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Legal Boundaries of Government Substituted Performance in Hong Kong SAR's Mandatory Building Inspection Scheme

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Abstract. The Mandatory Building Inspection Scheme (MBIS) in the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong SAR) was designed to address risks arising from ageing and poorly maintained private buildings. However, its owner-led and government-assisted model has faced repeated difficulties in practice because it assumes that building owners have adequate organisational capacity, financial resources and professional knowledge. This paper argues that the ineffectiveness of the MBIS is not only a problem of weak compliance, but also a structural responsibility vacuum. In particular, three-nil buildings, limited owner participation, insufficient maintenance funds and an enforcement model that relies heavily on demand letters and penalties make preventive maintenance difficult to achieve. When the condition of a private building creates a serious risk to public safety, post-event supervision is insufficient. The paper therefore proposes a clearer legal framework for government substituted performance in high-risk cases. The proposed reforms include a quantitative risk assessment threshold for triggering intervention, a recyclable emergency repair fund, post-repair cost recovery from owners and independent technical review by professional bodies. These measures would clarify the responsibilities of owners, government and professionals, while preventing excessive administrative intervention. The paper concludes that only institutional reconstruction can transform the MBIS from a reactive accountability tool into an effective preventive maintenance and public safety governance mechanism.

Keywords: mandatory building inspection scheme, building safety governance, government substituted performance, risk assessment

1. Introduction

As of 2014, the number of old buildings in Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong SAR) with a building age of over 30 years had exceeded 15,000. Due to the long-term lack of systematic maintenance, safety accidents in these buildings occurred frequently. To fundamentally solve this urban governance problem, after completing two rounds of public consultations, the Hong Kong SAR Government officially launched the Mandatory Building Inspection Scheme (MBIS).

However, the framework of owner-led, government-assisted on which the MBIS is based is built on the idealized assumption of the self-governance ability of building owners. This raises a core

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question: how to re-define the responsibility boundaries among the government, building owners, and professional organizations to fill the current institutional vacuum? This paper argues that the mechanism for the distribution of responsibilities among these three parties must be reconstructed through precise government intervention and institutional innovation. Otherwise, the legislative intention of preventive maintenance will be perverted into post-event accountability, fundamentally shaking the legitimacy foundation of the policy.

Most existing studies focus on diagnosing the surface problems of the MBIS. Chan and Choi highlighted the need to establish a pre-approved contractor list and a mandatory supervision system [1]. Leung, Tsang and Tsui then quantified the problem of bid-rigging in the repair market and found that winning bid prices were substantially higher than reasonable levels [2]. Although these studies accurately address operational difficulties, bid-rigging and the failure of owner self-governance, they leave a key gap: they do not clearly define when, and within what legal boundaries, the government should move from passive supervision to active substituted performance.

2. Reasons for responsibility vacuum under MBIS

The current MBIS framework has clearly defined a legal liability chain. That is, once a building is included in the inspection scope, the incorporated owners or individual owners must appoint registered inspectors. After the inspectors complete the survey, they will issue a mandatory repair order, requiring all owners to jointly undertake and complete the repairs. The government's legal role is mainly to supervise, including issuing legal notices, monitoring compliance deadlines, and imposing fines or initiating prosecutions against non-compliant owners at the final stage. However, it is this very design that reveals the inherent flaws in the policy logic and has become the fundamental reason for the failure of collective action among the owners of old buildings in the Hong Kong SAR [3].

2.1. Overly idealized presumption of owner-led model

The premise of the current institutional design is that property owners not only have the willingness but also possess the corresponding organizational capabilities and professional judgment to take action. However, in reality, owners of old buildings often lack the necessary professional knowledge, financial reserves, and time for coordination, making it difficult for them to effectively fulfill their duties [4]. A further complication is that the property rights of such properties have a high liquidity, with frequent changes of owners and outdated contact information, which has repeatedly frustrated efforts to build effective consensus [5].

2.2. Autonomy failure in three-nil buildings and low meeting attendance

In the numerous old buildings in Hong Kong SAR, especially in the so-called buildings without management, maintenance, and security, the problem of collective action is particularly severe. These buildings are in a state of institutional vacuum: without an incorporated owners' corporation, there is no legal entity to receive government notices or hire professionals; without a property management company, daily maintenance is neglected, accelerating the aging of the buildings; without a repair reserve fund, even the most urgent repair projects face insurmountable financial obstacles. For these buildings, it is not only difficult but also structurally almost impossible to establish a legal entity that meets the requirements of the MBIS, which completely excludes them from the scope of policies that presuppose a basic level of owners' organization [6].

