, if suspected UBWs were identified as having imminent danger, the consultants should report to the BD for it to take immediate follow-up actions. In June 2011, in response to LegCo questions, the BD said that the stock-taking exercise would enable the BD to set up a comprehensive database for making appropriate arrangements for prioritising its enforcement actions and conducting various LSOs.

## **Implementation of Government policies on unauthorised building works**

2.11 Upon completion of the site surveys in December 2012, BD consultants found some 2,290,000 suspected UBWs, which comprised:

- (a) 1,870,000 household minor works (82% — Note 7);
- (b) 120,000 signboards (5%); and
- (c) 300,000 other UBWs (13% — such as UBWs on rooftops — see Appendix B).

The consultants provided the BD with information of the 2,290,000 suspected UBWs including photographic records. In July 2014, after analysing the data, the BD submitted the survey results to the DEVB. According to the BD, the photographic records were useful materials for BD staff in their daily operation such as desktop screening of some reported UBWs instead of conducting site inspections, and the findings had also provided approximate numbers of different types of suspected UBWs.

2.12 In February and March 2015, the BD informed Audit that:

- (a) the 2011 stock-taking exercise was to provide a repository to facilitate BD daily operation and for it to formulate the future UBW enforcement strategy. Due to resource consideration and tight timeframe, the exercise did not have an objective or intention to accurately identify the number of actionable UBWs for taking enforcement actions, but was a snapshot exercise to provide rough estimates of the existing UBWs erected on the exterior of buildings after the 10-year enforcement programme from 2001 to March 2011, and to categorise buildings prone to have high-risk UBWs for the BD's planning for resources to tackle the problems;

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**Note 7:** *The 1,870,000 household minor works comprised:*

- (a) *1,260,000 supporting structures for air-conditioning units and water cooling towers;*
- (b) *230,000 small canopies; and*
- (c) *380,000 drying racks.*

## **Implementation of Government policies on unauthorised building works**

- (b) due to resource consideration and tight timeframe, consultants of the 2011 stock-taking exercise did not record the dimensions of UBWs found, conduct detailed assessments, or cover UBWs located inside the buildings. The consultants were also not required to check the legality of the suspected UBWs found against the approved plans, minor works submissions and other BD records. In the absence of verification of the legal status and detailed assessments (such as the case history and dimensions) of the suspected UBWs found, the BD could not establish whether they were UBWs or actionable UBWs warranting the issue of removal orders; and
- (c) the removal of the remaining UBWs after the 10-year enforcement programme was a complicated task which might involve court warrants for access, rehousing and owners not visualising the associated risk. Subsequent to the collapse of a building at Ma Tau Wai Road in 2010 and the fire incident at Fa Yuen Street in 2011, the BD had put more emphasis on building repairs and SDFs during the conduct of LSOs, and accordingly had reduced the number of target buildings for carrying out enforcement actions on UBWs.

### ***Some UBWs not identified in the 2011 stock-taking exercise***

2.13 Audit noted that some buildings having UBWs had not been identified in the 2011 stock-taking exercise. For example, the 2011 stock-taking exercise found a total of 16,000 buildings erected with rooftop-podium-lane UBWs. However, Audit examination revealed that 2,800 related buildings as shown in BD records (mostly discovered from public reports) were not identified in the stock-taking exercise. In February 2015, the BD informed Audit that the discrepancy of 2,800 buildings might be attributable to BD consultants not being able to visit some sites due to inaccessibility and site constraints of some buildings, the construction of some rooftop-podium-lane UBWs after completion of the survey and data matching problems.

### ***Number of actionable UBWs for planning enforcement actions not known***

2.14 Since 1975, the Government has adopted a policy under which enforcement actions would be taken on actionable UBWs and such actions on

## **Implementation of Government policies on unauthorised building works**

non-actionable UBWs would be deferred. Notwithstanding this Government policy, from 1975 to present, the BD has not taken action to ascertain the total number of actionable UBWs in existence. In this connection, the 2011 stock-taking exercise found a total of 2,290,000 suspected UBWs.

2.15 Of the 2,290,000 suspected UBWs found, the BD has conducted a sampling analysis and estimated that some 96% of the 1,870,000 suspected unauthorised household minor works could be validated under the Household Minor Works Validation Scheme (see para. 2.30). Regarding the 120,000 suspected unauthorised signboards, in September 2013, the BD commenced implementing a Validation Scheme for Unauthorised Signboards under which signboards complying with the technical specifications could be retained subject to carrying out a safety check every five years. The BD estimated that some 72% (86,400) of the 120,000 suspected unauthorised signboards could be validated under the Scheme. According to the BD, for the 300,000 other suspected UBWs, many of them may be unauthorised amenity features which may be validated under future validation schemes under the MWCS.

2.16 In March 2015, the DEVB and the BD informed Audit that:

- (a) the BD would continue to adopt a multi-pronged approach to tackle the UBW problem. However, as the problem was very complicated involving millions of UBWs, it was not pragmatic to ascertain the total number of territory-wide actionable UBWs and deal with them one by one through issuing removal orders. In any event, whether a UBW was actionable depended on the prevailing UBW policy, which might be revised from time to time to meet the needs of the circumstances; and
- (b) while the total number of UBWs removed each year was published in the BD's COR and on its website, they did not consider it necessary to show a breakdown of the number of UBWs removed each year into actionable and non-actionable UBWs for the following reasons:
  - (i) the number of actionable and non-actionable UBWs would unlikely be of public concern;
  - (ii) the breakdown was not a good indicator for assessing the effectiveness of the BD's enforcement action; and

## **Implementation of Government policies on unauthorised building works**

- (iii) highlighting a building owner's voluntary removal of non-actionable UBWs might remind the public that some UBWs need not be removed and might have a negative effect of discouraging voluntary removal of UBWs.

2.17 In Audit's view, in order to facilitate planning and setting targets for enforcement actions on actionable UBWs erected on the exterior of private buildings, the BD should consider taking actions to ascertain the number of actionable UBWs not having been issued with removal orders. Thereafter, taking into account resources available, the BD needs to formulate an action plan with timeframe to issue removal orders on actionable UBWs, including household minor works, signboards and other UBWs which are not eligible for validation under related schemes (see para. 2.15). In this connection, in 2001, the BD had set a target of removing 150,000 to 300,000 UBWs in five to seven years (see para. 2.5(d)). However, the BD has not set similar targets since 2011. In addition, the BD has not provided in its CORs a breakdown of the number of UBWs removed during a year into actionable and non-actionable ones. In order to enhance public accountability and transparency of the BD's effectiveness in tackling the UBW problem, the BD should consider publishing in CORs and on its website the annual number of actionable and non-actionable UBWs removed.

### ***New UBWs not clearly defined***

2.18 Since 1975, in order to contain the growth of the number of UBWs, new UBWs have been accorded high priority for taking enforcement actions (see paras. 2.2 and 2.3(b)). In January 2001, the DEVB informed the then LegCo Panel on Planning, Lands and Works (functions taken over by the LegCo Panel on Development since October 2007) that, in order to give a clear message to the public that the Government would not tolerate perpetuation of the UBW problem, new UBWs of any sort should be cleared as soon as they were identified.

2.19 According to BD guidelines issued in March 2014, new UBWs are:

- (a) UBWs found under construction at the time of inspection, i.e. works-in-progress;
- (b) UBWs reconstructed after removal actions under previous enforcement action as revealed from BD records;

## **Implementation of Government policies on unauthorised building works**

- (c) UBWs found not existing in or shown in BD photo records (e.g. photos taken in the 2011 stock-taking exercise); or
- (d) UBWs within BD staff's reasonable belief to have been completed within 12 months.

2.20 In Audit's view, the criteria in paragraph 2.19(c) and (d) are not very clear for enforcement purposes. With a view to providing clearer guidance to BD staff, the BD needs to conduct a review of BD guidelines on the definition of new UBWs.

### ***Low response rate of Validation Scheme for Unauthorised Signboards***

2.21 According to the BD, an estimate of 86,400 suspected unauthorised signboards could be validated under the Scheme (see para. 2.15). However, from commencement in September 2013 of the Validation Scheme for Unauthorised Signboards to January 2015, the BD had only received 190 related applications and only 35 signboards had been validated under the Scheme (Note 8). Therefore, the BD needs to strengthen action to publicise the Scheme.

### ***Illegal rooftop structures on 33 single-staircase buildings not yet removed***

2.22 In April 2001, the DEVB informed LegCo that the BD would clear all 12,000 illegal rooftop structures on the 4,500 single-staircase buildings by 2007 (see para. 2.5(e)). From 2001 to 2014, a total of some 13,000 illegal rooftop structures on 5,700 single-staircase buildings had been cleared. However, as of January 2015, illegal rooftop structures on 33 single-staircase buildings had not been removed. According to the DEVB, rooftop is the fire refuge area for residents, and illegal rooftop structures, especially those erected on single-staircase buildings, would obstruct the fire escape route and pose serious fire risk to the occupants. In February 2015, the BD informed Audit that the remaining illegal rooftop structures on 33 single-staircase buildings were sensitive cases and some of them were subject to court appeals, prosecution or planned closure actions, and some

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**Note 8:** *Regarding the remaining 155 applications, as of January 2015, 98 applications were in progress, 55 had been rejected and 2 had been withdrawn.*



## **Implementation of Government policies on unauthorised building works**

involved emotional owners/occupants. In Audit's view, with a view to minimising public safety risks, the BD needs to take actions to clear such structures as soon as possible.

### **Audit recommendations**

2.23 **Audit has *recommended* that the Director of Buildings should:**

- (a) **conduct a review of BD guidelines on the definition of new UBWs with a view to providing clearer guidance to BD staff in carrying out UBW enforcement actions;**
- (b) **strengthen action to publicise the Validation Scheme for Unauthorised Signboards; and**
- (c) **take actions to clear all illegal rooftop structures erected on single-staircase buildings as soon as possible.**

### **Response from the Government**

2.24 The Secretary for Development and the Director of Buildings agree with the audit recommendations. They have said that:

- (a) regarding paragraph 2.23(b), the BD will continue to publicise the Validation Scheme for Unauthorised Signboards through various channels including Announcements in the Public Interest, press releases, booklets, and guidelines and briefings provided to the industry and the general public. The BD will also convey a message to the applicants of food business licences that the BD will take progressive enforcement action against unauthorised signboards and they should remove or replace their unauthorised signboards; and
- (b) regarding paragraph 2.23(c), the BD has regularly updated the progress of follow-up actions on the remaining single-staircase buildings erected with illegal rooftop structures, and the Progress Monitoring Committee chaired by the Director of Buildings has monitored the progress on a case-by-case basis.

## **Minor Works Control System**

2.25 Before December 2010, under the Buildings Ordinance, all building works, including those which were minor in nature (unless exempted under the Ordinance), required the BD's prior approval and consent before commencement of works. According to the BD, the costs and time involved in taking actions to meet requirements under the Ordinance were disproportionate to the scale of minor works and, as a result, many owners did not comply with the requirements in carrying out minor works, rendering a large number of such unauthorised works. In December 2010, in order to facilitate members of the public to carry out minor works lawfully by adopting simplified procedures, the MWCS was implemented.

### ***Procedures for carrying out new minor works***

2.26 Under the MWCS, as of December 2014, 126 items of minor works were classified into the following three classes according to their nature, scale, complexity and safety risk:

- (a) Class I (44 items) comprising relatively more complicated minor works, such as internal staircases connecting two floors;
- (b) Class II (40 items) comprising works of comparatively lower complexity and risk to safety, such as the erection of metal garden gates; and
- (c) Class III (42 items) comprising common household minor works, such as supporting frames for air conditioners.

## **Implementation of Government policies on unauthorised building works**

2.27 Under the MWCS, a building owner needs to employ a prescribed registered contractor (Note 9) to carry out designated minor works. For Class I minor works, he needs to employ a prescribed building professional (Note 10) to supervise the conduct of the works. For Classes I and II minor works, at least 7 days before works commencement, a notification is needed to be submitted to the BD specifying details of the works with site photographs. For all three classes of minor works, within 14 days after works completion, a completion certificate is needed to be submitted to the BD together with details of works completed and related photographs. The BD has uploaded onto its website a list of prescribed registered contractors specifying the classes or items of works that could be carried out by each contractor. As of December 2014, there were a total of 18,729 prescribed registered contractors.

2.28 According to the BD, designated minor works that are not carried out in accordance with the procedures under the MWCS are UBWs, the owners concerned may be subject to prosecution, and the prescribed building professionals and prescribed registered contractors concerned may be subject to disciplinary action or prosecution.

### ***BD procedures for handling minor-works submissions***

2.29 According to BD guidelines, upon receiving a minor-works submission, the BD would:

- (a) conduct an initial screening of the submitted documents to ensure their completeness, record the information in BD computer system and issue an acknowledgement letter;
- (b) verify the validity and capacity of the prescribed building professional and/or prescribed registered contractor against the BD's registration records;

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**Note 9:** *A prescribed registered contractor is a registered general building contractor, a registered specialist contractor of the respective registered category of specialised works, or a registered minor works contractor of the respective registered classes, types or items of works.*

**Note 10:** *A prescribed building professional is an authorised person, a registered structural engineer, a registered geotechnical engineer or a registered inspector.*

## **Implementation of Government policies on unauthorised building works**

- (c) conduct a desktop audit on selected submissions to ensure compliance with BD requirements and the Building (Minor Works) Regulation;
- (d) conduct a site audit on selected submissions to ensure compliance with BD requirements and the Building (Minor Works) Regulation; and
- (e) for irregularities found during the desktop and site audits, issue advisory letters and warning letters to the prescribed building professional and/or prescribed registered contractor concerned.

### ***Household Minor Works Validation Scheme***

2.30 From December 2010, under the Household Minor Works Validation Scheme, owners of four types of already-installed household minor works (namely supporting structures for air-conditioning units and water cooling towers, supporting frames for air-conditioning units, small canopies and drying racks) may apply to the BD for retaining the minor works after being certified by a prescribed building professional (except a registered geotechnical engineer) or a prescribed registered contractor (except a registered specialist contractor). The BD would not take enforcement actions against the validated minor works unless they are found posing safety risks.

