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**Paper for the House Committee meeting on 21 June 2002**

**Report of the Bills Committee on Fire Safety (Buildings) Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Fire Safety (Buildings) Bill.

**Background**

2. In early 1998, the Fire Services Department (FSD) conducted a territory-wide buildings survey. The survey revealed that while the fire safety provisions of many old private buildings were not up to the current standards, the fire safety condition in composite buildings, among the different types of private buildings, was the most unsatisfactory. Only 11% of these buildings were found satisfactory. The result was generally in line with a sample survey by the Buildings Department (BD), which found that 80% of the composite buildings had serious deficiencies in exit routes. As a general indication, the fire safety construction and fire service installations in old buildings, i.e. the pre-1987 buildings, do not meet present day standards.

3. Given the very unsatisfactory fire safety conditions in composite buildings, and in view of the high fire load and heavy traffic of people in the non-domestic parts of composite buildings, the Administration considers that new legislation should be introduced to tackle composite and domestic buildings by upgrading the minimum fire safety standards in these buildings.

## **The Bill**

4. The Bill seeks to empower the enforcement authorities, i.e. the Director of Building and the Director of Fire Services, to require an owner/occupier of a composite building or a domestic building built before 1 March 1987 to improve the fire safety measures in the building, and to provide for related matters. Occupants of and visitors to the building will hence be better protected from the risk of fire.

## **The Bills Committee**

5. At the House Committee meeting on 16 February 2001, Members agreed to form a Bills Committee to study the Bill. The membership of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon IP Kwok-him, the Bills Committee has held 17 meetings with the Administration. The Bills Committee has also met with representatives of the Fong Chung Social Service Centre Limited, Conference of Building Organisation of Wan Chai and Redevelopment Owners Organisation of Wan Chai and Central, Mr CHAN Tak-chor and Mr YEUNG Wai-foon. In addition, the Bills Committee has considered submission from the Chairman of the Building Services Division of the Hong Kong Institution of Engineers.

## **Deliberations of the Bills Committee**

7. While members of the Bills Committee are in support of the objective of better protecting occupants of and visitors to composite and domestic buildings from the risk of fire in these buildings, members have raised various issues and concerns, particularly in relation to the enforcement of the Bill. The main deliberations of the Bills Committee are summarised below.

### Scope and phased implementation of the Bill

8. Members note that the Bill will apply to composite buildings and domestic buildings, including private buildings, buildings sold by the Housing Authority, and public rental blocks built before 1 March 1987. Members also note that industrial buildings and domestic buildings of less than three storeys are not within the scope of the Bill.

9. Regarding the implementation of the Bill, members note that, as a priority, the Administration will undertake a 10-year programme comprising two phases to require owners or occupiers of composite buildings to upgrade the fire service installations and the fire safety construction in their buildings. About 5 000 pre-1973 composite buildings and some 4 000 composite buildings built between

1973 and 1987 would be dealt with in the first six years and the remaining four years respectively. Upon completion of the improvement programme for composite buildings, about 3 000 pre-1987 domestic buildings would be dealt with, with priority given to the pre-1973 buildings and making reference to similar fire safety requirements for the domestic parts of composite buildings.

#### Difficulties in complying with the fire safety requirements

10. Under the Bill, owners and occupiers of composite and domestic buildings are required to comply with the following fire safety measures -

- (a) Owners of non-domestic parts of composite buildings are required to comply with the fire safety measures specified in Schedule 1 to the Bill. They will have to provide or improve fire service installations and equipment in their buildings such as an automatic sprinkler system, a fire hydrant and hose reel system, a manual fire alarm system, emergency lighting within the common areas, an automatic cut-off device for the mechanical ventilating system. As for fire safety construction requirements, owners will have to improve the exit routes, fireman's access and fire resisting construction;
- (b) Owners of domestic buildings and owners of domestic parts of composite buildings are required to comply with the fire safety measures as specified in Schedule 2 to the Bill. They are required to provide or improve a fire hydrant and hose reel system, a manual fire alarm system and emergency lighting within the common areas. As for fire safety construction requirement, owners will have to protect staircases with separating walls of fire resisting construction, improve the exit routes and provide fire doors; and
- (c) Occupiers of non-domestic parts of composite buildings are required to comply with the fire safety measures specified in Schedule 3 to the Bill. They will have to provide emergency lighting within the area they occupied and an automatic cut-off device for the mechanical ventilating system.

If an owner or occupier fails to comply with the specified requirements, the enforcement authorities may serve on the owner or the occupier a fire safety direction. An owner or occupier who, without reasonable excuse, fails to comply with the direction is guilty of an offence and is liable on conviction to a fine at level 4, i.e. \$25,000 and a further daily fine of \$2,500 if the offence continues.

