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Paper for the House Committee meeting on 10 February 2017

**Report of the Bills Committee on
Fire Services (Amendment) Bill 2016**

Purpose

This paper reports on the deliberations of the Bills Committee on Fire Services (Amendment) Bill 2016 ("the Bills Committee").

Background

2. At present, a person who intends to run certain types of premises has to obtain a certificate or letter issued by the Director of Fire Services ("DFS"), certifying that the premises concerned have complied with all relevant fire safety requirements and will not expose persons therein to any undue risk of fire, before the applicant can be issued a licence, a permit, a certificate of compliance or a certificate of registration by the regulatory authorities concerned.¹ DFS is currently the only party vested with the statutory authority to issue fire safety certification for buildings or premises. The Fire Services Ordinance (Cap. 95) ("the principal Ordinance") and its subsidiary legislation do not provide for persons other than DFS to perform fire safety risk assessment and certification required for the licensing process.

3. Before issuing the certificate or letter, the Fire Services Department ("FSD") officers will inspect the premises to assess the fire risk. According to the fire risk assessment result, FSD officers will issue a set of fire safety requirements

¹ Those premises requiring a licence or permit to operate include general restaurants, factory canteens, funeral parlours, cinemas, theatres, karaoke establishments, hotels, guesthouses, places of public entertainment, etc. A club-house requires a certificate of compliance to operate, whereas schools needs a certificate of registration.

to the licence applicant, stipulating the fire safety works required (e.g. provision of fire service installations and equipment and ventilating systems). The licence applicant will then engage a registered fire service installation contractor ("RFSIC"), other contractors or workers to carry out the required works. Upon notification by the licence applicant that the required fire safety works have been completed, FSD officers will conduct compliance inspection. If the requirements have been complied with, FSD will issue a certificate or letter to the licence applicant, with which the licence applicant can submit to the relevant regulatory authority for obtaining the relevant licence.

4. The Efficiency Unit conducted a Departmental Business Study for FSD in 2004 with a view to enhancing FSD's business-friendliness. The Efficiency Unit recommended FSD to reduce its involvement in day-to-day inspection and certification by devolving the responsibility of fire safety certification to the industry. FSD conducted two rounds of trade consultation in 2007 and 2011 respectively to gauge the views from the stakeholders on the proposal to implement a scheme so that qualified persons in the private market might also provide the fire safety risk assessment and certification services. To better assess the business impact of the proposed scheme on various stakeholders, a Business Impact Assessment ("BIA") study was conducted from mid-2012 to mid-2013. According to the Administration, the majority of the stakeholders expressed support for the introduction of the proposed scheme.

The Fire Services (Amendment) Bill 2015

5. The Administration introduced the Fire Services (Amendment) Bill 2015 ("the 2015 Bill") into the Legislative Council ("LegCo") on 16 December 2015. The 2015 Bill seeks to expand the scope of the principal Ordinance to provide for registered fire engineers ("RFEs") and a scheme for fire safety risk assessment and certification on compliance with fire safety requirements by RFEs for certain premises; empower the Chief Executive ("CE") in Council to make regulations for the RFE Scheme and for regulating RFEs; and make related, consequential and other minor amendments.

6. A Bills Committee was formed to scrutinize the 2015 Bill. It completed scrutiny of the 2015 Bill in June 2016 and raised no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 29 June 2016. However, due to other legislative priorities, the resumption of Second Reading debate did not take place and the Bill lapsed upon the prorogation of the Fifth LegCo on 16 July 2016.

The Fire Services (Amendment) Bill 2016

7. The Administration introduced the Fire Services (Amendment) Bill 2016 ("the 2016 Bill") into LegCo on 30 November 2016. According to the LegCo Brief (File Ref.: SBCR 1/2361/14) issued by the Security Bureau on 16 November 2016, the 2016 Bill is by and large a replica of the 2015 Bill but has incorporated the then agreed Committee stage amendments ("CSAs") that regulations made by the CE in Council for the proposed RFE Scheme and for regulating RFEs, except those concerning fees to be charged in relation to the registration and de-registration of RFEs, are to be subject to the positive vetting procedure under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1). Other amendments are textual in nature.

The Bills Committee

8. At the House Committee meeting on 2 December 2016, Members formed a Bills Committee to study the 2016 Bill in detail. The membership list of the Bills Committee is in **Appendix I**.

9. Under the chairmanship of Ir Dr LO Wai-kwok, the Bills Committee has held two meetings with the Administration to study the 2016 Bill. The Bills Committee has also received written submissions from those organizations and individual which/who have previously given views to the Bills Committee on Fire Services (Amendment) Bill 2015. A list of organizations and individual which/who have given views on the 2016 Bill is in **Appendix II**.