### ***Inadequate action taken on non-compliant registered contractors***

2.31 The MWCS is a self-regulatory system under which prescribed building professionals and prescribed registered contractors are responsible for carrying out minor works. In order to detect any irregularities of non-compliance with the Buildings Ordinance, the BD conducts desktop audits and site audits on selected cases. Audit noted that, from 2011 to 2013, of the 2,342 cases with site audits completed, the BD had identified a total of 34 cases involving non-compliance with the requirements of the Buildings Ordinance. However, the BD had not issued warning letters to the related prescribed building professionals and prescribed registered contractors or taken any prosecution action against them. For 2014, of the 774 cases audited, the BD identified a total of 100 cases (13%) involving

## **Implementation of Government policies on unauthorised building works**

irregularities and the BD issued 13 warning letters to the related parties and referred 4 cases to BD Legal Services Section for prosecution action. In Audit's view, with a view to ensuring the effective operation of the self-regulatory MWCS, the BD needs to strengthen action on related prescribed building professionals and prescribed registered contractors upon identification of non-compliance with the requirements of the Buildings Ordinance in carrying out minor works.

### ***Low response rate of Household Minor Works Validation Scheme***

2.32 According to the BD, some 96% (or 1,795,200) of the 1,870,000 household minor works identified in the 2011 stock-taking exercise could be validated under the Household Minor Works Validation Scheme (see para. 2.15). The BD set targets of validating 1,000 of these minor works in 2011 and 100 each in 2012 to 2014 (i.e. a total of 1,300 household minor works from 2011 to 2014). However, from commencement of the Household Minor Works Validation Scheme in December 2010 to December 2014, the BD had only received 83 related applications of which 29 applications involving 76 (6% of 1,300) household minor works had been validated under the Scheme (Note 11). In Audit's view, the BD needs to strengthen action to publicise the Scheme.

## **Audit recommendations**

2.33 **Audit has recommended that, in administering the MWCS, the Director of Buildings should:**

- (a) **strengthen action on related prescribed building professionals and prescribed registered contractors upon identification of non-compliance with requirements of the Buildings Ordinance in carrying out minor works; and**
- (b) **strengthen action to publicise the Household Minor Works Validation Scheme.**

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**Note 11:** *Regarding the remaining 54 applications, as of December 2014, 43 applications had been rejected, 8 were in progress and 3 had been withdrawn.*

## **Response from the Government**

2.34 The Secretary for Development and the Director of Buildings agree with the audit recommendations. They have said that, regarding paragraph 2.33(b):

- (a) the BD will continue to explore measures to promote the MWCS, including the Household Minor Works Validation Scheme; and
- (b) as part of the enhancement measures on publicity, the BD launched in 2014 a mobile application on the MWCS covering validation schemes. The BD is also studying the option of including more amenity features under the Household Minor Works Validation Scheme.

## **PART 3: HANDLING OF PUBLIC REPORTS**

3.1 This PART examines BD actions on identifying UBWs through public reports and issuing removal orders on identified UBWs.

### **Handling of UBW public reports**

3.2 One of the sources of identifying UBWs is public reports (see para. 1.6(a)). The number of UBW public reports had increased from 13,817 in 2001 to 41,146 in 2014 (having tripled in 13 years — see Figure 1 in para. 1.8). Upon receiving a UBW public report, the BD would take the following actions:

- (a) screening whether the alleged UBW has been included in BD records and deciding whether an inspection is required;
- (b) carrying out an inspection to classify the alleged UBW into actionable or non-actionable for carrying out appropriate actions:
  - (i) for an actionable UBW, issuing an advisory letter (with no specified date for action — Note 12) to the owner/occupant advising removal of the UBW. Thereafter, issuing a removal order requiring the pertinent owner to remove such works within a specified period (normally 60 days), and registering the order at the LR. For a non-compliant case, the BD may take prosecution action and arrange default works;

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**Note 12:** *According to the BD, for actionable UBWs where the owners would unlikely take voluntary removal actions, it would issue removal orders without issuing advisory letters to the owners.*

## Handling of public reports

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- (ii) for a specific non-actionable UBW (Note 13), issuing a warning notice to the pertinent owner notifying removal of the UBW within a specified period (normally 60 days), and registering the non-complaint notice at the LR; and
  - (iii) for other non-actionable UBWs, issuing an advisory letter (Note 14) to the owner/occupant advising removal of the UBW. Thereafter, the BD would not take further follow-up actions; and
- (c) notifying the informant that, for an actionable UBW, a statutory order would be issued or, for a non-actionable one, no immediate enforcement actions would be taken.

The BD has set time targets on taking different actions in handling UBW public reports (see Figure 3 and Appendix C).

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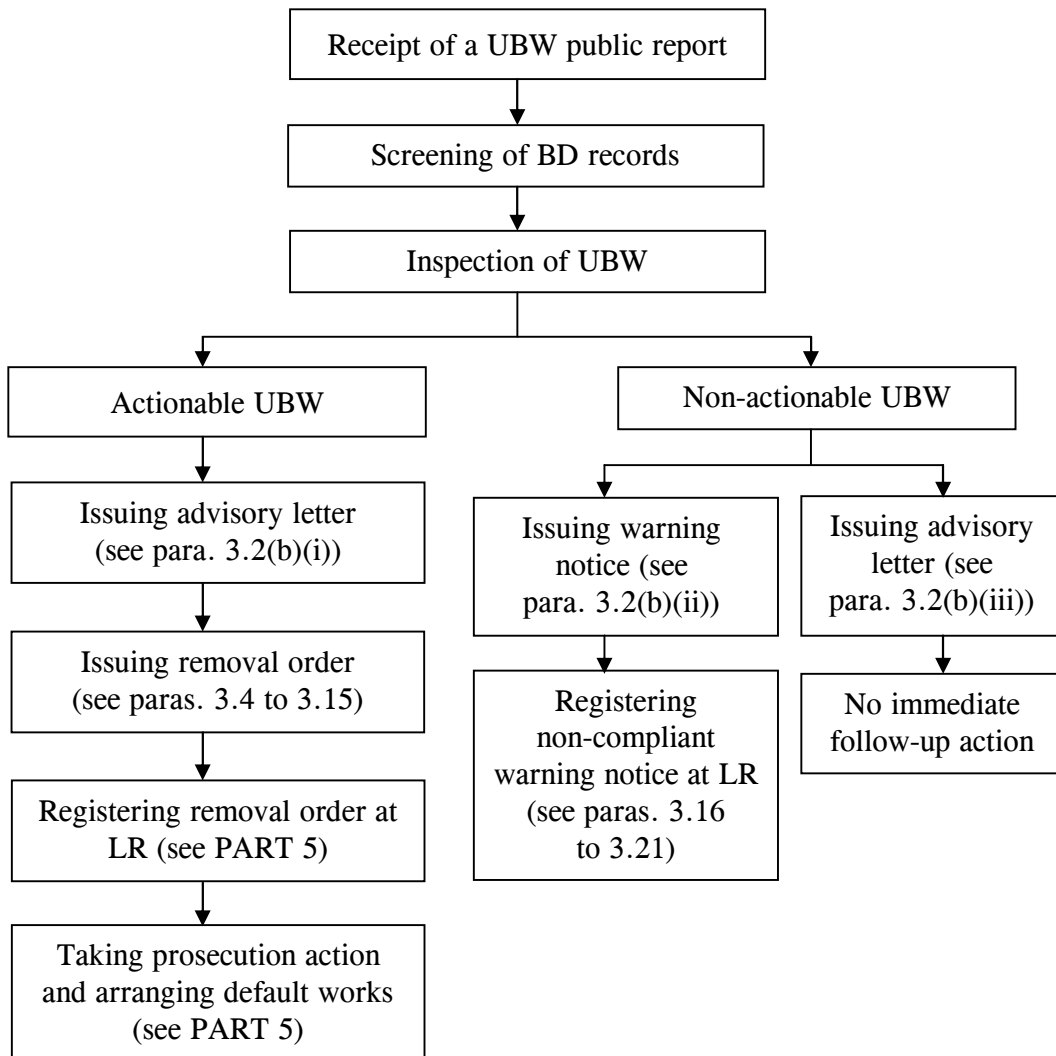
**Note 13:** *According to the BD, a warning notice would be issued on certain UBWs such as an existing unauthorised cockloft built on the ground floor or an existing unauthorised internal staircase erected in a building not constituting obvious hazard or imminent danger to life or property. When section 24C of the Buildings Ordinance became effective from 31 December 2004, warning notices were primarily issued on unauthorised structures erected on rooftops and podiums, and in yards and lanes until the change of the related Government policy in April 2011 (see para. 2.6).*

**Note 14:** *According to the BD, it may not issue advisory letters on some non-actionable UBWs, such as common amenity features.*



Figure 3

BD's actions in handling UBW public reports



Source: Audit analysis of BD records

## Handling of public reports

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3.3 Table 2 shows the number of removal orders, warning notices and advisory letters issued by the BD from 2004 to 2014. An order, a notice or a letter may cover one or more than one UBW. Generally, the number of removal orders, warning notices and advisory letters had decreased significantly in recent years.

**Table 2**

**Number of removal orders, warning notices and advisory letters issued  
(2004 to 2014)**

Year	Removal order	Warning notice	Advisory letter
2004	29,201	— (Note 1)	9,443
2005	25,582	2,227	11,077
2006	34,095	8,650	7,965
2007	36,339	9,015	6,598
2008	34,548	8,700	5,408
2009	32,989	7,672	5,653
2010	28,409	3,987	4,565
2011	11,601	124 (Note 3)	3,275
2012	13,475	356	5,205
2013	15,668	286	3,561
2014	11,816	332	2,972
Total	273,723	41,349	65,722

Source: *BD records*

*Note 1: Warning notices were first issued in 2005 after the introduction of section 24C of the Buildings Ordinance on 31 December 2004.*

*Note 2: According to the BD, the significant decrease in the number of removal orders issued from 2011 was mainly because the number of non-civil service contract staff had decreased since 2010 and more staff resources had been directed to inspect dilapidated buildings (see para. 2.9).*

*Note 3: According to the BD, the significant decrease in the number of warning notices issued from 2011 was because rooftop-podium-lane UBWs would be issued with removal orders instead of warning notices since April 2011.*

***Long time taken in issuing removal orders on actionable UBWs***

3.4 According to BD guidelines, before May 2014, if a UBW is found to be actionable, BD officers should issue a removal order on a confirmed actionable UBW (other than a rooftop-podium-lane UBW — see para. 3.11) within 105 days (30+30+45 days — see items 6 to 8 in Appendix C) after conducting an inspection (extended to 180 days (30+60+90 days) since May 2014).

3.5 As of October 2014, Audit noted that confirmed actionable UBWs (other than rooftop-podium-lane UBWs) revealed from 4,522 public reports had not been issued with removal orders more than six months (see para. 3.4) after conducting inspections, as follows:

<b>Period from conducting inspection to October 2014</b>	<b>Number of public reports that related UBWs had not been issued with removal orders after conducting inspection</b>
More than 6 months to 1 year	1,248 (28%)
More than 1 year to 2 years	2,159 (48%)
More than 2 years to 3 years	1,005 (22%)
More than 3 years to 5 years	110 (2%)
Total	4,522 (100%)

3.6 Furthermore, the BD accords topmost priority to actionable UBWs associated with structural or higher fire-safety concern (Note 15) for clearance. Moreover, for the purpose of containing the growth of UBWs, the BD would take immediate enforcement actions on new UBWs (see para. 2.19), including UBWs under construction.

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**Note 15:** *According to the BD, UBWs associated with higher fire-safety concern included:*

- (a) additions and alterations to an exit route;*
- (b) SDFs; and*
- (c) UBWs blocking-up of a principal means of escape.*

## Handling of public reports

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3.7 Audit examination revealed that, as of October 2014, of the UBWs identified from the 4,522 public reports awaiting issuance of removal orders (see para. 3.5):

- (a) 703 reports (16%) related to UBWs associated with structural or higher fire-safety concern (Note 16); and
- (b) 1,285 reports (28%) related to UBWs under construction (Note 17).

3.8 In addition, in the first 10 months of 2014, the BD issued removal orders relating to 718 public reports on confirmed actionable UBWs (other than rooftop-podium-lane UBWs). Audit examination revealed that, of the 718 public reports, removal orders relating to 321 reports (45%) had only been issued more than six months after conducting inspections, which were at variance with BD guidelines of 180 days (see para. 3.4). Of the 321 public reports, removal orders relating to these reports had only been issued more than 6 months to 9 years after conducting inspections:

Period from conducting inspection to issuing removal order	Number of public reports
More than 6 months to 1 year	191 (59%)
More than 1 year to 2 years	111 (35%)
More than 2 years to 3 years	14 (4%)
More than 3 years to 9 years (see Case 1)	5 (2%)
Total	321 (100%)

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**Note 16:** *Of the 703 reports related to UBWs associated with structural or higher fire-safety concern, 176 reports also related to UBWs under construction.*

**Note 17:** *Of the 1,285 reports related to UBWs under construction, 176 reports also related to UBWs associated with structural or higher fire-safety concern.*

Case 1

**Long time taken in issuing a removal order  
on actionable UBWs**

1. In August 2006, the BD received a public report on UBWs under construction (a cockloft with glass panels) erected on the ground floor of a commercial/residential building in Kwai Chung. In the same month, the BD's consultant carried out inspection but was unable to gain access to the interior of the building. However, there were signs that works on interior decoration on the ground floor were in progress, with full-height glass panels and a shop-front projection being erected at the external wall of a cockloft.

2. According to BD inspection report of February 2008, the following new UBWs were found: (a) external-wall glass panels of a cockloft; (b) a canopy of over 0.6 metre extended from the cockloft; (c) a cockloft with a staircase on the ground floor; and (d) a shop-front encroachment of 0.55 metre on public pavement. The BD classified these works as actionable UBWs. In March 2008, before issuing a removal order, the BD issued an advisory letter advising the owner to remove the UBWs.

3. In March 2010 and April 2014, BD inspections found that the UBWs had not been removed. As stated in the inspection report of April 2014, since the time lapse of over five years, the BD might not have sufficient justification to take action on the grounds of the works being "new works". In May 2014, the BD issued an advisory letter to the owner advising removal of the unauthorised canopy (see para. 2(b)).

