LC Paper No. CB(2)1882/01-02(01)

Fire Safety (Buildings) Bill

Administration's response to issues raised by the Bills Committee at its meeting on 5.2.2002

To give a response to the following issues raised by members at the meeting –

a) ***Timing for introducing amendments to the Building Management Ordinance (Cap. 344) enabling Owners' Corporations (OCs) to borrow money from the Building Safety Loan Scheme (the Scheme) to cover outstanding contributions from owners who refused or failed to pay their shares of the costs incurred in upgrading the fire safety standards in the common parts of their buildings;***

b) ***Requirements and procedures for OCs to borrow money from the Scheme; and***

c) ***Feasibility of the Government placing a legal charge registrable against the titles of those irresponsible and missing owners with the Land Registry as a form of security for the money paid out from the Scheme.***

The Home Affairs Bureau has formulated relevant proposals in response to the issues raised by the Bills Committee. They are set out in a paper entitled "Building Safety Loan Scheme for Owners' Corporations Subject to Statutory Building Improvement Directions" submitted to the Panel on Home Affairs for discussion (LC Paper No. CB(2)1533/01-02(03)). A copy is attached. At the Panel meeting held on 12 April 2002, Members were generally supportive of the approach proposed and exchanged views with the Administration on how best to pursue the proposals. The Home Affairs Bureau will consider Members' views and proceed with drawing up necessary legislative amendments and the associated implementation details. We will consult Members again when details are ready. If practicable, these will form part of a package of proposals to amend the Building Management Ordinance, Cap. 344 which are being deliberated by the Subcommittee on the Revision of the Building Management Ordinance under the Panel on Home Affairs.

Security Bureau
May 2002

LC Paper No. CB(2)1533/01-02(03)

Legislative Council Panel on Home Affairs

Building Safety Loan Scheme for Owners' Corporations Subject to Statutory Building Improvement Directions

Purpose

This paper sets out the Administration's proposals on how building owners who are subject to statutory orders under the Buildings Ordinance and fire safety improvement directions and statutory orders could borrow from the Building Safety Loan Scheme ("Loan Scheme"), in the event of irresponsible or missing owners not paying their share of the costs involved.

Background

Statutory building safety directions or orders

2. Under a number of legislation, the authorities may require owners of buildings to undertake works in respect of the common parts to ensure public safety. For example, under the Buildings Ordinance, the Director of Buildings may issue statutory orders on individual owners to compel them to carry out repair works on the common parts of the building. Under the Fire Services Ordinance, the Director of Fire Services may issue Fire Hazard Abatement Notices to require removal of fire hazards (including proper maintenance of fire services installations) in buildings. Under the Fire Safety (Commercial Premises) Ordinance, the Director of Buildings and the Director of Fire Services may issue directions on individual owners of certain commercial premises and old commercial buildings to require them to improve the building fire safety. Under the Fire Safety (Buildings) Bill 2000, it is proposed that the Director of Buildings and the Director of Fire Services may issue fire safety improvement directions to Owners' Corporations (OCs) and individual owners of a building to improve the fire safety of the building. Where the maintenance or improvement works required are in respect of the common areas of a building and the building is managed by an OC, the statutory orders or directions must, by virtue of section 16 of the Building Management Ordinance (BMO) (Cap. 344), be served on the OC instead of the owners themselves.

What individual private building owners could do to comply with statutory fire safety improvement directions or any statutory orders under the Buildings Ordinance

3. At present, private building owners encountering financial problems in complying with the statutory directions or orders may apply for low interest loans from the Loan Scheme launched by the Building Department in July 2001. The loan can be made out to an individual owner, or owners on behalf of the other co-owners of the same flat if they have obtained consent from such other co-owners. The loan amount to each owner is not necessarily limited to the share of the owners in respect of the flat concerned. Rather, the loan amount is limited to the share of the total cost of the works as apportioned among the owners who are required to contribute towards it. It follows that in case there is a small proportion of missing or dissenting owners, the remaining owners may have to borrow more in order to cover the share of the missing dissenting ones. This has been criticized as being

unfair to those responsible owners, for they have to shoulder the extra loan and the costs of borrowing (i.e. the interest).

What OCs could do in order to comply with statutory building improvement directions or orders

4. In response to a statutory order affecting the common parts of a building, the OC shall carry out the work required by the statutory order and may for this purpose pass a resolution, which is binding on all owners. The owners have to observe the relevant provisions in the Deed of Mutual Covenant in determining and making appropriate contributions to pay for the cost of the work. The amount payable by an owner shall be a debt due from him to the OC under section 22(3) of the BMO.

5. The OC may take all steps reasonably necessary to recover the debt due to it from any missing or irresponsible owner. For instance, pursuant to section 24 of the BMO, it may apply for a warrant of distress under Part III of the Landlord and Tenant (Consolidation) Ordinance as if the debt were rent payable to it as landlord of the owner's flat. Pursuant to section 19 of the BMO, it may register a charge against the owner's interest in the Land Registry in certain circumstances.[1] It may also sue the owner in civil proceedings. If the claim is upheld in court, the OC may enforce the judgement by various means, including the registration of charges against the owner's interest in the Land Registry.

6. Under Section 18 of the existing BMO, the powers and duties of an OC do not include borrowing money on behalf of any or all of the owners for the purpose of performing its management duties. It follows that, in the event of some missing or irresponsible owners not contributing their share of the costs, an OC is not empowered to borrow any money to make up the shortfall. In such circumstances, if the other compliant owners refuse to borrow more than their share of the improvement costs from the Loan Scheme, all that an OC could do is to take legal actions against the irresponsible owners under the BMO. This may not be conducive to the timely implementation of the works required under the statutory directions or orders.

