

Bills Committee on Buildings Legislation (Amendment) Bill 2011

**Administration's Response to Follow-up Issues
of the Meeting held on 16 April 2012**

This note sets out the Administration's response to the issues to be followed up from the last meeting of the Bills Committee on 16 April 2012 (the last meeting).

Warrant Proposal

2. At the last meeting, Members asked about the procedures of the Buildings Department (BD) in following up building safety-related complaints, and considered that the BD's investigation into the complaints should avoid creating nuisance to property owners or occupants as far as possible. As a general practice, upon receipt of a report or complaint on suspected unauthorised building works (UBWs) or building safety problem, the BD staff will consider the information provided by the informant/complainant, seek clarification from the informant/complainant as necessary, carry out a desk-top investigation with reference to file records kept by the Department and decide whether a site inspection is necessary. Generally speaking, BD will not conduct site inspections for non-specific or block reports covering numerous buildings without specific details. A recommendation made by the case officer for not conducting a site inspection in response to a report/complaint will need to be endorsed by a senior professional officer of the Department. Reports constituting a challenge against or a request for re-consideration of an earlier decision by a senior professional officer will have to be endorsed by a directorate officer of the Department.

3. In cases where inspection is confirmed to be required, depending on the subject matter of the report, inspection from the exterior and common parts of the building concerned will usually serve the purpose of the investigation in most cases and no attempt will be made to enter the private premises. In cases where entry to the interior of private premises is necessary such as the investigation of UBWs associated with sub-division of flats, internal UBWs that may affect third parties or unauthorised change in use, the BD staff will endeavour to seek the cooperation of the unit owner,

occupants or the building management office for access. If no one answers the door, BD staff will leave a contact slip at the concerned premises requesting the owner/occupant to contact the BD for making arrangement for access. Efforts will also be made to arrange inspection on different dates and during different times of the day to suit the owner/occupant as far as possible. BD may also issue letters to the owner seeking his/her cooperation to grant access. Should the situation warrant invocation of the power under the existing section 22 of the Buildings Ordinance (BO) to break into the premises or application to the Court for a warrant as proposed in Clause 3 of the Bill, endorsement by directorate officers will be required.

4. We appreciate Members' concern over private property rights and the need to minimise nuisance to property owners or occupants. Apart from the above-mentioned procedure, as one of the safeguards in the warrant proposal, the Building Authority (BA) could make an application to the Court for warrant for entry into premises only when there are grounds of reasonable suspicion of one of the circumstances as stipulated in the new section 22(1B)(a), while satisfying other requirements under this new section at the same time.

Surcharge on defaulted works

5. Under the Bill, we propose that a surcharge of not exceeding 20% on the cost incurred by BD be imposed on an owner in default of any BD's statutory orders or notices. The BA will have a discretionary power to determine the amount of surcharge, which is capped at 20%, having regard to the circumstances of each case. At the last meeting, Members requested the Administration to provide information on how the discretion would be exercised.

6. The discretion to determine the amount of surcharge will be made by directorate officers in the BD under the delegated authority of the BA. The following principles, which will be clearly laid down in BD's internal office manuals, will be adopted in imposing the surcharge -

- (a) for the carrying out of emergency works where no order or notice under the BO has been issued, no surcharge would be imposed;
- (b) in the case of default of a statutory order or notice, the BD would

engage the service of an outsourced consultant and/or the government contractor to carry out the required works. If the owner chooses to make arrangement for the works before the commencement of the required works by the BD and eventually the owner has complied with the order or notice, no surcharge would be imposed;

- (c) owners who have proved that genuine practical difficulties were encountered in complying with the order or notice due to old age, infirmity, mental illness, tenant's refusal to grant access, obstruction of access to common parts of a building by uncooperative persons, and unsuccessful attempt in organising the required works in the common parts of a building, etc. a surcharge of 10% on the cost of the required works would be imposed; and
- (d) for all other cases, a surcharge of 20% would be imposed.

Criminal penalty against Persons who Refuse to Share Cost of Works by Owners' Corporation for Compliance with Statutory Orders or Notices

7. Under the Bill, it is an offence if a person, without reasonable excuse, refuses to pay the relevant share of the cost of inspection, investigation, works or other action for the common parts of the building that are required to be carried out by the Owners' Corporation (OC) for compliance with any order or notice issued under the BO. Offenders are liable on conviction to a fine at Level 4 (i.e. a maximum fine of \$25,000). At the last meeting, Members asked the Administration to provide information on the consequences for an owner who fails to pay the fine, and whether such outstanding fine could be registered as an encumbrance against his property title at the Land Registry.

8. As the above offence is summary in nature, section 51 of the Magistrates Ordinance (Cap. 227) is relevant for the follow-up action in case of any default in the payment of fine. If a convicted offender fails to pay the fine, the magistrate could issue a warrant of distress for the purpose of levying the fine. However, whenever it appears to the magistrate that the issue of the warrant would be ruinous to the defendant and his family, or whenever it appears to the magistrate, by the confession of the defendant or otherwise, that he has no goods or chattels whereon to levy the distress, or whenever in the opinion of the magistrate it is inexpedient to issue such warrant, then and in

every such case it shall be lawful for the magistrate, instead of issuing the warrant of distress, to commit the defendant to prison. The maximum period of imprisonment for a fine not exceeding \$25,000 is three months.

9. There is no provision in the BO or among the existing criminal sanction provisions that provides for the registration of the defaulted fine as an encumbrance against the title of the offender's property. In addition, according to section 2 of the Land Registration Ordinance (LRO) (Cap. 128), only instruments affecting land can be registered. Under section 2(1) of the LRO, the types of interests registrable are deeds, conveyances, and other instruments in writing, and all judgments, by which any parcels of ground, tenements, or premises in Hong Kong may be affected. According to section 2(2), "judgments" include judgments and orders of the Court of First Instance, the District Court and the Lands Tribunal. The payment of fine which a person is liable to pay on conviction is a personal obligation on the part of the offender. Accordingly, the failure to pay the fine on the part of the offender is not an instrument affecting land that is capable of being registered under the LRO.

**Development Bureau
Buildings Department
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