

**For discussion
on 18 December 2024**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

Proposed Amendments to the Buildings Ordinance (Cap. 123)

PURPOSE

In the 2023 Policy Address, the Government proposed to review the Buildings Ordinance (Cap. 123) (BO) and to introduce amendments to ensure building safety and enhance building works safety. This paper seeks to consult Members on the proposed legislative amendments.

BACKGROUND

2. There have been no major amendments to the BO since its enactment in 1955 save the introduction of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS) in 2012. The Government's current proposals mainly target the following situations which have aroused public concern –

- (a) incidents of dilapidated old buildings in recent years (e.g. concrete spalling from external walls of defective buildings causing injuries to passers-by);
- (b) serious unauthorised building works (UBWs) (e.g. large-scale UBWs in a number of detached houses revealed by the landslide during the heavy rainstorm last year) which aroused concerns about building and public safety;
- (c) there are calls in the community for reviewing the enforcement policy against UBWs, so as to take into account both safety considerations and the people's daily lives; and
- (d) the series of safety incidents at construction sites which aroused concerns over the quality and regulatory system for contractors.

3. In response to the above requests from the community, it was announced in the 2023 Policy Address that proposals to amend the BO would be put forward within 2024. We have conducted a systemic review of the BO focusing on the following three areas –

- (a) expediting the inspection and repair of buildings;
- (b) rationalising the policy for handling UBWs; and
- (c) enhancing building works safety.

GUIDING PRINCIPLES

4. We have conducted the review and formulated recommendations in accordance with the following guiding principles –

- (a) it is the owners' primary responsibility to maintain and repair their properties;
- (b) to adopt a carrot and stick approach. On one hand, we support owners in complying with statutory orders and notices. On the other hand, we impose legal responsibilities and penalties to compel owners' compliance with orders and notices, and to provide deterrence against non-compliance;
- (c) to strike a balance between lenient and stringent enforcement, and to adjust enforcement latitude having regard to the type and nature of contravention; and
- (d) the policy principles and objectives should be clear, while enforcement should be pragmatic.

5. The review and recommendations are set out in paragraphs 6 to 28 below.

PROPOSALS

(A) Expediting building inspection and repair

6. It is the responsibility of owners to maintain their properties in good condition. Property dilapidation not only affects the living environment of residents, but also poses a threat to public safety, especially when the external walls or windows of the buildings are damaged or spalled off, posing danger to passers-by. The Government adopts a two-pronged approach to enhance building safety. On one hand, we encourage and support owners to maintain and repair their properties; on the other hand, the Government proactively intervenes through law enforcement or default works¹ where dilapidated or defective buildings pose public safety hazards.

7. It should be emphasised that government intervention cannot replace owners' responsibilities. Public resources are by no means unlimited, and government intervention must be targeted and in the public interest to help owners most in need. For example, the Buildings Department (BD) has been carrying out default works for about 2 000 "three-nil" buildings and buildings of which owners are incapable of organising building inspection under the "Operation Building Bright 2.0" (OBB 2.0). However, over-intervention will bring about moral hazards, and owners who are in fact capable of organising building inspection and repair will also become reliant. The Government should not and cannot take responsibility for the maintenance of all 44 000 private buildings in Hong Kong. The Government's stance is as follows: for owners who are willing to carry out building maintenance properly, the Government will provide financial and technical support. For owners of "three-nil" buildings and other buildings who are unable to organise building maintenance, the Government will carry out default works on behalf of them as necessary, but the owners will have to pay the costs and surcharges. For owners who ignore their responsibilities to maintain their buildings, we must take strict

¹ If the owner fails to comply with the relevant order/notice, the Buildings Department may arrange for a government contractor to carry out the required inspection, investigation, repair or removal works on behalf of the owner. In case of emergency, BD may arrange to carry out the required works without notifying the owner. Upon completion of the works, BD may recover the cost of works, supervision charges and impose a surcharge of not exceeding 20% of the total cost from the owner in accordance with section 33 of the BO. No surcharge will be imposed for emergency works or default works carried out under Operation Building Bright 2.0.

enforcement action.

8. In terms of supporting owners, we will continue to help them discharge their responsibilities to maintain and repair their properties through subsidy schemes such as OBB 2.0. Following the relaxation of eligibility criteria for the third round of OBB 2.0, applications for about 1 600 buildings have been received, representing an increase of more than 30% over the combined total of buildings in the first and second rounds. Since May this year, the Development Bureau (DEVB) and the Urban Renewal Authority (URA) have introduced improvement measures to strengthen monitoring and procurement support for owners and Owners' Corporations (OCs) which have participated in OBB 2.0, so as to facilitate timely inspection and repair works. These measures include: (i) the URA acts as a gatekeeper to pre-qualify and compile a list of qualified inspectors and contractors for use of owners and OCs when inviting tenders; (ii) if the owners or OCs fail to invite tenders for appointing inspectors and contractors on time, the URA will step in to issue tender documents on their behalf; and (iii) providing standardised tender assessment forms and guidelines for owners and OCs (details set out in LC Paper No. CB(1)228/2024(04)). In addition, DEVB established a multi-partite collaboration platform in the third quarter of last year. Members include BD, the URA, the Home Affairs Department (as well as the Security Bureau and the Fire Services Department which joined later in respect of compliance with fire safety directions). Briefings were held in the old districts to directly answer owners' questions and concerns on compliance with building and window inspection notices, and tailored assistance was provided to residents. In addition, for dilapidated buildings whose owners lack organisation ability, BD has, apart from carrying out default works, regularised the external wall inspection scheme this year by using drones to inspect the external walls of high-risk buildings and carrying out emergency works as necessary. The target buildings also include "three-nil" buildings.