7. We need to work out an appropriate mechanism to ensure that the works as required under statutory orders and statutory building improvement directions will not be unduly delayed by irresponsible or missing owners not paying their share of the costs involved. Such a mechanism should not be inequitable to the other owners.

Proposals

8. We propose to amend the BMO to specifically empower an OC 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

[1] "**19. Corporation may sell or register charges against flat in certain circumstances**
(1) If a deed of mutual covenant provides that if an owner fails to pay any sum which is payable under the deed of mutual covenant, a person may sell that owner's interest in the land or register a charge against such interest in the Land Registry, then, notwithstanding the provisions of the deed of mutual covenant, the corporation may, to the exclusion of such person, exercise such power of sale or register such charge in the same manner and subject to the same conditions as if it were the person referred to in the deed of mutual covenant.
(2) The reference in subsection (1) to "fails to pay any sum which is payable under the deed of mutual covenant" shall be construed to extend to the failure by an owner to pay the costs incurred by the management committee in connection with the exercise by it of the powers conferred by section 40(1)(a)(ii) or (b)."

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 from the Loan Scheme, the OC, as the borrower of the loan, will be acting as an agent on behalf of those missing or irresponsible owners, instead of all the owners of the building. In other words, only those missing and irresponsible owners will be liable for the loan from the Government under the Loan Scheme. It then follows that the liability for the loan will not be transferred to all other owners who have already contributed their share of the costs to the OC.

9. We also propose to empower the Director of Building under the BMO to register a charge upon the property titles of those missing and irresponsible owners, as a form of security for the loan. Before such a legal charge is to be registered, the Director would be required to serve a notice upon each of these identified owners both informing them of the matter, and giving them a specified one-month period to express objection to his or her share of the improvement costs if they wish to do so. Once an objection has been lodged, the share of the objecting owner would be deducted from the total loan amount until and unless the objection has been resolved between the objecting owner and the relevant OC. This aims to strike a balance between giving the affected owners a right to a fair hearing and ensuring the timely implementation of the building improvement works required under the relevant statutory order.

10. As the group of missing or irresponsible owners would be made liable for the loan, we propose also that the Government be given the right under the BMO to take appropriate measures to recover the loan amount from any one of these owners for whom the OC has borrowed on their behalf. The legal charge in respect of any of these affected owners' property would only be released upon the repayment of their respective share of the loan either from the owners direct, or through the OC.

The way forward

11. Subject to Members' views on the above proposals, we will proceed to draw up the necessary legislative amendments to the BMO and the associated implementation arrangements. We will consult Members again when the details of the proposals are ready.

Home Affairs Bureau
April 2002

Fire Safety (Buildings) Bill

Administration's response to issues raised by the Bills Committee at its meeting on 5.3.2002

(a) To consider adopting a more commonly used term for "住用用途" referred to in clause 3, e.g. "住宅用途"

We have revisited the issue. Statutory precedents of the use of the rendition "住用用途" can be found in section 2 of the Buildings Ordinance, Cap. 123 and regulations 41A and 49 of the Building (Planning) Regulations, Cap.123 sub. leg. From a drafting angle, there is an advantage in maintaining consistency throughout the Bill, by using the rendition "住用" for "domestic" and using the rendition "住用用途" for "domestic purposes". We do not see the need for changing the term.

(b) To review clause 5(10) to reflect the Administration's intention that the committee referred to in this clause would be established and to consider strengthening the powers of the committee; or alternatively, to provide an avenue of appeal for owners or occupiers having difficulties in complying with certain requirements in the fire safety directions, before the enforcement authorities could apply to a magistrate court for compliance orders directing these owners or occupiers to comply with such.

2. As we have explained in paragraph 5 of our letter of 23 May 2001 to the Assistant Legal Adviser of the LegCo (LC Paper No. CB(2)1644/00-01(02)), to impose a duty on the enforcement authority under clause 5(10) to set up an advisory committee may imply that the authority is then under a duty to consult the committee in each and every case. This is not our policy intent. The fire safety requirements prescribed in Schedules 1 and 2 to the Bill are clear and objective and are detailed in the relevant Codes of Practice. In a great many cases, we believe enforcement of the fire safety directions is straightforward without necessary reference to the committee. The purpose of the committee is to provide impartial advice and assistance to the relevant enforcement authority in difficult cases, to help determine what alternative remedial measures would be appropriate. In line with good administrative practices, the committee will receive representations (including oral representations as necessary) from the parties concerned, and, in case the Director of Fire Services or the Director of Buildings does not follow the advice of the committee, he will give reasons for his decision. We

believe that the current clause 5(10) has provided an adequate legal basis for us to achieve this policy intent.

3. The Bill has already built in proper checks and balances in the enforcement mechanism to ensure that owners/occupiers aggrieved by decisions of the authorities can have access to adequate redress or appeal channels. These have been set out and explained in paragraph 5 of the Administration's Response (1st part) to issues raised by Members at the Bills Committee meeting on 14.3.2001 (LC Paper No. CB(2)1357/00-01(01) – excerpt attached for ease of reference). Specifically, before the enforcement authorities can apply to the Magistrate for a fire safety compliance order under clause 6(1), the occupier/owner must be found guilty of an offence of not complying with the fire safety direction under clause 5(8). An appeal channel already exists under the Magistrates Ordinance (Cap 227) for the occupier/owner to appeal against the conviction of the original offence. In this regard, the owner/occupier may rely on the "reasonable defence" provision in clause 5(8). If this is successful, the compliance order must also be set aside.