4. In June 2014, the BD issued a warning notice notifying the owner to remove the unauthorised cockloft and staircase (see para. 2(c)), on the basis that this UBW was a non-actionable one because the BD considered it not a new UBW after review.

5. In September 2014, the BD issued a removal order requiring the owner to remove the unauthorised canopy (see para. 2(b)).

6. After review, the BD had decided not to take any action on: (a) the glass panels (see para. 2(a)), because the panel sizes were smaller than that for an actionable UBW and were considered not a new UBW; and (b) the shop-front encroachment (see para. 2(d)) on the grounds that enforcement actions should be taken by the Lands Department.

### Case 1 (Cont'd)

#### *Audit comments*

7. The BD only issued a removal order on the confirmed UBW (see para. 2(b)) in September 2014, eight years after the first inspection in August 2006, and removal orders were not issued on some UBWs on the grounds that they were no longer new UBWs. Furthermore, as of January 2015, the BD had not informed the Lands Department of the shop-front encroachment.

#### *BD response*

8. In March 2015, the BD informed Audit that:

- (a) the BD had encountered problems in gaining access to the related premises, thus leading to a prolonged period of investigation;
- (b) in the course of follow-up action, the subject file was mislaid and could only be found in early 2014;
- (c) the external-wall glass panels of the cockloft (see para. 2(a)) was considered not actionable UBWs as the panel size of each glass did not exceed the dimension limits stipulated in BD guidelines;
- (d) a case review in February 2015 revealed that the previous action had not complied with BD guidelines and had inappropriately ruled that the cockloft and associated staircase (see para. 2(c)) were not new UBWs. Hence, the BD issued a removal order against the cockloft and associated staircase in March 2015; and
- (e) the shop-front encroachment (see para. 2(d)) was a raised ground platform. At the time when the public report was received in 2006, BD guidelines did not require the referral of UBWs on public pavement to the Lands Department (the requirement was included in BD guidelines issued in 2009). In the light of the revised BD guidelines, the BD informed the Lands Department of the raised ground platform on public pavement in February 2015.

*Source: BD records*

3.9 In March 2015, the BD informed Audit that BD guidelines on time targets for handling UBW public reports (see para. 3.4) only provided an indicative timeframe for handling simple and straight-forward cases, and the actual timeframe would vary according to workload situation and complexity of individual cases.

3.10 In Audit's view, the long time taken in issuing removal orders after conducting inspections will cause delays in rectification actions and may pose public safety risks. Furthermore, delays in issuing removal orders will lead to a longer time taken to register the orders at the LR, and prospective property buyers may be deprived of the knowledge of the existence of the UBWs. Therefore, the BD needs to strengthen actions with a view to ensuring that removal orders are issued within BD time targets, particularly the UBWs associated with structural or higher fire-safety concern and UBWs under construction.

### *Long time taken in issuing removal orders on rooftop-podium-lane UBWs*

3.11 In view of the large number of public reports relating to rooftop-podium-lane UBWs, the BD has adopted a priority system for handling these UBWs since April 2011. Under the system, in response to related public reports, BD officers should rank the cases according to public safety risks and dates of receipt of public reports for taking enforcement actions. The BD would issue removal orders on these UBWs after conducting inspections. For this type of UBWs, the BD had also set the following targets and arrangements:

- (a) from June to August 2011, issuing 280 removal orders a month;
- (b) from September 2011 to March 2014, issuing 420 removal orders a month; and
- (c) from April 2014, except for new UBWs or UBWs constituting obvious and imminent danger to life and property, UBW public reports of this type would primarily be handled by means of conducting LSOs.

## Handling of public reports

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3.12 Audit noted that, as of October 2014, of the 25,313 public reports on rooftop-podium-lane UBWs received from April 2011 to October 2014, only 3,357 (13%) of such public reports had been dealt with (such as by issuing removal orders, placing the related buildings in target building lists for conducting LSOs, or the UBWs had been voluntarily removed by the owners), with the remaining 21,956 (87%) reports awaiting BD actions. Of the 21,956 public reports, as of October 2014, 17,862 reports had been received and awaiting enforcement actions for 10 months to 3.5 years, as follows:

<b>Period from receipt of public report to October 2014</b>	<b>Number of public reports awaiting BD actions on related UBWs</b>
10 to 22 months (from January to December 2013)	6,722 (38%)
More than 22 months to 34 months (from January to December 2012)	6,242 (35%)
More than 34 months to 43 months (from April (see para. 2.6) to December 2011)	4,898 (27%)
Total	17,862 (100%)

3.13 Furthermore, as of October 2014, 25,887 warning notices (Note 18) had been issued on rooftop-podium-lane UBWs before April 2011 but had not been complied with, and removal orders had not been issued for related UBWs.

3.14 Audit noted that, in 2014, the BD selected 200 buildings for conducting LSOs focusing on rooftop-podium-lane UBWs. However, at this pace, the BD would take a long time to clear the rooftop-podium-lane UBWs erected in about 16,000 buildings as identified in the 2011 stock-taking exercise (see Appendix B).

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**Note 18:** *The related UBWs of 7,612 of the 25,887 warning notices issued had again been reported by the public and included in the 21,956 public reports on rooftop-podium-lane UBWs received from April 2011 to October 2014 awaiting BD actions (see para. 3.12).*



3.15 In October 2010, the DEVB informed LegCo that, under the 2011 enforcement policy, the BD would actively respond to public reports and issue removal orders requiring owners to conduct rectification works immediately if actionable UBWs were found after inspections. In Audit's view, the BD's slow progress in processing public reports and issuing removal orders on rooftop-podium-lane UBWs is unsatisfactory and is at variance with the Government policy. Therefore, the BD needs to formulate an action plan with timeframe for issuing related removal orders.

### *Long time taken in registering warning notices at LR*

3.16 In April 2003, when making a proposal for amending the Buildings Ordinance to empower the BD to issue warning notices, the DEVB informed LegCo that registration of warning notices at the LR would enhance consumer protection to prospective property buyers, who would become aware of the existence of UBWs in premises through a land search at the LR. According to section 24C of the Buildings Ordinance (effective from 31 December 2004), the BD shall cause a non-compliant warning notice to be registered at the LR.

3.17 The BD normally allows two months for the pertinent owner to carry out removal works after issuing a warning notice. Thereafter, the BD would conduct an inspection within two months and refer the notice to the LR for registration if rectification works have not been taken. Therefore, a non-compliant warning notice should be referred to the LR for registration within four months from the date of issuance. However, Audit noted that, as of October 2014, 147 non-compliant warning notices (Note 19) which had been issued for more than 4 months to 9 years had not been referred to the LR for registration, as follows:

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**Note 19:** *According to the BD, the 147 non-compliant warning notices accounted for 0.6% of the 25,887 non-compliant warning notices (see para. 3.13) issued on rooftop-podium-lane UBWs before April 2011 where removal orders had not been issued for related UBWs.*

## Handling of public reports

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<b>Period from issuance of warning notice to October 2014</b>	<b>Number of warning notices not yet referred to LR for registration</b>
More than 4 months to 1 year	63 (43%)
More than 1 year to 3 years	27 (19%)
More than 3 years to 5 years	24 (16%)
More than 5 years to 7 years	9 (6%)
More than 7 years to 9 years	24 (16%)
Total	147 (100%)

3.18 Regarding warning notices forwarded by the BD for registration, the LR would inform the BD whether each of the notices is successful in registration. The BD would take follow-up action if the warning notices were referred back from the LR (such as notices having incorrect information). Audit noted that, as of October 2014, 985 non-compliant warning notices (Note 20) referred back from the LR had not been forwarded again to the LR for registration. The 985 non-compliant warning notices had been issued for more than 4 months to 10 years, as follows:

<b>Period from issuance of warning notice to October 2014</b>	<b>Number of warning notices not yet forwarded again to LR for registration</b>
More than 4 months to 1 year	38 (4%)
More than 1 year to 3 years	64 (7%)
More than 3 years to 5 years	290 (29%)
More than 5 years to 7 years	401 (41%)
More than 7 years to 10 years (see Case 2)	192 (19%)
Total	985 (100%)

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**Note 20:** *According to the BD, the 985 non-compliant warning notices accounted for 3.8% of the 25,887 non-compliant warning notices (see para. 3.13) issued on rooftop-podium-lane UBWs before April 2011 where removal orders had not been issued for related UBWs.*

Case 2

**Long time taken to register a warning notice at LR**

1. In March 2005, the BD received a UBW public report on an unauthorised flat roof structure erected on the first floor of a commercial/residential building in Tai Po. In April 2005, after inspecting the structure, the BD issued an advisory letter to the owner advising him to remove the UBW. In June 2005, the BD issued a warning notice (with ownership particulars obtained from the LR) specifying that if the UBW was not demolished by August 2005, the BD would cause the notice to be registered at the LR.

2. In February 2007 and January 2008, BD inspections found that the unauthorised flat roof structures had not been removed. In February 2008, the BD forwarded the warning notice to the LR for registration.

3. In March 2008, due to a typographical error in the owner's name in the warning notice, the LR informed the BD that the warning notice could not be registered. Up to October 2014, the BD had not forwarded a correct warning notice to the LR for registration.

***Audit comments***

4. The warning notice was only referred to the LR for registration in February 2008, 32 months after issuing the notice in June 2005. Furthermore, as of October 2014, more than nine years after its issuance, owing to a typographical error in the owner's name, the notice had not been registered at the LR.

***BD response***

5. In March 2015, the BD informed Audit that, after clarifying the name of the owner, it had sent back the warning notice to the LR for registration in February 2015.

*Source: BD records*

## Handling of public reports

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3.19 Audit noted that, as of October 2014, 1,132 non-compliant warning notices had not been registered at the LR (comprising 147 notices not having been referred to the LR and 985 notices having been referred back from the LR for follow-up action), of which 884 notices (78%) related to rooftop-podium-lane UBWs.

3.20 In February and March 2015, the BD informed Audit that:

- (a) as rooftop-podium-lane UBWs should be issued with removal orders instead of warning notices under the 2011 enhanced policy on UBWs, UBWs previously issued with warning notices which had not been complied with and registered at the LR would be issued with removal orders in future; and
- (b) as rooftop-podium-lane UBWs were subject to enforcement action in a progressive manner, further follow-up actions on registration of the related warning notices at the LR, which would involve the issuance of superseding warning notices, might not be warranted.

3.21 Audit noted that, under the Buildings Ordinance, the BD is required to register non-compliant warning notices at the LR. In Audit's view, under the Buildings Ordinance, all warning notices, including those relating to rooftop-podium-lane UBWs, should be registered at the LR. Audit considers that, in addition to enhancing consumer protection, registering non-compliant warning notices at the LR would create a deterrent effect on the pertinent owners. Therefore, the BD needs to take measures to ensure that all non-compliant warning notices are promptly referred to the LR for registration. The BD also needs to take prompt follow-up action on warning notices referred back from the LR.

## Audit recommendations

3.22 **Audit has *recommended* that the Director of Buildings should:**

- (a) **strengthen actions with a view to ensuring that removal orders are issued within BD time targets, particularly UBWs associated with structural or higher fire-safety concern and UBWs under construction;**

- (b) **inform the Lands Department of the UBW found in Case 1 for it to take enforcement action;**
- (c) **formulate an action plan with timeframe for issuing removal orders on rooftop-podium-lane UBWs;**
- (d) **take measures to ensure that all non-compliant warning notices are promptly referred to the LR for registration; and**
- (e) **take prompt follow-up action on warning notices referred back from the LR.**

## **Response from the Government**

3.23 The Secretary for Development and the Director of Buildings agree with the audit recommendations. They have said that:

- (a) regarding paragraph 3.22(b), the BD informed the Lands Department in February 2015 of the raised ground platform (see Case 1 in para. 3.8);
- (b) regarding paragraph 3.22(c), given the large number of related public reports, rooftop-podium-lane UBWs will primarily be handled by means of LSOs. The number of target buildings covered under LSOs will be worked out on an annual basis taking into account resource and workload considerations. Moreover, enforcement is only one of the means to tackle the problem of UBWs. The BD will continue to adopt a multi-pronged approach to enhance building safety; and
- (c) regarding paragraph 3.22(e), for UBWs other than rooftop-podium-lane UBWs issued with warning notices referred back from the LR, the BD will review and take appropriate follow-up action.

## **PART 4: ACTIONS THROUGH LARGE-SCALE OPERATIONS**

4.1 This PART examines BD actions on rooftop-podium-lane UBWs (see paras. 4.3 to 4.17) and SDFs (see paras. 4.18 to 4.32) through conducting LSOs.

### **Background**

4.2 In June 2011, the DEVB informed LegCo Panel on Development that LSOs were more effective than handling individual public reports separately as more actionable UBWs would be cleared in one go. The BD conducts LSOs focusing on specific types of UBWs (such as rooftop-podium-lane UBWs and SDFs). For each LSO on a type of UBWs, the BD specifies a number of target buildings for the purpose. LSOs are conducted both by BD in-house officers and BD consultants (Note 21).

### **LSOs on rooftop-podium-lane UBWs**

4.3 From 2010 to 2014, the BD had conducted LSOs on rooftop-podium-lane UBWs covering a total of 2,337 target buildings, as follows:

- (a) 401 buildings in 2010, comprising:
  - (i) 101 buildings by BD in-house officers (LSO 1); and
  - (ii) 300 buildings under 6 consultancies (LSO 2);
- (b) 782 buildings in 2011 (under 14 consultancies — LSO 3);
- (c) 354 buildings in 2012 (under 6 consultancies — LSO 4);
- (d) 600 buildings in 2013 (under 8 consultancies — LSO 5); and

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**Note 21:** *The BD selected consultants for LSOs by openly inviting consultants to participate in pre-qualification exercises, followed by inviting pre-qualified consultants to submit tenders for assessment.*

- (e) 200 buildings in 2014 (under 5 consultancies — LSO 6 (Note 22)).

4.4 The total cost of the 39 consultancies amounted to \$35.6 million. The main duties of the consultants included:

***(a) Survey stage***

- sending letters to the owners/occupants advising the selection of their building for an LSO, conducting a survey of the building to identify UBWs, and submitting a survey report to the BD.

***(b) Order-serving stage***

- checking ownership details, preparing removal orders for the BD's signature, and sending the orders to the owners.