9. BD launched the MBIS² and MWIS in 2012 to urge owners to regularly inspect, maintain and repair their properties. Under the MBIS, 600 target buildings are selected each year based on risk assessment for issuing notices requiring OCs or owners to carry out inspection and repair works in respect of common parts or individual premises, and inspection notices in respect of common parts are sent to the Land Registry for registration. The maximum penalties for non-compliance with MBIS and MWIS notices are a fine of \$50,000 and imprisonment for one year, and a fine of \$25,000 and imprisonment for three months respectively. Besides, BD may impose a fixed penalty of \$1,500 for non-compliance with MWIS notices. Since the implementation of the MBIS and MWIS, a total of about 7 800 and 12 700 private buildings have been served with MBIS and MWIS notices respectively. However, the compliance rates are low, especially in respect of the common parts (including external walls of the buildings which are related to pedestrian safety): the compliance rate for MBIS notices was only 41%, and that for MWIS notices was only 71%. The situation is unsatisfactory. As building stock continues to age, we need to step up our efforts to urge compliance.

Specific Proposals

10. We will continue to adopt a carrot and stick approach (with both support and a punitive system) to urge owners to comply with various orders and notices. For punitive measures, we propose to increase the penalties under the BO for non-compliance with inspection and repair orders or notices so as to enhance the deterrent effect and urge owners to carry out building inspection and repair works in a timely manner, thereby protecting the safety of residents and the public. The key measures include –

² Under the MBIS, owners of private buildings aged 30 years or above (except domestic buildings not exceeding three storeys) are required, upon receiving statutory notices served by BD, to appoint a registered inspector to carry out prescribed inspections for the common parts, external walls and projections of the buildings and to supervise the required prescribed repair works. Under the MWIS, owners of private buildings aged 10 years or above (except domestic buildings not exceeding three storeys) are required to appoint a registered inspector to carry out prescribed inspections and supervise the repair works, if necessary, for all the windows involved upon receiving statutory notices served by BD. BD will take enforcement action against non-compliance with the building and/or window inspection notices. At present, there are about 44 000 private buildings in Hong Kong, of which about 20 000 are aged 30 years or above and are subject to the MBIS.

- (a) **introducing a fixed penalty for non-compliance with MBIS notices:** The current BO only provides for a fixed penalty of \$1,500 for non-compliance with MWIS notices. Past statistics show that fixed penalty has been effective in urging compliance with notices, and the handling process is relatively swift (as BD can immediately impose a fixed penalty on the OCs or owners and does not have to go through multiple steps of evidence collection and court procedures). We propose to introduce a fixed penalty of \$6,000 for non-compliance with MBIS notices to improve effectiveness of enforcement and enhance compliance. Compared with the levels of fixed penalties in other legislation and taking into account the potential safety risks of non-compliance with notices, \$6,000 is relatively moderate. We aim to send a message to the community that non-compliance with the notice will entail immediate consequences, compelling OCs or owners to take prompt action. Besides, the fixed penalty for non-compliance with MWIS notices will be increased to \$3,000. BD may initiate prosecution if the notice is still not complied with after the fixed penalty notice has been issued;
- (b) **for prosecuted cases, increasing the penalties for (i) non-compliance with building inspection, window inspection and other notices/orders, and (ii) uncooperative owners obstructing building inspection, investigation or works:** We propose to increase the maximum penalties that may be imposed by the court to enhance the deterrent effect, making reference to other legislation. Regarding MBIS notices involving external walls or projections thereof, we propose to quadruple the maximum fine from \$50,000 to \$200,000³ for public safety reasons. The term of imprisonment will remain at one year. For non-compliance with MWIS notices, the maximum fine will be increased from \$25,000 to \$100,000, whereas the term of imprisonment will remain at three months. In addition, the penalty for uncooperative owners obstructing building inspection or maintenance will be increased from \$10,000 to \$25,000, which is the same as the current level of fine penalty for refusing to contribute to the relevant costs;

³ The recently passed Fire Safety (Buildings) (Amendment) Bill 2024 increased the penalties for non-compliance with fire safety directions and fire safety orders. The maximum fines were increased four-fold to \$100,000 and \$200,000 respectively.

- (c) **introducing a new offence:** Where there is non-compliance with statutory notices/orders, and the dilapidated external walls or the projections thereof/windows of the building have caused personal injury or property damage, the maximum penalties are proposed to be a fine of \$300,000 and imprisonment for one year. The new offence is proposed because there is no provision in the prevailing BO to deal with such situation. We currently have to rely on other legislation (such as the Summary Offences Ordinance) which has little deterrent effect due to the low level of penalties⁴; and
- (d) beyond the BO, we will continue to consider **proposals to better support OCs and owners** on various fronts, including exploring improving existing arrangements, such as whether there is room to relax the eligibility criteria of OBB 2.0 or extend the pre-qualification mechanism of OBB 2.0 to the Smart Tender platform. We are also open to discussing with the community new modes to motivate owners to adopt a more proactive attitude and prepare for future building maintenance. At present, there are two major problems commonly encountered in building maintenance, namely the lack of relevant knowledge and financial reserve. Drawing on the experience of the URA’s “eResidence” project, we will consider encouraging owners and property management companies to formulate maintenance manuals by, for example, amending the sample deed of mutual covenant. We will also make reference to the URA’s “Preventive Maintenance Subsidy Scheme” and consider how to empower owners to make financial plans for building maintenance.

