

MANAGEMENT OF MANDATORY BUILDING INSPECTION SCHEME BY THE BUILDINGS DEPARTMENT

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1. Building neglect has been a long-standing problem in Hong Kong. Following the enactment of amendments to the Buildings Ordinance (Cap. 123) and the subsidiary Building (Inspection and Repair) Regulation (Cap. 123P) in 2011, the Mandatory Building Inspection Scheme (MBIS) has been fully implemented since 30 June 2012. Founded on the principle of “prevention is better than cure”, MBIS aims to require owners to carry out regular inspection and timely repair for their properties so as to tackle the problem of building neglect at source. Under MBIS, the Buildings Department (BD) is empowered under the Buildings Ordinance to issue statutory notices to owners of private buildings aged 30 years or above (except domestic buildings not exceeding three storeys), requiring them to carry out prescribed inspection and, if necessary, prescribed repair in respect of the common parts, external walls, projections and signboards of their buildings every 10 years. As of December 2019, there were a total of 18,066 buildings covered by MBIS. Up to April 2020, a total of 82,177 statutory notices (involving 5,308 buildings) had been issued under MBIS. Under MBIS, registered inspectors (RIs) are responsible for carrying out the prescribed inspection and/or supervision of the prescribed repair by registered contractors. BD is responsible for ensuring proper regulation of RIs and implementation of MBIS. The Audit Commission (Audit) has recently conducted a review to examine BD’s work in management of MBIS.

Selection of buildings for issuance of statutory notices

2. *Need to keep under review the target number of buildings to be selected for issuance of statutory notices under MBIS and formulate a long-term strategy for MBIS.* BD sets out in its Controlling Officer’s Report (COR) a key performance measure of “buildings targeted for prescribed inspection and, if necessary, prescribed repair under MBIS”. Regarding this performance measure for selection of target buildings under MBIS: (a) since 2013 (i.e. the first full-year implementation of

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MBIS), the target number of buildings had been decreasing from 2,000 in 2014 to 400 in 2019 (i.e. 650 in 2015, 500 in 2016 and 400 in 2017 to 2019), and increased to 600 in 2020; and (b) for 2012 to 2014, the actual numbers of buildings fell short of the target numbers. For 2015 to 2019, the actual numbers were equal to or greater than the target numbers. According to BD, since the commencement of MBIS in 2012, it had kept monitoring the progress of MBIS and noted that its work progress could not meet the target because of huge volume of work and public responses on the implementation of MBIS. With experience gained, BD had adjusted its strategy by adjusting the work priority with more focus on enhancing compliance with served statutory notices. As a result, the target number of buildings since 2014 had been gradually reduced. Audit noted that of the 18,066 buildings covered by MBIS as of December 2019, it was estimated that some 12,000 buildings had not been selected for issuance of statutory notices. Based on the 2020 target of selecting 600 buildings each year, it will take about 20 years to cover these some 12,000 buildings, let alone the new buildings which will be covered by MBIS coming up after 2019. In Audit's view, BD needs to keep under review the target number of buildings for issuance of statutory notices under MBIS, further streamline MBIS and formulate a long-term strategy for MBIS with a view to achieving MBIS's objective of tackling the problem of building neglect. Audit also noted that BD's definition for the abovementioned key performance measure was not clearly set out in its COR (e.g. according to BD, the actual number for this performance measure refers to the number of buildings selected for consideration of issuance of statutory notices). There is merit for BD to consider defining more clearly the key performance measure in its COR to enhance transparency and public accountability (paras. 2.7 to 2.11).

3. *Need to keep under review the selection criteria.* To enhance the transparency and promote community participation, a Selection Panel has been established to tender advice to BD on the selection criteria and the selection of target buildings for the purpose of issuing statutory notices under MBIS. At a Selection Panel meeting in October 2017, the Selection Panel agreed to adopt BD's proposal of revising the selection criteria and Building Score System so that a risk-based approach would be adopted for selection of target buildings under MBIS, and the revisions were then incorporated in BD guidelines. Under the Building Score System, scores will be given to buildings based on four selection criteria (i.e. building age, building condition, building management and risk to public). Priority will be given to buildings with higher scores (i.e. relatively higher potential risk). At the same meeting, BD also informed the Selection Panel that only private residential or composite buildings aged 50 years or above would be selected for issuance of statutory notices under MBIS (i.e. overriding selection criterion). On 25 August 2020, the Selection Panel endorsed the revision of the overriding selection criterion to private residential or composite buildings aged 40 years or above. Audit noted that: (a) the revised overriding

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selection criterion (and the previous one adopted in October 2017) was based on building type and age. However, under the Building Score System, building type was not a selection criterion, and building age was only one of the four selection criteria; (b) some buildings covered by MBIS not meeting this criterion (i.e. of different building type or aged below the specified age of this criterion) might also be of high risk to public safety as indicated by their higher scores or incidents of fallen building elements; and (c) the overriding selection criterion (for both the previous one and the current one) had not been included in BD guidelines. In Audit's view, BD needs to keep under review the use of the overriding selection criterion for selection of target buildings under MBIS, having regard to other selection criteria under the Building Score System, and incorporate all selection criteria of target buildings under MBIS in its guidelines (paras. 2.2, 2.3, 2.12 to 2.14 and 2.18 to 2.20).

