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Panel on Security

**Information note prepared by the Legislative Council Secretariat
for the meeting on 5 July 2011**

Review of fire safety inspection and related issues

Background

The Cornwall Court fire in August 2008 aroused immense public concern over the fire safety of licensed premises, especially those patronized by large number of members of the public. On 2 June 2009, The Ombudsman declared under section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397) a direct investigation into the fire safety regulatory measures for food premises enforced by the Fire Services Department ("FSD") and the Food and Environmental Hygiene Department ("FEHD").

Findings of The Ombudsman's investigation into the fire safety regulatory measures for food premises

2. On 7 May 2010, The Ombudsman issued its investigation report, which revealed that while FSD had a statutory certification system for owners of premises to engage registered contractors to inspect their fire service installations or equipment annually, its monitoring was loose and ineffective. Its inspections of premises had fallen below target and few prosecutions had been instituted against non-compliance and obstruction to or locking of means of escape. The investigation also revealed that FEHD renewed food business licences without checking whether the premises met fire safety requirements. As a result, renewed licences posed a false assurance of safety of the premises to the public. The Ombudsman made 11 recommendations for improvement, which included -

- (a) expediting the setting up of its computer system and the legislative amendment to enable prompt identification of owners of premises and registered contractors ("RCs") failing to comply with statutory requirements;
- (b) promoting conspicuous display of Certificate of Fire Service Installations and Equipment ("FS251") on premises, while considering legislative measures for mandatory display;
- (c) inspecting all high priority cases and conduct random checks on low priority cases;
- (d) requiring RCs to make good fire service installations or equipment ("FSI") before submitting FS251 to FSD;
- (e) stepping up prosecution, where warranted, against owners of premises for failure to check FSI, RCs for failure to submit FS251 and owners/users for causing obstruction or locking means of escape;
- (f) working out with the Buildings Department the procedures whereby the latter would inform the former of action taken after receipt of referral of cases of serious obstruction. FSD should follow up on such cases by taking enforcement action where necessary;
- (g) imposing conditions in food business licences for compliance with fire safety requirements;
- (h) working out arrangements with FSD to ensure that food premises meet fire safety requirements before approving their applications for licence renewal; and
- (i) comprehensively reviewing FSD's frequency of surprise inspections and manpower requirements.

3. The executive summary of The Ombudman's investigation report is in **Appendix I**.

Administration's response to the recommendations of The Ombudsman

4. The Administration advised in a press release issued on 13 May 2010 that FSD would actively follow up the recommendations in the investigation report. In response to The Ombudsman's recommendation on expediting the establishment of the computer system and the legislative amendment exercise, FSD had decided before The Ombudsman initiated the investigation to set up a new computer system to improve its efficiency in licensing, fire protection and prosecution work. The contract for the system was awarded in September 2009. The system was expected to be put into commission in 2011. With the new computer system, FSD would be able to promptly identify the buildings which had failed to submit FS251. As a result, actions would be taken against FSI owners or contractors breaching the law in a more speedy and effective manner. FSD would review the arrangement of inspection of food premises and would work closely with FEHD to seriously consider the recommendations in the report with a view to enhancing fire safety in food premises. The press release issued by the Administration is in **Appendix II**.

Fire safety inspections

5. According to a press release issued by the Administration on the 2010 year-end review of FSD, a total of 256 124 fire safety inspections were conducted in 2010, representing an increase of 15 639 inspections or 6.5% over 240 485 inspections in 2009. The inspections sought to ensure fire safety in relation to FSI, fire escapes, ventilation systems, handling of dangerous goods and licensed premises.

EXECUTIVE SUMMARY

Direct Investigation on Fire Safety Regulatory Measures

Background

The Cornwall Court fire in August 2008 aroused concern over fire safety especially on food premises, which entertain members of the public in large numbers. The Ombudsman, therefore, initiated in June 2009 a direct investigation to examine:

- (a) the procedures and practices in enforcement of regulatory measures for fire safety applicable to all premises;
- (b) the administration of arrangements for fire safety in licensing food premises; and
- (c) the mechanism for monitoring compliance with fire safety on food premises.

Our Findings

Roles and Responsibilities of Relevant Departments

2. The Fire Services Department (“FSD”) is responsible not only for fire-fighting and rescue, but also for promotion of fire safety and protection on all premises.

3. The Food and Environmental Hygiene Department (“FEHD”) is the licensing authority for food premises. It issues licences to food premises which meet health, fire safety and other requirements.