(B) Rationalising the policy for handling UBWs

11. Under the prevailing BO, with the exception of “Exempted Works”⁵, “Designated Exempted Works” (DEWs)⁶ and New Territories Exempted

⁴ According to the Summary Offences Ordinance, if a person drops anything from a building, or allows anything to fall from a building, so as to cause danger or injury to any person in or near a public place, he commits an offence and is liable to a fine at level 3 (\$10,000) and imprisonment for 6 months.

⁵ General interior decoration (except minor works) such as painting, interior plastering, wallpaper works or repair or replacement of sanitary fittings are exempted works under the BO.

⁶ The Minor Works Control System provides for 30 items of DEWs, such as drying racks of smaller

Houses (NTEHs) (commonly known as “New Territories village houses”), all building works must either be submitted to and have obtained prior approval from BD or carried out in accordance with the simplified requirements of the Minor Works Control System (MWCS). Under this system, all building works that contravene the above regulatory requirements are regarded as UBWs (or unauthorised works) and are subject to removal orders irrespective of their nature, scale, complexity and safety risk. Besides, having regard to the low safety risk and for facilitating the public, BD has set up three validation schemes in urban areas⁷ to allow minor unauthorised works that were built before specified dates, that constitute lower risks and less serious contraventions, and are related to the people’s daily lives (such as drying racks, supporting frames for air-conditioners and canopies) to be retained and not subject to removal after being validated as safe.

12. Due to the large number of unauthorised works and given the limited manpower resources, BD has to prioritise its enforcement actions under a pragmatic “risk-based” approach. BD’s enforcement priorities include UBWs under construction or newly completed, UBWs posing obvious hazard or imminent danger, or causing serious hygiene or environmental nuisance, etc. BD will issue removal orders to the owners and register the orders with the Land Registry, i.e. imposing an encumbrance. If the owner fails to rectify the situation within the specified period without reasonable excuse, BD will consider prosecuting the owner. In the past three years, BD has issued an average of about 9 000 to 10 000 removal orders to owners concerned each year. As of October 2024, there were about 36 000 outstanding removal orders.

dimensions and not too high above the ground level, etc. The works are not subject to the approval of BD or the simplified requirements of the Minor Works Control System.

⁷ The current coverage of the three validation schemes and their applicable “specified erection dates” are set out below:

- (a) Household Minor Works Validation Scheme: applicable to household minor installation works, including supporting frames for air-conditioners, drying racks and small canopies that were in existence or completed before 31 December 2010;
- (b) Signboard Validation Scheme: applicable to signboards in existence or completed before 2 September 2013. As signboards are of a higher risk than items under the other two schemes, they are required to undergo a safety check every five years; and
- (c) Minor Amenity Facilities Validation Scheme: applicable to unauthorised minor amenity facilities erected before 1 September 2020, including canopies, retractable awnings, solid fence walls and external mesh fence or metal railings.

13. Although BD has adopted a pragmatic approach in tackling UBWs under the “risk-based” approach, under the prevailing BO, structures ranging from unauthorised basements or rooftop floors to retractable awnings on streets are considered as UBWs and subject to the same level of maximum penalties as long as they do not comply with the BO and related regulations, irrespective of scale and level of risk. There are views in the community that some small unauthorised structures are essential to the people’s daily lives and pose lower safety risks. Enforcement actions may cause nuisance to the public. On the other hand, the prevailing penalties are ineffective in deterring building works that are in serious contravention of the BO. Some owners have gained considerable economic or personal benefits from building large-scale UBWs without being held liable.

14. From the perspective of public resource utilisation, the large number of UBWs diverts BD’s enforcement resources, preventing it from focusing on UBWs that pose higher risks and/or constitute serious contraventions. This is not in the public interest. Meanwhile, BD often faces enforcement difficulties. For example, owners of UBWs can easily appeal against removal orders issued by BD, deliberately delaying the progress of enforcement. In addition, there are views in the community questioning that the current practice of not holding a person legally responsible after the UBWs is removed, which seemingly condones the offenders. The problem is that the current threshold for prosecuting participation in erecting a UBW is very high. The prosecution has to provide evidence to prove that the person concerned has “knowingly” erected UBWs in contravention of the law. Moreover, in the case where a UBW was already in existence when the owner purchases the property, at present he can easily evade prosecution on the grounds that the UBW was “not erected with his knowledge” even though he has clear knowledge of the UBW but still purchases the property and benefits from the UBW. These constraints have greatly undermined the effectiveness of the BO and BD’s enforcement efforts.

Specific Proposals

15. In order to strike a balance between the daily needs of the people and the low risk of “minor UBWs”, as well as to optimise the use of limited

enforcement resources to combat serious UBWs, we will adopt a pragmatic and facilitating approach in handling “minor UBWs” on one hand, and focus enforcement resources on enhancing enforcement effectiveness against serious UBWs on the other hand. Specifically, we will classify UBWs under the prevailing framework into two categories for handling.