4. *Some buildings deleted after selection by Selection Panel.* After the Selection Panel's endorsement of the nomination list, BD may change some buildings in the endorsed building list due to various reasons (e.g. buildings which were recently repaired or with repair works in progress, were or would be demolished). According to BD, it deleted a total of 76 buildings after their selection by the Selection Panel from 2017 to 2019, including 67 buildings with replacement from the list of buffer buildings and 9 buildings without replacement. Audit noted that: (a) for buildings selected in 2017, while BD had informed the Selection Panel about the number of buildings it subsequently deleted with replacement (i.e. 13 buildings) and the reasons for their deletion, it had not done so for the buildings it deleted without replacement (i.e. 6 buildings); and (b) the 67 buildings deleted with replacement included 7 buildings which had been wrongly selected due to data quality problem in BD's Building Condition Information System (BCIS) (para. 2.25).

5. *Need to maintain proper records on assessment of building repairs.* According to BD, it will carry out initial check before serving of statutory notices under MBIS to verify whether the buildings in the nomination list meet the selection criteria for MBIS. It is BD's practice to exclude buildings which have been recently repaired or with voluntary repair works in progress provided that such buildings are in fair condition as verified by the site inspection carried out by BD staff. However, Audit noted that such practice was not included in BD guidelines. Audit also noted that, for the building selection exercise for MBIS in 2019, there were 35 buildings with higher scores than some buildings in the nomination list, but they were not included in the nomination list as they had been recently repaired or repair works were in progress. According to BD, these 35 buildings were excluded from the nomination list based on BD's initial checks in previous years. However, no

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documentation was available showing BD's assessment that such buildings were in fair condition (paras. 2.26 and 2.27).

6. ***Need to strengthen actions in promoting voluntary building inspection.*** According to BD guidelines: (a) a building being assessed for accreditation under the Hong Kong Housing Society's Voluntary Building Assessment Scheme (VBAS) or a building accredited with satisfactory building safety rating under VBAS with inspection/repair carried out within 10 years will not be selected for MBIS; and (b) where inspection/repair of a building has been completed on a voluntary basis without joining VBAS and BD is satisfied that the same requirements as those under MBIS are complied with, the concerned building may not be selected for MBIS within 10 years. Audit noted that, from the commencement of MBIS in June 2012 and up to April 2020, only a low number of buildings covered by MBIS had participated in voluntary building inspection (i.e. 41 buildings were being assessed or were accredited under VBAS, and 139 buildings were with notifications made to BD for conducting prescribed inspection on a voluntary basis) (paras. 2.4, 2.36, 2.37 and 2.39).

Follow-up actions on compliance with statutory notices

7. ***Warning letters not timely issued.*** According to BD, upon receipt of a statutory notice under MBIS, the owners/the owners' corporation of a building should, from the date of the statutory notice, appoint an RI within 3 months to carry out the prescribed inspection, complete the prescribed inspection within 6 months and complete the prescribed repair found necessary within 12 months. For buildings without an owners' corporation, an extra three months will be provided to the owners to organise and arrange the required inspection and repair works. The specified timeframe for each stage is stated in the statutory notice. According to BD guidelines, warning letters should be issued to the building owners for non-compliance of statutory notices under MBIS within one month after the dates specified in the statutory notices for each stage. According to BCIS records, as of April 2020, of 24,639 non-compliant statutory notices, no warning letters had been issued to owners for 6,941 (28%) statutory notices. For almost all (6,862 (99%)) of these 6,941 notices, more than one month had elapsed after completion due dates (i.e. not meeting the one-month time target in BD guidelines). In fact, some of them were very long-outstanding cases (e.g. time elapsed for 621 notices was more than 5 years and up to 6.5 years) (paras. 3.2, 3.4 and 3.8).

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8. ***Need to make timely registration of statutory notices at Land Registry (LR).*** According to BD guidelines (revised in April 2018), under MBIS, for statutory notices served on the common parts of a building, a certified true copy should be sent to LR for registration within one month upon posting of the notices on site in order to facilitate the enforcement action on non-compliance of notices. According to BCIS records, regarding the registration at LR of statutory notices under MBIS issued on the common parts of the buildings from April 2018 to March 2020, as of April 2020, 1,406 statutory notices had been registered at LR and 187 notices had not been registered at LR. Audit noted that BCIS only recorded the referral dates for 467 (33%) of the 1,406 notices. Of these 467 notices, 304 (65%) notices had only been referred to LR for registration more than 1 month and up to 11 months after issuance of the notices (i.e. not meeting the one-month time target in BD guidelines) (paras. 3.11 and 3.12).

