

**For discussion on
7 September 2021**

Legislative Council Panel on Security

**Proposed amendments to the Fire Safety
(Buildings) Ordinance (Cap. 572)**

Purpose

This paper briefs members on the proposal to amend the Fire Safety (Buildings) Ordinance (Cap. 572) (“Ordinance”) to empower the enforcement authorities (“EAs”) to carry out fire safety improvement works for owners of old composite and domestic buildings who have not complied with the requirements of the Ordinance, and to recover relevant fees from them afterwards. Members are invited to express views on the basic principles and key questions involved.

The Ordinance and implementation mechanism

2. The Ordinance stipulates that composite and domestic buildings which were constructed on or before 1 March 1987, or with the plans of the building works first submitted to the Building Authority for approval on or before that day (“target buildings”), must be enhanced to meet modern fire protection requirements. Under the Ordinance, the EA in relation to planning, design and construction of buildings is the Director of Buildings; while the EA in relation to fire service installations and equipment (“FSIs”) is the Director of Fire Services. The Fire Services Department (“FSD”) and the Buildings Department (“BD”) will issue Fire Safety Directions (“Directions”) to owners and/or occupiers with regard to fire safety measures of buildings under their respective purview and specify the required fire safety improvement works.

3. The FSD and the BD will deploy officers to conduct joint inspection of the target buildings. Directions will be issued to owners and/or occupiers in light of the actual condition of the buildings and in accordance with the Ordinance, requiring them to provide appropriate FSIs and/or carry out works in relation to fire safety construction, with a view to enhancing the fire safety standards of their buildings.

4. There are about 13 500 target buildings regulated under the Ordinance. Since the Ordinance came into force in July 2007, the FSD and the BD have been conducting joint inspections on these target buildings in stages according to the plan. About 10 500 old target composite buildings (“TCBs”) will be inspected in the first stage, and about 3 000 target domestic buildings will be inspected in the second stage. The EAs are now conducting the first stage of inspection¹. As at end of July 2021, the FSD and the BD have inspected 10 056 TCBs, and have issued Directions to 8 875 TCBs. Amongst which 267 TCBs have complied with the Directions issued by the BD in relation to fire safety construction on planning, design and construction of buildings. Another 389 TCBs have complied with the Directions issued by the FSD in relation to FSIs.

5. The FSD and the BD normally give building owners one year to comply with the Directions. The EAs will, without compromising basic fire safety, adopt a flexible and pragmatic approach in handling individual cases. If the owners need more time to prepare for and carry out the improvement works for reasons that involve the formation of an owners’ corporation (“OC”), etc., the EAs will consider their applications for extending the compliance period of the Directions in a reasonable manner in the light of the justifications provided in their applications and/or the scale of works involved². As of end July 2021, the FSD has issued over 230 600 Directions to owners and/or occupiers. Over 89 300 Directions have been complied with by owners and/or occupiers or discharged³ (i.e. Directions which do not require follow-up actions), which make up to almost 40%. On the BD’s side, it has issued over 70 500 Directions to owners. Over 20 100 Directions have been complied with or discharged, reaching a rate of almost 30%.

Various assistances provided by the Government

6. We are aware that some owners of old buildings may encounter difficulties in the financial or technical aspects, or problems in coordination

¹ The EAs will select a certain number of target buildings for inspection each year, taking into account various factors including building age and fire safety risk. The EAs will continue their inspection of the remaining target buildings in light of the actual circumstances. The second stage of inspecting target domestic buildings will commence upon completion of the first stage inspection.

² If owners or occupiers do not comply with the Directions within a reasonable time frame and fail to provide reasonable justifications, the EAs may apply to the Magistrate for the Fire Safety Compliance Order (“Order”), ordering them to comply with the requirements of the Order. If they do not comply with the Direction or the Order, they are guilty of an offence and are liable to a fine.