***(c) Compliance-inspection stage***

- conducting the 1st compliance inspection after the specified date for action under the order, submitting the 1st compliance inspection report to the BD, and preparing a compliance letter (if the order has been complied with) or a warning letter (if the order has not been complied with) for the BD's signature.
- conducting the 2nd compliance inspection, submitting an inspection report to the BD, and preparing a compliance or warning letter and statement (for taking prosecution actions against defaulted owners) within eight weeks after the endorsement of the 1st compliance inspection report.

***(d) Final stage***

- completing all outstanding work as required under the agreement. Upon satisfactory completion of all work, the BD shall issue a completion letter.

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**Note 22:** *The five consultancy agreements under LSO 6 (at a total cost of \$7 million) covered a total of 270 target buildings, of which 200 buildings were selected for the combined clearance of rooftop-podium-lane UBWs and SDFs, and the remaining 70 buildings were selected for clearance of UBWs in SDFs.*

## **Actions through large-scale operations**

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### ***Significant slippages in completing LSOs***

4.5 For the 101 buildings covered under LSO 1 (commenced in 2010) conducted by BD in-house officers (see para. 4.3(a)(i)), the BD had set a target of completing the LSO (Note 23) by March 2012. However, Audit examination revealed that, up to October 2014, actions on only 42 buildings had been completed and actions on the remaining 59 buildings were yet to be completed.

4.6 For LSOs 2 to 4 (commenced from 2010 to 2012) conducted under consultancies (see para. 4.3(a)(ii) to (c)), after conducting surveys, mainly due to buildings having already been covered in other LSOs, 2, 3 and 5 buildings under LSO 2, LSO 3 and LSO 4 respectively were removed from the operations, leaving 298 (300 less 2), 779 (782 less 3) and 349 (354 less 5) buildings in LSO 2, LSO 3 and LSO 4 respectively. Audit noted that, as of October 2014, actions on 200 buildings (67% of 298 buildings) under LSO 2 and on all the 779 buildings under LSO 3 and 349 buildings under LSO 4 had not been completed (see Table 3).

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**Note 23:** *For LSO 1 conducted by BD in-house officers, actions were considered having been completed when the related UBWs had been removed or referred to the BD's Legal Services Section for follow-up action.*



## Actions through large-scale operations

**Table 3**  
**Progress of outsourced LSOs on rooftop-podium-lane UBWs**  
**(October 2014)**

Particulars	LSO (year commenced)				Total
	LSO 2 (2010)	LSO 3 (2011)	LSO 4 (2012)	LSO 5 (2013)	
<b>Consultancy awarded</b>					
Number of consultancies	6	14	6	8	34
Number of original target buildings	300	782	354	600	2,036
Number of target buildings after survey (see para. 4.6)	298	779	349	600	2,026
Target completion date (Note)	July 2011 to February 2012	February 2012 to March 2013	February 2013 to January 2014	December 2014	
<b>Action progress as of October 2014</b> (see para. 4.4 (a) to (d))					
	<b>Number of target buildings</b>				
Final stage completed	98	0	0	0	98
Action up to 2nd compliance-inspection stage	121	189	56	0	366
Action up to 1st compliance-inspection stage	63	160	118	0	341
Action up to order-serving stage	16	95	56	0	167
Action up to survey stage	0	321	119	496	936
Action in survey stage	0	14	0	104	118
Total	298	779	349	600	2,026
<b>Number of consultancies issued with:</b>					
Warning letter (Number of letters)	4 (7)	4 (9)	1 (1)	0 (0)	9 (17)
Adverse performance report (Number of reports)	1 (1)	1 (3)	0 (0)	0 (0)	2 (4)

Source: BD records

Note: The target dates were included in work programmes submitted by consultants, which was a consultancy requirement.

## **Actions through large-scale operations**

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4.7 According to the BD, as of October 2014, of the total 26 consultancy agreements under LSOs 2 to 4, only two agreements covering 98 buildings had been completed (with final payments made in February 2014 and March 2014 respectively). These two consultancies also had programme slippages. According to BD guidelines, the progress of every consultancy should be closely monitored with a view to ensuring timely completion of tasks. However, as shown in Table 3, there were significant delays in completing the consultancies. Audit analysis revealed that, comparing with the target completion dates, as of October 2014, completion of the 24 (26 less 2) consultancies had been delayed by 9 months to 3 years, as follows:

<b>Period from target completion date to October 2014</b>	<b>Number of consultancies</b>
9 months to 1 year	3 (13%)
More than 1 year to 2 years	14 (58%)
More than 2 years to 3 years	7 (29%)
Total	24 (100%)

4.8 In Audit's view, the significant programme slippages and long time taken to clear UBWs under LSOs have adversely affected the effectiveness of BD action in tackling the UBW problem. The BD needs to strengthen actions with a view to ensuring that the LSOs having programme slippages are completed as soon as possible, and future LSOs are completed by the target completion dates.

### ***Inadequate monitoring of consultant performance***

4.9 According to BD guidelines, the BD may issue a warning letter to a consultant having unsatisfactory performance. During the contract period, the BD would issue quarterly performance reports to a consultant and a final performance report upon completion of an agreement. The BD may issue an adverse performance report to a consultant who has been issued with a warning letter.

## **Actions through large-scale operations**

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A consultant who has been issued two and three consecutive adverse performance reports under the same consultancy shall be suspended from bidding the BD's consultancy work of the same category for at least 3 and 12 months respectively. However, notwithstanding the significant slippages in completing consultancies, Audit noted that the BD had only issued few warning letters and adverse performance reports to the consultants of LSOs. As of October 2014, of the 26 consultancies having programme slippages under LSOs 2 to 4 (commenced from 2010 to 2012):

- (a) only 9 consultancies had been issued with a total of 17 warning letters, of which 2 (Consultancy A under LSO 2 and Consultancy B under LSO 3) had been issued with 1 and 3 adverse performance reports respectively; and
- (b) the BD had not issued any warning letter or adverse performance report on the other 17 consultancies.

4.10 In Audit's view, the BD needs to strengthen actions on monitoring consultants' performance, and issue warning letters and adverse performance reports to consultants on warranted cases, such as consultancies having significant programme slippages.

### ***Payments prematurely made to consultants before completion of work***

4.11 According to BD consultancy agreement, upon satisfactory completion of work, the BD shall issue a completion letter to a consultant signifying the conclusion of the agreement and make the final payment. However, Audit noted that final payments had been made to two consultancies before issue of the completion letters (see Table 4).

## Actions through large-scale operations

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Table 4

**Premature payments made for two consultancies  
(February to December 2014)**

Consultancy	Final payment date	Event	
		Date	Particulars
A	6 March 2014	27 February 2014	BD certified final payment
		15 April 2014	Consultant submitted one of the 2nd compliance inspection reports
		2 September 2014	BD issued a completion letter
		15 December 2014	BD endorsed the 2nd compliance inspection report
C	13 February 2014	7 February 2014	BD certified final payment
		Up to 31 December 2014	BD had not issued a completion letter

Source: *BD records*

4.12 In February and March 2015, the BD informed Audit that:

- (a) for Consultancy A, after taking into account the consultant's commitment, difficulty in gaining access for inspection (Note 24) and his promise to

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**Note 24:** *According to the BD:*

- (a) *the owner of the concerned target building lodged an appeal against the removal order issued in August 2011, which had caused an unforeseen delay for the consultant to carry out the compliance inspection scheduled for early 2012. The consultant attempted to carry out the first compliance inspection in June 2012 but he was refused entry to the premises;*
- (b) *the appeal was dismissed by the Appeal Tribunal in November 2012 and the enforcement action could be resumed; and*
- (c) *since early 2013, the consultant had attempted to contact and liaise with the owner/occupants for carrying out the compliance inspection but could not gain access to the building. In February 2014, the consultant advised the BD twice of the outstanding compliance inspections under the consultancy.*

carry out compliance inspection of the concerned target building in March 2014 if he could gain access to the building, the BD considered the service under the consultancy had been satisfactorily completed. Therefore, the BD certified the final payment on 27 February 2014. Subsequently, the consultant carried out compliance inspection and submitted the outstanding compliance report in April 2014. Due to mislaying of the file, the BD issued the completion letter for Consultancy A in September 2014; and

- (b) for Consultancy C, although a completion letter had not been issued when the final payment was made in February 2014, the consultancy was considered having been satisfactorily completed because all related inspection reports had been endorsed by the BD at that time. The completion letter was issued in March 2015.

4.13 In Audit's view, the BD needs to take measures to prevent making the final payment to a consultant before satisfactory completion of all work and the issuance of a completion letter.

### ***BD criteria only required one or two UBWs for each target building***

4.14 From 2003 to 2010, one of the criteria for selecting target buildings for conducting LSOs on UBWs installed on external walls was that each target building should have more than 10 actionable UBWs. In this connection, the DEVB informed LegCo Panel on Development in June 2011 that LSOs were more effective than the handling of individual public reports as more actionable UBWs would be cleared in one go (see para. 4.2). However, for LSOs 1 to 5 conducted on rooftop-podium-lane UBWs from 2010 to 2013, the selection criterion was that each target building should have at least one actionable UBW (i.e. rooftop-podium-lane UBW). For LSO 6 in 2014, each target building selected should have at least two actionable UBWs (Note 25). In February and March 2015, the BD informed Audit

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**Note 25:** *For the 200 buildings selected for combined clearance of rooftop-podium-lane UBWs and SDFs, one of the selection criteria was that each target building should have at least one rooftop-podium-lane UBW and one SDF (i.e. two actionable UBWs). For the 70 buildings selected for clearance of UBWs in SDFs, each target building selected should have at least one SDF.*

## **Actions through large-scale operations**

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that according to BD guidelines, while the selection criterion was that each target building should have at least one or two actionable UBWs, this was only the minimum requirement and did not mean that a building with one or two actionable UBWs would be selected automatically. In fact, on average, 16 UBWs were identified in each target building in recent LSOs.

4.15 According to the BD's Building Condition Information System (BCIS — see PART 6), as of October 2014, a total of 19,101 removal orders had been issued covering 30,968 actionable UBWs identified under LSOs 2 to 4 (commenced from 2010 to 2012). However, Audit noted that the BD had not produced management reports on the number of removal orders issued and actionable UBWs identified in each target building. In Audit's view, in order to assess the effectiveness of the BD's selection of target buildings for carrying out LSOs, the BD needs to produce related management reports.

## **Audit recommendations**

4.16 **Audit has *recommended* that the Director of Buildings should:**

- (a) **strengthen actions with a view to ensuring that LSOs 1 to 5 are completed as soon as possible;**
- (b) **strengthen actions with a view to ensuring that LSOs are completed by the target completion dates;**
- (c) **strengthen actions on monitoring consultants' performance, and issue warning letters and adverse performance reports to consultants on warranted cases, such as consultancies having significant programme slippages;**
- (d) **take measures to prevent making the final payment to consultants before satisfactory completion of all work and the issuance of a completion letter;**
- (e) **review the effectiveness of BD selection criteria which state that a target building having even one or two actionable UBWs may be selected for conducting an LSO; and**

- (f) **produce management reports on the number of removal orders issued and actionable UBWs identified in each target building under an LSO.**

## **Response from the Government**

4.17 The Secretary for Development and the Director of Buildings agree with the audit recommendations. They have said that:

- (a) regarding paragraph 4.16(a) to (c), the BD has taken the following measures:
  - (i) pursuant to a review on consultancy performance in 2012, the BD has embarked on a number of enhancement measures, including improving the process of assessing consultants' performance, rationalisation of the size and contract period of consultancies and timely use of warning letters. The detailed measures were finalised and promulgated after consultation with staff;
  - (ii) in October 2013, the BD revamped its internal guidelines on Performance of the Outsourced Consultants to provide clearer division of responsibility between different levels of BD staff on monitoring of the consultants' performance;
  - (iii) in early 2014, the BD set up a "Warning Letter Register" to keep track of warning letters issued to its consultants and facilitate the consideration of issuing adverse performance reports. To assist in closer monitoring of the deployment of staff resources by consultants, the BD also set up in early 2014 a "Man-hour Database" on the approved key staff of consultants which is updated on a monthly basis. The database facilitates the BD's consideration of consultants' tender submissions and proposed changes of key staff during the consultancy services; and

## **Actions through large-scale operations**

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- (iv) the BCIS has been customised recently to facilitate progress monitoring of various stages (such as survey, order-serving and compliance-inspection stages) according to the target completion date for each target building under LSOs; and
- (b) regarding paragraph 4.16(e), the BD will devise a specific set of selection criteria for each LSO, taking into account the objective of the LSO, target hazards to be dealt with, manpower situation and the latest departmental policies on building safety. The BD will refine the wording of the selection criteria in its guidelines to avoid misunderstanding.

## **LSOs on sub-divided flats**

4.18 An SDF refers to a flat (as shown on the approved building plan) having been sub-divided into two or more smaller self-contained units (sub-divided units) for sale or for rental. Each of these smaller units usually contains its own toilet, and some even have their own cooking places. Sub-dividing a flat often involves demolishing partition walls and erecting new ones, altering or expanding the water supply and drainage system within the unit, raising the floor slab to embed the added or diverted pipes, and providing additional doors and ventilation openings. Some SDFs are not illegal as the relevant works may have been approved by the BD or carried out under the MWCS. However, building works in contravention of the Buildings Ordinance are UBWs and subject to BD enforcement actions.

4.19 In July 2010, the DEVB informed LegCo Panel on Development that SDFs would give rise to the following problems:

- (a) overloading the building due to additional structures, and causing structural danger to the building concerned;
- (b) water seepage constituting health hazards and environmental nuisance or, more seriously, leading to gradual deterioration of the building structure; and
- (c) obstruction to means of escape or means of access for fire fighting and rescue, causing danger in the event of a fire or an accident.



4.20 In December 2014, the Transport and Housing Bureau informed LegCo that:

- (a) according to a survey commissioned by the Census and Statistics Department on households living in sub-divided units, it was estimated that there were 86,400 residential sub-divided units in Hong Kong. In view of various concerns expressed by the community, the Government would not introduce any licensing or landlord registration system for residential sub-divided units; and
- (b) the building and fire safety of those living in sub-divided units should under no circumstances be compromised. The BD would continue to step up efforts to eradicate sub-divided units in industrial buildings and take enforcement action against building and fire-safety irregularities of sub-divided units in residential and composite buildings.