11. Members and the deputations have expressed concern about the difficulties for owners of these buildings to fully comply with the fire safety measures in the Bill. They have pointed out that as some of the buildings

covered by the Bill are of old designs, owners would have practical difficulties in complying with some of the fire safety measures because of the physical constraints and/or structural problems of their buildings. They have also expressed concern about the financial difficulties for some owners in complying with the fire safety requirements.

12. The Administration has responded that it is aware of the practical difficulties for some building owners to comply with some of the proposed fire safety requirements. FSD and BD will adopt a flexible and pragmatic approach in handling cases where owners encounter practical difficulties in complying with the fire safety standards.

13. The Administration has explained that owners who have genuine difficulties in following the requirements may propose alternative measures which can achieve the equivalent fire protection standards for FSD/BD's consideration. For instance, if an authorised person or a registered engineer certified that the rooftop of the building concerned cannot support a standard fire service water tank due to structural problems, and no alternative place is available for such installation, FSD will consider accepting a water tank of smaller capacity. Where justified, consideration will be given to waiving the installation of a water tank if firemen can still rely on the water supply from the town's main in the vicinity.

14. Regarding the financial difficulties encountered by some owners, the Administration has advised that affected owners can apply for a loan from the new Building Safety Loan Scheme (the Loan Scheme) launched by BD in July 2001. The repayment terms of a loan are normally 36 months at a no-gain-no-loss rate of interest. However, for those owners in hardship, e.g. the elderly and people with very low income, they may be given the flexibility to repay at no interest over an extended period up to 72 months, or defer repayment until the transfer of the property.

#### Exemptions in respect of buildings with lower fire risks

15. Some members have asked whether consideration could be given to exempting owners of buildings of several storeys and with few units from the Bill.

16. The Administration has advised that from a fire protection point of view, it cannot categorically say that the risk inherent in one kind of buildings is lower than another. Many factors including the intended use, type of occupancy, means of escape provisions, provision and maintenance of fire services installations, building height, size and construction, etc. have to be taken into account in assessing the level of fire risk. The fire risk of a particular building can therefore only be determined on its individual circumstances.

17. The Administration has stressed that a flexible and pragmatic approach will be undertaken by the enforcement authorities. For instance, owners of domestic parts of composite buildings and domestic buildings of not more than six storeys high may be waived from installing a fire hydrant in their buildings, as firemen can lay flexible fire fighting hoses along the staircases within a very short time after arrival. The provision of portable fire extinguishers may be accepted as an alternative measure if space is not available in the common areas for the installation of standard or even reduced sized hose reel drum.

#### Guidelines for exemption of certain fire safety requirements

18. Members have suggested that the circumstances under which owners or occupiers may be exempted from complying with certain fire safety requirements be specified in the Bill or in guidelines issued by the enforcement authorities.

19. The Administration has explained that the enforcement authorities will exercise discretion in determining what relaxation or even exemptions may be granted having regard to the particular circumstances of each case. In the view of the Administration, it will not be practical or appropriate to detail and exhaust all the circumstances under which owners or occupiers may be exempted in the Bill. Such an approach will also lack flexibility, and the Bill may need to be amended from time to time to deal with any new circumstances.

20. The Administration has informed members that FSD and BD will draw up circular letters and guidance notes respectively to keep members of the public, professionals and parties alike posted of the guidelines that they are following in their enforcement and exercise of discretion.

21. Members have discussed the draft circular letter and guidance notes prepared by FSD and BD respectively. In response to members' suggestions, the Administration has revised the draft circular letter and guidance notes. The Administration has informed members that FSD and BD will update the circular letter and guidance notes in the light of the implementation experience gained and new circumstances arising.

#### Lack of Owners' Corporations to co-ordinate improvement works

22. Members have expressed concern that not all private buildings covered by the Bill have Owners' Corporations (OCs) to co-ordinate the improvement works in the common parts of the buildings as required under the Bill. Some members are also concerned that insufficient support has been provided to help building owners and OCs in managing their buildings. These members have urged the Administration to step up efforts in this regard.

23. The Administration has advised that every effort is being made to improve building management. The Home Affairs Department (HAD), through

its liaison networks in various districts, makes proactive efforts to encourage, advise and assist owners to form OCs under the Building Management Ordinance (BMO) to undertake management of their own buildings. Apart from encouraging owners to form OCs, FSD and BD will, if necessary, arrange and attend forums for owners and occupiers to explain the improvement requirements and the assistance available to them, and will make proactive efforts to help owners and occupiers to comply with the statutory directions.

24. The Administration has also advised that the Comprehensive Strategy for Building Safety and Timely Maintenance undertaken by a Task Force under the Planning and Lands Bureau should also help owners and occupiers in complying with the upgraded fire safety standards.

