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25 January 2007

Miss Flora Tai
Clerk to Bills Committee
Bills Committee on
Building Management (Amendment) Bill 2005
Legislative Council Building
Jackson Road
Central
Hong Kong

Dear Flora,

Bills Committee on Building Management (Amendment) Bill 2005

**Matters Arising from Meeting on 7 December 2006
Borrowing Power of Owners' Corporations**

At the meeting of the Bills Committee on 7 December 2006, Members discussed and agreed to the Administration's recommendation to withdraw the proposal of empowering owners' corporations (OCs) to borrow from the Government on behalf of defaulting property owners to carry out statutory repair works, having regard to the many problems associated with the proposal and the availability of other financial assistance schemes for OCs and property owners. At the same time, Members noted that the withdrawal of the borrowing power proposal would have implication on the commencement of the Fire Safety (Buildings) Ordinance (Cap.572) and that the Administration would

shortly consult the Legislative Council Panel on Security on the matter. Members requested the Administration to relay to the Bills Committee the view of the Panel on Security.

We are pleased to inform the Bills Committee that the Administration has consulted the Panel on Security at its meeting on 25 January 2007. The paper submitted to the Panel is attached at the Annex for Members' reference. The Panel on Security noted the Administration's decision to withdraw the borrowing power proposal from the Building Management (Amendment) Bill 2005. Having regard to the various facilitation measures which will be introduced to assist OCs and property owners to comply with the new fire safety requirements, the Panel has no objection to the Administration's proposal to commence the Fire Safety (Buildings) Ordinance on 1 July 2007 so as to improve the fire safety of pre-1987 composite and domestic buildings.

I should be grateful if you would convey the above to Members of the Bills Committee. If you need further information, please do not hesitate to let me know.

Yours Sincerely,



(Mrs Angelina Cheung)
for Director of Home Affairs

w/attachment

cc S for S (Attn : Ms Carol Yuen) - w/o encl

For Discussion
on 25 January 2007

Legislative Council Panel on Security

Commencement of the Fire Safety (Buildings) Ordinance

PURPOSE

This paper sets out our proposal, and seeks Members' agreement, to commence the Fire Safety (Buildings) Ordinance [FS(B)O] (Cap. 572).

BACKGROUND

2. The Fire Safety (Buildings) Bill was passed by the Legislative Council in 2002. The Bill sought to improve the fire safety of pre-1987 composite and domestic buildings by mandating the current minimum standards required of building owners and/or occupiers.

3. In the course of examining the Bill, Members of the Bills Committee expressed concern about the ways to ensure compliance by all owners in multi-storey buildings with the relevant statutory directions or orders under the Bill. At that time, Members of the Bills Committee and the Administration considered that the proposal of empowering owners' corporations (OCs) to borrow from the Government on behalf of the missing or irresponsible owners ("the borrowing power proposal"), which was then being pursued by the Home Affairs Department (HAD), might help to address the issue. Therefore, during the passage of the Bill, we agreed with the Legislative Council that we would not commence the FS(B)O until amendments regarding the borrowing power proposal had been made to the Building Management Ordinance [BMO] (Cap. 344), and support of a majority of Members of the Panel on Security for doing so had been obtained.

BUILDING MANAGEMENT (AMENDMENT) BILL 2005

4. The Building Management (Amendment) Bill 2005 [BM(A)B2005] was introduced into the Legislative Council on 27 April 2005, and a Bills Committee was set up to examine the Bill.

5. Having discussed the matter further with Government departments concerned and considered the results of public consultation, HAD decided, and the Bills Committee on the BM(A)B 2005 agreed at its meeting of 7 December 2006, that the borrowing power proposal should not be pursued.¹ This is because the proposal, which forces the owners concerned to become borrowers and if they want to object, forces them into court,² could be seen as a violation of human rights. Besides, in order to strike a fair balance between the timely completion of statutory works and the interests of individual owners (who may have genuine reasons for defaulting payment of their share), an appeal mechanism³ has to be built into the borrowing power proposal. For those owners who deliberately refuse to pay (whether their reasons are valid or not), the appeal mechanism will enable them to delay the whole process for a very long period of time. The original aim of the proposal, which is to facilitate the timely compliance with statutory repair orders by OCs, could not be met. On the other hand, there are already a number of provisions under the BMO which assist OCs to collect payment from owners. There are also numerous precedents of OCs successfully using these channels to deal with defaulting owners. More importantly, there were not many financial assistance schemes available for OCs and property owners in carrying out repair works when the borrowing power proposal was first put forward. Given the above reasons, the Administration is of the view that it is no longer appropriate nor necessary to pursue the borrowing power proposal.