4. It should be noted that the requirements prescribed in Schedules 1 and 2 to the Bill are the most basic ones for upgrading the fire safety measures in old buildings. Subject to the passage of the Bill, they will reflect the minimum fire safety standards that the legislative body has approved for compliance by all to ensure public safety. Under clause 5 of the Bill, the Director of Fire Services and the Director of Buildings will be required to implement this statutory standards, and, as needs be, to exercise discretion in a flexible yet prudent manner to accept alternative measures in lieu of the prescribed ones taking into account the circumstances of individual cases. In so doing, they need to exercise professional judgment on whether the alternative measures are adequate and owe an important responsibility to society to ensure the fire safety of old buildings as intended by the Bill. While the enforcement authorities would be assisted by an advisory committee, no higher authority would be in a better position to exercise the professional judgment and override their decisions in determining the fire safety requirements in the fire safety directions issued under clause 5.

5. That said, the two Directors of course must not exercise their discretion with an ill intent or in an unreasonable manner. For example, if they make a decision which does not follow the advice given by the advisory committee, they must explain their decision with very good justifications. Otherwise they may be challenged in court for acting irrationally, as their decisions are subject to judicial review in which the usual remedies will be available.

(c) To improve the drafting of clause 6(1) of the Bill to remove inconsistencies between the English and Chinese versions.

6. We will propose Committee Stage Amendment to remedy the discrepancies.

(d) To consider amending "7 days" in clause 7(4) of the Bill to "14 days".

7. After the issue of fire safety directions, FSD/BD will start liaison with the owners/occupiers concerned and render advice to help them comply with the directions within the specified period (usually one year which may be extended). There will be ample time for exchanges between FSD/BD and the owners/occupiers concerned. Only in cases in which the owners/occupiers have failed to comply with the directions after the specified period had expired and there is no prospect of compliance will FSD/BD have to resort to court for seeking sanctions. Notably, FSD/BD will not apply to the District Court for a prohibition order unless they are satisfied that <u>all</u> the conditions set out in cl.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 cases, we consider that a notice of 7 days is the longest that we can allow. Changing it to a 14-day notice is not appropriate. It should also be noted that the 7 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.

8. An application for prohibition under section 7A of the Fire Safety (Commercial Premises) Ordinance, Cap.502 is also subject to the giving of at least 7 days' notice of the application in advance [s.7A(4)]. Consistency among the legislation should be maintained.

(e) To review the drafting of certain provisions in the Chinese version of the Bill to make it more comprehensible.

Heading of Part II of the Bill

9. The English version of the heading of Part II of the Bill reads "COMPLIANCE WITH FIRE SAFETY MEASURES" in which the word "COMPLIANCE" is a noun. It is also a practice that the heading of a text is written as a noun or a noun phrase as far as possible. Our search reveals that the term "的遵從" is widely used in the statutes. We thus would keep the heading as drafted.

Clauses 5(6)(a) and 5(9)

10. Members have queried the appropriateness of the use of passive voice in the terms "獲遵從" and "未獲遵從" in Chinese respectively in clauses 5(6)(a) and 5(9). As far as passive voice is concerned, generally speaking, when the English text does not mention a person who performs the act, it is also not desirable to mention that person in the Chinese text because the emphasis may be changed as a result and in the present case, it is difficult to specify that person at all. Therefore, no particular effort has been made to draft in active voice just to make a provision sound more like Chinese. As regards the expression "達致 … 滿意的程度" in clause 5(6)(a), it is not something new in statutes. The same expression can be found in s.3 of the Stock Exchanges Unification Ordinance, Cap.361 as the rendition for the phrase "complied to the satisfaction".

11. Thus, in order to achieve consistency and accuracy and to avoid any potential arguments which may arise as a result of the inconsistency between the two languages, we are of the view that the present approach should be adopted.

Chinese rendition of "technology"

12. We agree to review the Chinese rendition of the word "technology" in the Bill and will propose appropriate Committee Stage Amendment.

(f) To consider reflecting in the Bill that the enforcement authorities would have regard to the urban renewal programme when enforcing the Bill.

13. As we have explained at previous Bills Committee meetings, the enforcement authorities will adopt a flexible and pragmatic approach in implementing the Bill, having regard to all the circumstances of a case, including, but not limited to, the progress of the urban renewal

programme. This is within the discretion of the authorities under the Bill as drafted and no changes are necessary.

(g) To consider ways to help owners to take out fire insurance policy for buildings which had complied with the upgraded fire safety standards stipulated in the Bill, particularly for old buildings.

14. If upgrading works have been carried out as required by the fire safety directions, the enforcement authorities will be prepared to issue letters to the owners to confirm the compliance. Such letters may be produced to insurance companies to facilitate the taking out of fire insurance.

Security Bureau
May 2002

Excerpt of the Administration's Response (1st Part) to issues raised by Members at Bills Committee Meeting on 14.3.01 (LC Paper No. CB(2)1357/00-01(01)

Appeal channel available to aggrieved owners/occupiers of the buildings concerned

5. The Bill has built in a number of channels for appeals and communications between FSD/BD and the affected occupiers/owners -

(a) Under clause 5(5) of the Bill, FSD/BD is empowered to amend a fire safety direction. 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.

(b) Under clause 5(8) of the Bill, an owner or occupier who, without reasonable excuse, fails to comply with a fire safety direction commits an offence. In enforcing the fire safety directions, BD/FSD will maintain close liaison with the owners or occupiers. Prosecution will only be considered if the owners/occupiers could offer no reasonable excuse for their failure. Any owner or occupier who thinks that he is aggrieved by prosecution may also rely on the reasonable excuse provision in clause 5(8) to defend his case in the court.