9. ***Scope for enhancing BCIS records.*** BD maintains information of statutory notices under MBIS in BCIS. Audit noted that: (a) while BD had set time target of issuing warning letters for non-compliant statutory notices within one month for each stage as specified in the notices, only the issue date of the latest warning letter was kept in BCIS; (b) BCIS records for the issuance of warning letters for some non-compliant statutory notices were not timely updated; and (c) regarding the registration of statutory notices at LR, the referral dates of some notices to LR were not timely updated in BCIS and some notices had data entry problems in BCIS (e.g. incorrectly recorded as notices served on common parts of the buildings) (paras. 3.12 and 3.14).

10. ***Need to continue to step up referral of non-compliant statutory notices to prosecution teams.*** According to BD, to create an effective deterrent, prosecution actions should normally be instigated in case of non-compliance with statutory notices under MBIS without reasonable excuse. These cases may be referred to BD Legal Services Section or Fast Track Prosecution Teams (since January 2019) (collectively referred to as prosecution teams), which will arrange for issuance of summonses on the related building owners for warranted cases. Audit found that, of 1,071 non-compliant statutory notices that had been referred to prosecution teams in 2019 for instigating prosecution, 696 (65%) notices were referred to prosecution teams more than 2 years and up to 6 years after the completion due dates of the statutory notices (paras. 3.17 and 3.21).

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11. ***Scope for improving prosecution actions.*** According to BD guidelines, immediate referral for prosecution should be made for long-outstanding cases or blatant cases. However, BD guidelines had not elaborated on what cases should be regarded as blatant cases for immediate referral for prosecution. Furthermore, according to BD guidelines, for cases convicted by the Court for non-compliance with a statutory notice under MBIS, once continuous non-compliance without reasonable excuse is ascertained, immediate referral to the prosecution teams for second prosecution should be made. Up to April 2020, the defendants of 430 non-compliant statutory notices had been convicted. Audit noted that 130 (30% of 430) statutory notices had not yet been complied with as of April 2020, including 26 statutory notices with non-compliance continuing for more than 1 year and up to 3.5 years after the defendants had been convicted. However, no referral for second prosecution had been made as of April 2020 (para. 3.24).

Monitoring of registered inspectors' submissions

12. ***Some MBIS submissions not timely submitted.*** According to the Building (Inspection and Repair) Regulation, an RI should submit various documents to BD within specified timeframe for the prescribed inspection and the prescribed repair under MBIS. Based on BCIS records, Audit noted that: (a) of 7,408 certificates of building inspection received from RIs under MBIS in 2019, 3,860 (52%) certificates were received by BD more than 7 days and up to 4.5 years (averaging 56 days) after completion of building inspection, not meeting the 7-day statutory requirement; and (b) of 607 certificates of building repair received from RIs under MBIS in 2019, 238 (39%) certificates were received by BD more than 14 days and up to 4.5 years (averaging 162 days) after completion of building repair, not meeting the 14-day statutory requirement (para. 4.6).

13. ***Long time taken to complete BD's audit checks for some MBIS submissions.*** According to BD, to ensure that the inspection and repair works have been carried out in accordance with the Buildings Ordinance, it issues detailed guidelines through the relevant Code of Practice and Practice Notes and conducts checking on MBIS submissions. After fundamental check on the submissions (e.g. verification of the registration status of an RI), BD will select some submissions for audit checks. According to BCIS records, in 2019, BD completed audit checks for 1,174 MBIS submissions. Audit found that BD's audit checks of 213 (18%) submissions were completed more than 1 year and up to 5 years (averaging 1.8 years) after receipt of submissions by BD. Audit also noted that BD had not set time target

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for completing audit checks of MBIS submissions in its guidelines (paras. 4.3 and 4.8 to 4.10).

14. ***Need to take timely follow-up actions on irregularities identified during BD's audit checks.*** According to BD guidelines, for irregularities identified in the submitted documents, BD will issue a reminder letter to the related RI requesting clarification and/or rectification, and in case there is no positive response from the RI within one month or the time limit set out in the reminder letter, BD should issue a warning letter to the related RI. Audit examined the subject files for 10 submissions (out of the 76 submissions with BD's audit checks completed in 2019 and with unsatisfactory results) and noted that, for 5 submissions with irregularities not yet rectified as of April 2020, BD had issued reminder letters to the related RIs regarding the irregularities identified during its audit checks. While the RIs had failed to provide a response within the time limit set out in the reminder letters (exceeding the time limit by 6 to 14 months, averaging 9 months), BD had not issued warning letters to the RIs up to April 2020, contrary to the requirements under BD guidelines (paras. 4.4 and 4.11).