¹ “*Way Forward on the Proposal about Borrowing Power of Owners’ Corporations*” (LC Paper No. CB(2)551/06-07(02))

² Under the borrowing power proposal, if the owners concerned want to object to the OC’s decision to borrow from the Government on their behalf, they must submit an appeal to the Lands Tribunal within a specified time limit.

³ Under the borrowing power proposal, if an appeal against the determination of the respective share of cost of works to be contributed is filed with the Lands Tribunal within the prescribed period of time, the OC will have to withhold the application for the loan to the Government pending the Lands Tribunal’s judgment.

6. At the same meeting, Members were informed of the Administration's suggestion to delink the borrowing power proposal from the commencement of the FS(B)O. Members were also briefed on the measures to be adopted by the Administration to facilitate the commencement of the Ordinance as set out in paragraphs 7 to 16 below. In gist, these measures include a phased implementation timetable based on the age of buildings, a flexible and pragmatic approach in enforcing the Ordinance, and the various financial and technical assistance schemes available for owners in carrying out the required works under the Ordinance. Members in general agreed that the withdrawal of the borrowing power proposal should not affect the commencement of the FS(B)O as the Administration would adopt a series of measures in facilitating the commencement of the Ordinance.

FACILITATION MEASURES FOR THE COMMENCEMENT OF FS(B)O

Phased Implementation

7. The Fire Services Department (FSD) and the Buildings Department (BD) propose to implement the FS(B)O in phases as follows -

Composite Buildings

8. Given the less satisfactory fire safety condition in composite buildings and in view of the higher fire load, mixed occupancies and large number of visitors in the non-domestic (commercial) parts of composite buildings, we plan to implement the FS(B)O in pre-1987 composite buildings in the first instance with a target for completion in 10 years. In the first six years, we will deal with about 5,000 pre-1973 private composite buildings. In the remaining four years, we will cover some 4,000 private composite buildings built between 1973 and 1987.

Domestic Buildings

9. Upon completion of the improvement programme for composite buildings, we will deal with about 3,000 pre-1987 domestic private buildings,

with priority given to the pre-1973 buildings, and making reference to similar fire safety requirements for the domestic parts of composite buildings. Domestic buildings with not more than three storeys high will be exempted.

Flexible and Pragmatic Implementation

10. We are aware of the practical difficulties for some building owners to comply with some of the fire safety requirements. These difficulties may arise from the physical constraints and/or structural problems of the buildings, as well as the lack of sufficient financial means despite the financial assistance mentioned in paragraphs 12 to 14 below. Without compromising fire safety, FSD and BD will adopt a flexible and pragmatic approach in handling these cases. Some examples are given below :

- (a) Under the FS(B)O, FSD and BD are empowered to serve fire safety directions on owners and occupiers, directing them to improve the fire safety measures of their premises/buildings within a specified period. The compliance period could be extended upon application by owners/occupiers for Extensions of Time if owners/occupiers have genuine difficulties. Prosecution will only be considered if, without reasonable excuse, the owners/occupiers fail to comply with the directions.

- (b) In implementing the FS(B)O, FSD and BD will exercise flexibility in granting relaxations or even exemptions of some requirements having regard to the particular circumstances of each case. For instance, if an authorized person or a registered structural engineer certified that the rooftop of the building cannot support a standard fire service water tank due to structural problems, FSD will consider accepting a water tank of smaller capacity. Where justified, FSD will even consider waiving the installation of a water tank if firemen can rely on the water supply from the town's main in the vicinity. As for the fire safety construction, an example will be if the door of a domestic flat opens into the corridor and not directly into the escape staircase, BD will consider exempting the upgrading requirement of the door.

- (c) For those buildings which have been included in the urban renewal programme with a timetable for completion, FSD and BD will only require the minimum fire safety standard, such as the provision of portable fire extinguishers and the removal of imminent fire hazards.

11. Such flexible and pragmatic implementation approach has been proven to be effective in the implementation of the Fire Services (Commercial Premises) Ordinance [FS(CP)O] (Cap. 502) and its Amendment Ordinance. Since their commencement in 1997 and 1998, about 46% of prescribed commercial premises (PCP)⁴ and 39% of specified commercial buildings (SCB)⁵ have complied with the fire safety directions issued by FSD under the Ordinance. In terms of the fire safety directions issued by BD, about 61% of PCP and 26% of SCB have complied with the directions. So far, only 0.14% and 0.34% of the PCP and SCB owners/occupiers have been considered as failing to comply with the directions without reasonable excuse and have been prosecuted by FSD. For BD, only 0.28% and 0.46% of the PCP and SCB owners/occupiers have been prosecuted.

