

立法會
Legislative Council

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seen by the Administration)

Ref : CB2/BC/2/15

Bills Committee on Fire Services (Amendment) Bill 2015

Minutes of the third meeting
held on Monday, 29 February 2016, at 10:45 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Tony TSE Wai-chuen, BBS (Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, SBS, JP
Hon IP Kwok-him, GBS, JP
Hon YIU Si-wing, BBS
Dr Hon Kenneth CHAN Ka-lok
Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Members absent : Hon Abraham SHEK Lai-him, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon WU Chi-wai, MH
Dr Hon CHIANG Lai-wan, JP

Public Officers attending : Miss Shirley YUNG Pui-man
Deputy Secretary for Security 2
Security Bureau

Mr Alex CHAN Yuen-tak
Principal Assistant Secretary for Security B
Security Bureau

Miss Venus TSOI Yuen-san
Assistant Secretary for Security B2
Security Bureau

Mr Shane LO Siu-hang
Assistant Director (Fire Safety)
Fire Services Department

Mr Terrance TSANG Wing-hung
Deputy Chief Fire Officer (Fire Safety)
Fire Services Department

Mr Ryan KWOK Pak-chiu
Divisional Officer (Policy) 1
Fire Services Department

Ms Rayne CHAI Chih-hui
Acting Senior Assistant Law Draftsman (I) 2
Department of Justice

Miss Queenie WU Chung-yi
Government Counsel
Department of Justice

Attendance : Item I
by invitation

Hong Kong Catering Industry Association

Mr WOO lun
Representative

Building Department Local Building Surveyors'
Association

Mr Anderson CHAN Che-bun
Chairman

The Federation of Hong Kong Electrical & Mechanical
Industries Trade Unions

Mr LIU Wei-kwong
Associate Committee Member

The Hong Kong Institution of Engineers (Fire Division)

Mr LAM Chun-man
Adviser

Institution of Dining Art

Mr Kelvin YAU
Chairman

The Hong Kong Institute of Surveyors

Mr Eddy CHEUNG Yan-kwai
Building Surveyor

The Institution of Fire Engineers (Hong Kong Branch)

Ir Roks CHIK Mo-shui
Vice President

Mr Robin Sinclair Howes

The Hong Kong Institution of Engineers - Fire Discipline

Mr CHAN Yim-cheong
Committee Member

Passive Fire Protection Research Centre

Ir TSUI Hon-wing
Vice-President

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Ms Janet SHUM
Senior Council Secretary (2) 5

Ms Louisa YU
Legislative Assistant (2) 5

Action

I. Meeting with deputations and the Administration

[File Ref.: SBCR 1/2361/14, LC Paper Nos. LS21/15-16, CB(2)881/15-16(01) to (03), CB(2)935/15-16, CB(2)970/15-16(01) to (09), CB(2)987/15-16(01), CB(2)1040/15-16(01), CB(2)1093/15-16(01) to (03), CB(2)1100/15-16(01) and CB(3)207/15-16]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee received oral representation from 10 deputations on the Bill.

3. Members agreed to cancel the discussion session with the Administration so as to allow more time for members to discuss with both the deputations and the Administration.

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4. The Administration was requested to:

- (a) consider members' suggestion of amending the proposed amendments to section 25 of the Fire Services Ordinance (Cap. 95) to the effect that the new subsidiary legislation for the implementation of the proposed Registered Fire Engineer ("RFE") Scheme would be subject to the approval of the Legislative Council, i.e. the positive vetting procedure under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1); and
- (b) in respect of the licence or permit application for the operation of those prescribed premises to be covered under the proposed RFE Scheme,
 - (i) clarify whether the fire safety requirements proposed to be issued by RFEs (Risk Assessment) under the RFE Scheme would cover only the licensing requirements on fire safety currently imposed by the Director of Fire Services, but not the passive fire protection elements under the licensing requirements on building safety (i.e. fire resisting construction, means of escape in case of fire and means of access for firefighting and rescue) currently imposed by the Director of Buildings; and
 - (ii) advise the current responsibilities of authorized persons (i.e. architects, engineers or surveyors registered under the

Action

Buildings Ordinance (Cap. 123)) on certifying the prescribed premises' compliance with the fire safety requirements in the licensing process, and whether the certification was subject to follow-up compliance inspections by the Fire Services Department for its issuance of a Fire Services Certificate upon confirmation of compliance.

II. Any other business

5. The Chairman said that members would be informed of the date of the next meeting in due course.

(Post-meeting note: With the concurrence of the Chairman, the fourth meeting of the Bills Committee has subsequently been scheduled for 24 May 2016 at 8:30 am.)

6. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 2
Legislative Council Secretariat
27 September 2016

**Proceedings of the third meeting of
the Bills Committee on Fire Services (Amendment) Bill 2015
held on Monday, 29 February 2016, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with deputations and the Administration</i>			
000115 - 000723	Chairman	Opening remarks	
000724 - 001027	Hong Kong Catering Industry Association	Presentation of views (LC Paper No. CB(2)970/15-16(04))	
001028 - 001346	Building Department Local Building Surveyors' Association ("BDLBSA")	Presentation of views (LC Paper Nos. CB(2)970/15-16(05) and CB(2)1040/15-16(01))	
001347 - 001541	The Federation of Hong Kong Electrical & Mechanical Industries Trade Unions	Presentation of views (LC Paper No. CB(2)987/15-16(01))	
001542 - 001954	The Hong Kong Institution of Engineers ("HKIE") (Fire Division)	Presentation of views (LC Paper No. CB(2)1093/15-16(01))	
001955 - 002218	Institution of Dining Art	Presentation of views (LC Paper No. CB(2)970/15-16(06))	
002219 - 002641	The Hong Kong Institute of Surveyors ("HKIS")	Presentation of views (LC Paper No. CB(2)970/15-16(07))	
002642 - 003106	The Institution of Fire Engineers ("IFE") (Hong Kong Branch)	Presentation of views (LC Paper No. CB(2)1093/15-16(02))	
003107 - 003514	Mr Robin Sinclair Howes	Presentation of views (LC Paper No. CB(2)970/15-16(08))	
003515 - 003901	HKIE - Fire Discipline	Presentation of views (LC Paper Nos. CB(2)987/15-16(02) and CB(2)1093/15-16(03))	
003902 - 004224	Passive Fire Protection Research Centre	Presentation of views (LC Paper Nos. CB(2)970/15-16(09) and CB(2)1100/15-16(01))	
004225 - 004654	Chairman Admin	The Administration's response that: (a) under the proposed Registered Fire Engineer ("RFE") Scheme, a person applying to become an RFE had to be a registered professional engineer ("RPE") of relevant disciplines under the Engineers Registration Ordinance (Cap. 409), or a person possessing relevant fire engineering qualification and experience as considered appropriate by the Director of Fire Services ("DFS");	

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		<p>(b) the Fire Services Department ("FSD") would establish a Registration Committee consisting of professionals and representatives from the academia to provide professional advice to FSD on matters including the qualifications and experience required for registration as an RFE of the relevant classes;</p> <p>(c) an RFE who had committed misconduct or neglect in any professional respect, and had issued a fire safety certificate that was false and misleading might respectively be regarded as having committed a disciplinary offence and a criminal offence; and</p> <p>(d) the RFE Scheme aimed to offer an additional option for licence applicants of the prescribed premises with a view to facilitating business operation. FSD would continue to provide its existing services for licence applicants and maintain its level of service.</p>	
004655 - 005410	Chairman Mr James TO BDLBSA HKIS	<p>Mr James TO sought the deputations' views on what details of the proposed RFE Scheme should be set out in the Fire Services Ordinance (Cap. 95) ("the principal Ordinance") but not in the new regulation to be made by the Chief Executive ("CE") in Council after the passage of the Bill. In his view, the latter should be subject to the positive vetting procedure under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1), rather than the negative vetting procedure under section 34 of the Interpretation and General Clauses Ordinance as proposed by the Administration.</p> <p>Mr Anderson CHAN of BDLBSA's view that apart from RPEs of relevant disciplines, other professionals such as registered professional surveyors in the building surveying division under the Surveyors Registration Ordinance (Cap. 417) ("building surveyors") who possessed appropriate knowledge and experience were also professionally competent to register as RFEs.</p> <p>Mr Eddy CHEUNG of HKIS's view that the Administration's assurance that in addition to RPEs of relevant disciplines, persons who possessed relevant fire engineering qualification and experience as considered appropriate by DFS could also apply to be RFEs was too vague to provide certainty on the types of professionals qualified to apply for registration as RFEs. He pointed out that building surveyors were currently engaged in providing professional services on fire safety measures for compliance with the Fire Safety (Commercial Premises) Ordinance (Cap. 502) and Fire Safety (Buildings) Ordinance (Cap. 572).</p> <p>Given the strong views of the surveying profession on the qualification requirements for registration as RFEs, Mr James TO expressed concern about whether the Administration had consulted the relevant stakeholders on the issue during previous rounds of consultation exercise on the proposed RFE Scheme.</p>	