(c) Clause 5(10) of the Bill provides for the establishment of a committee to assist the relevant enforcement authority in determining alternative measures in place of any of the requirements in Schedule 1 or 2. Subject to the passage of the Bill, a 'Fire Safety Advisory Committee' will be set up to hear problematic cases, to examine alternative measures proposed by owners/occupiers and render impartial advice. This advisory committee will serve as another communication channel available to aggrieved owners/occupiers.

(d) Pursuant to clause 6(1) of the Bill, a Magistrate may make a fire safety compliance order if the occupier/owner is found guilty of an offence of not complying with the fire safety direction. If an appeal against the conviction of the original offence is made pursuant to the appeal procedures under the Magistrates

Ordinance (Cap 227) and is successful, the compliance order must also be set aside.

(e) Pursuant to clause 6(5) of the Bill, the applicable owner or occupier is entitled to be heard on the hearing of an application for a fire safety compliance order made by an enforcement authority. Pursuant to clause 6(4), a Magistrate may, on application of the applicable owner or occupier, revoke or vary a fire safety compliance order.

(f) A prohibition order made under clause 7 of the Bill involves the civil jurisdiction of the District Court. The persons affected may appeal in accordance with the appeal procedures under the District Court Ordinance (Cap 336). Under clauses 8(2) & (5) of the Bill, the prohibition order will not take effect until the appeal has been concluded.

(g) Pursuant to clause 12, an owner/occupier may request FSD/BD to issue a certificate that the requirements of the fire safety direction or fire safety compliance order have been complied with, so that the District Court may revoke the prohibition order. In considering such requests, FSD/BD will ensure full exchange of views with the owner/occupier concerned.

(h) If the request made under clause 12 fails, the owner or occupier may, pursuant to clause 13(1), apply to the District Court for the revocation of a prohibition order.

Fire Safety (Buildings) Bill

Administration's response to issues raised by the Bills Committee at its meeting on 28.3.2002

(a) To consider the need for replacing the word "or" with "and" referred to in clause 7(4).

In case the enforcement authorities need to apply for a prohibition order because the applicable owner has failed to comply with the fire safety direction, we agree that the affected occupiers should also be informed of such intention. Clause 7(4) as presently drafted provides for the service of notice to two classes of persons regulated under the Bill, namely owners and occupiers, through the operation of clauses 5(1) and (2) for the former class and clause 5(3) for the latter class. Simply replacing the word "or" with "and" may not be appropriate. Instead we will propose Committee Stage Amendment to add appropriate provisions to require the enforcement authorities to also post notices of the intended application upon conspicuous parts of the building affected in a bid to keep all affected informed.

(b) To consider whether there was a need to retain clause 8(1)(b) which stipulated that "the applicable owner and, if the owner is not the occupier, the occupier must take all practicable steps to ensure that any of the requirements in paragraph (a) is complied with"; and if so, to review whether the penalties for contravening clause 8(1)(b), as stipulated in clause 9, were proportionate to the offence.

2. As we have explained at the Bills Committee meeting, it is reasonable to require the owner or occupier to keep the premises effectively secured against unauthorised entry when the prohibition order is in force. To address the members' concerns, we will propose appropriate CSA to revise clause 8(1)(b) to make the requirements more specific.

3. We agree that the currently proposed penalty under clause 9 may be disproportionate to the gravity of the offence in clause 8(1)(b). We will propose CSA to provide that the penalty would be a fine at level 4 (currently at $25,000) and imprisonment for 6 months.

(c) To advise on the reasons for the use of the different words "revocation" and "discharge" in relation to the ceasing of effect of the prohibition order in clauses 12 and 13.

4. In *Black's Law Dictionary* (7th Ed.), "discharge" means "the cancelling or vacating of a court order" and "revocation" means "the annulment, cancellation, or reversal, usually of an act or power". In *A Dictionary of Modern Legal Usage* (2nd Ed.), "discharge" means "to cancel the original provisional force of an injunction or other court order" and "revoke" means "to annul by taking back". Thus, both words can be used to describe the act of cancelling the effect of a prohibition order under clauses 12 and 13.

5. Both words have been used in our legislation. For example, in section 31 of the District Court Ordinance, Cap. 336, a District Court judge may **revoke** an order made by him committing a person to prison. In section 52D of the same Ordinance, the District Court may **discharge** an order for arrest or imprisonment. In section 9(8) of the Fire Services Ordinance, Cap. 95, a magistrate's court may **revoke** a closing order if it is satisfied that conditions which gave rise to the making of the order no longer exist.

6. While it is possible to use the same word in clauses 12 and 13, from a drafting point of view, there is a small advantage of using two different words in the two different contexts in which a prohibition order ceases to have effect. Such usage can make a clear distinction between the ceasing of effect under clause 12 and that under clause 13 and facilitate reference. For example, when "revocation of such an order" is referred to in clause 14(1), we immediately know that the cancellation of the order under clause 12 is being referred to.

(d) To examine whether arrangements relating to the empowering of owner or occupier to apply to the District Court for the revocation of the prohibition order, as provided for in clause 13, were similarly provided for in the Buildings Ordinance.

7. Under s27(1) of the Buildings Ordinance, the District Court may, on application, issue a closure order against a dangerous building. Under s27(8), the closure order will remain in force until the Building Authority has posted a notice of expiry and served a copy of it to the owner. An owner affected by a closure order may therefore, after completion of the necessary building repair works, apply to the Building Authority for a notice of expiry. If the Building Authority is not satisfied that the repair works are adequate and refuses to issue the notice of expiry, the owner may appeal from that decision to an Appeal Tribunal under Part VI of the Buildings Ordinance, or seek judicial review from the court. There is no specific provision in the Buildings Ordinance for the owner to apply to the District Court for the revocation of the closure order.