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However, even in buildings with an owners' corporation, the ability to take action is severely limited. The management committee is usually composed of part-time volunteer owners. Despite their good intentions, they often lack the necessary technical, legal, and financial expertise to evaluate complex repair plans or review bids worth millions. This makes them easy targets for unscrupulous contractors. More fundamentally, there are flaws in the decision-making process itself. Since repair plans usually only require a simple majority vote from the owners present at the general meeting to pass, and attendance at meetings has always been low, key financial decisions involving large-scale expenditures may actually be made by a small and possibly unrepresentative group of owners. This situation not only raises serious concerns about the legitimacy of governance and the fairness of cost sharing but also often leads to deadlocks. Owners who oppose or do not participate in the voting may refuse to pay their share, which may ultimately cause necessary safety projects to be postponed indefinitely.

3. Why government cannot merely act as supervisor

The widespread disrepair of old buildings in Hong Kong SAR poses a systematic safety hazard. However, the current governance model, which is mainly based on post-event supervision, is difficult to fundamentally resolve this deep-seated structural contradiction.

3.1. Public safety nature of building integrity

Based on an undeniable reality, the necessity for the government to take proactive intervention is well-founded: the disrepair of buildings generates significant negative externalities. Whether it is a structural collapse or the peeling of external walls, the hazards do not stop at the property boundary but endanger public sidewalks, adjacent buildings, and even lives. The resulting social costs, including traffic disruption, emergency rescue, asset devaluation and loss of life, are substantial and involuntary, and the market mechanism is powerless in this regard. The Garden Street fire in 2010 and the frequent concrete peeling incidents have clearly shown that the consequences of mismanagement and disrepair in the private domain are inevitably borne by the public.

From an economic perspective, this is undoubtedly a case of market failure. Property owners act based on their limited personal interests and lack the incentive to bear the high maintenance costs because the main benefits of maintenance (public safety) are shared by society. For individuals, the maintenance costs are immediate, while the social costs of inaction are dispersed and delayed. Therefore, government action is not just an option but a necessity, aiming to internalize these external costs-ensuring that property owners bear the full social costs of their dereliction of duty. Protecting citizens from foreseeable harm is a fundamental responsibility of the state, a responsibility that transcends private property relations [7].

3.2. High-risk buildings cannot rely solely on owner autonomy

The MBIS model, which relies on owner self-governance, has repeatedly faced setbacks in practice. The root cause lies in the systematic flaws in the institutional design.

At the organizational level, this framework is difficult to implement from the start for about 40% of old buildings, especially single-block tenement buildings. This is because there are simply no incorporated owners' corporations in these buildings. Without this basic legal entity, there is no one to receive government instructions or coordinate maintenance projects, rendering the policy ineffective

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At the financial level, this model is equally fragile. For retired elderly people and low-income owners, the maintenance costs, which can easily reach millions, are simply unaffordable. Just the HK$20,000 expenditure per household required by the window inspection program is already a heavy burden for many families. When owners are unable to pay, compliance becomes out of the question, and government fines are reduced to empty words.

At the technical level, the key gap in professional knowledge puts owners at a disadvantage. The voluntary management committee lacks the engineering and legal knowledge required to evaluate complex tender documents, which provides a fertile ground for bid-rigging and inflated prices. According to the data from the Buildings Department in 2025, the compliance rate of high-risk buildings is as low as 58%. This data undoubtedly declares that the current policy is seriously out of touch with the reality of old buildings in Hong Kong SAR [8].

3.3. Mere issuance of demand letters and penalties fails to resolve disrepair

Currently, the law enforcement logic centered around punishment is severely out of touch with the reality of dilapidated buildings. Imposing hefty fines or even criminal prosecution on property owners who are unable to afford the maintenance costs is not only illogical but counterproductive. This approach neither eliminates safety hazards nor alleviates the financial difficulties of property owners.

More seriously, there is the significant delay in the law-enforcement process. The average litigation period lasting up to 18 months allows the identified risks to continue to deteriorate without control. The tragic incident of the falling exterior wall on Pine Street in 2022 is a prime example. The delay in the legal process has become a direct threat to public safety.

This exposes a fundamental institutional flaw: the current system views violations as a choice that deserves punishment, rather than an inability that needs to be addressed. Without providing any technical or financial support to help property owners meet the standards, the entire system has fallen into a vicious cycle of violations and punishments, completely deviating from the legislative intent of prevention first in the MBIS.