4.21 From 2011 to 2014, the BD had conducted seven LSOs on SDFs covering a total of 34,605 flats located in 1,092 target buildings (see Table 5):

## Actions through large-scale operations

Table 5

**LSOs on SDFs  
(2011 to 2014)**

LSO	Date commenced	Type of building (Note 1)	Number of target buildings	Number of flats covered	Original target completion date	Conducted by/under
7	April 2011	Residential and composite	116	4,091	January 2012	BD in-house officers
8	December 2011	Residential and composite	338	6,762	September 2012	BD in-house officers
9	April 2012	Industrial	30	2,226	March 2013	BD in-house officers
10	June 2013	Industrial	30	3,581	June 2014	BD in-house officers
11	September 2013	Residential and composite	270	6,159	December 2014 (Note 2)	5 BD consultancies
6 (see Note 22 to para. 4.3(e))	November 2014	Residential and composite	270	9,980	May 2016 (Note 2)	5 BD consultancies
12	December 2014	Industrial	38	1,806	April 2016	BD in-house officers
Total			1,092	34,605		

Source: *BD records*

Note 1: *A composite building is one used partly for commercial and partly for residential purposes.*

Note 2: *In March 2015, the BD informed Audit that the target completion dates for LSOs 11 and 6 had been revised to July 2015 and September 2016 respectively.*

4.22 The main duties of BD in-house officers and consultants included taking action at the survey stage, order-serving stage, compliance-inspection stage and final stage (see para. 4.4). The total cost of the 10 BD consultancies under LSOs 6 (totalled \$7 million) and 11 (totalled \$5.4 million) amounted to \$12.4 million.

***Actual number and percentage of SDFs found under LSOs not published***

4.23 Table 6 shows the number of flats found under LSOs 7 to 11 (LSOs 6 and 12 had not yet commenced) having been sub-divided as of October 2014.

**Table 6**

**SDFs found in LSOs  
(October 2014)**

LSO	Number of flats covered (a)	Actual SDFs found	
		Number (b)	Percentage (c) = (b) ÷ (a) × 100%
7	4,091	823	20 %
8	6,762	1,547	23 %
9	2,226	264 (Note 1)	12 %
10	3,581	133 (Note 2)	4 %
11	6,159	1,225	20 %
Overall	22,819	3,992	17 %

*Source: Audit analysis of BD records*

*Note 1: Of the 264 SDFs, 34 were found having been sub-divided for residential purposes.*

*Note 2: Of the 133 SDFs, 4 were found having been sub-divided for residential purposes.*

4.24 According to the BD, for industrial buildings covered under the LSOs on SDFs, it would only take enforcement actions on those having been used for residential purposes. Audit noted that the BD had not published the actual number and percentage of SDFs found under LSOs on SDFs.

## **Actions through large-scale operations**

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- 4.25 In February and March 2015, the BD informed Audit that:
- (a) based on LSOs conducted in recent years, about 20% to 30% of flats in residential and composite buildings were found having been sub-divided. The lower percentage of industrial buildings having SDFs was expected due to the Government's efforts in publicity and enforcement in recent years delivering a clear message of the illegitimacy of such use; and
  - (b) regarding the publication of information of percentage of SDFs found in buildings, the DEVB and the BD considered that:
    - (i) the information would unlikely be of public concern; and
    - (ii) provision of a percentage in a simple format might mislead the public on generalising the concentration of SDFs in buildings in Hong Kong, which varied in different buildings and districts.

4.26 In view of public concern over the building and fire safety of sub-divided units (see para. 4.20), Audit considers that there are merits for the BD to publish on its website the actual number and percentage of SDFs found vis-a-vis the total number of flats covered under LSOs on SDFs.

### ***Significant slippages in completing LSOs on SDFs***

4.27 As of October 2014, target completion dates of LSOs 7 to 10 had already lapsed (see Table 5 in para. 4.21). However, Audit noted that actions on the following target buildings had not been completed:

<b>LSO</b>	<b>Number of target buildings</b>	
	<b>Total</b>	<b>Actions not completed (as of October 2014)</b>
7	116	65 (56%)
8	338	253 (75%)
9	30	23 (77%)
10	30	16 (53%)
Overall	514	357 (69%)

4.28 Regarding LSO 11, as of October 2014, BD consultants had encountered access problems in entering 1,073 SDFs (88% of 1,225 SDFs identified during preliminary inspections at the common areas of target buildings) for conducting detailed inspections under the LSO.

4.29 In February 2015, the BD informed Audit that it was not uncommon for BD officers and consultants to encounter access problems and more time was required to gain access to SDFs for conducting inspections.

4.30 In Audit's view, the BD needs to strengthen actions with a view to ensuring that LSOs on SDFs having programme slippages are completed as soon as possible, and future LSOs are completed according to target completion dates (see para. 4.16(b)).

### **Audit recommendation**

4.31 **Audit has recommended that the Director of Buildings should strengthen actions with a view to ensuring that LSOs 7 to 11 are completed as soon as possible.**

### **Response from the Government**

4.32 The Secretary for Development and the Director of Buildings agree with the audit recommendation. They have said that the BD will review the programmes of LSOs 7 to 11 and explore measures for timely completion of the LSOs.

## **PART 5: FOLLOW-UP ACTIONS ON REMOVAL ORDERS**

5.1 This PART examines the BD's follow-up actions after issuing removal orders to pertinent property owners, focusing on the following areas:

- (a) administration of removal orders (paras. 5.2 to 5.21);
- (b) prosecution actions on non-compliant removal orders (paras. 5.22 to 5.32);
- (c) default works carried out by BD contractors (paras. 5.33 to 5.39); and
- (d) actions to recover costs of default works (paras. 5.40 to 5.47).

### **Administration of removal orders**

5.2 Upon identification of an actionable UBW, the BD will issue a removal order requiring the pertinent owner to remove the UBWs by a specified date (normally within 60 days), and may register the order at the LR. Under the Buildings Ordinance, a person who fails to comply with the requirements under a removal order without reasonable excuse may be subject to prosecution. The person is liable, on conviction, to a maximum fine of \$200,000 and to imprisonment for one year, and to a daily maximum fine of \$20,000 for each day during which the failure to comply with a removal order has continued. Under the Buildings Ordinance, an owner served with a removal order may appeal to the Appeal Tribunal (Note 26) within 21 days of the issue of the order. Under the circumstance, actions on the order would be suspended awaiting the Tribunal's ruling.

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**Note 26:** *An Appeal Tribunal, appointed by the Chief Executive of the Hong Kong Special Administrative Region for each appeal case, is formed comprising a chairman (who is qualified for appointment as a District Judge) and not less than two members to hear and determine an appeal against a decision made by the BD in the exercise of a discretion under the Buildings Ordinance.*

### *Some removal orders not having been registered at the LR*

5.3 In May 2004, the DEVB informed LegCo that, upon the service of a removal order on an owner, the BD would at the same time send a copy of the order to the LR for registration. According to the DEVB and the BD, registration of UBW information at the LR would enhance consumer protection on prospective property buyers, who will become aware of the existence of UBWs in the related premises through conducting a land search at the LR.

5.4 In this connection, in September 2010, the LR informed the BD of the following views of a legal professional association that:

- (a) some removal orders had not been sent to the LR for registration; and
- (b) when legal professionals made enquiries to the BD on whether certain removal orders had been registered at the LR, the BD would only give a standard reply referring the enquirers to conduct a land search at the LR.

At a meeting held in December 2010, the legal professional association informed the BD that some orders had only been sent to the LR for registration more than one year after the dates of issuing the orders. The association also requested the BD to send all removal orders to the LR for registration as soon as possible, because delays in registration of removal orders had caused great inconvenience to the legal profession in handling property transactions.

5.5 In April 2014, the DEVB informed LegCo Finance Committee (FC) that the BD did not keep statistics on the number of removal orders registered at the LR. From 2004 to 2013, the BD issued a total of 261,907 removal orders (see Table 2 in para. 3.3). Audit examination revealed that, as of October 2014, the BD's BCIS only recorded the dates of sending 2,654 orders (1% of 261,907 orders) to the LR for registration. Therefore, there was little assurance that all the removal orders had been sent to and registered at the LR.

## Follow-up actions on removal orders

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5.6 In February 2015, Audit selected 30 of the 907 removal orders issued in May 2013 of which the dates of referral to the LR had not been recorded in the BCIS, and conducted search at the LR to ascertain whether they had been registered. The results are as follows:

	<b>Number of removal orders</b>
Issued in May 2013 selected by Audit for checking in February 2015	30 (100%)
<u>Less:</u>	
Found having been registered at LR	25 (83%)
Order being complied with by owner in August 2014	1 (4%)
	<hr/>
Found not having been registered at LR	4 (13%)

5.7 Regarding the four removal orders not having been registered at the LR:

- (a) one of the orders (removal order A) had been withdrawn because the order had been served on a person who was not the owner of the concerned property. In October 2013, the LR provided the ownership particulars to the BD. However, up to January 2015, the BD had not issued a new removal order to the owner;
- (b) for other two orders (removal orders B and C), the BD noted in August and October 2013 that the respective ownership of the concerned properties had changed. However, up to January 2015, the BD had not issued new removal orders to the new owners; and
- (c) for the remaining order (removal order D), there was no change in ownership of the concerned property from May 2013 to January 2015.

5.8 In February and March 2015, the BD informed Audit that:

- (a) unlike warning notice (see para. 3.21), registration of removal orders at the LR was not a statutory requirement under the Buildings Ordinance. Notwithstanding this, since 2011, it had been the BD's standard procedure



## **Follow-up actions on removal orders**

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to send all removal orders to the LR for registration. Before 2011, all removal orders would be registered after conducting the 1st compliance inspection; and

- (b) there was no readily available means to identify those removal orders that had not been registered at the LR, and the checking could only be done when follow-up actions were to be taken for individual orders. Given the large number of removal orders issued by the BD every year, it would not be an effective use of the staff resources to input the dates of referral and registration of removal orders at the LR into the BCIS retrospectively.

5.9 In Audit's view, the BD needs to conduct a review of those outstanding removal orders (i.e. the related UBWs not having been completely removed) that have not been registered at the LR and take remedial actions as soon as possible. The BD also needs to take measures to ensure that the dates of referral and registration of removal orders at the LR are promptly input into the BCIS in future. The four removal orders (not having been registered at LR) in paragraph 5.7 also highlighted that the BD had not followed up orders that could not be or had not been registered. Therefore, the BD needs to take more proactive and timely actions on the issue. The BD also needs to take actions regarding the four removal orders (not having been registered at LR) identified by Audit (see para. 5.7) as soon as possible.

### ***Long time taken to register removal orders at LR***

5.10 Regarding the 2,654 removal orders having records in the BCIS of being sent to the LR for registration, Audit examination revealed that 80% of them had been sent to the LR more than one month after the issue of the pertinent orders, as follows:

<b>Period from issuance of removal order to sending to LR for registration</b>	<b>Number of removal orders</b>
1 month or less	529 (20%)
More than 1 month to 1 year	1,276 (48%)
More than 1 year to 3 years	807 (30%)
More than 3 years to 8 years	42 (2%)
Total	2,654 (100%)

## Follow-up actions on removal orders

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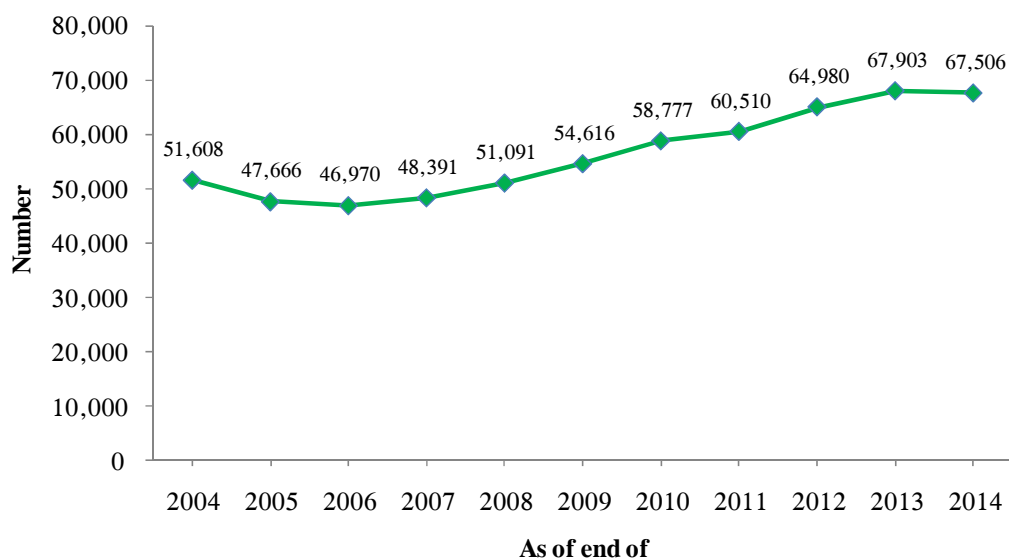
5.11 In Audit’s view, in order to enhance consumer protection and strengthen deterrent effects on UBW owners, the BD needs to refer removal orders to the LR for registration timeously.

### *Targets on clearing removal orders not met*

5.12 The number of outstanding removal orders has risen since 2006 (see Figure 4).

**Figure 4**

**Number of outstanding removal orders  
(2004 to 2014)**



*Source: BD records*

5.13 According to the BD, a removal order is considered to be “cleared” when:

- (a) the related UBW has been completely removed;
- (b) prosecution action has been initiated by the BD;
- (c) default works are being carried out by BD contractors; or

## Follow-up actions on removal orders

- (d) the order is superseded or withdrawn (Note 27).

5.14 Since 2004, in the first quarter of each year, the BD has set targets on the number of removal orders to be cleared by March of the following year. According to the BD, it sets clearance targets having regard to its resource and workload and, in general, long-outstanding orders are accorded higher priority for clearance. Audit examination revealed that the BD did not meet its targets on clearing all the removal orders issued from 2004 to 2009 (see Table 7).