³ The Directions that are discharged include the Directions related to demolished buildings, as well as buildings that have been approved to adopt facilitation measures, etc.

amongst owners in complying with the requirements under the Ordinance. Since the Ordinance was implemented, various government departments have been proactively providing assistances of different forms to owners of old buildings, with a view to assisting them in complying with the Directions as soon as practicable.

7. In respect of the coordination among owners, the Government understand that the owners of old buildings (whether they are “three-nil” buildings or not⁴) may encounter difficulties in coordinating fire safety improvement works. Therefore, the FSD and the BD will refer the lists of target buildings without OCs to the Home Affairs Department so that the latter could assist the owners of the buildings in forming OCs and provide advice on the building management matters. After issuing the Directions, the FSD will proactively promote and recruit Building Fire Safety Envoys and Fire Safety Ambassadors in “three-nil” buildings. The purpose is to enhance fire precaution awareness among residents and facilitate the coordination of future projects on the upgrading of FSIs in those buildings. The BD will also arrange its in-house Social Services Teams to provide further support to those in need, including coordinating residents of the buildings in carrying out the required works, assisting them in applying for financial assistance schemes as appropriate, etc.

8. In terms of technical support, the EAs will adopt a flexible and pragmatic approach in handling individual cases without compromising basic fire safety. Case officers from the FSD and the BD will also meet the owners concerned from time to time to explain the contents in the Directions and assist them in solving potential problems associated with the works. The EAs have currently launched various facilitation measures for the owners. For instance, the FSD has introduced the “Improvised Hose Reel System” for buildings of three storeys or less, sparing the installation of fire service water tanks and pumps, whereas in the case of buildings of four storeys or above, the capacity requirements for fire service water tanks have been lowered. By amending the Building (Minor Works) Regulation, the BD allows owners to, amongst others, erect small water tank through the Minor Works Control System⁵.

9. In terms of financial support, the Government and the Urban Renewal Authority (“URA”) have been offering multiple financial subsidy schemes to owners in need, with a view to assisting private building owners

⁴ “Three-nil” buildings refer to buildings which do not have OCs or any form of residents’ organisations, or do not engage property management companies.

⁵ Minor Works Control System aims to facilitate building owners and occupiers in carrying out small-scale building works safely and lawfully through simplified requirements.

in maintaining and repairing their buildings. The subsidy schemes include the “Building Safety Loan Scheme”, “Building Maintenance Grant Scheme for Needy Owners”, etc. Fire safety improvement works pertaining to the Ordinance have been incorporated into the list of works eligible for subsidies or loans under these schemes.

10. To further assist owners of old buildings, the Government, in partnership with the URA, implemented the \$2-billion Fire Safety Improvement Works Subsidy Scheme (“FSWS”) since 2018 to subsidise owners of eligible old TCBs in carrying out the required fire safety improvement works in complying with the requirements pursuant to the Ordinance. Subsequently, the Government has further injected \$3.5 billion to FSWS. It is anticipated that FSWS could benefit around 6 000 to 6 500 buildings.

Amending the Ordinance to further enhance fire safety of target buildings

11. Currently, there is no provision in the Ordinance empowering the FSD and the BD to carry out works relating to improving fire safety measures for target buildings. Since undertaking fire safety improvement works would involve various feasible proposals and works arrangements (such as, where the facilities or what alternative equipment can be installed), and the scale of the works or associated costs as well as the impacts to individual building owners would vary rather significantly depending on the proposals to be adopted, it is therefore more appropriate for the owners of the buildings to discuss among themselves having regard to the building’s circumstances and reach a consensus. If the EAs are to forcibly carry out the works, it could lead to many complicated disputes involving different owners or even litigation. In addition, fire safety improvement works would require subsequent maintenance. For instance, the owners of FSIs must, in accordance with the requirements of regulation 8 of the Fire Service (Installations and Equipment) Regulations (Cap. 95B), ensure that the installations or equipment are in efficient working order at all times and arrange annual inspection.