(A) “Minor UBWs” relating to the people’s daily lives

16. We suggest that –

(a) with regard to **pre-existing “minor UBWs” that fall within the scope of “minor works”** (i.e. not erected in accordance with the requirements of the MWCS), taking into account the relatively small scale of the structures and their relevance to the people’s daily lives, we will handle them sympathetically, reasonably and lawfully as follows –

(i) **adding more** works items relating to people’s daily lives and of low risk as **DEW items**, and relaxing the requirements for existing items. Such **pre-existing works will no longer be regarded as UBWs**. Examples include retractable awnings and drying racks below a specified height, etc.; and

(ii) **consolidating the three existing validation schemes into an integrated scheme, and extending the scope of validation to “minor UBWs” erected before the commencement of the amendment ordinance** and meeting the specified dimensions **such that owners could retain them after one-off or regular validation** by registered building professionals or registered contractors (all but signboards are subject to one-off validation only), such as canopies, supporting frames for air-conditioners, enclosed balconies, signboards, etc. BD will not issue removal orders. There will be a grace period of three years upon the implementation of the integrated scheme to urge for early participation by owners, during which no enforcement action will be taken (except for “minor UBWs” constituting imminent danger). After the three-year grace period, BD will progressively take enforcement action

against unvalidated “minor UBWs”;

- (b) for **new building works**, after the commencement of amendment ordinance, **BD’s approval will not be required for** carrying out the newly added **DEW items** mentioned in sub-paragraph (a)(i) above. We will also **add new “minor works” items or relax the requirements of existing items** so that works related to the people’s daily lives and of low risks (including erection or alteration of supporting frames for air-conditioners and projections from external walls) can be carried out under simplified procedures.

Examples of the proposed new and relaxed DEW and “minor works” items are at **Annex A**; and

- (c) **on enforcement** –

- (i) **introducing fixed penalty:** For new “minor works” not carried out in accordance with the amendment ordinance or pre-existing unvalidated “minor UBWs”, we propose to introduce a fixed penalty of \$10,000 for non-compliance with removal orders; and
- (ii) **introduce new penalty for subsequent convictions:** If a removal order is still not complied with after a fixed penalty is imposed, BD may initiate prosecution. The maximum penalties for first conviction will remain at \$200,000 and imprisonment for one year. We propose to add a new provision to increase the maximum penalties to a fine of \$400,000 and imprisonment for one year on subsequent convictions to enhance the deterrent effect.

(B) “Serious UBWs”

17. As for “serious UBWs” posing threat to public safety or constituting serious contraventions (such as enclosing rooftop structures, building unauthorised basements, erecting podium/alley structures, etc.), there is a general consensus in the community that they should not be tolerated from

the perspectives of safeguarding public safety and policy fairness, and must be subject to enforcement. This message should be clearly conveyed through legislation and enforcement. To this end, we put forward the following proposals to enhance the effectiveness of enforcement and provide BD with additional enforcement tools to combat and deter UBWs more effectively –

- (a) **increasing penalties for non-compliance with removal orders and introducing a penalty for subsequent convictions:** From a maximum fine of \$200,000 and imprisonment for one year to \$300,000 and imprisonment for two years, and in the case of subsequent convictions, to \$600,000 and imprisonment for two years;
- (b) **lowering the existing prosecution threshold and raising the penalties for the offence of erecting UBWs:**
 - (i) under the prevailing provision of the BO, it is an offence for a person such as an owner, registered building professional or registered contractor to **“knowingly” erect an UBW without the approval of BD**. However, the threshold for proving “knowledge” is very high (for example, the owner can easily evade liability by arguing that the UBWs were handled entirely by professionals), and the prosecution often could not successfully prove the case. We propose to lower the prosecution threshold by removing the word “knowingly”. In other words, BD may initiate prosecution if there is reasonable doubt that an owner and/or a professional is involved in commencing unauthorised works without submitting plans to BD and obtaining approval; and
 - (ii) **increasing the penalties:** To increase the maximum penalties under sub-paragraph (i) from \$400,000 and imprisonment for two years to \$2,000,000 and imprisonment for two years. For very serious UBWs (especially those causing significant increase in floor area and posing greater safety risks), when prosecuting such cases, we will invite the court to take into account factors in determining the sentence, such as the size

of the UBWs in question, the location of the property or the rateable value of the property, etc., such that the difference in value between, say, a luxury detached house and a rooftop UBW in an old building can be reflected in the sentence;

- (c) **introducing a new offence and indictable offence:** In the past, some owners evaded liability by arguing that the UBWs were not erected by them but were already in existence when they purchased the property, and that they had only inherited the UBWs erected by the previous owner. The Government could only issue removal orders (and could not instigate prosecution if the owner complied with the orders). To plug this loophole, a new offence is proposed to be created so that an **owner** commits an offence **if a serious UBW is found in a property acquired after a certain specified period after the commencement of the amendment ordinance**⁸, irrespective of whether the UBW was erected by the owner (for example, assuming that the amendment ordinance takes effect at the end of 2026, and the owner acquires a property with a serious UBW after a certain specified period (say in 2027)). On summary conviction by the Magistrates' Court, the maximum penalties are proposed to be a fine of \$300,000 and imprisonment for two years. In addition, we propose to introduce an indictable offence in order to refer very serious UBW cases to the District Court or a higher court for adjudication with higher penalties. We propose that the maximum fine should be higher than that on summary conviction or the existing maximum fine under the BO (\$1,000,000); and
- (d) **aiding an offence is tantamount to committing an offence:** We propose to amend the existing provision so that a person who **knowingly assists** an owner in committing the new offence in subparagraph (c) above (e.g. a solicitor or estate agent involved in the transaction of the property) will be deemed guilty of and held liable to the same offence and the same penalties for that offence. This offence applies to a person who assists an owner to acquire a property with a serious UBW **after a certain specified period**

⁸ We propose that the new offence should take effect after a certain specified period after the commencement of the amendment ordinance so as not to affect property transactions in progress at that time.

after the commencement of the amendment ordinance. For example, assuming that the amendment ordinance takes effect at the end of 2026, the person assisting an owner in acquiring a property with a serious UBW after a certain specified period (say in 2027) will be deemed guilty of committing the new offence in sub-paragraph (c) above.