25. Regarding the support and services provided by HAD, the Administration has advised that starting from 2001-02, HAD has secured extra resources, equivalent to \$43.9 million full-year provision, for employing additional staff to provide more comprehensive and professional service to owners and OCs. At the headquarters level, a new dedicated Building Management Division, has already been set up in June 2001 to provide better support for the 18 District Offices in handling building management matters. At the district level, a professional District Building Management Liaison Team will be set up in each of the 18 districts to provide outreaching support to owners and OCs. They will also assist FSD and BD to implement building maintenance and fire safety improvements in buildings.

Delay of fire safety improvement works in the common parts of a building caused by missing or irresponsible owners

26. Members are concerned that even if a building has an OC, fire safety improvement works in the common parts of a building could still be delayed if some owners refuse or fail to pay their shares of the costs incurred. Some members have asked the Administration to consider undertaking the required upgrading fire safety works and recover the costs thereof from the irresponsible owners concerned. These members have pointed out that BD presently also carries out remedial works for owners and occupiers of buildings under the Buildings Ordinance.

27. The Administration considers it not appropriate for FSD/BD to undertake the fire safety improvement works for building owners. The Administration has explained 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.

28. The Administration also does not consider it appropriate, as a matter of principle, for the Bill to provide for such default power to be exercised by the enforcement authorities in case of non-compliance. The Administration has pointed out that while the works required under the Buildings Ordinance are to effect reinstatement of the building plans, to implement the improvement measures specified in a fire safety direction, it is sometimes 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.

29. The Administration has also pointed out that as 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. Furthermore, the implementation of the idea of FSD/BD undertaking fire safety improvement works 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 section 16 of BMO which stipulates that all statutory orders should be served on OCs and defeat the primary objective of having the OC, acting on behalf of the owners, co-ordinate the works required.

30. The Administration has informed members that HAB has formulated proposals to amend the BMO to empower OCs to borrow from the Loan Scheme, for the purpose of complying with statutory fire safety or building safety improvement directions or statutory orders, an amount equivalent to the costs which should be borne by the missing owners and/or owners who refuse to pay their share of the improvement costs as determined by a resolution which is binding on all building owners. In borrowing money from the Loan Scheme, the OC would be acting as an agent on behalf of those missing or irresponsible owners.

31. The Administration has also informed members that under the proposals, the Director of Buildings will be empowered to register a charge upon the property titles of those missing and irresponsible owners as a form of security for the loan. The Government will have the right to take appropriate measures to recover the loan amount from any one of those owners for whom the OC has borrowed on their behalf. When consulted on 12 April 2002, members of the Panel on Home Affairs generally expressed support for the proposal. HAB is drawing up the necessary legislative amendments and the associated implementation details. It is hoped that the legislative amendments to BMO could be introduced into the Legislative Council (LegCo) next year.

Buildings covered by the Bill which have been included in the urban renewal programme

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32. Members have sought clarification as to whether owners whose buildings have been included in the urban renewal programme will be required to comply

with the upgraded fire safety standards proposed in the Bill.

33. The Administration has explained that FSD and BD will liaise closely with the Urban Renewal Authority regarding the progress of the urban renewal programme, in order to determine how best to upgrade the fire safety measures of a particular private building.

Appeal channel available to aggrieved owners or occupiers

34. Under the Bill, if an owner or occupier of a composite building or an owner of a domestic building fails to comply with the specified requirements, the relevant enforcement authority may serve on the owner or occupier a fire safety direction. If owners or occupiers of the buildings concerned fail to comply with the fire safety direction without reasonable excuse, the relevant enforcement authority may apply to a Magistrate for a compliance order. If these owners or occupiers fail to comply with the compliance order, the relevant enforcement authority may apply to a District Court for a prohibition order prohibiting occupation of the building concerned or part thereof.

35. Members are concerned about the appeal channels available for aggrieved owners or occupiers of the buildings concerned, especially given that a prohibition order may be issued.

36. The Administration has explained that the policy intent of issuing a prohibition order is to prevent occupation of premises which might present substantial fire risks and hence to protect public safety. The enforcement authorities will exercise prudent discretion before applying to the court for a prohibition order. The court will not issue such an order unless it has been proved to be reasonable and necessary in the circumstances, and there could be substantial fire risks if the relevant building or part of that building is occupied.

37. The Administration has informed members that sufficient channels for appeals and communications between FSD/BD and the affected owners/occupiers have been provided for the Bill. For instance, FSD/BD will be happy to discuss with owners/occupiers who may propose viable alternative measures in place of those specified in the fire safety direction, and consider amending the direction as appropriate. Subject to the passage of the Bill, a "Fire Safety Advisory Committee" will be set up to hear problematic cases referred to it by FSD/BD, examine alternative measures proposed by owners/occupiers and render impartial advice. As regards appeals, the applicable owners or occupiers are entitled to be heard on the hearing of an application for a fire safety compliance order made by an enforcement authority. The persons affected may also appeal in accordance with the appeal procedures under the District Court Ordinance in respect of prohibition orders.