Security Bureau
May 2002

Fire Safety (Buildings) Bill

Administration's Response to issues raised by Members at the Bills Committee meeting on 8.4.02

(a) To examine whether clause 13(3) needed to be amended so as to give more flexibility to the court to ensure that the court may, due to unforseeable difficulties, consider factors other than the compliance with the requirements of the relevant fire safety direction or fire safety compliance order when dealing with an application for revocation of a prohibition order

We have reviewed cl. 13(3). Although in practical terms we envisage that it would be very unlikely for owners to encounter difficulties which are unforseen at the time of the issue of the prohibition order by the court, we agree that it is not necessary to restrict the court's jurisdiction unduly. We will propose appropriate Committee Stage Amendment to remove the current restriction.

(b) To provide information on ordinance(s) which contained provisions similar to clause 13(3)

2. A few legislative provisions which are similar to cl. 13(3) are as follows –

- s.13(3) of the Fire Safety (Commercial Premises) Ordinance (Cap 502);
- s.27(1) of the Buildings Ordinance (Cap. 123).

—— A copy of the above provisions is attached.

(c) To seek views from the Law Society of Hong Kong regarding the effect of clause 14 on prospective buyers

3. We have approached the Law Society of Hong Kong and will revert with its views as soon as possible.

(d) To consider issuing a notice to each of the owners of the building individually in the event that an order referred to in clause 14(2) had been made against the owners' corporation

4. In the event that an order referred to in cl. 14(2) has been issued to the owners' corporation, we agree that, as a matter of good administrative practice, the enforcement authorities will serve a notice as far as possible on all the individual owners concerned. FSD and BD will ensure that this be done in the implementation of the Bill.

(e) To advise on whether a prior notice to owners or occupiers of the intended entry would be a more appropriate measure for authorized officers to enter and inspect the premises without warrant

5. In our letter of 22 November 2001 to the Bills Committee (CB(2)476/01-02(02)), we have explained in detail the consistency of cl. 16(1) and (2) with relevant human rights provisions. In a nutshell, cl. 16(1) and (2) provides the legal basis on which authorized officers may enter and inspect a building without use of force. (If use of force is required, a warrant must be obtained under cl. 16(3)). Such legislative provisions are necessary to ensure that, among other things, the interference are "lawful" for the purpose of Article 14 of the HKBOR. It would not be appropriate to rely on mere "consent" given by the owner or occupier for entry into premises in the absence of statutory power.

6. That said, Members may wish to note that, in practice, the fire safety measures to be complied with by owners of composite buildings in respect of 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 (see Schedule 2). It is very unlikely that the enforcement authority will need to enter a private unit. In case such a need arises and the occupier finds the intended visit not convenient, the enforcement authority will adopt a flexible approach and schedule a later visit for a mutually convenient time as far as possible.

7. To improve the safeguard, we will propose appropriate CSA to add that, in exercising the power in cl. 16(1) and (2), the authorised officers have to give 24 hours' prior notice if the premises they seek to enter are private domestic units of a building.

(f) To advise on whether owners or occupiers would commit an offence under clause 18 if they refused authorized officers to enter their premises without a warrant to carry out inspection work

8. As we have explained in our letter of 22.11.2001 (CB(2)476/01-02(02)), no criminal sanction would be imposed under clause 18 on the owner or occupier who refuses to let an authorised officer enter his or her premises without a warrant if he or she has reasonable excuse to do so. What constitutes reasonable excuse is a matter of fact for the court to decide in an individual case.

(g) To consider the appropriateness of including all police officers as authorized officers in enforcing the Bill

9. Police officers are general law enforcement officers. Regarding many ordinances in which the primary enforcement authorities are the respective professional departments concerned, police officers play a useful role in rendering assistance as needs be. As far as the Bill is concerned, in a great many cases, we envisage that authorised officers from FSD and BD can carry out their duties efficiently on their own. However in a few difficult cases in which owners or occupiers are not cooperative, it is imperative that FSD/BD officers may summon any police officer in an expeditious manner without resorting to case-by-case authorization to effect the entry and inspection of buildings under clause 16 and the request for information about ownership or occupation of building under clause 17.

10. It should be noted that all authorised officers (whether they are FSD/BD officers or police officers) must only exercise the powers given in cl. 16 and 17 for the purposes of implementing the Bill. Such statutory powers would not be valid and available to them if they are taking action for other purposes or acting in bad faith.

Security Bureau
May 2002

Section of Enactment

Chapter：	502	Title：	FIRE SAFETY (COMMERCIAL PREMISES) ORDINANCE	Gazette Number：	L.N. 234 of 1998
Section：	**13**	Heading：	**Right to apply to District Court for revocation of use restriction order or prohibition order**	Version Date：	01/06/1998

(1) If the relevant enforcement authority-
(a) rejects the request of the relevant owner or occupier for the issue of a certificate of compliance under section 12; or
(b) fails to issue such a certificate within 28 days after the request was made,
that owner or occupier may apply to the District Court for the revocation of the use restriction order or prohibition order relating to the premises or building, as the case may be.
(2) An applicant must give notice in writing of the application to the relevant enforcement authority within 7 days after making the application.
(3) On the hearing of an application for the revocation of a use restriction order or prohibition order, the District Court must revoke the order if satisfied that the requirements of the relevant fire safety direction, fire safety improvement direction, fire safety compliance order or fire safety improvement compliance order, as the case may be, have been complied with. Otherwise it must refuse the application.

