

**Subcommittee on Building (Inspection and Repair) Regulation,
Building (Administration) (Amendment) Regulation 2011,
Building (Minor Works) (Amendment) Regulation 2011, and
Buildings (Amendment) Ordinance 2011 (Commencement) Notice 2011**

**Administration's Response to Follow-up Issues
of the Meeting held on 17 November 2011**

Selection criteria of target buildings

A total of 2 000 and 5 800 target buildings will be selected for the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) respectively each year. To spread out the workload for both the professional personnel and contractors in the market and the implementation agencies, we will select target buildings on a quarterly basis, i.e. 500 and 1 450 target buildings per quarter respectively for the two Schemes.

2. A wide variety of relevant factors will be taken into account in the selection of buildings, which include –

- (a) building age;
- (b) building condition (including the presence and extent of defects on external walls, building structures and drainage system in common areas);
- (c) repair and inspection records (including participation in the Voluntary Building Assessment Scheme and Operation Building Bright (OBB); inclusion in the Coordinated Maintenance of Building Scheme as well as Buildings Department (BD)'s other large scale operations, recent inspection of buildings aged 50 years or above and BD's pre-war building inspection programme; past compliance record of BD's repair orders; etc.); and
- (d) location.

3. Priority will be given to buildings with more dilapidations and defects in common areas and external walls, with more exterior unauthorised building works (UBWs), or buildings abutting streets with heavy pedestrian or traffic flow. Nevertheless, we will select a combination of target buildings with different conditions and needs in MBIS and MWIS every quarter. In fact, we believe that most

dilapidated or poorly managed buildings should have been covered in the Government's past enforcement programmes or assistance schemes. The selected target buildings for each year will represent a mix of buildings in different conditions and age profiles. Those relatively better managed buildings that comply with the statutory notices swiftly will set good examples for other buildings and disseminate success stories. We believe that they will inspire other building owners to speed up their repair works.

4. Buildings with investigation or repair of the common parts and external walls just completed under the supervision of an authorized person, such as those carried out under the OBB, will normally not be accorded with a high priority as target buildings under MBIS. BD will keep track of the condition of such buildings and decide when to select these buildings as target at a later stage. However, these buildings may still be selected under MWIS for carrying out window inspection/repair within individual premises.

Estimated inspection cost

5. We advised the Subcommittee at the meeting on 17 November 2011 that the estimated cost for inspection ranged between \$400 and \$2,400 per unit, and the average cost was about \$800 per unit. The average inspection cost is estimated on the premise that the inspection is carried out by a professional and his assistants based on presumed hours on different sizes of buildings. The estimated cost of \$10,000 to \$20,000 is the range for buildings with less than 50 units from the above estimate and with due regard to the actual cost experienced by building owners in their building maintenance and repair work in the past. We would like to reiterate that, as explained at the Subcommittee meeting on 17 November 2011, these costs are rough estimates only as the scheme has not yet been implemented. Labour cost can also fluctuate over time. We expect that as more Registered Inspectors (RIs) available in the market after implementation of the MBIS, there will be keener competition which should in turn lower the inspection cost in the market.

6. It should be noted that any estimated price is for general reference only and the actual costs for each inspection and repair project would vary due to a number of factors, in particular the condition of the individual buildings and prevailing market condition. We are mindful

that such kind of reference price list should be carefully compiled so as not to create a false impression to building owners or the building industry that the prices therein represent standard prices applicable in every repair situation. We will continue our discussion with the relevant parties on how best to disseminate the information available to the public so as to provide useful reference and at the same time not to mislead owners.

Supply of Registered Inspectors

7. The Administration consulted the Hong Kong Institute of Architects (HKIA), Hong Kong Institution of Engineers (HKIE) and Hong Kong Institute of Surveyors (HKIS) on the supply of RIs earlier this year. All the three professional institutes advised that, given the enthusiastic participation and responses of their members in the course of discussion of MBIS, there should be adequate professionals for the registration of RIs. In particular, the HKIS estimated that over 400 qualified building surveyors would be interested in registering as RIs, which is, in its view, already more than sufficient to meet the anticipated demand.