Deliberations of the Bills Committee

Business implications of the proposed RFE Scheme

10. Clause 3 of the Bill seeks to amend the long title of the principal Ordinance to include the proposed RFE Scheme. According to the Administration, a qualified person may register as an RFE for any one or all of the following three classes according to their own areas of expertise and scope of services: (a) registered fire engineer (risk assessment) ("RFE(RA)") who will conduct fire risk assessments and formulate fire safety requirements; (b) registered fire engineer (fire service installation) ("RFE(FSI)") who will conduct compliance inspections on the fire safety requirements (except those relating to ventilating systems) and issue fire safety certificate upon confirmation of compliance; and (c) registered fire engineer (ventilating system) ("RFE(VentS)") who will conduct compliance inspections on the fire safety requirements relating to ventilating system(s) and

issue fire safety certificates upon confirmation of compliance. As a prudent start, the proposed RFE Scheme will first be implemented in the licensing process for the premises ("prescribed premises") to be listed out in a new regulation to be made by the CE in Council after the passage of the 2016 Bill. The types of these prescribed premises are set out in **Appendix III**.

11. Members support the proposed RFE Scheme which will offer an additional option for licence applicants of the prescribed premises by leveraging qualified persons in the market for the provision of the fire safety risk assessment and certification services. They have sought elaboration on how the proposed RFE Scheme can help expedite the whole licensing process of the prescribed premises.

12. Taking the licensing process of food premises as an example, the Administration has pointed out that it currently takes around 17 days for FSD to conduct fire safety risk assessment and formulate fire safety requirements upon receipt of the referral of a licence application from the licensing authority, and around 14 days to conduct compliance inspection and certification after the licence applicant concerned notifies FSD of the completion of the relevant fire services works. It is estimated that upon the implementation of the proposed RFE Scheme, RFE(RA) and RFE(FSI)/RFE(VentS) may be able to complete the risk assessment services in about five days and the certification services in about three days.

13. Some members including Dr Elizabeth QUAT and Mr Alvin YEUNG, as well as the Hong Kong Catering Industry Association which has submitted views to the Bills Committee, have expressed concern over the level of services to be provided by FSD upon the launch of the proposed RFE Scheme. The Administration has advised that FSD will maintain its existing services to the licence applicants of the prescribed premises after the roll-out of the proposed RFE Scheme. Licence applicants can opt to continue to use the services provided by FSD if they so wish, or engage the services of RFEs at different stages of the licensing process. FSD will conduct a fee review in due course to reflect its involvement and workload in the licensing process. The review, however, has to take into account the fact that the existing fee level of FSD is below the full-cost recovery level.

Qualifications and experience required for registration as an RFE

14. Members note that the qualifications and experience requirements for registration as an RFE will be provided for in the new regulation to be made under the principal Ordinance as appropriate after the passage of the 2016 Bill. The Administration has informed the Bills Committee of its initial proposal to allow persons from different backgrounds (including registered professional

engineers of the relevant disciplines under the Engineers Registration Ordinance (Cap. 409), persons with undergraduate degrees relevant to the duties of the three classes of RFEs, and practitioners with sufficient experience) to enter the trade, provided that they have the relevant and sufficient academic and professional training and working experience. Members are concerned about whether there will be a sufficient supply of qualified personnel to meet the service demand arising from the implementation of the proposed RFE Scheme.

15. The Administration has advised that according to the earlier BIA study, there should be a sufficient supply of potential RFE candidates in the market. In addition, it is expected that the implementation of the proposed RFE Scheme will attract more people to develop a professional career in the fire engineering field. A registration committee consisting of professionals and representatives from the academia will be established under the new regulation to provide professional advice to DFS on matters including whether to accept qualified persons who have relevant experience and/or completed the relevant fire engineering courses to register as an RFE of the relevant classes. An interview board panel and interview boards will be formed to conduct professional interviews in respect of the applications for registration and recommend to DFS if the applications should be approved.

16. Dr YIU Chung-yim is of the view that the composition of the boards and committees to be set up for various purposes under the proposed RFE Scheme should be provided for in the principal Ordinance. The Administration has explained that it is more appropriate to set out matters of details of the proposed RFE Scheme and regulation of RFEs in the new regulation. It will continue to engage the relevant professional bodies and stakeholders before finalizing the implementation details in the new regulation.

17. Members note that among the organizations which have submitted their views to the Bills Committee, the Buildings Department Local Building Surveyors' Association has indicated strong objection to the name of "registered fire engineer" as personnel possessing different qualifications may be qualified to register as an RFE. The Hong Kong Institute of Surveyors ("HKIS") takes a neutral stand in this regard, whereas the Fire Division of The Hong Kong Institution of Engineers ("HKIE") and The Institution of Fire Engineers (Hong Kong Branch) have expressed support to the use of the name "registered fire engineer".

18. The Administration is of the view that "registered fire engineer" is an appropriate title to reflect the professional knowledge and practical experience required of this group of personnel, who have to possess sufficient knowledge and experience in such areas as fire protection systems, fire safety management,

fire science, fire dynamics, human behavior in fire, etc. which are commonly referred to as "fire engineering". Members noted that the Bills Committee on Fire Services (Amendment) Bill 2015 had a discussion on this matter and had agreed not to pursue the matter further.