Provision of services to owners/occupiers of buildings which have been issued with a prohibition order

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38. Members have asked about the services provided to owners or occupiers who have been issued with a prohibition order.

39. The Administration has advised that in line with the established policy, the Housing Department will provide alternative accommodation to owners or occupiers who are rendered homeless by a prohibition order issued under the Bill until the prohibition order is revoked or discharged. In addition, FSD/BD will continue to provide free consultative services to the affected owners and occupiers in regard to the measures necessary for the discharge or revocation of the prohibition order. FSD/BD will also continue to liaise closely with the affected owners and occupiers and make the best use of the Home Affairs Department (HAD)'s building management services to render assistance to them.

40. The Administration has also pointed out that under clause 8(1)(a)(ii) of the Bill, the enforcement authority may by notice in writing permit any person to occupy the relevant building or part of a building for the purpose of implementing measures for the discharge or revocation of the prohibition order subject to such conditions as may be imposed.

Establishment of a Fire safety Advisory Committee

41. Clause 5(10) of the Bill provides that the relevant enforcement authority may establish a committee consisting of relevant expertise to give advice on the alternate measures proposed by owners of composite or domestic buildings in place of the requirements as specified in the fire safety direction.

42. According to the Administration, an independent advisory committee comprising professionals from the building industry, academics and representatives of the relevant professional bodies will be set up to ensure fair and practical consideration of any alternative fire safety measures as may be proposed by owners.

43. The Administration has explained that in a great number of cases, enforcement of the fire safety directions is straightforward without necessary reference to the advisory committee. The purpose of the committee is to provide impartial advice and assistance to the relevant enforcement authority in difficult cases, and to help determine what alternative measures would be appropriate. The committee will also receive representations, including oral representations as necessary, from the owners of buildings concerned. In the case where the Director of Fire Services or the Director of Buildings does not follow the advice of the committee, he will have to give reasons for his decision. As the committee is not meant to handle complaints from owners of buildings concerned, the Administration is of the view that only cases referred by the enforcement authorities will be considered by the advisory committee.

44. Members have pointed out that if it is the policy intent to establish such an advisory committee to consider cases referred to it by the enforcement authorities and to consider written and/or oral representations from the owners affected, the Administration should clearly spell these out in the Bill. Members have also agreed that only the relevant enforcement authority may refer a case to the advisory committee. Having considered members' views, the Administration has agreed to introduce the relevant amendments.

45. Regarding the composition of the advisory committee, the Administration has agreed to members' suggestions to include members of the public in the committee. Members note that the advisory committee, chaired by the Chief Fire Officer (Fire Safety), will comprise three official members from FSD and BD, and six non-official members. The non-official members include a representative from the Building Services Division of the Hong Kong Institution of Engineers, a representative from the Association of Registered Fire Services Installation Contractors of Hong Kong, a representative from one of the tertiary institutions whose major field of research is in building safety/fire engineering, and three members of the public with an interest in fire safety and building management, one from each of the Hong Kong, Kowloon and New Territories Regions.

46. Given its advisory nature, the Administration considers that it is not appropriate to prescribe the membership in the Bill.

Supervision and certification of fire safety improvement works by registered professional engineers (building services)

47. Ir Dr Raymond HO is of the view that the Bill should specify that fire safety improvement works required of the owners or occupiers under the Bill be supervised and certified by registered professional engineers (building services).

48. The Administration has advised that the control on the types of persons who may undertake or certify fire services installation works to be required by the Bill is already provided for in the subsidiary legislation of the Fire Services Ordinance which is under review. FSD is currently reviewing the present registration scheme for the fire service installation contractors. The working group undertaking review comprises representatives of professional bodies, associations/unions of related trades and relevant government departments, including a representative of Building Services Division of the Hong Kong Institution of Engineers. One concrete recommendation of the review is that the qualification of registered professional engineers (building services) will satisfy the registration of all future classes of registered contractors, with the exception of the class concerning portable equipment.

49. As regards certification, the Administration has advised that regulation 9 of the Fire Service (Installations and Equipment) Regulations requires that a

certificate must be issued by the registered contractor within 14 days after completion of the installation, maintenance, repair or inspection works undertaken by him and the certificate must be signed by a person authorised to do so under regulation 3A of the Fire Service (Installation Contractors) Regulations. The working group is now reviewing the Fire Service (Installations Contractors) Regulations and the Fire Service (Installations and Equipment) Regulations to strengthen the legal framework on the registration and regulation of fire service installation contractors. The engineering profession will continue to be properly consulted during the exercise via the representative of the Hong Kong Institution of Engineers.