15. ***Discrepancies in BCIS records.*** According to BD guidelines, statutory notices under MBIS are considered to be complied with if notification of appointment of RI, certificates of building inspection and certificates of building repair (if necessary) have been received by BD. According to BCIS records, as of April 2020, a total of 35,639 statutory notices issued under MBIS had been complied with. However, Audit noted that: (a) for 4,747 (13%) statutory notices, there were no BCIS records for receipt of the notification of appointment of RI for building inspection and repair; (b) for 1,314 (4%) statutory notices, there were no BCIS records for receipt of certificates of building inspection; and (c) for 596 (2%) statutory notices, while there were BCIS records for receipt of certificates of building inspection indicating the need for building repair, there were no BCIS records for receipt of certificates of building repair (para. 4.20).

16. ***Scope for making use of BCIS for compiling management information for BD's audit check results.*** Audit noted that BD had not regularly compiled management information (e.g. highlights or summaries) on its audit check results of MBIS submissions, including nature and seriousness of irregularities found and follow-up actions taken for submissions with irregularities found (e.g. reminder letters and/or warning letters issued) (para. 4.22).

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Audit recommendations

17. 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:

Selection of buildings for issuance of statutory notices

- (a) keep under review the target number of buildings for issuance of statutory notices under MBIS, further streamline MBIS and formulate a long-term strategy for MBIS with a view to achieving MBIS's objective of tackling the problem of building neglect (para. 2.34(a));
- (b) consider defining more clearly the key performance measure of "buildings targeted for prescribed inspection and, if necessary, prescribed repair under MBIS" in BD's COR (para. 2.34(b));
- (c) keep under review the use of the overriding selection criterion for selection of target buildings under MBIS, having regard to other selection criteria under the Building Score System (para. 2.34(c));
- (d) incorporate all selection criteria of target buildings under MBIS in BD guidelines (para. 2.34(d));
- (e) inform the Selection Panel about the number of all buildings BD subsequently deleted after selection by the Panel and the reasons for their deletion (para. 2.34(f));
- (f) take measures to enhance data accuracy in BCIS, thereby providing accurate information for selection of buildings for issuance of statutory notices under MBIS (para. 2.34(g));
- (g) include in BD guidelines the practice of excluding buildings which have been recently repaired or with voluntary repair works in progress and are in fair condition from selection under MBIS (para. 2.34(h));
- (h) maintain proper records on BD assessment in respect of buildings excluded from MBIS selection due to repair works recently completed or in progress (para. 2.34(i));

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- (i) **strengthen actions in promoting voluntary building inspection and encouraging owners to carry out timely and necessary building repair on their own initiative (para. 2.40);**

Follow-up actions on compliance with statutory notices

- (j) **closely monitor the compliance with statutory notices under MBIS and take appropriate follow-up actions (e.g. issuing warning letters) on non-compliant cases (para. 3.15(a));**
- (k) **strengthen actions to ensure that statutory notices served on the common parts of a building under MBIS are timely referred to LR for registration in accordance with BD guidelines (para. 3.15(b));**
- (l) **consider enhancing BCIS to record information of all warning letters issued for non-compliant statutory notices under MBIS and take measures to ensure that BCIS records for warning letters issued are timely updated (para. 3.15(c));**
- (m) **strengthen actions to ensure that information about registration of statutory notices under MBIS at LR is accurately and timely updated in BCIS (para. 3.15(d));**
- (n) **continue to step up referral of non-compliant statutory notices under MBIS to prosecution teams for instigating prosecution actions and explore opportunities to streamline BD's prosecution work (para. 3.32(a));**
- (o) **provide further guidelines for identifying blatant cases of non-compliant statutory notices under MBIS to facilitate making immediate referral of such cases for prosecution (para. 3.32(b));**
- (p) **closely monitor the compliance with statutory notices under MBIS for convicted non-compliant cases and make referral of warranted continuous non-compliant cases for second prosecution (para. 3.32(c));**

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Monitoring of registered inspectors' submissions

- (q) **take measures to strengthen monitoring of RIs' MBIS submissions (para. 4.16(a));**
- (r) **take measures to complete BD's audit checks for MBIS submissions as soon as practicable, consider setting time target for completing the audit checks and take timely follow-up actions on irregularities identified during the audit checks (para. 4.16(b) to (d));**
- (s) **review the record keeping in BCIS for receipt of MBIS submissions and the compliance with statutory notices with a view to ensuring that the records are accurate, complete and up-to-date (para. 4.25(a)); and**
- (t) **make use of BCIS to regularly compile management information on BD's audit check results of MBIS submissions (para. 4.25(c)).**

Response from the Government

18. The Director of Buildings agrees with the audit recommendations.