12. Nevertheless, despite the fact that the Government has been proactively providing various assistances to old buildings owners, some of them may still have difficulties in complying with the requirements of the Ordinance due to the lack of technical knowledge and/or coordination capability, etc. The Chief Executive (“CE”) indicated at the Legislative Council CE’s Question and Answer Session held on 4 February 2021 that

the Government agreed it was necessary to take into account the BD's experience in the work of building safety, and improve the existing legal framework by considering amending the Ordinance to empower the FSD and the BD to carry out fire safety improvement works for owners of old target buildings who are incapable of complying with Directions, and to recover the costs incurred from such owners upon completion of the works. The CE also emphasised that improvement works for fire safety and removal of illegal structures with potential safety hazards are different in nature. The Government will draw reference to a similar mechanism and its implementation under the prevailing Buildings Ordinance (Cap. 123) ("BO") when formulating the legislative proposal, and will do our best to resolve the legal and enforcement issues involved.

Basic Principles and Key Questions

13. We have to emphasise that it is the responsibility of owners to timely repair and properly maintain the private buildings, including carrying out the required fire safety improvement works to enhance the fire safety standards thereof according to the Directions. Due to the resources and workload involved, the Government should only, under very exceptional circumstances, carry out default works for buildings which do not comply with the Directions or the Fire Safety Compliance Orders ("Orders"). In light of this principle and the policy objectives stated above, we are actively studying and following up the amendments to the Ordinance. In considering how to formulate a suitable mechanism and resolve the enforcement issues, etc., we recommend that the following fundamental key questions be considered:

Key Question 1: How to set the threshold for the default works?

While the Ordinance aims to enhance the fire safety standards of target buildings, this does not mean that these buildings are subject to immediate fire risks.⁶ As mentioned above, there are about 13 500 target buildings regulated by the Ordinance. Taking into account factors such as the trade's intention to undertake the works, setting too low a threshold will result in too many buildings being eligible for the default works⁷, rendering buildings with genuine needs may not obtain

⁶ Buildings completed in different eras were constructed with regard to the prevailing fire safety construction requirements set out in the relevant codes of practice published by the BD. Also, they were fitted with the required FSIs in accordance with the Code of Practice for Minimum Fire Service Installations and Equipment published by the FSD in order to meet the standards at the time of their construction.

⁷ For instance, currently there are about 5 300 "three-nil" buildings in Hong Kong.

timely assistance from the Government.⁸ Taking into account the relevant considerations such as the purpose of amending the Ordinance is to carry out fire safety improvement works for owners of old target buildings who have not complied with the Directions, the effective use of public funds and government resources, as well as not contravening the principle that owners of private buildings should timely repair and properly maintain their property, how should the Government set the threshold to offer assistance to owners with genuine needs within a reasonable time? A possible threshold for consideration is buildings not complying with the Directions or the Orders, and the EAs have not extended the compliance period of the Direction or the Order as the owners do not have reasonable excuse⁹. For owners who can afford the costs of the fire safety improvement works but cannot comply with the Directions due to coordination problems among owners or other reasons, should the Government carry out the works for them?

Key Question 2: How to determine the priorities?

Further to the above, how to determine the priorities of buildings that are eligible for the default works? When determining the priorities, apart from considering factors such as building age, number of storey, whether it is “three-nil” building, whether it is single-staircase, fire hazard¹⁰, the Order is not extended by the EAs, etc., what other factors should also be taken into account (for example, there is a lack of capability among owners on coordination, technical or financial aspects to comply with the requirements of the Ordinance and carry out fire safety improvement works, etc.)? According to section 5(10) of the Ordinance, the two EAs have each set up a statutory Advisory Committee¹¹ for giving advice to the EAs on matters such as the appropriateness of fire safety measures of target buildings, technical

⁸ Another reason for the Government to take into account market capacity is to avoid the cost of fire safety improvement works required by the Ordinance surging owing to emergence of substantial demand for such works.

⁹ For instance the owners have not tried to comply with the requirements of the Ordinance with reasonable and legitimate means.

¹⁰ For example damaged, missing or defective FSIs.