18. At present, a person served with a statutory order/notice under the BO may lodge appeals under the statutory mechanism of the BO, and BD has to suspend enforcement while the appeal is being processed. About 30% of the cases were withdrawn by the appellants before hearing, while the vast majority of the appeals were unsubstantiated, indicating that there is room for **improving the procedures for handling appeals** to prevent abuse of the appeal mechanism to delay BD's enforcement actions. We propose to consider written determination for simple appeal cases while continuing to conduct hearing in determining more complicated cases, so as to streamline procedures and expedite the process to ensure timely compliance with statutory orders/notices.

19. As for New Territories village houses, these houses are located in the rural areas with a relatively small population, which is different from the dense urban environment. In view of the history and unique situation of New Territories village houses, as a special arrangement, the Government launched a one-off Reporting Scheme in 2012 for pre-existing UBWs in order to focus resources on handling UBWs of a serious nature. Reported UBWs would not be subject to immediate enforcement (except those posing imminent danger). In response to the views of villagers and Legislative Council members that the reporting period was too short, we propose to **re-launch the administrative scheme** to allow owners who at that time did not report their UBWs to do so. Nevertheless, all the old arrangements under the scheme will be maintained, including that the scheme is only applicable to UBWs erected before 28 June 2011, and that regular safety inspection is required for reported UBWs.

(C) Enhancing Building Works Safety

20. At present, BD takes action against building works involving injuries, deaths or other serious incidents through a three-pronged

approach, including: (i) disciplinary actions against registered contractors and registered persons concerned if they are found guilty of negligence or misconduct⁹; (ii) re-assessment of the competence and fitness of the relevant contractors or personnel in determining whether to approve the registration renewal applications; and/or (iii) criminal prosecution if building works-related offences under the BO is committed¹⁰. If an incident occurs on a construction site, BD and the Labour Department (LD) may consider initiating prosecution in accordance with the BO and the Factories and Industrial Undertakings Ordinance and/or the Occupational Safety and Health Ordinance (OSHO) respectively. BD is mainly concerned with whether the building works are carried out in accordance with the prescribed requirements and in a safe manner, while LD considers whether the proprietor and the duty holders have complied with the requirements to ensure safety and health of their employees by providing them with industrial plants and systems of work that are safe and not hazardous to health.

21. Past experience has shown that BD’s regulatory and enforcement work is fraught with difficulties (particularly in prosecution) for the following reasons –

- (a) while registered contractors are required to keep relevant supervision records and documents (e.g. site supervision records) of building works in accordance with the relevant regulation under the BO¹¹, there is no provision stipulating the legal liability for non-compliance;
- (b) the BO does not empower BD to request interviews with the persons concerned and to compel production of records that should have been kept, which often results in the inability to collect sufficient evidence for prosecution or conviction;

⁹ If a registered contractor or registered person is convicted by the court of an offence in relation to building works, or is guilty of negligence or misconduct in relation to building works, BD may refer the case to a disciplinary board in accordance with the provisions of the BO. If the disciplinary board is satisfied after inquiry that a person has been convicted of the offence or is guilty of negligence or misconduct, etc., it may impose punitive measures under the BO.

¹⁰ Examples include carrying out building works without approval by BD, carrying out building works in a dangerous manner that causes injury to any person or damage to property, etc.

¹¹ Under Regulation 41 of the Building (Administration) Regulations (Cap. 123A), the appointed registered contractor “are required to keep records of activities and information relevant to the supervision of building works or street works of the site”.

- (c) even if BD succeeds in obtaining the records, they may still be inadmissible as evidence in court because of the high evidentiary threshold; and
- (d) for the above reasons, it is often difficult to prove that registered contractors, registered building professionals and other relevant persons are directly concerned with or have knowledge of the works involved in the incidents.

22. Regarding the registration system, under the BO, building professionals (including architects, surveyors and engineers) and contractors are required to possess the relevant qualifications, experience and competence, or passing interviews conducted by the relevant registration committees constituted under the BO before they can be included in the registers and perform the statutory duties under the BO (such as submitting plans for approval, commencing works and supervising construction sites, etc.)¹². In addition, registered building professionals and registered contractors are required to appoint suitable Technically Competent Persons (TCPs) in accordance with the requirements of the technical memorandum issued under the BO. The technical memorandum sets out clearly the minimum qualifications and experience of the TCPs, the roles and number of TCPs required for different types of works, the systems of site safety supervision and quality supervision (e.g. the requirements for preparing and executing supervision plans), etc.

23. In terms of works quality, construction and safety supervision, registered building professionals and registered contractors and their authorised signatories have overall responsibility under the BO for proper supervision of building works¹³, including ensuring that all stages of works are carried out in accordance with the BO and its subsidiary regulations, the approved plans, as well as orders or conditions imposed by BD in

¹² In the case of contractors, each registered contractor is required to appoint at least one person to act on his behalf for the purposes of the BO. The person so appointed is commonly known as the authorised signatory of the registered contractor.

