

Bills Committee on Fire Safety (Buildings) Bill

**Clause 19 of the Bill and liability of directors
in respect of building and construction**

Background

At the meeting of the Bills Committee on 29 April 2002, when discussing clause 19, i.e. on the liability of directors or other persons concerned in the management of a company if a company commits an offence, members would like to have information on legislation relating to building and construction containing provisions similar to clause 19.

Various ordinances that contain specific provisions on liability of directors

2. Various Ordinances may contain specific provisions on the liability of directors or officers of a company for offences committed by the company in relation to that Ordinance (see LC Paper No. LS93/01-02(01) attached). Listed below are two most relevant provisions in the Ordinances which relate to building and construction:

(a) section 40(6) of the Buildings Ordinance (Cap. 123)

"Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or default on the part of, any director, manager, or other officer concerned in the management of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence.";

(b) section 48(1) of the Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470)

"Where a body corporate is guilty of an offence under this Ordinance in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against.".

General provision on liability of directors

3. In the absence of specific provisions on liability of directors in an Ordinance, there is a general provision in section 101E of the Criminal Procedure Ordinance (Cap. 221) which reads as follows :

"Where a person by whom an offence under any ordinance has been committed is a company and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company, or any person purporting to act as such director or officer, the director or other officer shall be guilty of the like offence."

4. According to the above provision, a director or other officer would only be liable if the prosecution can prove that he consents or connives at the offence committed by the company.

Conclusion

5. In cases where there is no specific provision provided in an Ordinance on the criminal liability of a director of a building and construction company in respect of crimes committed by that company, section 101E of the Criminal Procedure Ordinance may apply. In cases where specific provisions are provided, they are usually broader in scope than section 101E in terms of the liability of the directors concerned. In addition to imposing criminal liability on a director for his consent or connivance to the commission of an offence concerned, the specific provisions will sometimes impose liability in respect of a director's neglect or default.

Encls.

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**Ordinances that contain specific provisions on liability of directors
for an offence committed by a company**

<u>No(s)</u>	<u>Ordinance</u>	<u>Cap No</u>	<u>Section No(s)</u>
1.	Securities and Futures Commission Ordinance	24	57
2.	Trustee Ordinance	29	98
3.	Companies Ordinance	32	numerous sections
4.	Insurance Companies Ordinance	41	57
5.	Employment Ordinance	57	64B
6.	Factories and Industrial Undertakings Ordinance	59	14
7.	Import and Export Ordinance	60	36A
8.	Post Office Ordinance	98	37
9.	Telecommunications Ordinance	106	32
10.	Stamp Duty Ordinance	117	53
11.	Buildings Ordinance	123	40(6)
12.	Public Health and Municipal Services Ordinance	132	137
13.	Antibiotics Ordinance	137	10
14.	Public Health (Animals and Birds) Ordinance	139	3
15.	Gambling Ordinance	148	22
16.	Legal Practitioners Ordinance	159	Schedule 2
17.	Money Lenders Ordinance	163	31
18.	Civil Aviation (Births, Deaths and Missing Persons) Ordinance	173	2
19.	Crimes Ordinance	200	157
20.	Theft Ordinance	210	20
21.	Aerial Ropeways (Safety) Ordinance	211	27B
22.	Travel Agents Ordinance	218	49

23.	Criminal Procedure Ordinance	221	101E
24.	Police Force Ordinance	232	67
25.	Commodities Trading Ordinance	250	110
26.	Chit-Fund Businesses (Prohibition) Ordinance	262	9
27.	Employee's Compensation Ordinance	282	45D
28.	Adoption Ordinance	290	24
29.	Dangerous Goods Ordinance	295	16
30.	Radiation Ordinance	303	23
31.	Air Pollution Control Ordinance	311	47A
32.	Protection of Non-Government Certificates of Origin Ordinance	324	8
33.	Lifts and Escalators (Safety) Ordinance	327	28 & 29
34.	Securities Ordinance	333	147
35.	Protection of Investors Ordinance	335	7
36.	Building Management Ordinance	344	11, 27 & 40B
37.	Trading with the Enemy Ordinance	346	12
38.	Waste Disposal Ordinance	354	39
39.	Pyramid Selling Prohibition Ordinance	355	4
40.	Water Pollution Control Ordinance	358	10A
41.	Dangerous Goods (Consignment by Air)(Safety) Ordinance	384	5
42.	Securities (Insider Dealing) Ordinance	395	16 & 34
43.	Securities (Disclosure of Interests) Ordinance	396	48
44.	Electricity Ordinance	406	56
45.	Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance	414	30
46.	Toys and Children's Products Safety Ordinance	424	26
47.	Occupational Retirement Schemes Ordinance	426	82
48.	Amusement Rides (Safety) Ordinance	449	36
49.	Organized and Serious Crimes Ordinance	455	24D
50.	Consumer Goods Safety Ordinance	456	27

51.	Builders' Lifts and Tower Working Platforms (Safety) Ordinance	470	47 & 48
52.	Mandatory Provident Fund Schemes Ordinance	485	44
53.	Biological Weapons Ordinance	491	4
54.	Non-local Higher and Professional Education (Regulation) Ordinance	493	39
55.	Aviation Security Ordinance	494	62
56.	Whaling Industry (Regulation) Ordinance	496	12
57.	Fire Safety (Commercial Premises) Ordinance	502	18
58.	Occupational Safety and Health Ordinance	509	33
59.	Estate Agents Ordinance	511	42
60.	Patents Ordinance	514	145
61.	Registered Designs Ordinance	522	89
62.	Outer Space Ordinance	523	14
63.	Weapons of Mass Destruction (Control of Provision of Services) Ordinance	526	13
64.	Copyright Ordinance	528	125
65.	Electoral Affairs Commission Ordinance	541	7
66.	Prevention of Copyright Piracy Ordinance	544	36B
67.	Trade Marks Ordinance	559	96
68.	Entertainment Special Effects Ordinance	560	51
69.	Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance	566	21