Financial and Technical Assistance

Financial Assistance

12. Various financial assistance schemes are now in place to help alleviate possible financial problems that some building owners may encounter. The Building Safety Loan Scheme, administered by the Director of Buildings, provides owners with loans at a no-gain-no-loss interest rate to carry out statutory works under the FS(B)O. Elderly and/or disabled singletons/couples aged 60 and above eligible for grant of interest-free loan may even apply to attend the repayment for an unspecified period until the transfer of title of the property or death of the borrower, whichever is the earlier.

⁴ PCP refer to commercial premises with a total floor area exceeding 230 square metres in which businesses, which *include* banks, off-course betting centres, jewellery or goldsmith shops, supermarkets, departmental stores and shopping arcades, are being carried out.

⁵ SCB refer to pre-1987 commercial buildings.

13. Other than the Building Safety Loan Scheme operated by the Government, the Hong Kong Housing Society (HKHS) also provides owners with loans and grants to carry out building repair and maintenance work, including statutory works under the FS(B)O. Owners could apply for interest-free loans from the HKHS's Home Renovation Loan Scheme (HRLS) up to \$50,000. The HRLS was originally designed to help flat owners to carry out flat interior renovation on safety and hygiene items. With a view to facilitating owners to comply with the FS(B)O, the HKHS has agreed to extend the coverage of the loan to statutory works carried out in common parts of the buildings under the FS(B)O. Subsidies amounting to 50% of the loan or \$10,000, whichever is the lower, would also be granted to the loan applicant aged 60 or above who is the recipient of Comprehensive Social Security Assistance or medical fee waiver.

14. In addition, the HKHS has operated the Building Maintenance Incentive Scheme (BMIS), under which owners could obtain grants of not exceeding 20% of the total project cost or \$3,000 per residential unit, whichever is the lower. To facilitate owners to carry out statutory works under the FS(B)O, the HKHS has also agreed to consider, on individual merits, to relax the eligibility criteria of the BMIS, and provide owners with grant even if their estates/buildings comprise more than 200 residential units, as well as for the carrying out of fire safety upgrading works in the private areas of the buildings, such as the installation of fire resisting doors to flats.

Technical Assistance

15. Apart from financial assistance, technical support for owners to carry out the statutory works under the FS(B)O will also be provided. Experience in implementing the FS(CP)O shows that the existence of OCs could help coordinate the statutory works in the common parts of the buildings. Therefore, every effort is being made to improve building management. HAD, through its liaison networks in various districts, makes proactive efforts to encourage, advise and assist owners to form OCs under the BMO. The HKHS also provides advice together with a financial grant of up to \$3,000 to encourage owners of private buildings to form OCs. With the concerted efforts of the Government, non governmental organizations and the public, about 15,000 private buildings have already had OCs. We will continue to assist owners to form OCs to facilitate the implementation of the FS(B)O.

16. Technical advice has and will also be given to owners to facilitate them to comply with the FS(B)O. Although the FS(B)O has not yet commenced, FSD and BD have inspected and issued advisory directions to about 900 composite buildings each year to advise on the enactment of the FS(B)O and the respective improvement works that would be required on each of them under the Ordinance under a Fallback Plan since 2004. FSD and BD have also arranged forums and attended seminars for owners and occupiers to explain the new requirements and the assistance available to them, and to provide technical advice. The HKHS, under the Building Management and Maintenance Scheme, also provides “one-stop” free technical advice to assist owners to comply with relevant Government orders, including engaging surveyors firm to help owners to make a basic cost estimate of carrying out the statutory works.

PREPARATION FOR THE COMMENCEMENT OF FS(B)O

17. As mentioned in paragraph 16 above, FSD and BD have advised owners and occupiers of the target buildings on the respective improvement works that would be required on each of them under the FS(B)O and the assistance available to them through inspections, issue of advisory letters, and participation in forums and seminars. These not only help publicising the FS(B)O, but also provide opportunities to train up frontline staff for the implementation of the Ordinance. In addition, FSD and BD have been identifying the first lot of target buildings, i.e. pre-1973 composite buildings, that are without OCs so that HAD can start offering assistance to the owners concerned to form OCs.

18. To further prepare the public and the professionals concerned for the commencement of the FS(B)O, FSD and BD are planning to step up publicity through producing television and radio announcements in the public interest (APIs), publishing posters and leaflets, organising roving exhibitions, arranging forums with the 18 District Fire Safety Committees and owners/occupiers, meeting with professional institutes such as the Association of Registered Fire Service Installation Contractors of Hong Kong Ltd., etc. These publicity measures could help the public and the professionals concerned to understand the requirements under the FS(B)O.

WAY FORWARD

19. Subject to Member's agreement, we will appoint 1 July 2007 as the commencement date for the FS(B)O by notice in the Gazette in early May 2007.

Security Bureau
18 January 2007