¹³ BD implemented the supervision plan system in 1997 and make requirements for quality supervision and supervision of site works based on the Technical Memorandum for Supervision Plans and the Code of Practice for Site Supervision. Under the supervision plan system, representatives of each functional stream and TCPs involved in the works are required to carry out their respective supervisory duties to ensure that the construction and building works comply with the requirements of the relevant regulations and codes of practice.

accordance with the BO (including compliance with the required standards). The TCPs shall carry out the prescribed supervisory duties and specific tasks in accordance with the supervision plans prepared by the registered building professionals and registered contractors and submitted to BD. If the registered building professionals, registered contractors and TCPs identify any irregularities, they are required to initiate the relevant procedures and rectify them in a timely manner.

24. As far as penalties are concerned, the maximum penalties under the prosecution provisions of the BO for cases involving death or injury are \$1,000,000 and imprisonment for three years. However, between 2021 and 2023, the average fine for successful convictions under the relevant offence provisions was only about \$28,000, which is on the low side.

25. As far as the registration and disciplinary systems are concerned, there are no express provisions empowering the Building Authority to impose conditions in processing applications for renewal of registration, or empowering the disciplinary board to impose more than one disciplinary sanction¹⁴. Hence, there are insufficient means to compel contractors with unsatisfactory performance to implement improvement measures.

Specific Proposals

26. Our proposal is to enhance the monitoring of quality and safety of construction site works on one hand, including the regulatory regime for the persons concerned; and to strengthen enforcement and the punitive mechanism against major building works incidents to enhance the deterrent effect on the other hand. Regarding **enforcement and the punitive mechanism**, we **propose to** strengthen the enforcement power of BD and increase the penalties –

- (a) with regard to registered building professionals or registered contractors involved in the works, **we propose to increase the penalty level for the offence of carrying out works or authorising or permitting works to be carried out where such works are carried out in a manner that causes or is likely to**

¹⁴ The disciplinary board may, in accordance with the BO, (i) order the removal of the registered contractor or registered person from the register permanently or for a specified period of time, (ii) impose a maximum fine of \$250,000, or (iii) order a reprimand.

cause injury, death or damage to property. On summary conviction, the maximum fine of \$1,000,000 will be increased to \$3,000,000, while the term of imprisonment will remain at three years. For persons directly concerned with works involving **serious injury or death**, we propose that **an indictable offence be introduced** by making reference to the OSHO with a maximum fine of \$10,000,000, which is on a par with that under the OSHO. The term of imprisonment will remain at three years; and

- (b) **empowering the BA to request interviews, conduct searches and seize documents with warrant, and introducing new offences for refusing to attend interviews or failing to produce site supervision documents to BD, etc.:** This will help ensure that BD has sufficient power to collect evidence to establish the obligations and liabilities of the relevant registered contractors and/or persons, as well as to prove direct connection with and knowledge of the works involved.

27. We also **propose to enhance the registration and disciplinary systems** –

- (a) regarding the processing of renewal applications by registered contractors under the BO, we propose to **extend the renewal period** from the current three years **to a maximum of five years** in response to the industry’s aspiration for a longer operation period to encourage long-term investment and healthy development of the industry. On the other hand, if the contractor concerned has **caused serious injury or death incidents as a result of breach of duty**, we propose to empower the Building Authority to **shorten the renewal period** in order to strengthen monitoring. We also propose that the Building Authority be empowered to **impose conditions** (e.g. requiring implementation of a more stringent site supervision regime) on registration renewal having regard to the contractor’s individual circumstances, so as to enhance the existing registration system; and

- (b) to increase the number of members of the relevant disciplinary board panels and to simplify the composition of disciplinary boards of registered persons, so as to **expedite the hearing of the disciplinary boards**. We also propose to **increase the maximum fine for disciplinary sanction** from \$250,000 to \$400,000, and to allow the disciplinary board to impose more than one sanction for each charge (in addition to a fine, consideration may also be given to order a reprimand and/or remove the contractor from the register at the same time) so as to enhance the deterrent effect.

28. In terms of **improving the supervisory mechanism**, we **propose** the following –

- (a) at present, while the BO sets out the detailed requirements and regulations for registered building professionals and registered contractors, there is no express provision clearly defining the roles and responsibilities of other key personnel involved in building works, including the TCPs responsible for finalising the details of works and keeping records of the works, as well as the authorised signatories and the technical directors¹⁵ acting on behalf of registered contractors. We propose to delineate the above clearly in the BO and further clarify the details in the relevant technical memorandum in order to **establish their legal responsibilities in relation to building works**; and
- (b) the current regulatory regime does not require registration of TCPs. Having said that, the Construction Industry Council (CIC) has put in place a voluntary registration system with a list of TCPs. In view of the important role of TCPs in implementing the details of works supervision, we propose that in future, when **preparing supervision plans, it will be necessary to confirm that CIC-registered TCPs have been appointed** to ensure proper implementation of the supervision plans. This will also benefit the development of the profession of TCPs.

¹⁵ A Technical Director acts on behalf of a registered contractor, and must hold a certificate/diploma in a relevant subject (e.g. architecture, engineering, etc.) and have experience in the construction industry and management of contractors. A Technical Director is responsible for carrying out duties such as accessing plants, providing technical and financial support for the works, and supervising authorised signatories and other staff.

29. Details of the proposals in paragraphs 6 to 28 above are set out **in Annex B.**

FUTURE WORK

30. The Government will launch a two-month public consultation this month on the specific proposals set out in this paper. Taking into account public views, we will finalise the proposed amendments to the BO and commence drafting of the amendment bill with the target of introducing the amendment bill into the Legislative Council in the first half of 2026.