8. Our present assessment is that about 7,800 building professionals in total are currently qualified to register as RIs. When the market has a supply of at least about 300 RIs, which we believe will be achieved in second quarter of 2012, the two schemes can then commence. Bearing in mind that the first batch of statutory notices will only be issued in the fourth quarter of 2012, by then there should be more supply of RIs to ensure market competition.

9. Upon the passage of the subsidiary legislation concerned, the BD will launch publicity programmes targeting qualified building professionals to encourage them to register as RIs for providing inspection and supervision of repair services to building owners.

Examples of cases of possible tender-rigging found in target buildings under Operation Building Bright and involvement of the Independent Commission Against Corruption

10. Hong Kong Housing Society (HKHS), Urban Renewal Authority (URA) and BD have been working closely with the Independent Commission Against Corruption (ICAC) to formulate the application procedures and modus operandi to ensure that proper procedures and safeguards are put in place to prevent corruption and other malpractices in implementation of the OBB. HKHS and URA have, in consultation with ICAC, formulated and issued the “Operation Building Bright Maintenance Guidelines” to Owners’ Corporations (OCs), consultants and contractors, stipulating, among other things, the requirements and procedures for selection and management of consultants and contractors, anti-bribery and anti-collusion practices.

11. If irregularities involving misconduct or malpractice of the consultants or contractors are noticed, HKHS and URA will advise the OCs to follow up the matters in accordance with their agreed service contracts. In addition, cases with suspected abnormalities will be referred to ICAC by HKHS/URA for information or follow-up action. As at end-October 2011, 42 cases with suspected abnormalities had been referred to the ICAC for information or follow-up action.

12. Some of the irregularities which are commonly found in problematic maintenance works have already been set out in the Building Maintenance Toolkit issued by HKHS and ICAC for owners’ reference. An extract of the relevant chapter is at Annex for reference. We are in close liaison with ICAC on the various matters regarding building maintenance, and will explore with ICAC on how best the Toolkit should be updated in light of the implementation of MBIS and MWIS.

Feasibility of a marking scheme for monitoring performance of registered inspectors

13. Upon the request of the Subcommittee, we have considered whether a marking scheme similar to the performance assessment scheme for registered lift/escalator contractors could be adopted for RIs. To provide reference for lift owners to choose appropriate lift contractors for

maintenance of the lifts in their premises, the Electrical and Mechanical Services Department (EMSD) launched in June 2009 the “Registered Lift Contractors’ Performance Rating Scheme” (CPR) which is an administrative measure to supplement the enforcement of the Lifts and Escalators (Safety) Ordinance (Cap. 327).

14. Operation of the CPR is based on a scoring scheme, known as the scheme of the performance monitoring (PM) points. If a registered lift contractor has shown inferior performance or non-compliant items are found during the lift inspection by the EMSD, the latter will record and accumulate the PM points based on their non-compliances which are classified into six categories. The EMSD will issue warning letters to the contractors if the PM points for a single lift inspection or the average PM points within a twelve-month period have exceeded a certain level. The CPR will be updated and announced every three months and the PM points will be kept valid for twelve successive calendar months. Since September 2011, the EMSD has also implemented a similar rating scheme for registered escalator contractors. However, there is no similar rating scheme for registered lift/escalator engineers.

15. After studying EMSD’s CPR system, BD considers it not appropriate to adopt a similar marking scheme for the RIs under the Buildings Ordinance (Cap. 123) (BO) due to the following reasons:

- (a) The number of active lift/escalator contractor under the CPR scheme is only around 50 and their performance can be regularly monitored by EMSD. However, there would be a much larger number of active RIs. Due to the great variance of the volume of work among the RIs and the difficulty in conducting regular assessment on each and every RI, the points system may not be fair to RIs and will not be able to provide useful reference to building owners. In view of the large number of RIs involved, there would also be substantial resource implication for BD to maintain the marking scheme. It is therefore impractical for the BD to adopt measure similar to the CPR scheme;