(Amended 15 of 1998 s. 15)

Section of Enactment

Chapter：	123	Title：	BUILDINGS ORDINANCE	Gazette Number：	62 of 2000
Section：	**27**	Heading：	**Closure Order**	Version Date：	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 62 of 2000 s. 3

(1) Upon the application of-
(a) the Building Authority, where he is of the opinion that-
(i) any building is dangerous or liable to become dangerous; or
(ii) any building should be closed in order to enable any works, which he is empowered to carry out or cause to be carried out under this Part, to be carried out without danger to the occupiers or to the public; or (Replaced 59 of 1983 s. 3)
(b) the owner-
(i) where a notice has been served upon him by the Building Authority requiring closure of a building under section 26; or
(ii) where the Building Authority has supplied a certificate to him showing that a building should be closed in order to enable building works to be carried out without danger to the occupiers or to the public, the District Court shall on being satisfied that notice has been given in accordance with the provisions of subsection (2) make a Closure Order: (Amended 35 of 1969 Schedule)
Provided that nothing in paragraph (b)(ii) shall entitle an owner to carry out any building works which would result in a contravention of Part I of the Landlord and Tenant (Consolidation) Ordinance (Cap 7).
(2) (a) Not less than 7 days' notice of intention to apply for a Closure Order shall be given by the person making such application by posting a copy of such notice upon a conspicuous part of the building to be affected, and upon being so posted such notice shall be deemed to be notice to all persons of such intention: (Amended 40 of 1965 s. 5)
Provided that in the case of an emergency such notice shall be given as is practicable.
(b) The notice shall reproduce in clear and legible form subsections (8), (10) and (11) in both the English and Chinese languages. (Amended 23 of 1969 s. 6)
(3) (Repealed 23 of 1969 s. 6)
(4) A Closure Order made under this section shall-
(a) specify the building to be closed; and
(b) order the closure thereof under the direction of a police officer. (Amended 23 of 1969 s. 6)
(5) (a) Save with the permission in writing of the Building Authority, no person, other than a public officer in the course of his duty, shall enter or be in a building at any time while a Closure Order is in force in respect of that building.
(b) Where he thinks fit, the Building Authority may, subject to such conditions as he thinks fit, by notice in writing permit any person to enter and be in a building while a Closure Order is in force in respect of that building.
(c) Any permission granted under paragraph (b) may be cancelled by the Building Authority at any time and for any reason. (Replaced 40 of 1965 s. 5)
(6) Where a Closure Order is in force in respect of a building-
(a) any police officer of or above the rank of inspector, with such assistance as may be necessary, may remove therefrom any person who is in the building in contravention of subsection (5)(a); and
(b) the Building Authority may seal, or cause to be sealed, all or any of the entrances to or exits from the building. (Added 40 of 1965 s. 5)

(7) The Building Authority may recover from the owner of the building the cost of any works that he carries out, or causes to be carried out, under subsection (6)(b). (Added 40 of 1965 s. 5)
(8) A Closure Order shall remain in force in respect of a building until-
(a) the Building Authority has caused a notice, to be known as a notice of expiry of the Closure Order to be posted upon a conspicuous part of the building to which the Closure Order relates and, subject to subsection
(11), has served a copy of the notice of expiry on the owner of the building; or
(b) the building to which the Closure Order relates is completely demolished or otherwise ceases to exist, as the case may be. (Replaced 55 of 1996 s. 5)
(9) Every notice of expiry of a Closure Order shall specify-
(a) the building to which it relates; and
(b) the date upon which the Closure Order expires. (Replaced 23 of 1969 s. 6)
(10) Where an owner has received a copy of a notice of expiry of a Closure Order under subsection (8)(a), such owner shall- (Amended 55 of 1996 s. 5)
(a) cause copies thereof to be served upon all former occupiers of the building who have notified him of their addresses; and
(b) within 14 days of the date of such notice, serve upon the Building Authority a certificate in such form as the Building Authority may specify, setting out-
(i) the names and addresses of such former occupiers of the building as have notified him of their addresses; and
(ii) the date upon which each of such former occupiers was served with a copy of the notice of expiry of the Closure Order. (Replaced 23 of 1969 s. 6)
(11) Notwithstanding the provisions of subsection (8)(a) as to service of a copy of a notice of expiry of a Closure Order upon the owner, where- (Amended 55 of 1996 s. 5)
(a) the owner cannot be found or ascertained, or is absent from Hong Kong, or is under a disability; or (Amended 62 of 2000 s. 3)
(b) the notice of expiry of the Closure Order is served on the completion of works by the Building Authority in accordance with his powers in that behalf under section 26,
then the Building Authority shall cause copies of the notice of expiry of the Closure Order to be-
(i) served upon all former occupiers of the building of whose addresses he is aware; and
(ii) advertised in at least 1 English language newspaper and 1 Chinese language newspaper published in Hong Kong. (Added 23 of 1969 s. 6)

Fire Safety (Buildings) Bill

Administration's response to issues raised by the Bills Committee at its meeting on 29.4.02

(a) To consider amending clause 19(1)(b) so that any neglect on the part of a person concerned in the management of an owners' corporation would not constitute an offence; or alternatively, to consider adding the word"gross" before "neglect" in clause 19(1)(b)

An owners' corporations registered under the Building Management Ordinance is performing statutory duties for the better management of the common parts of a building on behalf of all the owners of the building. Members of the management committee are entrusted by the owners with the job of running the owners' corporation. In certain circumstances, it is necessary to subject members of the management committee to sanction if they have intentionally or negligently failed to carry out their prescribed duties. There are specific provisions in the Building Management Ordinance to such effect.