4. Legitimacy and boundaries of government substituted performance

Therefore, the core issue in policy design lies in the prudent use of the substituted performance power, enabling it to compensate for the failure of key institutions while strictly preventing the expansion of administrative power. To this end, this paper attempts to put forward several principles, aiming to provide ideas for solving this dilemma and clarify the legal scope of government intervention.

4.1. Applicable only to high-risk buildings

When a country exercises the power of substituted performance, it must abide by the principle of last resort in the constitution, that is, it is only applicable to extreme situations where the inaction of property owners has posed a clear, urgent and serious threat to public safety. Setting such a high threshold has dual significance: it can ensure that precious public resources are accurately allocated to the most critical buildings like a scalpel, and can also uphold the self-governance of property owners in accordance with the principle of minimum coercion when the building functions can still be maintained, reflecting the bottom line of liberal governance.

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To prevent the abuse of power, the conditions for initiating this ultimate intervention must be objective and verifiable and must never rely on subjective judgment. The legislation should stipulate a strict pre-procedure chain: first, the compliance requirements are still not met after the expiration of the statutory notice period; second, all reasonable assistance measures to all property owners have been exhausted; finally, through a quantitative multi-factor assessment, it is confirmed that the risk is indeed imminent. It is precisely this procedural rigidity that transforms substituted performance from a discretionary power into an expected legal safeguard, achieving a crucial balance between collective safety and individual rights [9].

4.2. Risk assessment rating as activation threshold

To ensure objectivity and fairness, government intervention must be based on a transparent multi-factor risk assessment mechanism. This framework needs to quantitatively evaluate three key dimensions: the severity of structural defects, the potential harm to the public (such as the density of pedestrian flow), and the actual action ability of the property owners (such as the inability to form an owners' organization). Only when the comprehensive risk score of a building exceeds the legal threshold does government intervention have legal legitimacy.

For example, a building with serious defects (scoring 35/40), located in a high-traffic area (scoring 30/40), and whose property owners lack organizational ability and funds (scoring 15/20) will have a total score of 80 points. This will far exceed the assumed intervention threshold of 60 points, thus triggering mandatory actions. This quantifiable method forms a key firewall to prevent arbitrary decision-making, and establishes the state's most severe intervention power on transparent and reproducible standards.

4.3. Post-repair cost recovery from owners

To achieve a sustainable substituted performance model, the key lies in balancing two seemingly contradictory principles.

First, it must be clear that its essence is a cost-recovery mechanism rather than a financial subsidy. The public funds advanced by the government for emergency repairs should be recovered by setting a statutory charge on the relevant properties. This is not only the bottom line for safeguarding the interests of taxpayers but also the key to preventing moral hazards.

Second, the system must face up to the dilemmas that may arise from rigid implementation. Therefore, it is non-negotiable to establish a safety net that reflects humanistic care. For verified cases of financial difficulties, solutions such as long-term interest-free installment payments and even fee exemptions under specific conditions should be provided. Such support should be regarded as a necessary investment in the overall well-being of the community rather than a simple welfare expenditure.

Only by combining the firmness of principles with the flexibility of implementation can public authorities formulate public policies that are both legal and effective.

5. Improvement pathways

5.1. Establishment of emergency repair fund

To fundamentally address the core bottleneck of financial incapability among property owners, it is recommended to establish a special emergency repair fund. The core positioning of this fund should

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be a recyclable and self-sustaining financial tool, rather than a one-time subsidy. Its main function is to provide immediate, interest-bearing loans or advances for projects that are assessed as high-risk and for which property owners are truly unable to bear the emergency repair costs, especially projects related to life safety. This measure aims to provide a constructive capital outlet and break the vicious cycle of violation, fine and further inability to repair at the root.

The sustainable operation of the fund is crucial. The initial capital can be provided by the government as a basic investment in urban public safety. However, the more core design lies in achieving self-replenishment of funds through a strong cost-recovery mechanism. As mentioned earlier, all the funds advanced by the fund will be registered as legal charges on the property. Subsequently, the government should actively recover these costs and interest from property owners, just as it collects land premiums. If necessary, measures such as forced property sales can be taken. Thus, a closed-loop is formed: the fund resources are used to eliminate imminent public dangers, and then the recovered funds are used for the next round of emergencies. This not only ensures the long-term viability of the fund, preventing it from becoming a long-term burden on taxpayers, but also transforms it from a simple subsidy into a powerful and sustainable proactive risk-management tool [10].

5.2. Clear intervention thresholds and procedures

To thoroughly reform the current governance dilemma of passive response, a fundamental paradigm shift must be promoted: the government should completely transform from a passive post-incident enforcer who waits for the maintenance period to expire or a safety accident to occur, to an active ultimate safety guarantor based on risk management and control. The cornerstone of this transformation lies in clearly establishing a set of clear and objective government action thresholds through law.