ADVICE SOUGHT

31. Members are invited to comment on the above proposals.

Development Bureau
December 2024

**Proposed New and Relaxed Items Under the
“Designated Exempted Works” (DEW) System and
“Minor Works Control System” (MWCS)**

DEW System (currently 30 items):

They can be carried out without prior approval and consent from the Buildings Department, and are not required to be carried out in accordance with the simplified requirements of MWCS. For example, small-size drying racks that are not too high above the ground.

Proposed new DEW items - examples as follows:

Erection/ alteration/ repair of retractable awnings,
Erection/ alteration/ removal of outdoor signboard fixed on grade,
Erection/ alteration of supporting structures or metal casing for a building services installation (on-grade/ on roof).

Existing DEW items but requirements of dimensions/height etc. proposed to be relaxed - examples as follows:

Erection/ alteration/ removal of drying rack projecting from external wall from building,
Removal of mesh fence or metal railing on-roof of building,
Erection/ alteration of signboard fixed on external wall of building.

MWCS

Under the MWCS, relevant persons may follow the simplified notification requirements to appoint registered building professionals or registered contractors to carry out small-scale building works legally and safely without the need to obtain prior approval and consent from the Buildings Department. “Minor works” are categorised into the following three classes according to their nature, scale, complexity and safety risks:

(a) Class I (currently 58 items):

More complicated minor works such as addition of internal staircases between two floors, repair of columns or load-bearing walls and removal of large-size unauthorised rooftop structures. The works have to be designed and supervised by a Prescribed Building Professional¹ and carried out by a Prescribed Registered Contractor².

(b) Class II (currently 68 items):

Minor works of lower complexity and safety risk, such as repair of non-load-bearing external walls, laying or repair of external wall rendering or wall tiles and erection of medium-size signboards on external walls. The works have to be carried out by a Prescribed Registered Contractor.

(c) Class III (currently 61 items):

Mainly for common household minor works, such as installation of supporting frames for air-conditioner units, drying racks and canopies. The works have to be carried out by a Prescribed Registered Contractor.

Proposed new MWCS items - examples as follows:

Erection/ alteration of pole projecting from external wall,

Enclosed balcony,

Erection/alteration of grease trap located on ground or on a slab,

Erection/alteration of supporting frames for fire pump installations in buildings

¹ Prescribed Building Professional means an Authorized Person/a Registered Inspector and, depending on the works items, a Registered Structural Engineer/Registered Geotechnical Engineer.

² Prescribed Registered Contractor means a Registered General Building Contractor, a Registered Minor Works Contractor who are qualified to carry out the minor works belonging to the class, type and item for which they are registered.

Existing MWCS items but requirements of dimensions/height etc. proposed to be relaxed - examples as follows:

Erection/alteration of supporting frames for air-conditioner units projecting from external wall,

Erection/alteration/repair of projecting signboard,

Removal of mesh fence or metal railing on roof

Major Proposals to Amend the Buildings Ordinance (BO)

(A) Expediting building inspection and repair

1. To introduce a fixed penalty for non-compliance with Mandatory Building Inspection Scheme Notices (MBIS notices) (a fine of \$6,000).
2. To increase the maximum penalties for non-compliance with MBIS notices, with a higher penalty for parts concerning external walls and the projections of a building (the maximum penalty is increased from a fine of \$50,000 and imprisonment for 1 year to a fine of \$200,000 and imprisonment for 1 year, and in addition a daily fine of \$20,000 for each day during which the offence continues).
3. To increase the fixed penalty level for non-compliance with Mandatory Window Inspection Scheme Notices (MWIS notices) (increased from a fine of \$1,500 to a fine of \$3,000).
4. To increase the maximum penalty for non-compliance with MWIS notices (the maximum penalty is increased from a fine of \$25,000 and imprisonment for 3 months to a fine of \$100,000 with the term of imprisonment remaining at 3 months, and in addition a daily fine of \$10,000 for each day during which the offence continues).
5. To introduce a new offence of non-compliance with statutory notices/orders and where the defective external walls and its projections/windows of buildings has caused personal injury or property damage (with a maximum fine of \$300,000 and imprisonment for 1 year, and in addition a daily fine of \$30,000 for each day during which the offence of non-compliance with statutory notices/orders continues).
6. To enhance deterrence against uncooperative owners for –
 - (a) obstructing owners' corporations in carrying out inspection, investigation or repair (the maximum penalty is increased from a fine of \$10,000 to a fine of \$25,000 with the term of imprisonment remaining at 6 months); and
 - (b) refusing to contribute to the costs (retaining the maximum penalty of a fine of \$25,000 with no imprisonment term).

7. To increase the maximum penalty for non-compliance with other statutory orders (such as investigation orders, repair orders, orders for terminating change of building use (e.g. converting industrial buildings for residential use))(the maximum penalty is increased from \$50,000 to \$300,000, with the term of imprisonment remaining at 1 year).