- (b) The non-compliant items under the CPR Scheme mainly focus on whether the components or parts of the lifts are functioning or in good working order, e.g. failure of emergency alarm devices or inoperative lift car ventilation fan etc. The assessment is relatively straightforward and objective. However, the assessment of the quality of the work of RIs in inspecting safety and conditions of a building under the MBIS is a very different matter since the performance of a RI involves a lot of professional judgment taking into consideration the dynamic change of conditions of buildings, e.g. whether a specific instrument is required for detecting building defects, and therefore it is difficult to have an objective assessment of the quality of inspection conducted by an RI, not to say formulating the benchmark for a marking scheme. It is also worthy to mention that while lift/escalator contractors need to carry out regular maintenance, the duties of RIs are only restricted to the prescribed inspection and repair, which are one-off exercises;
- (c) Upon completion of the prescribed inspection and prescribed repair, the RI appointed to conduct inspection and/or supervise the repair works must submit an inspection report and a completion report respectively, together with a certificate in the specified form, to the Buildings Authority for record and audit check to ensure that the RI has duly discharged his statutory duties; and
- (d) RIs, being professionals registered under the BO, bear the statutory responsibility to ensure compliance with the provisions of the BO, the objective of which is to maintain a minimum standard of safety in the control of existing buildings. They will be subject to prosecution or disciplinary actions under the BO if they have committed an offence, or demonstrated negligence or misconduct. The results of the prosecution or disciplinary actions will be in the public domain.

Publicity on the penalties for non-compliance with the regulations by Registered Inspectors and proposals to specify complaint channel in regulations

16. There are adequate sanction and disciplinary provisions under the BO against the malpractice of RIs in carrying out prescribed inspections. The three professional institutes have also confirmed that disciplinary proceedings will be initiated by the institutes and/or the respective registration boards if there is evidence showing that the members concerned have violated the relevant codes against misconduct or causing disrepute to their professions.

17. BD and the professional institutes would advise the industry and building owners through public education and publicity on the penalties for non-compliance with the relevant legislation or codes by RIs. Being the statutory authority to exercise the power under the BO, BD will handle all complaints against breach of statutory requirements under the Ordinance. The information of the subject officer handling the statutory notice could be found on covering letter of the notice. Any complaint about misconduct should be directed to the professional institutes and/or registration boards which the RIs concerned belong to. Since these complaint handling procedures are already stipulated in the relevant legislation and/or codes of professional institutes, we consider it not necessary and appropriate to specify the complaint channels in the regulations. Instead, we will state clearly these complaint channels in relevant publicity materials for owners' reference.

Proposal to require Registered Inspectors to comply with codes of practice through legislation

18. During the scrutiny of the Buildings (Amendment) Bill 2010, we have explained in our paper for the Bills Committee entitled "Subsidiary Legislation and Practice Notes" (paper no. CB(1)1983/09-10(02)) that building safety standards and requirements in Hong Kong are regulated by a three-tier framework. The first tier is the principal ordinance, i.e. the BO, which provides the broad legal framework. The second one is the subsidiary legislation made under the BO prescribing the detailed procedural and technical requirements. The third tier includes the administrative practice notes and codes of practice issued by the BD, which provide the industry with the details of the procedures and guidelines on technical standards and latest practices for the purpose of

complying with the requirements of the BO and the subsidiary legislation. The BD also issues general guidelines in layman terms and public education materials to help the public and building owners understand the statutory requirements and building safety matters.

19. This three-tier framework has been proven effective and well received by the industry and the public. Flexibility has also been maintained such that the detailed guidelines could be improved for getting in pace with the development of the relevant technology by updating the codes of practice or issuing new practice notes. The three-tier framework has also been adopted in recent legislative exercises, for example, the Buildings (Amendment) Ordinance 2008 and relevant subsidiary legislation for the minor works control system. We consider that this well-established framework should be maintained.

20. Given the administrative nature of practice notes and codes of practice, non-compliance with the guidelines set out in these documents does not and should not constitute violation of the BO. Indeed, in following the guidelines for complying with the statutory requirements, the building professionals have to make their professional judgment in assessing the condition of individual buildings with regard to the actual situation. While the practice notes and codes of practice provide guidance on how the statutory requirements are to be complied with, in certain special circumstances, the building professional concerned might decide to adopt alternatives to achieve the same result which do not strictly follow the codes of practice and practice notes. Therefore, it would be inappropriate to make compliance with such administrative documents a statutory requirement. Nevertheless, any deviation from or non-compliance of practice notes or codes of practice resulting in professional negligence or misconduct would still render the RI/QP subject to disciplinary action or even prosecution. The BD will advise the industry and the public through public education and publicity on the importance for compliance with the codes of practice and practice notices related to MBIS/MWIS.