These thresholds must be directly linked to the risk assessment framework discussed above, ensuring that every decision on state power intervention is based on quantifiable data rather than the discretionary power of administrative officials.

The core operating mechanism of this new paradigm is an automatically initiated and time-limited action protocol. Once the comprehensive risk score of a building is certified to exceed the legal threshold, a pre-set, non-discretionary action sequence will be unconditionally initiated. This sequence can be clearly defined through legislation as the following steps: First, a legal notice with a final deadline is issued to the property owner; if the owner fails to fulfill their obligations after the deadline, the second stage will automatically commence. The government will designate an approved project management party and contractor to carry out necessary repairs under the substitute performance framework. Meanwhile, the third stage will be initiated simultaneously, immediately registering a legal charge on the property to recover costs.

By solidifying this process through legislation, completely eliminating bureaucratic discretion and setting clear time limits for each stage, this protocol can eradicate the dangerous delays in the current law-enforcement process. It will ensure that the government responds quickly and predictably to imminent public safety threats, thus transforming the state's role from a passive punisher of dereliction of duty to an active ultimate safety guarantor. This is not only an improvement in execution efficiency but also a re-positioning of the government's core functions.

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5.3. Involvement of professional bodies in technical review

Within the reformed MBIS framework, the role of professional bodies should be diverse and substantial, going beyond the mere function of consultation and shifting towards proactive supervision. This role can revolve around the following three core functions:

Firstly, technical audit and compliance certification. Professional institutions should conduct independent reviews of the proposed maintenance plans instead of leaving property owners' organizations to face complex tender documents alone. Their responsibility lies in strictly verifying the technical rationality, scope of work, and technical specifications of the maintenance plans to ensure that they are truly necessary and commensurate with the identified degree of defects. This measure aims to effectively prevent over-maintenance, that is, contractors deliberately expanding the scope of work to inflate the quotation, which is a common profit-making method in a market with information asymmetry.

Secondly, cost benchmarking and market monitoring. The prevalence of bid-rigging is largely due to the lack of transparent and reliable cost data. Professional institutions can take the lead in establishing and dynamically maintaining a reference unit-price database for common maintenance projects. With the rich project experience of their members, they can provide the Buildings Department with an empirically-based and annually updated price benchmark. This will provide an objective yardstick for the government and property owners to evaluate contractors' quotations, making it difficult for colluding enterprises to maintain inflated prices in the long run.

Thirdly, neutral dispute mediation. Disputes between property owners and contractors regarding project quality or contract terms are inevitable. Professional institutions can provide efficient mediation services to avoid project delays caused by disputes or force the parties into costly litigation. By issuing authoritative and neutral technical opinions, they can promote the achievement of a fair solution, which not only protects the rights and interests of vulnerable property owners but also maintains the integrity of the maintenance process. This measure not only resolves individual disputes but also forms a case database in the long term, injecting transparency and credibility into the system.

In short, by introducing the credibility of professional institutions, the current gaps in professional supervision and responsibility mechanisms in the system can be effectively filled, thus building a more robust, reliable, and efficient building maintenance ecosystem.

6. Conclusion

The principle of owner-led, government-assisted upheld by the MBIS in Hong Kong SAR, despite its good intentions, has fundamental flaws in its institutional design because it overly relies on the idealized assumption of owner self-governance. In reality, the widespread existence of a large number of three-no buildings, the economic difficulties of owners, and the lack of professional capabilities have jointly created a huge responsibility vacuum. This has led to a large number of old buildings remaining in a dangerous state of disrepair for a long time, posing a continuous threat to public safety. In this context, if the government is only content to play a post-event supervision role and manage through fines and reminder letters, it is undoubtedly far from sufficient to solve this systemic problem.

It is necessary to redefine the government's responsibilities. In the face of high-risk buildings, the government should be given clear, legal, and bounded substitute performance powers. The activation of this power should be based on transparent risk assessment results and supported by a strong cost recovery mechanism. At the same time, a series of institutional strengthening measures are also

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crucial: for example, setting up an emergency repair fund to break through the funding bottleneck, formulating clear intervention procedures to ensure operational efficiency, and formally introducing professional institutions to provide technical credibility for the entire process. These support systems together constitute the three necessary financial, procedural, and technical pillars for translating the concept of preventive maintenance into reality. Without these profound reforms, the MBIS will be difficult to achieve its legislative intent, and the risk of avoidable tragedies will still exist for a long time.

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