FSD’s Statutory Certification System

4. By law, owners of premises have to keep their fire service installations or equipment (“FSI”) in efficient working order at all times. They also have to engage registered contractors (“RCs”) to inspect their FSIs once every 12 months. After inspection, the RC has to report the results to the owner on a certificate, commonly known as FS251, within 14 days, with a copy to FSD.

Loose and Ineffective Monitoring

5. FSD manually checks FS251s received against those previously received to identify premises with overdue inspection. However, this procedure is labour-intensive and the results prone to human errors. Moreover, FSD finds it difficult to prove whether and when RCs have submitted their FS251s. As a result, only four prosecutions have been brought in the past seven years against RCs for non-submission or late submission of FS251s.

6. FSD is developing a computer system for generating lists of premises with overdue inspection of FSI. It is also considering legislative amendment to require its endorsement of FS251s before RCs issue them to owners of premises. These would facilitate the Department's monitoring of the inspections.

Lack of Transparency

7. Under the current regulatory mechanism, owners of premises have no statutory obligation to display FS251s. The state of fire safety of premises is therefore not readily known to users of premises and they are unable to play a part in reporting defects. FSD is considering legislative amendment to require conspicuous display of FS251s, which would provide a strong incentive for owners to arrange timely inspection and proper maintenance of their FSI. Pending the legislative amendment, it encourages owners to display their FS251s.

Inadequate Follow-up on FS251s Received

8. FSD classifies FS251s received into high or low priority cases by the nature and severity of the defects reported therein. For high priority cases, FSD aims to inspect the premises immediately to determine if enforcement action is necessary. For low priority cases, FSD merely issues advisory letters to urge the owners to rectify the defects.

9. Each year, about 80% of cases are classified as high priority, and about 20% as low priority. However, FSD manages to inspect only 60% of cases, which means that at least about 20% of high priority cases are not checked by FSD. Low priority cases are even more likely to be taken lightly by owners, as FSD will not take further action after issuing advisory letters.

10. FSD should certainly inspect all high priority cases and conduct random checks on low priority cases.

RCs to be Gatekeepers

11. Currently, the law requires RCs to merely inspect FSI and report results to FSD. The onus is on FSD to ensure that owners rectify the defects reported.

12. It would be desirable for FSD to require RCs to make good FSI before submitting FS251s to the Department. With RCs acting as gatekeepers, FSD can better utilise its resources in monitoring compliance by RCs and owners of premises.

Low Prosecution Rate

13. FSD has initiated only a very small number of prosecutions, not only with regard to RC's non-submission or late submission of FS251s, but also to owners' failure to check FSI annually and obstruction to or locking of means of escape. The average annual figures for the past seven years were less than one, five and 29 respectively. More rigorous action by FSD is called for.

Gaps in Coordination and Communication

14. By law, FSD may prosecute any person causing obstruction to or locking means of escape. For cases of serious obstruction caused by suspected unauthorised building works, FSD is

to refer them to the Buildings Department (“BD”) for follow-up as building safety issues, apart from taking its own enforcement action. However, of the 1,289 cases referred to BD between October 2008 and October 2009, none was followed up by FSD.

15. FSD should enhance communication with BD to facilitate decision on the enforcement action to be taken on each case.

Licensing and Inspection of Food Premises

Omission in Licence Conditions

16. An applicant for a new food business licence has to produce evidence showing that health, fire safety and other requirements have been met. However, once issued, the licence only requires the licensee to comply with food hygiene conditions. It does not specify any fire safety requirements.

17. Such inconsistency is inconceivable, given the importance of fire safety and FEHD’s wide powers to impose conditions in licences. This may invite arguments that non-compliance with fire safety requirements does not constitute a breach of licence.

Deficiency in Renewal of Licence

18. Food business licences are renewable every 12 months. In processing applications for renewal, FEHD neither requires from the licensee any documentary evidence of, nor arranges with FSD to inspect the food premises for, continued compliance with fire safety requirements.

19. In a complaint case handled by this Office, the complainant applied for a new food business licence to operate a restaurant in a multi-storey building. FEHD rejected his application, as the FS251 of the building was long overdue and FSD had not taken any action. However, the existing restaurants in the same building had no problem in getting licences renewed.

20. Such renewal of licences without compliance with fire safety requirements gives the public a false assurance of safety. The practice also differs from those for other premises such as clubs and karaoke establishments where applicants for renewal of licensee have to submit certificates to prove that all FSI on the premises are in working order and FSD officers inspect the premises before renewal of licence. FEHD should take steps to ensure that the premises meet fire safety requirements when licences are renewed.