Assistance to be provided to owners

21. We recognize that some owners may not possess adequate knowledge, expertise or financial ability to fulfill the requirements of

regular inspection and repair. Whilst the smooth implementation of the MBIS and MWIS will depend on the active participation of owners who have the obligation to comply with the statutory notices to inspect and repair their own properties, the Government and our partner organizations will continue to offer suitable assistance to owners in need.

22. We have reiterated on different occasions that the Government, together with the HKHS and URA, will provide a comprehensive range of technical and financial assistance to building owners in need during the various stages of the MBIS/MWIS to guide them in carrying out inspection and repair works.

23. When notification letters on MBIS are issued to owners, each building will be assigned a single contact point, either from HKHS or URA, so that owners only need to get in touch with “one stop” for enquiries and assistance. In parallel with the public education and publicity programmes for the MBIS and MWIS, district briefing sessions will be organized for buildings owners with and without OCs to explain the details of the two Schemes and the assistance package available.

24. As mentioned in previous paragraphs, to facilitate the work of the owners in preparing building maintenance works, the HKHS and ICAC have developed a Building Maintenance Toolkit, which contains guidelines/ standard templates/ checklists for tendering procedures for the use of building owners. Owners may also make reference to the maintenance guidelines issued by the HKHS, URA and HKIS containing objective points to consider their evaluation of tender submissions. Taking into account experience obtained from the OBB and the implementation details of the MBIS, the HKHS and URA will, in consultation with the professional institutes, update the toolkit and relevant guidelines as necessary. Such documents will guide OCs/owners in requiring potential bidders to submit the essential information to help owners evaluate the bids and manage their agents.

25. Owners may obtain information from the HKHS and URA on matters concerning the MBIS and MWIS and other building maintenance issues. Building owners may seek advice from the HKHS/URA through their Property Management Advisory Centres / resource centres on the aforementioned procedures if in doubt.

26. In terms of financial assistance, the HKHS and URA will subsidize owners in need the cost of first building inspection under the MBIS. The subsidy will be provided to the OCs/co-owner and subject to a cap, which will be set taking into account the price levels for building inspection in the market. Moreover, the BD, HKHS and URA will also continue to provide financial assistance under their various existing schemes for the required repair works, including the Integrated Building Maintenance Assistance Scheme jointly administered by HKHS and URA, Comprehensive Building Safety Improvement Loan Scheme administered by BD, the Building Maintenance Grant Scheme for Elderly Owners administered by HKHS.

27. The HKHS and URA from time to time review the eligibility criteria under the various financial assistance schemes to ensure that owners in need would receive suitable financial support. The two organizations are conducting a new round of review based on the latest rateable values of flat units provided by Rating and Valuation Department. The eligibility criteria for the subsidy for first inspection fee under MBIS will make reference to this review, the result of which should be available in early 2012. Having said that, we do not consider it appropriate to set a target percentage for buildings to be eligible for the assistance to be provided under MBIS and MWIS as it may not be the best use of public resources since some of the buildings eligible for financial assistance because of the adoption of a target percentage may not be those that are genuinely in need.

28. For buildings that are without any form of management and are most in need of assistance, the Government, HKHS and URA will proactively approach and contact the building owners to encourage and help them organize the inspection and repair works. As a last resort, if, after repeated attempts by the HKHS and URA, the owners are still unable to coordinate and organise to fulfill the statutory requirements under the two Schemes, the BD may consider, for public safety reasons, carrying out the inspection or repair works and subsequently recovering the cost and surcharge from the owners. However, we must emphasize that this is only a last resort, and owners who have the ultimate responsibility to properly maintain their own properties must not rely on the Government's intervention in the long run.

29. Under the MBIS and MWIS, all statutory notices will be issued to owners (i.e. OCs or co-owner for common parts) of the target buildings. The buildings with OC or where owners can organize the required inspection and repair for the common parts under MBIS/MWIS can still proceed to make the necessary arrangement in spite of the fact that individual owner cannot be located. In any event, tenants have no obligation to comply with the MBIS/MWIS notices for the premises in which they are residing even if the landlord (i.e. the owner) cannot be located.