¹¹ Members of the FSD’s statutory Advisory Committee include representatives from the FSD, the BD, the Hong Kong Institution of Engineers, the Association of Registered Fire Service Installation Contractors of Hong Kong Limited, post-secondary colleges specialising in the study of building safety or fire engineering, and persons (one each from Hong Kong, Kowloon and the New Territories) with relevant expertise in fire safety and management of buildings. Members of the BD’s statutory Advisory Committee include representatives from the BD and the FSD, Authorized Persons, fire safety professionals, academics in the fire safety field, and persons (one each from Hong Kong, Kowloon and the New Territories) with relevant expertise in fire safety and management of buildings.

issues regarding the fire safety improvement works, and alternative fire safety measures proposed by the owners. Moreover, for implementing the “Mandatory Building Inspection Scheme” and the “Mandatory Window Inspection Scheme”, the BD has set up a non-statutory Selection Panel (Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme) (“the Selection Panel”)¹² for providing advice on the selection of target buildings under these two inspection schemes. In regard to providing advice to the EAs in the future under the proposed default works mechanism under the Ordinance, is it possible to consider amending the Ordinance so as to expand the terms of reference of the two statutory Advisory Committees to the effect that they can provide advice to the EAs on the criteria of prioritisation for target buildings eligible for default works? Besides, can the above two Advisory Committees make reference to the Selection Panel, tendering advice to the two EAs on the selection criteria for setting the priorities of the default works? How many eligible buildings should be selected for the default works each year?

Key Question 3: Should the final works proposal be decided and selected by the EAs?

Coordination among owners tends to be weaker for buildings to which default works are to be carried out by the Government. It is not easy for them to reach a consensus. Taking this fact into account, is it possible to consider similarly expanding the terms of reference of the Advisory Committees currently established under the Ordinance to give advice to the EAs on the pros and cons of each works proposal should there be more than one proposal? Apart from factors on whether the design would facilitate firefighting and rescue operations, involve individual owners’ title to the property, costs of works, what other factors should also be considered? Should the EAs decide and select the final proposal based on the Advisory Committees’ professional advice? If the works proposal inevitably involves individual owners’ title to the property¹³, should the EAs decide and select the final proposal? Furthermore, is it necessary to empower

¹² The terms of reference of the Selection Panel is -

- (a) To select the target buildings nominated for the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme; and
- (b) To advise the BD on aspects related to nomination and selection of target buildings including any proposed changes to the established selection criteria and scoring system as considered appropriate.

¹³ For instance installing fire service inlets at shop entrances, putting fire service water tanks on rooftops involving individual owners’ title to the property, etc.

the EAs to enter the relevant premise or land in order to carry out the default works?

Key Question 4: How to encourage owners to take the initiative in complying with the Directions of the Ordinance? How to avoid the default works mechanism being abused?

The Government's objective is, through various measures, to encourage owners to take the initiative in complying with the relevant Directions. As mentioned above, the Government has been providing support to owners in the technical, financial, and OC formation aspects in order to help and encourage owners to take the initiative in complying with the requirements of the Ordinance. When contemplating the default works mechanism, if the Government only recovers the costs of works, supervision fee and collects surcharge from the owners upon completion of the works, some owners may see the surcharge merely as additional cost caused by prolonging the works. They may choose to shift the responsibility of carrying out works for the buildings to the Government. This would run counter to the Government's objective of encouraging owners to take the initiative in complying with the Directions. How should the Government avoid abuse of such kind? How to avoid the default works mechanism being abused? At present, upon completion of the default works, the BD will, pursuant to section 33(1) of the BO¹⁴, recover from the owners the cost of works, other relevant fees, and impose a surcharge of not exceeding 20% on the abovementioned cost¹⁵. In respect of the proposed default works mechanism under the Ordinance, 20% surcharge may be seen as an administrative fee. Does this level constitute sufficient deterrent effect? Is it necessary to raise the surcharge so as to encourage the owners to take the initiative in complying with the Directions? Apart from imposing surcharge, are there any other ways to avoid abuse of the default works

¹⁴ According to section 33(1) of the BO, "in any case where under this Ordinance the Building Authority is authorized to recover the cost of any inspection, investigation or works carried out by him or caused to be carried out by him or to recover the costs of services provided by him or caused to be provided by him or to recover the cost of any abortive visit made by him, the Building Authority may impose a surcharge of not exceeding 20% on the cost due and may certify under his hand the cost and surcharge due and names of the persons liable therefor, and may by such certificate apportion such cost and surcharge among such persons."