(B) Rationalising the policy on handling unauthorised building works (UBWs)

“Minor UBWs” related to people’s daily lives

8. For **pre-existing** “minor UBWs” that fall within the scope of “minor works” –
 - (a) To add new “Designated Exempted Works” items or relax the requirements for existing items (such as retractable awnings and drying racks below a specified height); and
 - (b) To consolidate the existing three validation schemes into one integrated scheme, allowing “minor UBWs” erected before the commencement of the amendment ordinance, such as canopies, supporting frames for air-conditioners, enclosed balconies, and signboards, etc. meeting the specified dimensions to be retained by owners after one-off or regular validation by registered building professionals or registered contractors (all but signboards are subject to one-off validation only). No removal orders will be issued. There will be a grace period of three years upon implementation of the integrated scheme, and after which enforcement action will be taken progressively against unvalidated “minor UBWs”.
9. For **new building works** –
 - (a) The carrying out of “Designated Exempted Works” as mentioned in paragraph 8(a) will not be subject to regulation after the commencement of the amendment ordinance; and
 - (b) To add items of “minor works” or relax the requirements for existing items, including erection or alteration of supporting frames for air-conditioners and poles projecting from external walls.
10. In respect of non-compliance with removal orders –
 - (a) To introduce a fixed penalty (a fine of \$10,000); and

- (b) To introduce a penalty for subsequent convictions (the maximum penalty for first conviction remains at a fine of \$200,000 and imprisonment for 1 year; for subsequent convictions, the maximum penalty will be increased to a fine of \$400,000 and imprisonment for 1 year).

“Serious UBWs”

11. To increase the penalty for non-compliance with removal orders and to introduce a penalty for subsequent convictions (the penalty for first conviction is increased to a fine of \$300,000 and imprisonment for 2 years; and for subsequent convictions, the maximum penalty will be a fine of \$600,000 and imprisonment for 2 years, and in addition a daily fine of \$30,000 for each day during which the offence continues).
12. In respect of the existing offence of **erecting UBWs** –
 - (a) To lower the prosecution threshold: At present, it is an offence to “knowingly” erect UBWs without approval of the Buildings Department. The word “knowingly” is proposed to be removed from the provision. In other words, in future, if a professional employed by the owner commences unauthorised works without submitting plans to the BD and obtaining approval, the owner will be held liable even if he does not know that the works are unauthorised; and
 - (b) To increase the penalty: The maximum penalty is increased from a fine of \$400,000 to \$2,000,000 with the term of imprisonment remaining at 2 years, and in addition a daily fine of \$100,000 for each day during which the offence continues.
13. To introduce a new offence and indictable offence. If a property acquired by an owner **after a certain specified period after the commencement of the amendment ordinance** is found with a serious UBW, the current owner will be held liable (regardless of whether the UBW was erected by the current owner) –
 - (a) the maximum penalty on summary conviction is a fine of \$300,000 and imprisonment for 2 years on first conviction and a fine of \$600,000 and imprisonment for 2 years on subsequent convictions, and in addition a daily fine of \$30,000 for each day during which the offence continues; or

(b) the maximum penalty on conviction on indictment shall be higher than that on summary conviction or the current maximum fine under the BO (\$1,000,000).

For example, assuming that the amendment ordinance takes effect at the end of 2026, the owner who acquires a property with a serious UBW after a certain specified period (say in 2027) will be held liable.

14. To amend the existing provision to the effect that a person who knowingly assists the owner in committing the new offence mentioned in paragraph 13 above (i.e. assisting the owner in acquiring a property with a serious UBW **after a certain specified period after the commencement of the amendment ordinance**) will be deemed guilty of and held liable to the same offence and the same penalties for that offence.

For example, assuming that the amendment ordinance takes effect at the end of 2026, the person assisting an owner in acquiring a property with a serious UBW after a certain specified period (say in 2027) will be deemed guilty of committing the new offence in paragraph 13 above.

Others

15. To expedite the processing of appeals against statutory orders/notices through written determination of simple appeal cases.
16. To reopen the Reporting Scheme for UBWs in New Territories Exempted Houses ended in December 2012 to allow owners who at that time did not report their UBWs to do so. All the old arrangements under the scheme will be maintained, including that the scheme is only applicable to UBWs erected before 28 June 2011, and that regular safety inspection is required for reported UBWs.

(C) Enhancing construction safety

17. With regard to registered building professionals or registered contractors involved in the works, to increase the maximum penalty for carrying building works in a dangerous manner **that causes or is likely to cause injury, death or damage to property**; and to introduce an indictable offence to handle cases causing serious injury or death due to breach of duty –
 - (a) the maximum penalty on summary conviction is increased from a fine of \$1,000,000 to \$3,000,000 with the term of imprisonment remaining at 3 years; or
 - (b) the maximum penalty on conviction on indictment will be a fine of \$10,000,000 and imprisonment for 3 years.
18. To increase the enforcement powers of the Building Authority (BA) by empowering the BA to request interviews, conduct searches and seize documents with warrant, and to introduce new offences for refusing to attend interviews or failing to produce site supervision documents, etc. (with a maximum fine of \$100,000).
19. To amend the existing provisions to empower the BA to determine the renewal period for registration (extended from the current 3 years to a maximum of 5 years, with the power to shorten the period in the event of serious injury or death incidents caused by contractor's breach of duty); and to empower the BA to impose conditions, such as requirements for site safety.
20. To amend the existing provisions to increase the number of members of the disciplinary board panel and simplify the composition of disciplinary boards for registered persons; to increase the maximum disciplinary fine (from \$250,000 to \$400,000); and to empower the disciplinary board to impose more than one sanction (in addition to a fine, consideration may also be given to order a reprimand and/or remove the contractor from the register at the same time).
21. The roles and responsibilities of key personnel involved in buildings works, including Technically Competent Persons, Authorized Signatories and Technical Directors on behalf of Registered Contractors, will be clearly delineated in the BO and relevant technical memorandum.
22. Registered contractors and registered building professionals are required to confirm that they have appointed Technically Competent Persons registered with the Construction Industry Council when preparing the Supervision Plan.