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005411 - 010130	Chairman Ir Dr LO Wai-kwok Admin HKIE (Fire Division)	<p>In response to Ir Dr LO Wai-kwok's enquiries, the Administration's advice that:</p> <p>(a) it would be up to the licence applicants of the prescribed premises to decide whether to continue using the existing fire safety risk assessment and certification services provided by FSD, or engage the services of RFEs at different stages of the licensing process; and</p> <p>(b) given the wide coverage and variety of matters provided under the principal Ordinance, it was inappropriate to set out each and every detail of the matters in the principal Ordinance. Delegation of legislative power by way of subsidiary legislation was a well-established and long-standing practice. For instance, while the principle of registration and regulation of fire service installation contractors was provided in the principal Ordinance, the implementation details were set out in the Fire Service (Installation Contractors) Regulations (Cap. 95A). To maintain consistency of style in the organization of the principal Ordinance and its subsidiary legislation, the Administration considered it appropriate to set out matters of details or of technical, procedural or operational nature of the proposed RFE Scheme and regulation of RFEs in a new regulation to be made by the CE in Council under the principal Ordinance. The new regulation would be subject to the negative vetting procedure.</p> <p>At the invitation of Ir Dr LO Wai-kwok, Mr LAM Chun-man of HKIE (Fire Division) elaborated the functions of active and passive fire protections as detailed in the submission.</p>	
010131 - 010754	Chairman Mr WONG Ting-kwong Admin	<p>While expressing support to the Bill, Mr WONG Ting-kwong was concerned that the introduction of the proposed RFE Scheme might not achieve its objective of shortening the time required for fire safety risk assessment and certification as required of in the licensing process if many of the licence applicants did not switch from using FSD's services. In addition, the Scheme would not help much to expedite the whole licensing process of the prescribed process since other government departments were also involved in the licensing process.</p> <p>The Administration's advice that at present, the fire safety risk assessment and certification process had accounted for quite a substantial proportion of time in the whole licensing process of the prescribed premises. It was expected that RFEs would be able to complete the relevant services within a shorter turnaround time and hence reduce the overall time required for licence application. FSD would also maintain its level of service and would review its performance pledge with respect to the future demand for service after the implementation of the RFE Scheme.</p>	

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		<p>In response to Mr WONG Ting-kwong's enquiry about the future service fees to be charged by FSD for cases whereby FSD only needed to endorse the fire service requirements formulated by the RFEs concerned but not provided the services direct, the Administration's advice that it would review the existing service fees to be charged by FSD in this regard, based on the "user-pay" principle and other relevant considerations.</p>	
010755 - 011610	Chairman Mr IP Kwok-him Admin	<p>Mr IP Kwok-him's expression of support to the Bill; and his view that the new regulation to provide for the implementation details of the proposed RFE Scheme should be subject to the positive vetting procedure.</p> <p>Mr IP Kwok-him's enquiry about (a) whether the services provided or certification made by building surveyors, in their capacity of authorized person under the Buildings Ordinance (Cap. 123), in relation to certain prescribed premises' compliance with the fire safety requirements in the process of licence application was subject to follow-up compliance inspections by FSD; and (b) whether building surveyors were professionally competent to register as RFEs.</p> <p>The Administration's advice that:</p> <ul style="list-style-type: none"> (a) to maintain consistency with the rule-making procedure adopted for other similar subsidiary legislation made under the principal Ordinance, the new regulation to be made by CE in Council after the passage of the Bill would be subject to the negative vetting procedure. The relevant implementation details of the proposed RFE Scheme would be provided to the Bills Committee or the Panel on Security for consideration, as the case might be; (b) building surveyors, in their capacity of authorized persons under the Buildings Ordinance, had to certify to the licensing authority that the requirements in respect of passive fire protection, such as fire resisting construction, means of fire escape and means of access for firefighting and rescue, had been complied with; and (c) building surveyors who had completed courses relating to the class of RFE they applied to register, and possessed relevant working experience might apply to be registered as RFEs. 	
011611 - 011811	Chairman Mr James TO	<p>Members agreed to continue to discuss with the deputations and the Administration for the remaining part of the meeting.</p>	
011812 - 012257	Chairman Dr Kenneth CHAN Admin	<p>Dr Kenneth CHAN's view that given the need to ensure public safety, the new regulation should be subject to the positive vetting procedure, or otherwise, the implementation details of the proposed RFE Scheme, including the registration and duties for RFEs, their inclusion in and removal from the register and the disciplinary and appeal mechanisms in relation to the Scheme, should be set out in the Bill. He</p>	