**Development Bureau
Buildings Department
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Introduction

Building maintenance projects, as revealed in past ICAC cases, are corruption prone, and the amount of corrupt money involved could be very substantial.

With appropriate safeguards built into the tendering and contract administration procedures, the risk of corruption and fraud can be reduced to the minimum.

The cases and scenarios described in this chapter demonstrate the importance of complying with the law and implementing procedural safeguards as recommended in [Chapter 1](#) to prevent corruption.

Cases in Perspective

Why is corruption prevention a concern for OCs, flat owners and tenants? Being a flat owner, an office bearer of the MC or an employee of a PMC, what would you do in the following situations?

Case 1

Corrupt Dealings

The Senior Managers of a consultancy firm and a construction company conspired to offer bribes to a senior manager of a PMC and office bearers of the OC of a residential building for their assistance in securing consultancy and renovation contracts.

The corrupt deal was unearthed. The Senior Manager of the consultancy firm pleaded guilty to corruption offences and was sent to jail for 12 months.

Both Senior Managers of the construction company and the PMC were also convicted of bribery offences and were sent to jail for nine months.

Case 2

Accepting Advantages

An OC Chairman accepted a television set, a free trip to Thailand and two loans from a contractor for assisting the latter to secure a renovation contract worth \$5.35 million. The Chairman arranged an associate of the contractor to attend the owners' meeting by way of proxy so as to persuade the flat owners to select the corrupt contractor.

Both the OC Chairman and the contractor were convicted of bribery offences. The contractor was sent to jail for 18 months and the OC Chairman 24 months.

**Case 3**

Collusion
compromising
quality of works

A director of a consultancy firm solicited and accepted \$800,000 from a contractor as a reward for assisting the latter to secure a \$4 million renovation contract and ensure subsequent smooth payment processing irrespective of the quality of works.

The director was convicted and sent to jail for nine months.

Case 4

Tender rigging
and substandard
works

Consultant “B” assisted an OC to organize a tender exercise to select a renovation contractor. Before inviting tenders, “B” approached an associated contractor and solicited a bribe (about 15% of the project sum) in return for assisting the latter to secure the contract and accepting substandard works.

“B” then arranged other associated contractors to submit dummy bids to ensure the bid submitted by the colluding contractor was the lowest.

In fact, the project cost of this “lowest” bid was inflated. As a result, the OC had paid much more than required without getting quality works.

Case 5

Unethical
behaviour

A consultancy firm, which was controlled by non-professionals, appointed retired APs as the “directors” of the firm, but they were not actually involved in the daily operations. These APs’ role was only to sign the statutory forms for submission to BD to comply with the requirements in the Buildings Ordinance. For example, they certified satisfactory completion of the renovation works carried out by the contractors (which were associates of the consultancy firm) without actually conducting the required supervision and inspection.

The absence of supervision and inspection by the consultant resulted in substandard works. The OC was required to appoint another contractor to carry out rectification works, giving rise to additional cost.

Risks and Malpractice

Past cases have revealed a number of risk areas and malpractice in building maintenance projects. OCs / owners are advised to watch out for the following risks :

Risks	Examples / Scenarios	Prevention Tips
Tender rigging	<ul style="list-style-type: none"> • OC members / PMC employees corruptly collude with consultants/ contractors in the submission of tenders • With the collusion and undue assistance of the consultant, only colluding contractors were invited to bid 	▶ Chapter 1 - Section 2
Leakage of tender information / tampering with tenders submitted	<ul style="list-style-type: none"> • OC members / PMC employees corruptly leak the tender prices of other bidders and allow the colluding consultant/contractor to change its tender price 	▶ Chapter 1 - Section 2
Biased tender evaluation / lack of pre-determined objective evaluation criteria	<ul style="list-style-type: none"> • OC members / PMC employees corruptly make biased tender evaluation to favour a colluding consultant/contractor 	▶ Chapter 1 - Section 2
Accepting substandard works	<ul style="list-style-type: none"> • A staff member of the consultant corruptly relaxes site supervision and accepts substandard works 	▶ Chapter 1 - Section 3
Certifying inflated payment claims	<ul style="list-style-type: none"> • A staff member of the consultant corruptly certifies inflated claims for payment without checking the work completed beforehand and expedites the processing of payment applications. 	▶ Chapter 1 - Section 3