¹⁵ Where the owner is old, infirm or with disability or mental illness and also has genuine practical difficulties (for example 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), no surcharge will be imposed by the BD.

mechanism?

Key Question 5: Should deterrence effect be enhanced to increase the compliance rate of the Directions?

Following above, given the fact that the prevailing level of penalties and sentences imposed by the Court are relatively light¹⁶, should we consider increasing the penalties to enhance the deterrent effect against non-compliance with the Directions or the Orders, thereby further urging owners who are able to comply with the relevant requirements to assume their responsibilities as soon as possible¹⁷? Can we make

¹⁶ According to the Ordinance, an owner or occupier who, without reasonable excuse, fails to comply with a Direction is guilty of an offence and is liable on conviction to a fine at level 4 (\$25,000 as maximum) and to a further fine of \$2,500 for each day during which the failure continues after the expiry of the period specified in the Direction. An owner or occupier who fails to comply with an Order is guilty of an offence and is liable on conviction to a fine at level 5 (\$50,000 as maximum) and to a further fine of \$5,000 for each day during which the failure continues after the expiry of the period specified in the Order. According to the EAs' data in the past eight years, for example, the lowest penalty was \$67 among the convicted cases of failing to comply with the Directions without reasonable excuse.

¹⁷ Offences of similar nature and the penalties under the Fire Safety (Buildings) Ordinance and the Buildings Ordinance are tabulated as below –

Fire Safety (Buildings) Ordinance		Buildings Ordinance	
Offence	Penalty	Offence	Penalty
Non-compliance with the Direction – section 5(8)	Fine at level 4 (\$25,000 as maximum) Fine of \$2,500 for each day	Non-compliance with the Notice for carrying out prescribed inspection on the windows in the buildings – section 30C	Penalty Notice - \$1,500 If the Penalty Notice is not complied with, may be liable to a fine at level 4 (\$25,000 as maximum) and imprisonment for 3 months Fine of \$2,000 for each day
		Non-compliance with the Notice for carrying out prescribed inspection on the common parts of the buildings – section 30B	Fine at level 5 (\$50,000 as maximum) and imprisonment for 1 year Fine of \$5,000 for each day
Non-compliance with the Order – section 6(8)	Fine at level 5 (\$50,000 as maximum) Fine of \$5,000 for each day	Non-compliance with the Order for Dangerous Buildings – section 26	Fine at level 5 (\$50,000 as maximum) and imprisonment for 1 year Fine of \$5,000 for each day
		Non-compliance with the Dangerous Hillside Order – section 27A	Fine at level 5 (\$50,000 as maximum) and imprisonment for 1 year Fine of \$5,000 for each day

reference to section 39B (obstruction of OC) of the BO¹⁸ to instigate prosecution against uncooperative individual owners (for example, obstructing the required works to be carried out, refusing to allow relevant persons to enter their properties for carrying out works or refusing to contribute to the costs of the works), allowing OCs to commence the fire safety improvement works and comply with the Directions?

Key Question 6: How to recover the costs of the works?