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		<p>pointed out that whether a subsidiary legislation was subject to the negative or the positive vetting procedure depended on how the making of the subsidiary legislation was provided for in the relevant principal ordinance. This would be a policy issue rather than a legal issue.</p> <p>The Chairman's request for the Administration to consider members' request for subjecting the new regulation to the positive vetting procedure.</p>	Admin
012258 - 013418	Chairman Mr James TO BDLBSA HKIS Ir Dr LO Wai-kwok HKIE - Fire Discipline Mr IP Kwok-him	<p>Mr James TO's concern that the name of "registered fire engineer" did not seem to suggest that building surveyors would be qualified to register as RFEs; and Mr IP Kwok-him's view that a more neutral name similar to "authorized person" would be more appropriate.</p> <p>Ir Dr LO Wai-kwok's remark that the word "engineer" had also been used by other jurisdictions to refer to professionals providing fire safety certification services.</p> <p>Mr Anderson CHAN of BDLBSA's remark that during the second round of consultation from October 2011 to January 2012, suggestion had been put forth to the Administration for consideration that a more neutral word such as "certifier" should be adopted.</p> <p>Mr Eddy CHEUNG of HKIS's remark that the explanation given by the Administration so far could not ease the concern of the surveying profession on whether professionals other than RPEs of relevant disciplines could apply to become an RFE. To his understanding, the word "certifier" had been used before 2007 when the Administration was exploring the introduction of a third party fire safety risk assessment and certification scheme. As a reference, persons who were qualified to perform the duties and functions of inspectors in accordance with the Buildings Ordinance, who could be architects, engineers and surveyors, were named "registered inspectors" under the Buildings Ordinance. He considered that a more neutral name should be adopted.</p> <p>Mr CHAN Yim-cheong of HKIE - Fire Discipline's remark that the papers provided by the Administration had clearly set out the duties and functions of, as well as the qualifications requirements for, the three classes of RFE.</p>	
013419 - 014042	Chairman Mr James TO HKIS	<p>In response to Mr James TO's enquiry about the estimated number of building surveyors who might be competent to provide the fire safety risk assessment and certification services under the proposed RFE Scheme, Mr Eddy CHEUNG of HKIS's advice that there were thousands of building surveyors, in the capacity of authorized persons, providing professional services relating to ensuring compliance with the building and fire safety requirements of the premises in the process of licence applications.</p>	

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014043 - 014625	Chairman Ir Dr LO Wai-kwok IFE (Hong Kong Branch) HKIE (Fire Division)	<p>At the invitation of Ir Dr LO Wai-kwok, Ir Roks CHIK of IFE (Hong Kong Branch) elaborated the third party fire safety certification schemes implemented in Australia, Singapore and the United Kingdom. While building surveyors might be competent to carry out the duties of RFE (Risk Assessment), the carrying out of the respective duties of RFE (Fire Service Installation) and RFE (Ventilating System) might require RPEs of relevant disciplines.</p> <p>Mr LAM Chun-man of HKIE (Fire Division)'s view that only those professionals who had completed courses relating to the relevant class of RFE they applied to register and possessed the relevant working experience could apply to register as RFE in order to ensure fire safety and public safety.</p>	
014626 - 014957	Chairman Mr IP Kwok-him HKIS HKIE (Fire Division)	<p>Mr IP Kwok-him's enquiry about the respective roles of building surveyors and fire engineers in the process of licence application and certification for the prescribed premises.</p> <p>Mr Eddy CHEUNG of HKIS advised that in some cases, authorized persons were responsible to certify compliance to the licensing authority in respect of the relevant fire safety requirements.</p> <p>Mr LAM Chun-man of HKIE (Fire Division) advised that the role of authorized persons in the process of licence application would depend on the types of premises and licences involved.</p>	
014958 - 015906	Chairman Mr James TO Ir Dr LO Wai-kwok Admin	<p>Mr James TO sought elaboration from the Administration on (a) whether the fire safety requirements proposed to be issued by RFEs (Risk Assessment) under the proposed RFE Scheme covered only the licensing requirements on fire safety currently imposed by DFS; and (b) the current responsibilities of authorized persons on certifying the prescribed premises' compliance with the fire safety requirements in the licensing process.</p> <p>Ir Dr LO Wai-kwok's remark about the existing fire safety risk assessment and certification services provided by FSD and the rationale for introducing the proposed RFE Scheme.</p> <p>The Administration's explanation on the workflow of fire safety risk assessment and certification under the proposed RFE Scheme as set out in Annex B to the Legislative Council Brief (File Ref: SBCR1/2361/14); and its clarification that the existing role of authorized persons in the process of licence application and certification for the prescribed premises would remain unchanged under the proposed RFE Scheme.</p>	Admin
<i>Agenda item II: Any other business</i>			
015907 - 015933	Chairman	Closing remarks	