**Table 7**  
**Clearance of removal orders**  
**(2004 to 2009)**

Removal orders issued		Target date to achieve 100% clearance (c)	Actual clearance percentage as of	
Year (a)	Number (b)		Date in column (c) (d)	December 2014 (e)
2004	29,201	March 2008	94%	99%
2005	25,582	March 2009	92%	97%
2006	34,095	March 2010	94%	97%
2007	36,339	March 2011	85%	89%
2008	34,548	March 2013 (Note)	75%	80%
2009	32,989	March 2014 (Note)	71%	75%

Source: *Audit analysis of BD records*

Note: *In March 2014, the BD lowered the clearance targets on removal orders issued in 2008 and 2009 to achieving 80% and 75% clearance respectively by March 2015.*

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**Note 27:** *According to BD guidelines:*

- (a) *a removal order may be superseded by a new order if there is a change in ownership or an error in the original order is found; and*
- (b) *a removal order may be withdrawn if a UBW has been modified to the extent that it does not pose any danger to the public and is non-actionable.*

## Follow-up actions on removal orders

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5.15 Up to December 2014, only 89%, 80% and 75% of the removal orders issued in 2007, 2008 and 2009 respectively had been cleared, and the BD had not set target dates to achieve 100% clearance of removal orders issued from 2010 to 2014. In Audit's view, the BD needs to strengthen actions with a view to meeting its time targets on clearing outstanding removal orders issued in each of the previous years.

### *No monitoring of long-outstanding UBWs and UBWs associated with safety concern*

5.16 As of October 2014, some of the 68,134 outstanding removal orders had been issued for a long time, as follows:

<b>Period from issuance of removal order to October 2014</b>	<b>Number of outstanding removal orders</b>
More than 6 years to 10 years	14,514 (21%)
More than 10 years to 30 years	753 (1%)
Total	15,267 (22%)

5.17 Furthermore, of the 68,134 outstanding removal orders, 7,227 orders (11%) related to UBWs associated with structural or higher fire-safety concern (which were accorded topmost priority for clearance by the BD — see para. 3.6), and most of them had been issued for a long time, as follows:

<b>Period from issuance of removal order to October 2014</b>	<b>Number of outstanding removal orders</b>
2 years or less	2,045 (28%)
More than 2 years to 6 years	3,342 (46%)
More than 6 years to 10 years	1,767 (25%)
More than 10 years to 18 years	73 (1%)
Total	7,227 (100%)

- 5.18 According to the DEVB and the BD:
- (a) for external UBWs associated with structural concern, their safety condition may deteriorate with the passage of time due to wear and tear and lack of proper maintenance, which may pose public safety risks; and
  - (b) the risk level of UBWs associated with fire-safety concern would not change over time.
- 5.19 In Audit's view, the BD needs to take actions to periodically conduct safety inspections of external UBWs associated with structural concern, and take prompt action on UBWs posing public safety risks.

### **Audit recommendations**

- 5.20 **Audit has recommended that the Director of Buildings should:**
- (a) **conduct a review of the outstanding removal orders to identify those that have not been registered at the LR and take remedial actions as soon as possible;**
  - (b) **take measures to ensure that the dates of referral and registration of removal orders at the LR are promptly input into the BCIS in future;**
  - (c) **take actions regarding the four removal orders (that had not been registered at the LR) identified by Audit as soon as possible;**
  - (d) **take measures to refer removal orders to the LR for registration timeously;**
  - (e) **strengthen actions with a view to meeting BD time targets on clearing outstanding removal orders issued in each of the previous years; and**
  - (f) **take actions to periodically conduct safety inspections of external UBWs associated with structural concern, and take prompt action on UBWs posing public safety risks.**

### **Response from the Government**

5.21 The Secretary for Development and the Director of Buildings agree with the audit recommendations. They have said that:

- (a) regarding paragraph 5.20(b), as part of the BCIS revamping project (see para. 6.6), the BD will explore with the LR the feasibility for the LR to provide computer data to the BD on registration of removal orders for automatic uploading onto the BCIS in future; and
- (b) regarding the four removal orders (that had not been registered at the LR) identified by Audit (see paras. 5.7 and 5.20(c)):
  - (i) for removal order A, the service of a new order depends on the outcome of the ongoing appeals relating to other six removal orders, since the UBW involved in removal order A is an integral structure of the UBWs involved in the six orders;
  - (ii) for removal orders B and C, new orders were issued to the new owners on 6 March and 27 February 2015 respectively, and were sent to the LR for registration on the dates of issue; and
  - (iii) removal order D was sent to the LR for registration on 27 February 2015.

### **Prosecution actions on non-compliant removal orders**

5.22 Under delegated authority from the Department of Justice, some officers of the BD Legal Services Section (under the Corporate Services Division) may act as prosecutors in prosecution cases relating to non-compliance with removal orders issued by the BD. For warranted cases referred from the BD's divisions, the Legal Services Section will arrange for issue of summonses on the related building owners.

## **Follow-up actions on removal orders**

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5.23 In the past five years from 2010 to 2014, 8,370 owners had been convicted of non-compliance with removal orders, as follows:

<b>Year</b>	<b>Number of convicted owners</b>
2010	1,611
2011	1,844
2012	1,328
2013	1,955
2014	1,632
<b>Total</b>	<b>8,370</b>

The related penalties included fines ranging from no fine to \$100,000, as follows:

<b>Fine</b>	<b>Number of cases</b>
Nil	88 (1%)
\$100 to \$500	597 (7%)
\$501 to \$1,000	1,393 (17%)
\$1,001 to \$2,000	2,043 (24%)
\$2,001 to \$5,000	2,584 (31%)
\$5,001 to \$10,000	1,024 (12%)
\$10,001 to \$100,000	641 (8%)
<b>Total</b>	<b>8,370 (100%)</b>

## **Follow-up actions on removal orders**

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5.24 The court also imposed imprisonment in 4 cases, as follows:

- (a) 3 cases for imprisonment for two, four and six months respectively, all with suspended sentence; and
- (b) 1 case for imprisonment for one month.

On average, court hearings on related summonses were finalised within 3.5 months from the dates of issuing the summonses.

### ***Summonses not issued on cases meeting BD prosecution criteria***

5.25 According to BD guidelines, prosecution actions should be taken on non-compliant UBW cases meeting one of the following nine criteria:

- (a) a UBW associated with a residential SDF in an industrial building, or an SDF in a residential or composite building causing complete blockage of means of escape;
- (b) a UBW being identified under an LSO and posing serious hazard to life and limb (e.g. serious blockage of means of escape and removal of a staircase);
- (c) a UBW the owner of which has committed the same offence two or more times;
- (d) a UBW contravening the MWCS requirements;
- (e) for a UBW case being identified through a public report, the UBW posing imminent danger, causing serious health hazards or environmental nuisance to the public, found being newly constructed or under construction;
- (f) a UBW on which repeated public reports have been received;



## **Follow-up actions on removal orders**

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- (g) prosecution of a UBW owner may have immediate influence on other owners to remove their UBWs in the vicinity;
- (h) a removal order with the specified date for action having lapsed for over 10 years; or
- (i) a UBW which is excessive in scale and in blatant disregard of law or public safety.

5.26 The BD guidelines also state that the possibility that a defendant may advance a reasonable excuse as defence does not constitute a reason for not taking prosecution actions against UBW owners. According to the BD, items (a) to (c) in paragraph 5.25 are accorded the highest priority for taking prosecution actions, item (d) is accorded a higher priority and items (e) to (i) are not accorded any order of importance.

5.27 Audit also noted that, of the 68,134 outstanding removal orders as of October 2014 (see para. 5.16), only 9,608 (14%) had been referred to BD Legal Services Section for taking prosecution action against non-compliant owners. Regarding the remaining 58,526 (86%) cases, the BD did not have information indicating the number of such cases meeting one or more of the nine priority criteria for prosecution (see para. 5.25). In this connection, Audit examination of two cases (see Cases 3 and 4) revealed that, up to February 2015, no summonses had been issued to the non-compliant owners although the related UBWs had met 3 or more of the 9 prosecution criteria.

### Case 3

#### A long-outstanding UBW on Hong Kong Island

1. In September 2002, the BD received a public report that the lower ground floor of a residential building on Hong Kong Island had been altered without BD approval. In the same month, the BD inspection found that the owner of the related floor had erected in his 435-square-foot flat a number of UBWs, including removal of a wall and a staircase, erection of a new staircase and unauthorised occupation of a space to create an additional area of 708 square feet. The BD's assessment revealed that it would be dangerous for any person to use the expanded area.

2. In January 2004, the BD issued a removal order to the owner requiring him to reinstate by May 2004 the affected parts of the building back to those stated in the approved building plan. In April 2008, the BD issued a warning letter to the owner stating that the BD was considering taking prosecution action against him.

3. From February 2010 to July 2012, the BD received three more public reports on the concerned UBWs, with two reports raised by the same person. In July 2014, the BD issued another warning letter to the owner. Up to February 2015, the case had not been referred to the BD Legal Services Section for taking prosecution action.

#### *Audit comments*

4. In this case, although four prosecution criteria (see items (e), (f), (h) and (i) in para. 5.25) were met, up to February 2015, the BD had not taken prosecution action against the non-compliant owner.

#### *BD response*

5. In March 2015, the BD informed Audit that:

- (a) at the early stage, the owner had employed an authorised person to handle the removal works and prosecution action was therefore not initiated. Subsequently, in view of negative response from the owner and authorised person, the BD had attempted to conduct inspection in order to establish non-compliance of the removal order for initiating prosecution action. However, the BD could not gain access to the premises; and
- (b) the BD would take action to apply for a court warrant for entering the premises for enforcement actions.

*Source: BD records*

Case 4

**A long-outstanding UBW on Lantau Island**

1. In March 2004, the BD received a public report that a UBW was under construction at the yard of a residential building on Lantau Island. On the next day, a BD consultant's inspection found that an unauthorised aluminium structure was being erected. The consultant submitted an inspection report to the responsible BD officer and the Legal Services Section, and recommended that a removal order be issued and prosecution be instigated. In April 2004, the BD received a report from another person on the same UBW.

2. In August 2004, the BD issued a removal order to the owner requiring him to demolish the UBW by September 2004. In December 2004, after taking witness statements from two witnesses, BD Legal Services Section sought directions from the responsible BD officer on whether prosecution action should be taken against the owner. In October 2006, BD consultant also submitted his witness statement to the BD. Up to February 2015, prosecution action had not been taken on the case.

***Audit comments***

3. In this case, although three prosecution criteria (see items (e), (f) and (h) in para. 5.25) were met, up to February 2015, the BD had not taken prosecution action against the non-compliant owner.

4. In this connection, in January 2001, the DEVB informed the then LegCo Panel on Planning, Lands and Works that new UBWs of any sort should be cleared as soon as they were identified in order to give a clear message to the public that the Government would not tolerate perpetuation of the UBW problem. In Audit's view, the BD needs to strengthen prosecution actions on new UBWs.

***BD response***

5. In March 2015, the BD informed Audit that:

- (a) prosecution actions against persons for carrying out new UBWs without the BD's prior approval and consent had ceased in December 2004, and the dedicated investigation teams on new UBWs were disbanded in the year. Therefore, prosecution action in this case was not pursued; and
- (b) the BD was initiating prosecution action against the owner on the non-compliance of the removal order.

*Source: BD records*

## Follow-up actions on removal orders

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5.28 In Audit's view, the BD needs to conduct a review of the 58,526 outstanding removal orders (see para. 5.27) with a view to identifying cases warranting the issue of summonses according to BD criteria for prosecution (see para. 5.25).

### *Estimates on issuing summonses not met*

5.29 Audit examination revealed that the BD did not meet its estimates on the number of summonses (relating to non-compliance with removal orders) issued in 2010, 2011, 2012 and 2014, as follows:

Year	Estimated number of summonses (a)	Actual number of summonses (b)	Percentage (c) = (b) ÷ (a) × 100%
2010	3,000	2,616	87%
2011	3,000	2,264	75%
2012	3,300	2,105	64%
2013	2,500	2,515	101%
2014	3,000	2,532	84%
Overall	14,800	12,032	81%

5.30 In October 2010, the DEVB informed LegCo that, since there were views in the community that a tougher stance should be taken against non-compliant UBW owners to create stronger deterrent effects, in order to protect public safety, the BD would instigate prosecution action more readily to sanction owners who did not duly observe the statutory orders (including removal orders). In Audit's view, the BD needs to take measures to ensure that its estimates on issuing summonses on related cases are met.

## **Audit recommendations**

- 5.31 **Audit has recommended that the Director of Buildings should:**
- (a) **strengthen prosecution actions on new UBWs in order to give a clear message to the public that the Government would not tolerate perpetuation of the UBW problem;**
  - (b) **conduct a review of outstanding removal orders with a view to identifying cases warranting the issue of summonses according to BD criteria for prosecution; and**
  - (c) **take measures to ensure that BD estimates on issuing summonses on non-compliant UBW owners are met.**

## **Response from the Government**

5.32 The Secretary for Development and the Director of Buildings agree with the audit recommendations.

## **Default works carried out by BD contractors**

5.33 Under section 24 of the Buildings Ordinance, if an owner of a UBW fails to comply with a removal order within the specified period, the BD may carry out the works on behalf of the owner (default works) and recover the costs from him.

5.34 From 2009 to 2013, the BD had completed default works on 174 UBW cases, involving a total expenditure of \$14.77 million.

### ***Default works not carried out on many UBWs meeting BD criteria***

5.35 According to BD guidelines, default works should be carried out under the following special circumstances:

## **Follow-up actions on removal orders**

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- (a) a UBW owner having excusable reasons for not complying with the removal orders after trying reasonable and legitimate efforts and showing real intention to comply with the orders;
- (b) a UBW posing a risk to life or limb or causing public nuisance;
- (c) a highly publicised case;
- (d) a highly political case; or
- (e) a UBW involving a blatant breach of the law (e.g. re-construction of the UBW shortly after its removal).

5.36 In March 2015, the DEVB and the BD informed Audit that:

- (a) the criteria in paragraph 5.35 set out the types of situations suitable for carrying out default works, and it did not mean that the BD should proceed with default works for each and every case meeting such criteria; and
- (b) default works should not be over-emphasised as it remained the owner's responsibility to comply with a removal order and, in the event of non-compliance, the BD should make use of prosecution action to induce him to remove the UBW.