2. For example, s27(1) requires a management committee to maintain proper books or records of accounts and to prepare an income and expenditure account and a balance sheet annually under s27(3). In the event of a contravention of s27(1), every member of the management committee shall be guilty of an offence and shall be liable on conviction to a fine at level 5, unless he proves that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances. According to 40B(1) – which was added following an legislative exercise in 2000, the Secretary of Home Affairs may, in certain circumstances, order that the management committee must appoint a building management agent for the purposes of managing a building. Under s40B(2), where a management committee without reasonable excuse fails to comply with such an order, every member of the management committee shall be guilty of an offence and shall be liable on conviction to a fine at level 5 (and to a further daily fine of $1 000 each day), unless he proves that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.

3. It is relevant to note that the policy objective of the Bill is to improve fire safety of buildings and protect the safety of people. The application of clause 19(1) of the Bill to members of the management committee of an owners' corporation is in line with the spirit of the above specific provisions of the Building Management Ordinance which relate to the responsibilities of members of the management committee. Specifically, the degree of care required in clause 19 (absence of "neglect") is generally the same as that specified in the above provisions of the Building Management Ordinance ("due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances").

4. Clause 19(1) is also consistent with similar provisions for offences by persons concerned in the management of body corporate (including owners' corporation) in other legislation relating to buildings. See s18(1) of the Fire Safety (Commercial Premises) Ordinance, Cap.502 and s40(6) of the Buildings Ordinance, Cap.123 – excerpt attached.

5. In the above light, we are of the view that the present formulation of clause 19 is consistent with the prevailing policy and appropriate.

(b) To consider deleting the words "or apparently employed by" referred to in clause 23(b)(i); or alternatively, to consider qualifying the person apparently employed by the body corporate referred to in clause 23(b)(i)

6. In serving a document to a body corporate, it is customary and widely acceptable to deliver it to the place at which the body carries a business and giving it to the receipt and dispatch office manned by people employed by the body. Clause 23(b)(i) reflects such a common practice. Similar provisions can be commonly found in statutes. Excerpt of a few statutory precedents is attached for members' reference. We are of the view that the current drafting of clause 23(b)(i) is in order.

(c) To consider adding a provision to the Bill to enable the resolution of disputes among owners of non-domestic parts of composite buildings arising from the need to comply with a fire safety requirement of improving the staircases in terms of their width and number; or alternatively, to consider putting in place a mechanism to achieve the same effect.

7. Regarding the non-domestic part of a composite building, if the existing uses accord with the approved uses, such as shops, offices, etc., and if no unauthorised building works have been carried out since the issue of the occupation permit, there will be no need to require the improvement of staircases in terms of width and number under the provisions of the Bill. Owners of the non-domestic part would not be required jointly to comply with a fire safety requirement for the improvement of staircases and there would be no question of disputes among them in this respect.

8. In the event of a particular owner changing the use of his premises and increasing the number of occupants enormously, he may be required under schedule 2 of the Bill to provide additional staircases as means of escape, depending on such factors as the potential fire risk, floor layout/travel distances, nature of use, actual occupancy etc. It is for the owner himself to sort out how best to meet the requirement. In case he 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 rearranging the layout/reducing the travel distance) so that the existing staircases can meet the requirement for means of escape. If the owner concerned would like to install additional staircases as required but the installation would not be possible by solely making use of his own premises, he could seek to negotiate with other owners to buy the necessary space for access. But he cannot force others to sell him the space, as the property rights of an individual is protected by law from unlawful or arbitrary interference.

9. The pursuit of any of the possible solutions is entirely a matter of commercial or private decision on the part of the particular owner himself. It would not be appropriate for the Government to interfere with it or his business negotiations with other owners, and such matters would be outside the ambit of the Bill. That said, the enforcement authorities would be happy to render advice on the technical feasibility of possible solutions that the owners may pursue in order to meet the new means of escape requirements.

Security Bureau
May 2001

Section of Enactment

Chapter：	60	Title：	IMPORT AND EXPORT ORDINANCE	Gazette Number：	L.N. 196 of 1999
Section：	**6AD**	Heading：	**Director's discretion in respect of validated production notifications**	Version Date：	23/07/1999

PART IIA

PRODUCTION NOTIFICATION OF CERTAIN TEXTILES FOR EXPORT

(1) The Director may issue a validated production notification subject to such conditions specified or referred to in the notification as he may see fit to impose.
(2) The Director may cancel a validated production notification at the request of its holder.
(3) The Director may revoke or suspend a validated production notification if it appears to him that-
(a) a condition imposed on, or a declaration made in, the notification has not been complied with; or
(b) false or misleading information has been given in connection with the validated production notification.
(4) The Director may serve notice of the cancellation, revocation or suspension of a validated production notification on its holder and such holder shall, in the absence of evidence to the contrary, be deemed to be served with the notice if it-
(a) is delivered to the holder personally, or in the case of a partnership, to a person apparently concerned with the management of, or apparently employed by, the partnership;
(b) is addressed to the holder and left at or forwarded by registered mail to him at his usual or last known place of abode or business; or
(c) is sent to the holder using services provided by a specified body.
(5) The holder of a validated production notification that has been cancelled, revoked or suspended shall immediately surrender to the Director the validated production notification and all its copies issued to him by the Director.
(6) No person shall use a validated production notification that has been cancelled, revoked or suspended, or quote its reference number, for any purpose in connection with the export of the specified textiles to which the notification relates.
(7) A person who contravenes subsection (5) or (6) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.
(8) The Director may delegate any of the powers and duties conferred or imposed on him by this Part to any appointed officer.

