

**For discussion
on 26 June 2017**

Legislative Council Panel on Development

**Proposed Amendments to the Buildings Ordinance (Cap. 123)
for Strengthening Enforcement Action against
Illegal Domestic Use in Industrial Buildings**

Purpose

This paper seeks Members' views on Government's proposals for making amendments to the Buildings Ordinance (Cap. 123) ("BO") to strengthen enforcement action against illegal domestic use in industrial buildings ("IBs").

Legislative Proposals

2. To create a greater deterrent effect and strengthen enforcement action against illegal domestic use in IBs, we propose to amend the BO to impose criminal sanction on –

- (a) the owner, tenant, lessee, person in charge, etc. ("owners etc.") of an IB premises who use, or knowingly allow other person to use, the premises for illegal domestic purpose; and
- (b) any person who aids and abets owners etc. in allowing another person to use an IB premises for illegal domestic purpose.

Recognising that inhabitants of IBs who merely reside therein and do not own the IB premises are usually the underprivileged, an exemption from the new criminal offence provision as set out in paragraph 2(a) above is proposed to be expressly provided for them.

3. To enable the Buildings Department (“BD”) to effectively enforce the new criminal offence provision as set out in paragraph 2, we also propose to amend the BO to –

- (a) confer express investigatory powers on BD officers; and
- (b) empower BD officers to apply for a court warrant to effect entry to an IB premises if BD reasonably believes that the IB premises is being used for domestic purpose illegally.

Justifications

Safety Risks of Residing in IBs

4. Using an IB premises for domestic purpose would pose a significantly higher level of safety risk to the inhabitants because –

- (a) the fire load¹ of an industrial unit is normally greater than that of a domestic unit. Fires in IB premises, with a large amount of combustible raw materials and inflammable dangerous goods, could grow and spread in a much faster rate than those in domestic premises, and could generate a larger amount of heat, smoke or even toxic gases as the fires develop. Therefore, inhabitants of IB premises converted for domestic use could be exposed to high risks posed by other industrial occupancy within the same IB which are still being used for industrial activities or storage of dangerous and inflammable goods;
- (b) the IB inhabitants are using the premises for sleeping accommodation. As their alertness to fire or fire alarm is lower, particularly during the wee hours, they take longer evacuation time in case of fire;
- (c) even if all the other units in the IB are vacant at the time when

¹ It means the theoretical amount of heat that may be released during the burning of combustibles in the building under fire condition.

the inhabitants move in, hazardous and dangerous industrial uses may be re-introduced any time into the IB subsequently; and

- (d) IB premises converted for domestic use usually involve sub-division of the approved unit with sub-standard means of escape and fire resisting constructions. Such sub-division not only affects the safe evacuation of inhabitants but also hinders and endangers firefighting and rescue operation by Fire Services Department in case of fire.

5. In the light of their high potential risks, BD has since 2012 stepped up enforcement action against illegal domestic use in IBs through mounting a series of large-scale operations (“LSOs”). Up to end 2016, BD had inspected 118 target IBs through LSOs and identified 117 domestic dwellings in 26 IBs. Out of the 232 statutory orders issued, 192 orders had been discharged, and 30 prosecutions were instigated against individuals for non-compliance with statutory orders.

Existing Enforcement Framework and its Limitations

6. At present, BD mainly relies on sections 25(2) and 26(1) of the BO for taking enforcement actions against illegal domestic use in IBs. Section 25(2) of BO empowers the Building Authority (“the BA”) to require the owner or occupier to discontinue the present use of a building if the BA considers that the building is not suitable by reason of its construction for the present use. An order under section 26(1) of the BO may be issued declaring any building to be dangerous or liable to become dangerous, and requiring, *inter alia*, rectification of a dangerous situation. If unauthorised building works (“UBWs”) are identified, the BA may also invoke section 24(1) of the BO to order the owner to remove the UBWs. As regards criminal sanctions, section 40 of the BO provides that failure to comply with a section 25(2) or section 26(1) order without reasonable excuse can result in a maximum fine of \$50,000 and imprisonment for one year, while failure to comply with a section 24(1) order can result in a maximum fine of \$200,000 and imprisonment for one year.

7. As the aforesaid provisions are designed for tackling general building misuse situations, there are concerns that the existing regulatory regime under the BO is neither effective in tackling the specific problem of illegal domestic use in IBs nor sufficient in creating a deterrent effect against such use. In particular, under the present regime of the BO, prosecution will mainly be instigated after the recipient of the order(s) (who may be the owner and/or the occupier depending on the type of order(s) issued) fails to comply with a statutory order issued by the BA under sections 24(1), 25(2) or 26(1) of the BO within the time limit stipulated therein. In other words, as long as the said recipient complies with such order(s) issued by the BA, no criminality liability can arise from his illegal domestic use of the IB premises or from his allowing of the same. Therefore, there is no effective provision under the BO to cause owners etc. to cease renting out their IB premises for illegal domestic use and earning proceeds during the process until such violating use is uncovered and the relevant statutory order(s) is issued by the BA.