Giving of notice to the applicable owner or occupier in advance of applying to the District Court for prohibition order

50. Clause 7(4) provides that an enforcement authority must give at least seven days' notice to the applicable owner or occupier before making an application to the court for a prohibition order. Some members have suggested that the giving of notice in advance of application should be at least 14 days to allow more time for the applicable owner or occupier to sort out matters with the enforcement authorities.

51. The Administration has explained that after the issue of the fire safety directions, FSD/BD will start liaison with the owners/occupiers concerned and provide advice to help them comply with the directions within the specified period. There will be ample time for exchanges between FSD/BD and the owners/occupiers concerned. FSD/BD will resort to court for seeking sanctions only in cases where the owner/occupiers have failed to comply with the directions after the specified period had expired and there is no prospect of compliance.

52. The Administration has stressed that FSD/BD will not apply to the District Court for a prohibition order unless they are satisfied that all the conditions set out in clause 7(6) have been met, including that there could be substantial fire risk if the building is occupied. If an application is considered necessary, there exists an imminent danger that must be tackled as soon as possible. In the worst case, a notice of seven days is the longest that the Administration will allow.

53. The Administration has pointed out that the seven days only represent the shortest time between the giving of the notice and the hearing, not necessarily the time between the giving of the notice and the grant of an order. At the hearing, an owner is always at liberty to seek more time to prepare a response to the application. It is for the court to take a decision having regard to all the circumstances of the case. In the view of the Administration, the seven days notice is appropriate.

54. Members consider that it is necessary to ensure that the affected occupiers will also be informed of the intention of the enforcement authorities to apply for a prohibition order. Having considered members' views, the Administration has agreed to add a provision to require the enforcement authorities to also post notices of the intended application in conspicuous parts of the building affected so as to keep all affected informed.

Owners or occupiers to keep the premises effectively secured against unauthorised entry when the prohibition order is in force

55. Clause 8(1)(b) provides that while a prohibition order is in force, the applicable owner, and if the owner is not the occupier, the occupier must take all practicable steps to ensure any unauthorised entry into their premises. Clause 9 of the Bill provides that any person who contravenes section 8(1) is guilty of an offence is liable on conviction to a fine of \$250,000, and to imprisonment for three years and to a further daily fine of \$25,000 if the offence continues.

56. Members consider that it is not reasonable to place such a responsibility on owners or occupiers, as they no longer live there. As such, they should not be held responsible for unauthorised entry into their premises. Members also consider that the penalty for contravening clause 8(1)(b) is disproportionate to the gravity of the offence.

57. The Administration has explained that the intent of this provision is to ensure that the applicable owners or occupiers will perform the basic duty of securing their premises against unauthorised entry, i.e. locked all the doors and closed all the windows and other openings. To address members' concern, the Administration has agreed to move an amendment to the effect that the owners or occupiers concerned must take practicable steps to ensure that the relevant building is effectively secured against entry by any person other than an authorised officer or a person having a permission by the relevant enforcement authority under clause 8(1)(a)(ii). The Administration has also agreed to move an amendment to provide that the penalty for contravening clause 8(1)(b) would be a fine at level 4, which is currently at \$25,000, and imprisonment for six months.

#### Revocation of prohibition order

58. Clause 13(3) provides that on the hearing of an application for the revocation of a prohibition order, the District Court must revoke the prohibition order if satisfied that the requirements of the relevant fire safety direction or fire safety compliance order, as the case may be, have been complied with. Otherwise it must refuse the application.

59. Members are of the view that the way clause 13(3) is presently drafted will restrict the court to approve or refuse the application on the sole basis of whether the owners or occupiers concerned have complied with the requirements

of the relevant fire safety direction or fire safety compliance order. This is undesirable, as this will prevent the court from considering factors such as unforeseeable difficulties encountered by the owners or occupiers concerned. At the suggestion of members, the Administration has agreed to move an amendment to clause 13(3) to the effect that the court may make such order as it thinks fit.

#### Registration of fire safety compliance order, etc. in the Land Registry

60. Under clause 14(1) of the Bill, the relevant enforcement authority may register a fire safety compliance order or a prohibition order against the land register of the relevant property in the Land Registry, and shall register a revocation of such an order or a certificate of compliance. Clause 14(2) provides that where a corporation has been registered with the Land Registrar under section 8 of the BMO and an order referred to in subsection (1) has been made against the corporation, such an order shall be deemed to have been made against each of the owners of the building individually.

61. Members have expressed concern that prospective buyers may not be aware of the fact that the building in which the units they are interested in buying has failed to comply with certain fire safety requirements proposed in the Bill.