(Part IIA added 37 of 1999 s. 3)

Section of Enactment

Chapter：	132CI	Title：	LICENSING APPEALS BOARD RULES	Gazette Number：	L.N. 57 of 2000
Section：	**15**	Heading：	**Service**	Version Date：	15/03/2000

Any document, notice or thing required to be served, lodged or furnished to any person under these Rules shall be duly served, lodged or furnished if-

(a) in the case of the secretary, the Chairman or the Board, it is left at or sent to the office of the secretary;

(b) in the case of a person who is a body corporate-

(i) it is sent by registered post addressed to the body at its registered office in Hong Kong or at any place in Hong Kong at which the body carries on business; or

(ii) it is delivered to any place in Hong Kong at which the body carries on business and given to a person apparently concerned in the management of, or apparently employed by, the body;

(c) in the case of a person who is not a body corporate-

(i) it is sent by registered post addressed to the last known address of the person; or

(ii) it is delivered to the person personally.

Section of Enactment

Chapter：	502	Title：	LICENSING APPEALS BOARD RULES	Gazette Number：	L.N. 57 of 2000
Section：	**22**	Heading：	**Service**	Version Date：	15/03/2000

A document to be given or served under this Ordinance may be given or served-

(a) in the case of a person who is not a body corporate-

(i) by delivering it to the person personally; or

(ii) by sending it by registered post in a letter addressed to the person at the person's usual place of residence or business or, if the person's address is unknown, addressed to the person's last known place of residence or business; or

(b) in the case of a person that is a body corporate-

(i) by delivering it to any place in Hong Kong at which the body carries on business and giving it to a person apparently concerned in the management of, or apparently employed by, the body; or

(ii) by sending it to the body by registered post in a letter addressed to the body at its registered office in Hong Kong or at any place in Hong Kong at which the body carries on business.

Section of Enactment

Chapter：	509	Title：	OCCUPATIONAL SAFETY AND HEALTH ORDINANCE	Gazette Number：	
Section：	**47**	Heading：	**How documents are to be served for purposes of Ordinance**	Version Date：	30/06/1997

A document to be served for the purposes of this Ordinance may be served-

(a) in the case of a person other than a body corporate or partnership-

(i) by delivering it to the person personally; or

(ii) by sending it by registered post in a letter addressed to the person at the person's usual place of residence or business or, if the person's address is unknown, addressed to the person's last known place of residence or business; or

(b) in the case of a body corporate-

(i) by delivering it to any place in Hong Kong at which the body carries on business and giving it to a person apparently concerned in the management of, or apparently employed by, the body; or

(ii) by sending it to the body by registered post by letter addressed to the body at its registered office in Hong Kong or at any place in Hong Kong at which the body carries on business; or

(c) in the case of a partnership-

(i) by delivering it to any place in Hong Kong at which the partnership carries on business and giving it to a person apparently concerned in the management of, or apparently employed by, the partnership; or

(ii) by sending it to the partnership by registered post by letter addressed to the partnership at any place in Hong Kong at which the partnership carries on business.

Section of Enactment

Chapter：	485A	Title：	MANDATORY PROVIDENT FUND SCHEMES (GENERAL) REGULATION	Gazette Number：	L.N. 294 of 1998
Section：	**206**	Heading：	**How notices etc. are to be served for purposes of the Ordinance?**	Version Date：	24/07/1998

(1) Unless otherwise expressly provided, a notice or other document to be given or served for the purposes of the Ordinance may be given or served-

(a) in the case of a person other than a body corporate or partnership-

(i) by delivering it to the person personally; or

(ii) by sending it by registered post in a letter addressed to the person at the person's usual place of residence or business or, if the person's address is unknown, addressed to the person's last known place of residence or business; or

(b) in the case of a body corporate-

(i) by delivering it to any place in Hong Kong at which the body carries on business and giving it to a person apparently concerned with the management of, or apparently employed by, the body; or

(ii) by sending it to the body by registered post by letter addressed to the body at its registered office in Hong Kong or at any place in Hong Kong at which the body carries on business; or

(c) in the case of a partnership-

(i) by delivering it to any place in Hong Kong at which the partnership carries on business and giving it to a person apparently concerned with the management of, or apparently employed by, the partnership; or

(ii) by sending it to the partnership by registered post by letter addressed to the partnership at any place in Hong Kong at which the partnership carries on business.

(2) A notice or document is also taken to have been given or served for the purposes of the Ordinance if-

(a) it is sent to the recipient by facsimile transmission, electronic mail or other similar means of communication at the

recipient's facsimile number or electronic mail address last known to the sender; and

(b) a record, generated by the means of transmission, establishes that the notice or document was so sent.

(3) Subsection (2) does not apply in relation to a document given under section 55 or 124.

DRAFT

FIRE SAFETY (BUILDING) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause	Amendment Proposed
5(1), (2), (9)(b) and (10)	By deleting 〝技術和工藝〞and substituting 〝科技〞.
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 upon a conspicuous place of the relevant building or part of a building.〞.
8(1)(b)	By deleting every thing after 〝that〞and substituting 〝the relevant building or part of a building is effectually 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 subcluse (1), by adding 〝(a)(i)〞after 〝8(1)〞. (c) By adding -

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

13(3) By deleting everything after 〝Court〞 and substituting 〝may revoke the order if it is satisfied that the requirements of the relevant fire safety direction or fire safety compliance order, as the case may be, have been complied with.〞

16 By adding -

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

(a) intended for domestic purpose; and

(b) in respect of which a person has an exclusive right to occupy,

unless no less than 24 hours notice of an intended entry by such officer has been given to the person.〞 .