

SBCR 8/2361/98 Pt. 9
LS/B/21/00-01
2869 9216
2877 5029

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

7 November 2001

BY FAX

Fax No. : 2868 9159
Total no. of pages : (3)

Dear Mr Wong,

Fire Safety (Buildings) Bill

I have taken the opportunity to go through the Bill and the Administration's response to comments/queries raised by my colleague, Miss Anita Ho. My further comments and observation on the Bill are set out below for your consideration:

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

It is noted that in the Buildings Ordinance (Cap. 123), the defined term is "domestic", not "domestic purposes". In the definition of "domestic" in Cap. 123, the meaning of "purposes" is already included. Hence, the Chinese text "住用" which is an abbreviated reference for "住宅用途" is appropriate in that context. You may also note that "composite building" is defined in Cap. 123 as "a building that is partly domestic and partly non-domestic" (部分屬住用而部分屬非住用的建築物). However, in this Bill, the proposed defined term is "domestic purposes" and "composite building" is defined as a building that is constructed, or intended or be used, partly for domestic purposes and partly for non-domestic purposes". It would appear clear that "domestic" as used in this Bill does not include the meaning of "purposes". Hence, the use of "住用用途" as the Chinese text for "domestic purposes" may not be appropriate as the meaning of "purposes" would then be repeated in the proposed Chinese text. Would "住宅用途" be a better and more appropriate rendition?

Clause 3 - definition of "fire service installation or equipment"

The proposed definition of the term is identical to the definition of the same term in the Fire Services Ordinance (Cap. 95) and the Fire Safety (Commercial Premises) Ordinance (Cap. 502). However, as you are aware, in the Fire Services (Amendment) Bill 2001, amendments are proposed to the definition of the term used in Cap. 95 and Cap. 502. In light of this, will the Administration consider introducing the same amendments to the definition of "fire service installation or equipment" in this Bill?

Clause 3(2)

From the way this clause is drafted, it would appear that the owner of an originally unoccupied building will continue to be liable in respect of the exercise of powers by the enforcement authority for an indefinite period of time notwithstanding that the building is subsequently occupied. Does this reflect the policy intent? Should the time for which the owner will continue to be liable be specified in the clause?

Clause 7

Under section 7A of the Fire Safety (Commercial Premises) Ordinance (Cap. 502), an enforcement authority is empowered to apply to the District Court for a prohibition order in respect of a unit or part of a specified commercial building. The enforcement authority has no power under Cap. 502 to apply for a prohibition order in respect of the whole building. However, clause 7, as drafted, would empower an enforcement authority to apply for a prohibition order in respect of a whole building irrespective of whether the building is owned by one person or whether there are more than one owner or occupier. If the Administration's intention is that the application for and the making of a prohibition order will be on the basis of a unit or part of a building where there are more than one owner or occupier, should this intention be reflected in the Bill?

Clause 13(3)

If the District Court refuses the application for revocation of a prohibition order, can the owner or occupier concerned appeal against the District Court's decision or is it intended that the District Court's decision is final? Should provisions be made to cover this?

Clause 14(1)

Under what circumstances will the relevant enforcement authority exercise the discretion to register a fire safety compliance order or a prohibition order against the land register of the relevant property in the Land Registry? If the relevant enforcement authority considers it appropriate to exercise this discretion in a particular case, will the affected person(s) be given an opportunity to make representations on the matter?

Clause 16

- (a) In clause 16(1) and (2), should a court warrant be required to authorize entry and inspection of a domestic building or the part of a composite building intended for domestic or dwelling purposes? How is this provision which allows entry without warrant consistent with Article 14 of the Hong Kong Bill of Rights, which guarantees that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" and with Article 29 of the Basic Law, which prohibits "arbitrary or unlawful search of, or intrusion into, a resident's home or other premises"?
- (b) As an alternative to a court warrant, will the Administration consider at least giving prior written notice to the relevant occupier of the intended entry. As you are aware, in the Fire Services Ordinance (Cap. 95), the power of the Director of Fire Services to enter premises otherwise used for business purposes is exercisable only in circumstances where 24 hours' notice in writing of the intended entry has been given to the occupier.

I would appreciate it if you can let me have your reply in both English and Chinese by 19 November 2001 so that your reply can be circulated to members of the Bills Committee before the next meeting.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

c.c. DoJ (Attn: Mr William MADDAFORD, SALD and Mr Vidy CHEUNG, SGC)
LA