

## **Fire Safety (Buildings) Bill**

### **Information requested by the Bills Committee at the meeting held on 12.10.2001 (Part 2)**

**To make reference to an arrangement under consideration by the Buildings Department (BD) whereby orders issued by the Director of Buildings for the purpose of timely maintenance would no longer be the Owners' Corporations (OC) but to individual owners and that the Director of Buildings may place a legal charge registrable against the title with the Land Registry of those owners who refused or failed to pay their shares of the costs incurred in upgrading the fire safety standards in the common parts of their buildings, and to incorporate it in the Bill as far as practicable.**

The issue of dealing with non-compliant owners is not only an issue pertinent to the current Bill, but also a general, perennial one in the Government's enforcement of building or fire safety legislation involving multiple ownership in buildings. The issue was carefully considered in the formulation of the Comprehensive Strategy for Building Safety and during Timely Maintenance, which was promulgated by the Planning and Lands Bureau in April 2001. Following consultation with the community, the general consensus is that –

- (a) responsibility for maintenance and management rests with owners; and
- (b) the role of the Government is to assist and support those responsible and to action against non-compliant owners.

2. We firmly believe the same principles should be followed in the future enforcement of the Bill and envisage a number of ways to tackle non-compliance including the following –

- (a) Following the issue of a fire safety improvement direction, FSD/BD will follow up with the owners concerned in a proactive manner and render them necessary advice on action

required for compliance, including advice on the employment of qualified professionals to undertake improvement work and technical matters regarding the improvement measures required and alternative measures possible.

- (b) FSD/BD will also help owners liaise with other Government departments for appropriate assistance and support services. For example, to improve the management of a building, HAD will help owners form Owners' Corporations and arrange free professional consultation on various aspects such as in legal, accounting, surveying, engineering and managerial areas. (For details, please see the "Administration's response to issues raised by members at the Bills Committee meeting on 28.5.2001" – CB(2)1842/00-01(03).) In case some owners (such as some elderly people or other disadvantaged members of society) encounter welfare problems, they may receive a range of welfare services provided by any of the 65 government and non-government family services centres. Social workers there stand ready to provide appropriate counselling, referral services and practical assistance.
  
- (c) Where owners encounter financial problems in seeking to comply with the statutory directions, they may apply for low interest loan from a new \$700 million Comprehensive Building Safety Improvement Loan Scheme launched by BD in July 2001. In hardship cases, loan may be provided without interest and repayment can be deferred until transfer of titles. (For details, please see the "Administration's response to the submission of Mr YEUNG Wai-sing, Eastern District Council Member" - CB(2)1668/00-01(02).) Under the Loan Scheme, the amount of loan to each owner is not necessarily limited to the share of the total cost of the works involved, as apportioned among all the owners concerned. Rather, the amount is limited to the share of the total cost of the works as apportioned among the owners who contribute towards it. Thus, in case there is a small proportion of missing or dissenting owners, the remaining majority of owners may each borrow more in order to cover the shares of the missing or dissenting ones.
  
- (d) A number of initiatives being implemented under the Comprehensive Strategy for Building Safety and Timely

Maintenance will also help, such as promotion of the setting up of maintenance reserve funds by owners. For details, please see the “Administration's response (1<sup>st</sup> part) to issues raised by Members at the Bills Committee meeting on 14.3.2001” (paragraph 8) - CB(2)1357/00-01 (01).

- (e) If more time is required for the coordination of owners' efforts to comply with the directions or consider alternative measures, FSD/BD will be happy to discuss with the owners and to consider allowing an extension of the specified period or exercising flexibility in the requirements.
- (f) The statutory scheme is necessarily backed up by sanction. Under clause 5(8) of the Bill, an owner or occupier who, without reasonable excuse, fails to comply with a fire safety direction commits an offence. If all efforts failed, BD/FSD would consider initiating necessary prosecution to compel owners/occupiers to take action. Convicted offenders are liable to a fine at level 4 (currently \$25,000) and to a further fine of \$2,500 for each day during which the offence continues. Failure to comply with court orders issued subsequently will attract heavier penalties.
- (g) Under the current Building Management Ordinance (BMO), owners' corporations (OCs) are not allowed to borrow money. To prevent improvement works being delayed by irresponsible or missing owners not paying their fair share, one of the further initiatives proposed under the Comprehensive Strategy for Building Safety and Timely Maintenance is to amend the BMO to enable OCs to apply for loans from the new Comprehensive Building Safety Improvement Loan Scheme to cover the shares that should have been borne by the irresponsible or missing owners, and to make possible in such circumstances the registration of charges against those irresponsible and missing owners' titles as a form of security. The Home Affairs Bureau is examining the feasibility of this and other improvement initiatives in the context of a review of the BMO being pursued by a dedicated subcommittee under the Home Affairs Panel of LegCo. The appropriate improvement initiatives will form a package of proposals for the amendment of the BMO at a suitable juncture. This new initiative if implemented will

further facilitate the future implementation of this Bill (the Fire Safety (Buildings) Bill).

3. As regards the idea raised by the Bills Committee at its meeting on 12 October (summarised in the above opening paragraph), it should be noted that BD is empowered by the Buildings Ordinance to undertake remedial works to ensure safety in case of non-compliance with a maintenance order, to recover the cost from the owners concerned, and to register a certificate of the cost in the Land Registry against the title of their properties. Such default power is, however, only exercised with constraint and very sparingly such as in circumstances of immediate danger. No similar default power to undertake improvement works specified in a fire safety direction by the enforcement authority is provided for in the Bill.

4. Nor do we consider that, in principle, the Bill should provide for such default power to be exercised by the enforcement authority in case of non-compliance. Whereas the maintenance works specified in an order issued under the Buildings Ordinance only requires reinstatement of the original works or installation as stipulated in the approved building plan, improvement measures specified in a fire safety direction to be issued under the Bill generally require new works or installation not included in the original building plan. To implement the improvement measures in the latter case, it is necessary to alter the original building plan and there may be a number of ways to do so which may have different implications for the property rights of individual owners. It is necessary for the owners to discuss among themselves and agree on a mutually satisfactory arrangement.

5. More importantly, building safety is a primary responsibility of the owners themselves, or an OC acting on their behalf. It is not for the Government to assume such a responsibility and to step in lightly.

6. Furthermore, implementation of the idea requires the service of statutory orders on the owners of a building themselves instead of the OC of the building. This arrangement would conflict with the provisions of section 16\* of the Building Management Ordinance and defeat the primary

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\* “When the owners of a building have been incorporated under section 8, the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by, and the liabilities of the owners in relation to the common parts of the building shall, subject to the provisions of this Ordinance, be enforceable against, the corporation to the exclusion of the owners, and accordingly –

(a) any notice, order or other document which relates to any of the common parts of the building may be

objective of having the OC, acting on behalf of the owners, coordinate the works required.

7. For the above reasons, we do not consider it appropriate to pursue the idea in the Bill at this stage.

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(b) served upon the corporation at its registered office; and  
any proceedings in the tribunal in respect of any of the common parts of the building may be brought and pursued by or against the corporation.”