62. The Administration has, at the request of the Bills Committee, consulted The Law Society of Hong Kong on clause 14. The Administration has informed members that the Property Committee of The Law Society of Hong Kong in principle supports the spirit behind clause 14. However, the Property Committee points out that if it is the policy intent to impose an obligation on the enforcement authorities to remove the registration of the compliance or prohibition order, this should be spelt out clearly in the Bill. To better protect the interest of the owners, the Property Committee suggests that a definite period should be fixed for the registration of the removal. Having regard to the views of the Property Committee, the Administration will introduce amendments to improve the drafting to better reflect the policy intent and to specify a maximum period of one month for the registration of the removal.

63. Members are of the view that in the event that an order referred to in clause 14(1) has been issued to OCs, as a matter of good administrative practice, the enforcement authorities should serve a notice as far as possible on all the individual owners concerned. The Administration has agreed that FSD and BD will ensure that this would be done in the implementation of the Bill.

#### Authorised officers to enter and inspect domestic units of a building

64. Members have raised concern that an authorised officer may enter and inspect a domestic building or the part of a composite building intended for domestic purposes without a court warrant as provided in clause 16. Members consider that the authorised officers must give a prior notice in writing to owners

or occupiers of the intended entry.

65. The Administration has explained that the fire safety measures to be complied with by owners of composite buildings in respect of the parts intended for domestic purposes and domestic buildings as required by the Bill are mostly, if not all, related to the common parts of the buildings. It is very unlikely that the enforcement authorities will need to enter a private unit. In case such a need arises and the occupier finds the intended visit not convenient, the enforcement authorities will adopt a flexible approach and schedule a later visit for a mutually convenient time as far as possible. To improve the safeguard, the Administration has agreed to add a provision to the effect that in exercising the power in clause 16(1) and (2), the authorised officers have to give 24 hours' prior notice in writing if the premises they seek to enter are private domestic units of a building.

66. The Administration has confirmed that no criminal sanction would be imposed under clause 18 on the owner or occupier who refuses to let an authorised officer enter his premises without a warrant if he has reasonable excuse to do so. What constitutes reasonable excuse is a matter of fact for the court to decide in an individual case.

#### Liability of members of management committee of owners' corporations

67. Clause 19(1)(a) and (b) provides that if a person convicted of an offence under the Bill is a body corporate, and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director of, or other person concerned in the management of the body, the director or other person so concerned also commits the offence.

68. Members consider that members of the management committee of OC should not be held responsible for negligence in running the OC, having regard to the fact that this is essentially volunteer work and that what constitutes an act of neglect is very wide. Members note that section 101E of the Criminal Procedure Ordinance only stipulates that 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.

69. Having considered members' views, the Administration has agreed to move an amendment to delete the wordings " or was attributable to any neglect on the part of," from clause 19(1)(b) insofar as OCs are concerned.

#### Improvement of staircases

70. Paragraph 2(a)(i) of Schedule 1 to the Bill stipulates that owners of non-domestic parts of composite buildings may be required to improve staircases in terms of width and number in order to improve the means of escape.

71. Members have expressed concern that owners of non-domestic parts of composite buildings may be required to provide additional staircases as a means of escape, and, as a result, would give rise to dispute as to which owner should surrender some areas of his premises to make way for the provision of additional staircases. They have suggested that a mechanism should be put in place to enable the resolution of dispute among owners of non-domestic parts of composite buildings arising from the need to comply with a fire safety requirement of improving staircases in terms of their width and number.

72. The Administration has explained that owners of non-domestic parts of composite buildings will not be required to provide additional staircases as a means of escape if they have not changed the use of the parts of the building concerned from the approved use, and have not carried out any unauthorised building works since the issue of the occupation permit. The question of dispute among owners of non-domestic parts of composite buildings should not arise. In the event of a particular owner of non-domestic part of a composite building has changed the use of his premises and increased the number of occupants enormously, he may be required under Schedule 1 of the Bill to provide additional staircases as means of escape. It is for the owner himself to sort out how best to meet the requirement.

73. The Administration has further explained that in case the owner has encountered difficulties, a number of possible solutions may be available. For example, the owner may change or restrict the use of his premises to reduce the occupancy and fire load or undertake other improvements, such as re-arranging the layout, so that the existing staircases can meet the requirement for means of escape. If the owner would like to install additional staircases as required, but the installation would not be possible by solely making use of his premises, he could seek to negotiate with other owners to buy the necessary space for access. The pursuit of any of the possible solutions is entirely a matter of private decision on the part of the particular owner himself. It is therefore not appropriate for the Government to interfere with it or his business negotiations with other owners.

#### Commencement date of the Bill

74. Clause 1(2) provides that the Bill shall come into operation on a day to be appointed by the Secretary for Security (S for S). Members consider that the Bill should not come into operation before the amendments to BMO to empower OCs to borrow from the Loan Scheme have been enacted. Having regard to the wide implications on owners and occupiers of the buildings covered by the Bill and the amendments to BMO have not been made, members are of the view that the Administration should first consult LegCo before appointing a date for bringing the Bill into effect. Some members have suggested that the commencement date of the Bill should be made by resolution of LegCo.