5.37 Audit examination of the 68,134 outstanding removal orders as of October 2014 revealed that 98 (0.1%) of these orders had been issued with default works orders. Furthermore, of the remaining 68,036 (68,134 less 98) outstanding orders, 7,216 (11%) were classified as relating to UBWs that may pose structural or higher fire-safety risks (see para. 5.17). In particular, 73 of these 7,216 outstanding orders had been issued for over 10 years. Moreover, Audit noted that the BD did not have information indicating the number of non-compliant UBW cases meeting BD criteria for default works. In Audit's view, the BD needs to conduct a review of the 68,036 outstanding orders with a view to identifying cases warranting the carrying out of default works. Thereafter, the BD needs to devise an action plan with timeframe for carrying out default works for warranted cases. In order to enhance public safety, the BD also needs to strengthen actions to carry out default works for UBWs associated with structural or higher fire-safety concern.

## **Audit recommendations**

- 5.38 **Audit has *recommended* that the Director of Buildings should:**
- (a) **conduct a review of the outstanding removal orders with a view to identifying cases warranting the carrying out of default works;**
  - (b) **devise an action plan with timeframe for carrying out default works for warranted cases; and**
  - (c) **in order to enhance public safety, strengthen actions to carry out default works for removing UBWs associated with structural or higher fire-safety concern.**

## **Response from the Government**

5.39 The Secretary for Development and the Director of Buildings agree with the audit recommendations. They have said that the BD will give priority to carrying out default works on UBWs associated with structural or higher fire-safety concern.

## **Actions to recover costs of default works**

5.40 Under sections 24 and 33 of the Buildings Ordinance, the BD may recover the costs, supervision charges plus a surcharge of not exceeding 20% of the cost from the owner for carrying out removal works on the UBWs. According to BD guidelines, the BD will take the following actions to recover the costs from the pertinent owners upon completion of default works:

- (a) finalising the account of default works and issuing demand notes to the owners of UBWs;
- (b) serving a certificate under section 33 of the Buildings Ordinance (s.33 certificate) on an owner who does not promptly settle the demand note, and registering the certificate at the LR, which will constitute a first charge against the title of the property. Under this legal charge, the BD may sell or lease the property for the purpose of settling any outstanding default-works cost; and

## Follow-up actions on removal orders

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- (c) referring appropriate cases to the Department of Justice for taking legal action for recovering the debts.

5.41 Of the total 174 default works completed from 2009 to 2013 involving a total cost of \$14.77 million (see para. 5.34), as of October 2014, the BD had not recovered \$8.94 million (61% of \$14.77 million) in 99 cases (57% of 174 cases).

### *Time targets for cost recovery actions not met*

5.42 According to BD guidelines, demand notes should be issued to owners of UBWs within 6 months after completion of default works. However, Audit examination revealed that, as of October 2014, of the 99 cases having completed default works with outstanding costs, the BD had not issued demand notes to the UBW owners of 42 cases, which involved a total outstanding cost of \$5.73 million. As of October 2014, the 42 cases had been completed for 10 months to 4 years and 10 months, as follows:

<b>Period from works completion to October 2014</b>	<b>Number of cases not yet issued with demand notes</b>
10 months to 24 months	15 (36%)
More than 24 months to 36 months	15 (36%)
More than 36 months to 58 months	12 (28%)
Total	42 (100%)

5.43 According to BD guidelines, s.33 certificates should be registered at the LR within 4 months after issue of the demand notes. However, Audit examination revealed that, as of October 2014, of the 57 (99 less 42) cases having completed default works where demand notes had been issued, s.33 certificates for 38 cases (67%) had been registered at the LR and 18 cases (32%) had not been registered at the LR (Note 28). As of October 2014, 13 of the 18 cases had been outstanding for more than 4 months, contrary to the BD's 4-month time target, as follows:

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**Note 28:** *For the remaining case, the BD had granted approval to the UBW owner to settle the outstanding balance by instalments and hence it had not served the s.33 certificate on the owner.*



## Follow-up actions on removal orders

<b>Period from issuance of demand note to October 2014</b>	<b>Number of s.33 certificates not yet registered at LR</b>
7 months to 12 months	4 (31%)
More than 12 months to 24 months	7 (54%)
32 months and 52 months	2 (15%)
Total	13 (100%)

5.44 Under section 33 of the Buildings Ordinance, a first charge from registration of an s.33 certificate shall be void and no liability shall accrue to a bona fide purchaser if he has acquired a property and registered an interest in the property after the date of completion of default works but before the registration of an s.33 certificate. Furthermore, under the Limitation Ordinance (Cap. 347), legal action to recover costs must be taken within 6 years from the completion date of default works.

5.45 In order to protect the Government's financial interest, the BD needs to take measures to ensure that demand notes are issued to UBW owners within 6 months after completion of default works, and s.33 certificates are registered at the LR within 4 months after issue of related demand notes.

### **Audit recommendations**

5.46 **Audit has recommended that the Director of Buildings should take measures to ensure that BD officers:**

- (a) **issue demand notes to owners of UBWs within 6 months after completion of default works; and**
- (b) **register s.33 certificates at the LR within 4 months after issue of related demand notes.**

### **Response from the Government**

5.47 The Secretary for Development and the Director of Buildings agree with the audit recommendations.

## **PART 6: SYSTEM FOR SUPPORTING ENFORCEMENT ACTIONS**

6.1 This PART examines the BD's computer information system deployed in supporting its enforcement actions on UBWs.

### **Building Condition Information System**

6.2 In April 2000, in seeking funding of \$19.7 million for implementing the BCIS, the BD informed the FC that the BCIS's functions would include providing:

- (a) an effective means of recording, processing and retrieving details of complaints, referrals, planned surveys, statutory orders, works orders and consultancy assignments;
- (b) timely and up-to-date information on the status of complaints, statutory orders and referrals for internal monitoring and handling of enquiries;
- (c) searches on the basic data of individual private buildings and maintaining records of UBWs reported to and inspected by the BD; and
- (d) enquiries and statistical reporting facilities for operational and planning purposes.

The BCIS was fully implemented in November 2002.

#### ***BCIS data quality review***

6.3 In September 2010, the BD completed a review (2010 Review) of the quality of data (Note 29) maintained in the BCIS. According to the 2010 Review report submitted to BD senior management:

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**Note 29:** *In March 2015, the DEVB and the BD informed Audit that the review focused on the quality of core BCIS data, namely those bearing direct relevance to the BD's performance indicators shown in its COR, Monthly Digests and webpage.*

## System for supporting enforcement actions

- (a) the overall data recorded in the BCIS were 95.9% complete and 85.4% accurate, and the input of 3.3% of data had been delayed; and
- (b) the completeness, accuracy and timeliness of some data were unsatisfactory, which had affected the information released to the public through the BD's COR and website.

6.4 The salient recommendations of the 2010 Review included:

- (a) issuing new guidelines to BD officers outlining the workflow of data entry, crucial data fields and responsibilities of different ranks of officers in maintaining the BCIS data;
- (b) arranging regular tailor-made training or refreshment courses for BCIS users; and
- (c) strengthening the monitoring on the completeness, accuracy and timeliness of BCIS data through regular exception reports generated from the system.

According to the BD, by March 2013, the 2010 Review recommendations had been implemented.

6.5 In July 2014, the BD completed another review (2014 Review) on the quality of data (see Note 29 to para. 6.3) maintained in the BCIS. Comparing with the 2010 Review, the 2014 Review report found that:

- (a) the overall BCIS data completeness and accuracy rates had improved to 98.9% and 97.4% respectively, and input of 3.2% data had been delayed; and
- (b) most of the identified data deficiencies would not affect the BD's information released to the public.

The 2014 Review recommended that some improvement measures should be incorporated into the BCIS revamping project (see para. 6.6).

## **System for supporting enforcement actions**

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### ***BCIS revamping project***

6.6 In February 2014, in the light of the obsolete and outdated hardware, software and technology of the BCIS, the Office of the Government Chief Information Officer (OGCIO — Note 30) approved the BD's proposal to revamp the BCIS at an estimated cost of \$9.9 million. The BCIS revamping project commenced in April 2014 and was targeted for completion in March 2016.

### ***Important information not provided by BCIS***

6.7 As outlined in the earlier PARTs of this Audit Report, the following important information had not been input into or could not be provided by the BCIS:

- (a) the dates of different stages of LSO actions taken (namely survey stage, order-serving stage, compliance-inspection stage and final stage — see para. 4.4) on each target building;
- (b) management reports on the number of removal orders issued and actionable UBWs identified in each building under an LSO (see para. 4.15); and
- (c) the dates of most of the removal orders referred to the LR for registration (see para. 5.5).

6.8 Furthermore, in April 2014, in response to a LegCo Member's enquiry on the number of rooftop-podium-lane UBWs removed in each year from 2011 to 2013, the DEVB and the BD informed the FC that the BD did not keep separate statistics on the number of different types of UBWs removed.

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**Note 30:** *The OGCIO is responsible for overseeing the use of information, communication and technology of the Government, including the funding policies, procedures and monitoring of computerisation projects. According to OGCIO Circular No. 3/2007 of June 2007, administrative computer systems costing between \$150,001 and \$10 million are to be funded under the block allocation Subhead A007GX of the Capital Works Reserve Fund Head 710 under the control of the OGCIO.*

6.9 According to the BD, for the purposes of monitoring of long-outstanding removal orders and planning, its officers compiled and provided BD senior management with information on the progress of actions taken (Note 31) on outstanding removal orders issued before 2004. However, there was no record showing the provision to BD senior management of information on progress of actions taken on outstanding removal orders issued since 2004.

6.10 In addition, according to the DEVB and the BD, a BD coordinator for each type of LSO regularly collated information and reported the progress of LSOs to BD senior management, and there were cases where the coordinators collected information (kept in personal computers) from relevant BD divisions for compiling progress reports. Audit considers this arrangement unsatisfactory and the BD needs to make use of information technology to ensure that all essential information is consolidated in the BCIS and summarised for the review by the senior management.

6.11 In March 2015, the DEVB and the BD informed Audit that:

- (a) given that the BCIS enhancement had been made in September 2011, and that there had been several changes to the BCIS data definitions in recent years, accurate statistics on the number of rooftop-podium-lane UBWs removed (see para. 6.8) could not be simply generated from the BCIS. The data had to be verified by checking individual case files. Owing to the significant time and manpower resource implications, it was not practical for the BD to produce accurate figures under a tight timeframe for answering the query raised by the LegCo Member, and it would be irresponsible for the Government to provide information to LegCo where the Government had doubts on its accuracy;
- (b) the reporting of progress of actions taken (see para. 6.9) had been introduced primarily for monitoring of long-outstanding repair orders by BD senior management. Owing to the large number of removal orders involved and the significant resource implications, BD staff were not required to input the progress of actions into the BCIS for compiling

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**Note 31:** *The progress of actions included: (a) no action being taken by the UBW owner; (b) building professionals being appointed; (c) remedial works were in progress; (d) cases being referred to the BD's Legal Services Section for issuing summonses; and (e) default works being carried out by the BD.*

## **System for supporting enforcement actions**

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management reports for removal orders issued after 2004, except those issued under certain LSOs that were closely monitored by BD senior management; and

- (c) in response to operational needs, enhancements had been made to the BCIS from time to time in order to capture essential data to facilitate compilation of progress reports. It usually took time to introduce new data fields and work out the system logic. Therefore, before launching the necessary enhancement to the BCIS, LSO coordinators (see para. 6.10) had to collect the data manually for compiling statistics.

6.12 In Audit's view, in implementing the BCIS revamping project, the BD needs to take measures to provide functions in the system that would overcome the deficiencies outlined in paragraphs 6.7 to 6.11.

### ***Number of removal orders not accurately published in CORs and website***

6.13 Audit noted that the numbers of removal orders published in the BD's CORs had been consistently less than those recorded in the BCIS. For example, the numbers of removal orders issued in 2011, 2012 and 2013 as recorded in the BCIS were 11,601, 13,475 and 15,668 respectively, whereas the corresponding numbers published in the BD's CORs were 9,176 (79% of 11,601), 12,292 (91% of 13,475) and 12,005 (77% of 15,668) respectively.

6.14 According to the BD, for example, owing to the need to submit related data for 2013 to the Financial Services and the Treasury Bureau in the first week of January in 2014 for compiling the COR, information of some removal orders issued in last few months of 2013 had not been input into the BCIS by the time of submission of data to the Bureau for compiling the related COR. Hence, the number of removal orders issued in 2013 as reported in the COR was less than actual number. Audit considers this arrangement unsatisfactory. In Audit's view, information of all removal orders issued should be promptly input into the BCIS which would help monitor the progress of actions taken and prevent the situation of reporting inaccurate number of removal orders in the BD's COR. The BD should consider implementing an integrated system for issuing removal orders under which the BCIS will be automatically updated with related information upon issue of removal orders.

6.15 Furthermore, Audit also noted that the numbers of outstanding removal orders at year ends as published on BD website had been consistently less than those as reported to BD senior management. For example, the numbers of outstanding removal orders at year ends of 2011, 2012 and 2013 as reported to BD senior management were 60,510, 64,980 and 67,903 respectively, whereas the corresponding numbers published on BD website were 52,365 (87% of 60,510), 53,470 (82% of 64,980) and 56,941 (84% of 67,903) respectively.

6.16 According to the BD, for example, the 56,941 outstanding removal orders (as reported on BD website) as of December 2013 represented removal orders issued in or before December 2012 but remained outstanding as of December 2013 (excluding orders issued in 2013 that had not been complied with), whereas the 67,903 outstanding removal orders (as recorded in the BCIS) represented all outstanding removal orders as of December 2013 (including orders issued in 2013 that had not been complied with). Audit considers the BD needs to publish accurate information in this area.