If fire safety improvement works are carried out on behalf of owners according to the proposed default works mechanism under the Ordinance, the EAs will need to recover the costs of the works, surcharge and other relevant fees from the owners. If the owner does not/cannot repay these fees, what should the Government do? To ensure proper use of public funds, is it necessary to establish a legal mechanism to link the outstanding fees with the buildings or the owners concerned? In case the property is re-sold, should and how the Government recover the fees from the original or subsequent

¹⁸ Section 39B of the BO stipulates that –

- (1) A person who has been notified by an owners’ corporation of a building that an order or notice has been served on the owners’ corporation under any provision of this Ordinance in relation to any common parts of the building must not—
 - (a) obstruct a person employed or engaged by the owners’ corporation in the carrying out of any inspection, investigation, works or other action that is required for the purpose of complying with the order or notice; or
 - (b) refuse to allow a person employed or engaged by the owners’ corporation access to or the use of any premises, which is reasonably necessary for the carrying out of any inspection, investigation, works or other action that is required for the purpose of complying with the order or notice.
- (1A) A person who has been notified by an owners’ corporation of a building that an order or notice has been served on the owners’ corporation under any provision of this Ordinance in relation to any common parts of the building must not refuse to contribute to the cost of the inspection, investigation, works or other action that is required for the purpose of complying with the order or notice.

According to section 40(4B) of the BO, any person who without reasonable excuse contravenes section 39B(1) shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 6 months. According to section 40(4C) of the BO, any person who without reasonable excuse contravenes section 39B(1A) commits an offence and is liable on conviction to a fine at level 4. The penalties are summarised as below -

Offences of contravening section 39B of the BO	Penalty
Obstruct OC in carrying out works	Fine at level 3 (\$10,000 as maximum) and imprisonment for 6 months
Refuse to contribute to costs of works	Fine at level 4 (\$25,000 as maximum)

owners¹⁹?

Key Question 7: How to maintain the FSIs?

As we have been emphasising, it is owners' responsibilities to timely repair and properly maintain private buildings. Therefore, owners should perform their statutory duty to carry out subsequent maintenance of FSIs as mentioned in paragraph 11 above, upon completion of the works by the Government on their behalf. In case of their failure to comply with such statutory responsibility, how should the Government deal with the problem, with a view to not creating unfairness to other owners and not contravening the principle that maintaining private buildings is the owners' responsibilities?

Members are welcome to express views on the above basic principles and key questions.

Way Forward

14. The Government's proposal to carry out fire safety improvement works for owners involves complex considerations, including how to set threshold for the default works, the mechanism for and the principle of selecting feasible options in respect of the fire safety improvement works, subsequent maintenance of FSIs, recovery of the costs of the works from the owners, etc. Legal disputes, enforcement problems and the likes are inevitable during the process. Furthermore, issues such as how to avoid abuse of the default works mechanism, whether there will be moral hazard, etc. have to be considered. Therefore, amending, refining the Ordinance must be considered comprehensively and in a holistic manner. Views from the public should also be listened to.

15. After listening to Members' views on the above basic principles and key questions, the Government will continue to draw reference to a similar mechanism and its implementation under the existing BO, and will spare no efforts to resolve the legal and enforcement issues involved, with

¹⁹ Currently, the BD issues demand notes to the relevant owners after completing default works according to the BO. If the owners do not promptly settle the fees according to the demand note, the BD will serve certificates under section 33(9)(b) of the BO on them, and register the certificates at the Land Registry which will constitute a first charge against the title of the property. Furthermore, the BD will also refer appropriate cases to the Department of Justice or the Small Claims Tribunal for taking legal action to recover the debts.

a view to launching a public consultation in the coming year in order to formulate a suitable mechanism and amend the legislation to empower the relevant departments to carry out the related work.

16. It is the responsibility of owners to repair and properly maintain the private buildings, including carrying out the required fire safety improvement works. The Government's objective is to assist owners in complying with the relevant Directions through providing different measures and supports (for example those support measures as mentioned at paragraphs 7 to 10 above). In tandem with the abovementioned work to refine the Ordinance, the Government will continue to strive to improve fire safety standard through providing financial, technical and coordination support, as well as taking enforcement actions, etc., with a view to creating a safe living environment for the community.

Security Bureau
Fire Services Department
Buildings Department
August 2021