75. The Administration has assured members that it will take into account all circumstances relevant to the implementation of the Bill before proposing a suitable commencement date. The Administration has confirmed that it has no intention to bring the Bill into effect before necessary amendments have been made to BMO to empower OCs to borrow from the Loan Scheme to cover the shares of the costs that should be borne by the missing or irresponsible owners.

76. In terms of procedures, the Administration has assured members that, after considering all the relevant circumstances and coming to a view on the commencement date, it will prepare a paper for the Panel on Security setting out its views and proposal for bringing the Bill into force. Subject to such consultation, S for S may then, by notice in the Gazette, appoint a day for the Bill to come into operation.

77. In the view of the Administration, there is no need to amend clause 1(2) to the effect that the commencement date of the Bill should be made by resolution of LegCo. This is because the commencement notice is already subsidiary legislation subject to the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). A subcommittee may be formed to examine the commencement notice, if necessary. Members, if considered necessary, may also by resolution amend the commencement notice or repeal it. The Administration has also undertaken not to appoint a commencement date that would fall within the maximum vetting period of 49 days, i.e. 28 days plus 21 days if extend by resolution, or such longer time as calculated in accordance with section 34 of Cap. 1.

78. The Administration has undertaken to state the aforesaid assurance in S for S 's speech during the resumption of Second Reading debate on the Bill.

79. Having considered the undertakings by the Administration, most members consider that the commencement clause proposed in the Bill is acceptable. Hon James TO however feels strongly that clause 1(2) should be amended so that the commencement date of the Bill would be made by resolution of LegCo. He is worried that in the case where there is no majority support of Members, the commencement notice in respect of the Bill could still take effect. He explained that as provided in Rule 46(2) of the Rules of Procedure, as long as the Administration could obtain sufficient votes in any one of the two groups of Members present, it would not be possible for Member to successfully amend the commencement notice.

80. To address Hon James TO's concern, the Administration has undertaken that it will not bring the Bill into operation without first obtaining the support of a majority of members of the Panel on Security. Given the aforesaid, members have accepted the commencement arrangement as provided for in the Bill.

### Publicity of the Bill

81. Members have urged the Administration to step up efforts to publicise the requirements in the Bill, given the wide implications on owners and occupiers.

82. The Administration has informed members that to ensure that building owners are apprised of their obligations to improve the fire safety standards of their buildings, FSD and BD have briefed the 18 District Fire Safety Committees on the Bill so that the latter can better help the public understand the requirements and the implementation plan during their contacts with them. After the passage of the Bill and before its implementation, FSD and BD will widely publicise the requirements and the details of the fire safety measures through various channels. These will include television and radio announcements of public interest; organisation of seminars for OCs, mutual aid committees and residents associations through HAD, publication and distribution of promotional leaflets, and provision of a telephone hotline, etc.

### **Committee Stage amendments**

83. The Administration has confirmed that the reference of "owners of the buildings" will cover "owners of part of the buildings". It is therefore not necessary to make reference to "owners of part of a building" in the Bill. The relevant amendments will be made by the Administration.

84. Apart from the Committee Stage amendments in paragraphs 23, 44, 57, 59, 62, 65, 67, 69 and 83 above, the Administration has agreed to move other minor and technical amendments to the Bill. A copy of the draft CSAs to be moved by the Administration is in **Appendix II**.

### **Follow-up actions by the Administration**

85. The Administration has made the following undertakings -

- (a) The Administration will not bring the Bill into effect before necessary amendments have been made to BMO to empower OCs to borrow from the Loan Scheme to cover the shares of the costs that should be borne by the missing or irresponsible owners (paragraph 75 above refers);
- (b) The Administration will prepare a paper for the Panel on Security setting out its views and proposal for bringing the Bill into force. Subject to such consultation, it will not bring the Bill into operation without first obtaining the support of a majority of members of the Panel on Security (paragraphs 76 and 80 above refers); and

- (c) The Administration will not appoint a commencement date that would fall within the maximum vetting period of 49 days, or such longer time as calculated accordance with section of Cap. 1 (paragraph 77 above refers).

### **Recommendation**

86. The Bills Committee recommends that subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed at the Council meeting on 3 July 2002.

### **Advice sought**

87. Members are invited to note the deliberations of the Bills Committee and support the recommendation of the Bills Committee at paragraph 86 above.