Inadequate Inspection

21. There are currently about 22,000 licensed food premises. FSD aims to conduct a surprise inspection on each food premises every five years. Between 2006 and 2009, the number of surprise inspections conducted by FSD each year ranges from 78 to 513, falling seriously below its target. Such a small number of surprise inspections could hardly spur licensed food operators to maintain fire safety on their premises at all times.

Recommendations

22. Based on the above, The Ombudsman makes 11 recommendations to FSD and FEHD, including the following:

- (a) FSD should expedite the setting up of its computer system and the legislative amendment to enable prompt identification of owners of premises and RCs failing to comply with statutory requirements;
- (b) FSD should promote conspicuous display of FS251s on premises, while considering legislative measures for mandatory display;
- (c) FSD should inspect all high priority cases and conduct random checks on low priority cases;
- (d) FSD should consider requiring RCs to make good FSI before submitting FS251s to the Department;
- (e) where warranted, FSD should step up prosecution against owners of premises for failure to check FSI, RCs for failure to submit FS251s and owners/users for causing obstruction or locking means of escape;
- (f) FSD should work out with BD procedures whereby the latter will inform the former of action taken after receipt of referral of cases of serious obstruction, and should itself follow up on such cases by taking enforcement action where necessary;
- (g) FEHD should impose conditions in food business licences for compliance with fire safety requirements;
- (h) FEHD should work out arrangements with FSD to ensure that food premises meet fire safety requirements before approving their applications for licence renewal; and
- (i) FSD should comprehensively review its frequency of surprise inspections and manpower requirements.

**Office of The Ombudsman
May 2010**

Press Releases

FSD follows up Ombudsman's recommendations

The Fire Services Department welcomed the Ombudsman's investigation report on fire safety regulatory measures and would actively follow up the recommendations made in the report, a spokesman for the Fire Services Department (FSD) said today (May 13).

"The Fire Services Department attaches great importance to the fire safety of buildings and food premises to protect the lives and properties of members of the public," the spokesman said.

The spokesman said that while some of the recommendations in the report had been implemented, the FSD would seriously consider the remaining ones.

In response to the Ombudsman's recommendation on expediting the establishment of the computer system and the legislative amendment exercise, the spokesman clarified that before the Ombudsman initiated the investigation, FSD had decided to set up a new computer system to improve its efficiency in licensing, fire protection and prosecution work. The contract for the system was awarded in September 2009. The system was expected to be put into commission in 2011. With the new computer system, FSD would be able to promptly identify the buildings which had failed to submit the Certificate of Fire Service Installations and Equipment (FS 251). As a result, actions would be taken against Fire Service Installation (FSI) and Equipment owners or contractors breaching the law in a more speedy and effective manner.

The spokesman added, "Years ago, FSD has aimed to conduct surprise inspection of each licensed food premises every five years. In 2009, FSD adjusted its strategy to inspect licensed food premises requiring priority treatment. Such practice remains in force to date. FSD will study how to increase the inspection frequency."

"In 2009, FSD has strengthened its manpower to check the certificates involving reports of defects, resulting in the dramatic increase in the ratio of checks from less than 20 per cent in the previous years to 60 per cent. The FSD would study how to further improve the random inspection mechanism and the frequency of inspections," the spokesman said.

The spokesman noted that FSD would step up publicity to remind FSI owners of timely maintenance and inspection on FSIs. According to existing legislation, FSI owners had the responsibility of ensuring FSIs were in efficient working order at all times and if FS 251 indicated defects, owners of FSI had the full responsibility of rectifying the defects. FSD would conduct inspections to verify that such rectifications were duly completed.

He reiterated that FSD would continue to maintain strict law enforcement and consider taking legal actions against offenders without prior warning.

The spokesman said that FSD would work with the Buildings Department to explore ways to strengthen the existing referral system in handling cases involving serious obstruction to means of escape arising from unauthorised building works.

"FSD has adopted various approaches including publicity, enforcement and inspection to enhance the fire safety of buildings. Regular inspections on FSIs have been carried out from time to time and Fire Hazard Abatement Notices (FHANs) were issued to offenders," the spokesman said.

The spokesman stated that the FSD would review the arrangement of inspection of food premises and would work closely with the Food and Environmental Hygiene Department to seriously consider the recommendations in the report with a view to enhancing fire safety in food premises.

Finally, the spokesman stressed that fire safety is a shared responsibility among building owners, management companies, owners of licensed premises, staff and patrons, as well as FSI contractors. The FSD would continue to maintain close liaison with stakeholders to further improve fire safety.

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