### **Audit recommendations**

- 6.17 **Audit has recommended that the Director of Buildings should:**
- (a) **in implementing the BCIS revamping project, take measures to provide functions in the system for monitoring the progress of actions taken on:**
    - (i) **LSOs; and**
    - (ii) **outstanding removal orders;**
  - (b) **take measures to ensure that accurate information on the number of annual removal orders issued is published in the BD's CORs;**
  - (c) **consider implementing a function under the BCIS that would integrate essential information of removal orders issued; and**
  - (d) **take measures to ensure that accurate information on the number of outstanding removal orders at year end is published on BD website.**

## **Response from the Government**

6.18 The Secretary for Development and the Director of Buildings agree with the audit recommendations. They have said that:

- (a) regarding paragraphs 6.8 and 6.11(a), the BD will look into ways in the BCIS revamping project to address the current system deficiency that the system cannot provide the number of rooftop-podium-lane UBWs removed;
- (b) regarding paragraph 6.17(a), the BCIS has recently been customised to facilitate progress monitoring of target buildings under certain LSOs, and such features will be incorporated in the BCIS revamping project. In the revamped BCIS, the BD will explore the feasibility of introducing a function for monitoring the progress of actions taken on outstanding removal orders; and
- (c) regarding paragraph 6.17(b) and (c), a batch-record uploading function will be adopted in the BCIS to enhance the accuracy of information published in the BD's COR, including the number of removal orders issued each year.



## **PART 7: WAY FORWARD**

7.1 This PART outlines the major Audit concerns and examines the way forward.

### **Policies and enforcement actions on UBWs**

7.2 UBWs may pose structural and fire-safety risks to building users and members of the public, and they may also cause hygiene problems and environmental nuisance. With a view to removing risks to public safety within resources available, the BD has adopted policies on UBWs to focus enforcement actions on certain types of actionable UBWs. However, although the BD had removed 474,559 UBWs from 2001 to 2014, the BD has not published statistics on the number of actionable UBWs that have been removed. According to the BD, majority of the UBWs removed were likely to be actionable UBWs. Furthermore, although the 2011 stock-taking exercise found some 2,290,000 suspected UBWs, the BD has not taken action to identify the actionable ones.

### **Major areas for improvement**

7.3 Audit noted that the annual number of public reports on UBWs had increased from 24,577 in 2004 to 41,146 in 2014 (a 67% increase), and the annual number of UBWs removed had decreased from 41,210 in 2004 to 22,866 in 2014 (a 45% decrease).

7.4 *Inadequacies in BD actions to deal with UBWs.* Audit examination revealed that there were inadequacies in BD actions to deal with UBWs, including long time taken to issue removal orders on actionable UBWs, significant slippages in conducting LSOs on rooftop-podium-lane UBWs and SDFs, delays in referring warning notices, removal orders and s.33 certificates to the LR for registration, default-works actions not being carried out on many UBWs associated with structural or higher fire-safety concern, and lack of safety inspections of UBWs posing public safety risks. The long time taken to respond to public reports on UBWs may fall short of public expectation, and call into question the effectiveness of the BD's UBW enforcement actions.

## Way forward

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7.5 *Deficiencies of BD information system.* Audit examination revealed that the BD had not maintained some essential information in its BCIS to support its actions on UBWs. For example, the BCIS did not:

- (a) maintain data on the dates of different stages of LSO actions taken on each building covered in an LSO (see para. 4.4);
- (b) generate reports on the number of removal orders issued and actionable UBWs identified in each building under an LSO for management oversight and necessary remedial actions (see para. 4.15); and
- (c) capture data on the dates of most of the removal orders referred to the LR for registration (see para. 5.5) which were essential for monitoring and assessing the timeliness and effectiveness of the enforcement action.

## Way forward

7.6 Under BD enforcement policies on UBWs, the BD would take more stringent enforcement actions on actionable UBWs by issuing removal orders to related UBW owners, registering the removal orders at the LR, taking prosecutions against the owners and carrying out default works on related UBWs. For non-actionable UBWs, the BD would only issue warning notices and advisory letters to the owners, where the former would be registered at the LR.

7.7 Audit also noted that, as of October 2014, there were 68,134 outstanding removal orders, of which 21% had been outstanding for more than 6 years to 10 years and 1% for more than 10 years to 30 years. As reported in paragraph 2.17, the BD has yet to ascertain from the 2011 stock-taking exercise the number of actionable UBWs in existence that have not been issued with removal orders. In this connection, as of October 2014, there were 21,956 public reports (see para. 3.12) and 25,887 warning notices (see para. 3.13) related to rooftop-podium-lane UBWs on which the BD had not issued removal orders to the UBW owners.

7.8 The BD is facing a challenge in clearing UBWs under the 68,134 removal orders, some of which have been issued for long periods of time. Given that owners of a large number of UBWs have not taken UBW removal actions after

registration of the removal orders at the LR, the title-encumbrance arrangement alone may not be sufficiently effective in inducing these owners to remove their UBWs.

7.9 According to the DEVB, in the light that there were views in the community that a tougher stance should be taken against non-compliant UBW owners to create stronger deterrent effects, and in order to protect public safety, the BD would instigate prosecution action more readily to sanction owners who did not duly observe the statutory orders (including removal orders — see para. 5.30). Audit noted that the BD had issued a total of 4,620 summonses in 2012 and 2013 involving 5,439 UBWs. However, as of October 2014, only 3,047 (56% of 5,439) UBWs had been removed.

7.10 According to the BD, prosecution actions are effective means to clear UBWs. In this connection, the BD has set estimates of issuing 2,500 to 3,300 summonses a year on outstanding removal orders (see para. 5.29). Accordingly, for the 68,134 outstanding removal orders (not counting new removal orders issued in coming years), in the absence of other means to induce voluntary compliance of these orders, the BD would take a long time to issue summonses to all related owners. Furthermore, although taking prosecution actions against UBW owners is an effective means to resolve the UBW problem, any increase in the annual number of summonses issued (see para. 5.29) would require additional BD resources.

7.11 Audit considers the large number of long-outstanding removal orders unsatisfactory and that the BD needs to explore other effective means to clear these UBWs after issue of removal orders. For example, the BD may consider introducing a fixed penalty system for UBWs. The introduction of a fixed penalty system for UBWs would help streamline the prosecution actions and more effective deployment of BD resources.

## **Audit recommendation**

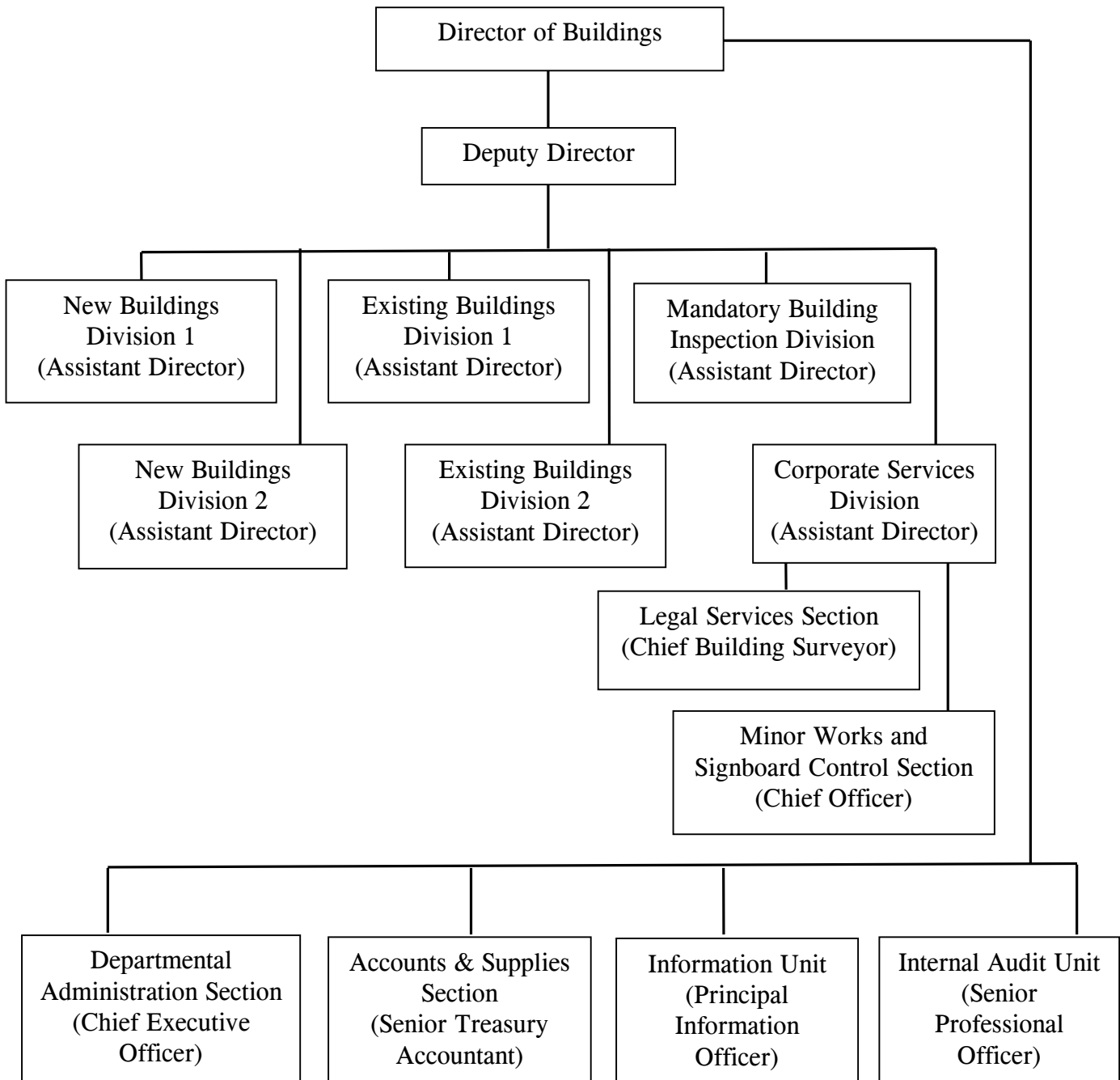
7.12 **Audit has *recommended* that the Director of Buildings should, in addition to taking prosecution actions against UBW owners, explore other effective means to induce the owners to remove their UBWs after issuing removal orders to them.**

### Response from the Government

7.13 The Secretary for Development and the Director of Buildings agree with the audit recommendation. They have said that:

- (a) the BD will continue to adopt a multi-pronged approach to tackle the problem of UBWs. Apart from existing measures including prosecution, surcharge on default works, validation schemes, financial assistance schemes and support from social service teams, the BD will explore other effective means to induce owners to remove their UBWs; and
- (b) the BD has introduced a fixed penalty system for the Mandatory Window Inspection Scheme, under which a penalty notice may be served to an owner who fails to comply with a statutory window inspection notice. The BD will review the effectiveness of the system and explore the possibility of extending its application.

**Buildings Department:  
Organisation chart (extract)  
(31 October 2014)**



Source: *BD records*

**Appendix B**  
(paras. 2.11 and  
3.14 refer)

**Suspected UBWs identified in 2011 stock-taking exercise**

UBW type	UBWs (Number)	Buildings involved (Number)
1. Chimney/vent duct and associated metal supporting frames	58,000	7,300
2. UBW on rooftops, podiums, yards and lanes	47,000	16,000
3. Retractable awnings	41,000	14,000
4. Supporting structures for antenna and transceiver	37,000	9,600
5. UBW/misuse of balcony	18,300	1,400
6. Pavement structure	10,300	3,000
7. Opening in external wall	9,000	2,300
8. Alteration to parapet/railing	7,200	2,300
9. UBW/misuse of cantilevered slab balcony	6,200	500
10. Metal grilles/bars	6,100	2,300
11. Supporting structure for satellite disc antenna	6,000	3,800
12. Supporting structures for air-conditioner cooling tower	5,500	1,500
13. Conversion of plant box/etc. to balcony/bay window	4,300	400
14. Alteration and addition of external wall to glass panel wall	3,600	800
15. Alteration to hood/plant box/architectural feature	2,600	400
16. Solid extension from external wall	2,300	800
17. UBW on canopy	1,600	400
18. Others (include supporting frames for light fittings, barriers, alteration of window to solid wall, etc)	34,000	8,000
Overall	300,000	28,600 (Note)

*Source: Audit analysis of BD records*

*Note: Some buildings had more than one type of UBW.*

**Time targets on handling public reports**

No.	Particulars	Time target (Note 1)	
		Before May 2014	From May 2014 (Note 2)
<b>From receipt of report to inspection</b>			
1.	Receiving a public report	30 days (Note 1)	30 days (Note 1)
2.	Assigning a case number, category and UBW type to the case, and inputting case details into BD's computer system		
3.	Issuing an acknowledgement reply		
4.	Screening the report by making reference to relevant BD records, and deciding whether an inspection is required		
5.	Carrying out inspection and preparing inspection report		
Subtotal (a)		30 days	30 days
<b>From inspection to issuance of removal order/warning notice</b>			
6.	Recommending action (i.e. enforcement actions for actionable and non-actionable UBWs), searching for ownership particulars, and replying to informant	30 days	30 days
7.	Receiving ownership particulars and preparing removal order/warning notice	30 days	60 days
8.	Issuing removal order/warning notice	45 days	90 days
Subtotal (b)		105 days	180 days
<b>Follow up of removal order</b>			
9.	Specified date for action (normally 60 days)	60 days	60 days
10.	Carrying out compliance inspection	15 days	150 days
11.	Determining the status (i.e. whether the owner has complied with the order) and issuing warning letter to the owner before taking prosecution action	14 days	50 days
Subtotal (c)		89 days	260 days
Total (d) = (a)+(b)+(c)		224 days	470 days

Source: BD records

Note 1: The time targets stated in this table relate to non-emergency public reports on existing UBWs erected on external walls. For a non-emergency public report (according to information provided by the informant and BD officers' judgement) on UBWs, BD officers should inspect the alleged UBWs under construction within 48 hours, existing UBWs on external walls within 30 days and other UBWs within 50 days. For an emergency public report on UBWs, BD officers should normally inspect the UBWs within 3 hours.

Note 2: According to the BD, for the purpose of expediting actions to clear the backlog of outstanding removal orders, some time targets on handling public reports have been extended with effect from May 2014.

## Acronyms and abbreviations

Audit	Audit Commission
BCIS	Building Condition Information System
BD	Buildings Department
COR	Controlling Officer's Report
DEVB	Development Bureau
FC	Finance Committee
LegCo	Legislative Council
LR	Land Registry
LSO	Large-scale operation
MWCS	Minor Works Control System
OGCIO	Office of the Government Chief Information Officer
SDF	Sub-divided flat
UBW	Unauthorised building works