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By Fax No. 2868 9159

8 March 2001

Secretary for Security
(Attn: Mr. David Wong
Principal Assistant Secretary(S)B)
Security Bureau
6/F Main and East Wings
Central Government Offices
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Dear Mr. Wong,

Fire Safety (Buildings) Bill

I am scrutinizing the above Bill with a view to advising Members on its legal and drafting aspects. I would be grateful if you could clarify the following:

Clause 3 - definition of "domestic purposes (住用用途)"

2. For the Chinese term "住用用途", what does the first "用" mean? Is it repetitious in meaning with the second "用"(途)?

Clause 5 - Owner or occupier may be directed to comply with fire safety measures

3. The term "technology" is rendered as "科技" in the Chinese version of the Fire Safety (Commercial Premises) Ordinance (Cap. 502). Is there any special reason for changing it to "技術和工藝" in this Bill?

Clause 7 - District Court may make orders prohibiting occupation of a building or part of a building

4. In explaining this clause, paragraph 15 of the Brief states that "under the original proposal promulgated in the context of the 1998 public consultation, a prohibition order would be applicable to the non-domestic parts of a composite building only but not to the domestic parts thereof or to domestic buildings. However, the Department of Justice (DoJ) has advised that the differential treatment is not based on reasonable and objective criteria and is inconsistent with the guarantee of equality

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before and equal protection of the law under Article 22 of the Hong Kong Bill of Rights Ordinance (BoR). Therefore, prohibition orders are now also proposed for the domestic parts of composite buildings and domestic buildings."

5. Please elaborate on how the original proposal is inconsistent with Article 22 of the BoR. Article 22 states that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.". It is to protect all persons and not meant to deprive any person of his rights.

6. The concept that "a prohibition order shall not be applicable to domestic premises" is not unprecedented. The proviso to section 128(1) of the Public Health and Municipal Services Ordinance (Cap. 132) provides that "where the premises are or is used for the purpose of human habitation, no such (prohibition)order shall be made so as to prevent such habitation".

7. Under clause 7(1) and (6), if a fire safety direction or a fire safety compliance order is not being, or has not been complied with, an enforcement authority may apply to the District Court for an order prohibiting the occupation of the relevant building or part of a building. In the case of a composite building, if the owners of the domestic parts of that building have complied with the requirements in Schedule 2 but the owners of the non-domestic parts have not complied with the requirements in Schedule 1, will a prohibition order be applicable to the relevant building as a whole or just the non-commercial parts? The wordings in clause 7(1) and (6) are not very clear and may suggest that in such case, the order can be applicable to the relevant building as a whole.

8. If the prohibition order is applicable to the whole building, the owners of the domestic parts of that building will then be arbitrarily deprived of their property rights. Would this be held to be inconsistent with Articles 6 and 29 of the Basic Law which state that the HKSAR shall protect the right of private ownership of property and that the homes and other premises of Hong Kong residents shall be inviolable.

9. Further, Article 105 of the Basic Law provides that,"(T)he HKSAR shall, in accordance with law, protect the rights of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property."

10. If a prohibition order is made against domestic premises, occupants might become homeless. Will there be compensation or other accommodation for them? Should the court be empowered to consider this question of "the availability of other accommodation" apart from the five considerations under clause 7(6) before granting a prohibition order?

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Clause 8 - Effect of prohibition order

(a) *Clause 8(1)(a)(iii)*

11. The relevant enforcement authority may cancel a permission granted under subparagraph (ii) at any time and for any reason. Would this be regarded as arbitrary and should advance notice and with reasons therefor be given before a permission is cancelled?

(b) *Clause 8(3)*

12. The Chinese version for "in the particular circumstances" is now rendered as "在個別個案中" while in Cap.502 , it is rendered as "在有關的特定情況下". Why is there the change?

Clause 14 - Registration of notice of fire safety compliance order, etc. in the Land Registry

13. This Clause empowers the enforcement authority to register a fire safety compliance order or a prohibition order against the land register of the relevant property in the Land Registry. The Fire Safety (Commercial Premises) Ordinance (Cap. 502) does not contain similar provisions. Would this be regarded as different treatment for commercial buildings on the one part, and composite (commercial/domestic) buildings and domestic buildings on the other part?

14. I would be grateful if you could let me have your reply in both English and Chinese before the date of the first meeting of the Bills Committee (i.e. before 14 March 2001) if possible.

Yours sincerely,

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