8. Further, BD has also encountered difficulties in collecting evidence in its enforcement actions against domestic use in IBs owing to the lack of cooperation from the inhabitants and the transient nature of such activities. Although the BA may apply for a warrant from a magistrate under section 22(1B) of the BO for entering or breaking into a premises, such warrant will only be granted if (a) there are reasonable grounds for suspecting breaches of the BO; (b) entry was refused or could not be gained despite repeated visits; and (c) notice of intention to apply for a warrant has been served. Given the need to pay repeated visits, the current process requires considerable time and resources. It is also ineffective in collecting evidence as surprise inspections cannot be effectively carried out. Owners etc. may temporarily cease the illegal domestic use after receiving the BA's notice of intention to apply for a court warrant.

Proposed Legislative Amendments

9. In view of the above, there is a need to create new dedicated

provisions in the BO to create a greater deterrent effect and strengthen enforcement action against illegal domestic use in IBs. In this regard, we **propose** providing for a new criminal offence in the BO against owners etc. of an IB premises who use, or knowingly allow other person to use, the premises for illegal domestic purpose and any persons (e.g. agents) who aids and abets the owners etc. Balancing the need to ensure the effectiveness of the proposed legislative amendments and the need to protect genuinely innocent persons from being subject to the proposed criminal sanction inadvertently, only owners, etc. who have actual knowledge of the premises concerned being used for illegal domestic use and let the situation continue, and their agents will be sanctioned. Inhabitants who merely reside in IB units without further subletting them for domestic purpose will be specifically exempted from the new criminal offence provision, unless these inhabitants are owners of the IB units.

10. At present, section 40(6) of the BO provides that where an offence under the BO 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. A similar provision (i.e. section 40(6A) of the BO) also exists in relation to an offence under the BO committed by a partner in a partnership. We **propose** that these two provisions similarly apply to body corporates and partnerships committing the new criminal offence, such that the directors, managers and officers concerned in the management of the body corporates and the partners of the partnerships may also be personally liable if they are proved to have consented or connived at the commission of the offence, or that the offence is proved to be attributable to their neglect or default.

11. To render BD's enforcement actions more effective, we **propose** empowering BD officers to apply to the court for a warrant authorising entry and search of IB premises if BD officers reasonably believe that the premises are being used for illegal domestic purpose. We **propose** that it is not necessary for BD officers to pay repeated visits or serve a notice of intention to apply for court warrant to effect entry to

the premises before applying for a warrant having regard to the transient nature of domestic use and the ease with which such use could cease immediately upon receipt of the prior notice, thus nullifying the enforcement efforts made by BD. To safeguard the interests of affected parties, a court hearing would still be held to consider the warrant application. We however **propose** that such hearing should be conducted on an ex-parte basis, i.e. in the absence of the owners etc. and the inhabitants of the IB premises. The proposed arrangement would enhance the effectiveness and efficiency of BD's enforcement actions while their exercise of investigatory powers would continue to be subject to judicial supervision.

12. Further, to ensure that the enforcement action would be effective, we **propose** that express investigatory powers be conferred on BD's officers after entering the premises pursuant to the warrant. These include the power to search the premises, the power to seize, remove and detain evidence, and the power to require the occupant or other person present to render reasonable assistance to BD's officers.

Assistance to Affected Inhabitants

13. Under the current policy, persons affected by Government's enforcement actions need to find their own accommodation. That said, those who are rendered homeless as a result of BD's enforcement actions and have temporary accommodation need may, through referral from BD, be accommodated in the Hong Kong Housing Authority's Po Tin Transit Centre ("TC") in Tuen Mun while they look for alternative accommodation. If these persons have stayed in TC for three months, passed the "homeless test" and fulfilled the eligibility criteria for public rental housing ("PRH") including income limit, asset limit and "no-domestic-property" requirement, they can be admitted to the Interim Housing ("IH") in Tuen Mun while awaiting PRH. Persons with pressing housing needs on medical or social grounds may consider applying for "Compassionate Rehousing" through the recommendation of the Social Welfare Department ("SWD").

14. Since 2014, BD eradicated 84 illegal domestic dwellings in IBs; 12 persons were admitted into TC in the end. As per the established practice, if BD's enforcement actions involve relocation of occupants, BD and its in-house social services team will closely liaise with the SWD, the Home Affairs Department and the Housing Department to provide assistance for those who are affected. Departments will work hand-in-hand to meet the temporary accommodation need of affected persons according to the policy as set out above. Besides, the social services teams of BD will provide necessary social and emotional support for affected occupants. BD has implemented the assistance programme endorsed by the Steering Committee on the Community Care Fund since December 2011 to allocate one-off relocation allowance to occupants who have to move out of illegal domestic premises in IBs due to BD's enforcement actions. As at end 2016, BD approved 144 applications involving 215 beneficiaries. SWD will also provide other support and services to affected families and individuals with welfare needs.

Way Forward

15. Subject to Members' views, the Government will continue to formulate the details of the proposed legislative amendments. Our plan is to introduce the amendment bill in around end 2017.

Advice Sought

16. Members are invited to comment on the above proposed legislative amendments.

**Development Bureau
Buildings Department
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