Council Business Division 2  
Legislative Council Secretariat  
18 June 2002

**Bills Committee on  
Fire Safety (Buildings) Bill**

**Membership list**

<b>Chairman</b>	Hon IP Kwok-him, JP
<b>Members</b>	Hon Cyd HO Sau-lan Ir Dr Hon Raymond HO Chung-tai, JP Hon James TO Kun-sun Hon CHAN Yuen-han, JP Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP Hon CHOY So-yuk Hon Abraham SHEK Lai-him, JP Hon Frederick FUNG Kin-kee Hon LAU Ping-cheung Hon Audrey EU Yuet-mee, SC, JP

(Total : 11 Members)

<b>Clerk</b>	Mrs Sharon TONG LEE Yin-ping
<b>Legal Adviser</b>	Miss Anita HO
<b>Date</b>	3 July 2001

FIRE SAFETY (BUILDINGS) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
5(1) and (2)	By deleting "技術和工藝" and substituting "科技".
5(4)	By deleting "or part of a building".
5(9)	(a) By deleting "of the building or part of a building" where it first appears. (b) In paragraph (a), by deleting "該建築物或該" and substituting "有關的建築物或建築物的". (c) In paragraph (b), by deleting "技術和工藝" and substituting "科技".
5(10)	(a) By deleting "may establish a committee" and substituting "must establish a committee (referred to in this section as "advisory committee")". (b) By deleting "技術和工藝" and substituting "科技".

5

By adding -

"(11) Only the relevant enforcement authority may refer a case to the advisory committee for advice.

(12) The advisory committee may, before giving advice on any case referred to it, receive representations from an owner of a building to whom the case is related.

(13) Where advice has been given by the advisory committee, the relevant enforcement authority must take into consideration such advice before determining under subsection (1) or (2) what, if any, measures in place of any of the requirements in Schedule 1 or 2, as the case may be, would be appropriate."

6(1)

By deleting "或某綜合用途建築物的某部分".

7

By adding -

"(4A) As soon as practicable after a notice is given under subsection (4), the relevant enforcement authority must post a copy of such notice in a conspicuous place -

(a) inside the relevant building or part of a building; or

(b) at or in the immediate vicinity  
of each entrance to the  
relevant building or part of a  
building.".

8(1)(b) By deleting everything after "that" and  
substituting "the relevant building or part of a  
building is effectively secured against entry by  
any person other than an authorized officer or a  
person having a permission under paragraph  
(a)(ii).".

9 (a) By renumbering the clause as clause 9(1).  
(b) In subclause (1), by adding "(a)(i)" after  
"8(1)".  
(c) By adding -

"(2) A person who, without  
reasonable excuse, contravenes section  
8(1)(b) is guilty of an offence and is  
liable on conviction to a fine at level 4  
and to imprisonment for 6 months.".

12(1) By deleting "thereof" and substituting "concerned".

12(6) By deleting "of the building or part of a

building".

13(3) By deleting everything after "Court" and substituting "may make any order as it thinks fit."

14 (a) In the heading, by deleting "**notice of**".  
(b) In subclause (1), by deleting everything after "Registry" and substituting a full stop.  
(c) By adding -

"(1A) Where -

(a) a fire safety compliance order or variance thereof is registered under subsection (1) and subsequently -

(i) the order is revoked under section 6(4); or

(ii) the relevant enforcement authority has, by a written notice referred to in section

6(6), informed  
the magistrate's  
clerk that the  
order has been  
complied with;  
or

(b) a prohibition order is  
registered under  
subsection (1) and  
subsequently -

(i) a certificate of  
compliance has  
been issued  
under section  
12(3); or

(ii) the order is -

(A) discharged  
under  
section  
12(5); or

(B) revoked  
under  
section  
13(3),

the relevant enforcement authority must

cause to be registered by memorial the revocation, notice, certificate of compliance or discharge, as the case may be, against the land register of the relevant property in the Land Registry as soon as practicable and in any event not later than one month after the date of the revocation, notice, certificate of compliance or discharge.".

16

By adding -

"(2A) An authorized officer must not enter under subsection (1) or (2) any part of a building -

(a) intended for domestic purposes;  
and

(b) in respect of which the occupier of that part of the building has an exclusive right of use and enjoyment,

unless no less than 24 hours' notice in writing of an intended entry by such officer has been given to that occupier.".

17(1)

By deleting "or part of such a building".

19(1)(a) By adding "other than a corporation registered under section 8 of the Building Management Ordinance (Cap. 344)" after "corporate".

19 By adding -

"(1A) If a corporation registered under section 8 of the Building Management Ordinance (Cap. 344) is convicted of an offence under this Ordinance, and it is proved that the offence was committed with the consent or connivance of a person concerned in the management of the corporation, that person also commits the offence."

Schedule 1 Within the square brackets, by deleting "& (10)" and substituting ", (10) & (13)".

Schedule 1, section 2(b) (a) In subparagraph (i), by adding ", up to the standard of fireman's lifts" after "lifts".

(b) In subparagraph (ii), by deleting "for" and substituting "of".

Schedule 2 Within the square brackets, by deleting "& (10)" and substituting ", (10) & (13)".