Regulatory mechanism for RFEs

19. Members are of the view that a comprehensive regulatory mechanism should be put in place in the new regulation to ensure the quality of work of RFEs. Mr Alvin YEUNG and Dr YIU Chung-yim have enquired about the disciplinary regime applicable to RFEs. Dr YIU Chung-yim is particularly concerned about those cases of improper conduct whereby the RFE concerned is not a member of any of the self-regulatory professional bodies (for instance HKIE or HKIS) and will not be subject to the disciplinary actions imposed on the respective professions.

20. The Administration has advised that FSD will issue codes of practice or guidance notes for RFEs to observe. A disciplinary board panel will be formed for inquiring into and dealing with cases in which an RFE is suspected to have failed to discharge the duties properly. Apart from disciplinary offences, RFEs may be subject to criminal liability if, among other things, an RFE has issued a fire safety certificate that is false or misleading. The above apart, FSD intends to require that fire safety requirements formulated by an RFE(RA) have to be endorsed by FSD before they are issued to the licence applicants concerned. This will help ensure that consistent fire safety standards will be maintained. To assess and ensure the quality of certification work of the RFEs concerned, FSD will select premises on a random basis to conduct audit inspections of at least 70% of those cases whereby the certification is completed by an RFE(FSI) or RFE(VentS) for the issuance of fire safety certificates to the licence applicants.

21. Mr CHAN Han-pan was concerned about the mechanism to be put in place under the proposed RFE Scheme to prevent malpractices and conflict of interest, in particular bid-rigging and anti-competitive acts in the tendering process which are not uncommon in building repair and maintenance works.

22. According to the Administration, FSD has sought advice from the Corruption Prevention Department of the Independent Commission Against Corruption ("ICAC") for suitable control measures to prevent malpractices and conflict of interest. Preventive measures recommended by ICAC include, among others, the prohibition of an RFE from certifying works carried out by an RFSICs or a registered specialist contractor (ventilating works category) if the RFE concerned is the proprietor, shareholder, director, partner or an employee of that contractor, and positive declaration of no conflict of interest by RFE on each

certification occasion. The Administration has informed the Bills Committee that the recommended measures of ICAC will be set out in the new regulation to be made after the passage of the 2016 Bill, or in the codes of practice or guidance notes issued by FSD for RFEs.

Amendments related to the introduction of the proposed RFE Scheme

23. Clause 7(3) of the Bill proposes to add new regulation 7(3) and (4) to the Fire Service (Installations and Equipment) Regulations (Cap. 95B) to respectively empower an RFE(FSI) to inspect and test any fire service installation or equipment installed in, or for, any prescribed premises, and empower DFS or a person authorized by DFS in writing to inspect and test any fire service installation or equipment installed in, or for, any premises (including prescribed premises) to check its safety and the efficiency of its working order.

24. In response to the enquiry of the Legal Adviser to the Bills Committee, the Administration has explained that the legislative intent to add the words "or for" in the proposed new regulation 7(3) and (4) as compared to the 2015 Bill is to respectively clarify that fire service installation or equipment to be inspected and tested by an RFE(FSI) and DFS (or a person authorized by DFS) would cover not only those installed in the premises concerned, but also those installed at locations which are not within the premises but which are installed for the premises concerned. The Legal Adviser to the Bills Committee has suggested that regulations 6, 7, 8 and 9 of the Fire Service (Installations and Equipment) Regulations which also touch upon fire service installation or equipment installed or to be installed in the premises should be similarly amended to the effect that the requirements concerned would cover not only the fire service installations or equipment installed or to be installed in the premises, but also those installed or to be installed at locations which are not within the premises but which are installed or to be installed for the premises for the sake of consistency and clarity.

25. Having carefully reviewed the suggestion made by the Legal Adviser to the Bills Committee, the Administration has advised that regulations 6, 7, 8 and 9 of the Fire Service (Installations and Equipment) Regulations are related to the responsibilities of RFSICs and owners of fire service installations and equipment. Taking into account that FSD is conducting a holistic review of the responsibilities of RFSICs and owners of fire service installations and equipment, and the outcome of which may entail amendments to the Fire Service (Installation Contractors) Regulations (Cap. 95A) and the Fire Service (Installations and Equipment) Regulations, the Administration has undertaken that, for prudence and completeness sake, the above amendments suggested by the Legal Adviser to the Bills Committee, which carry implications for the RFSIC trade and fire service installation owners, will be considered in the context of the review and the

related trade consultation. If the suggested amendments are confirmed to be necessary, it will take them forward together with other legislative amendments identified as necessary in the review.

26. As a related issue, some members including the Chairman and Dr YIU Chung-yim are of the view that the wording of the proposed new regulation 7(4) of the Fire Service (Installations and Equipment) Regulations should be revised to provide greater flexibility for DFS or a person authorized by DFS in inspecting and testing the fire service installation or equipment installed in, or for, any premises, the purpose of which may include but not limited to checking its safety and the efficiency of its working order. The Administration has explained that the current wording of the proposed new regulation 7(4) is intended to provide DFS and the authorized representatives of DFS with the power not more than is necessary. After consideration of members' view and to tally with the wording of the proposed new regulation 7(3) to avoid giving rise to queries on whether there is any difference in the scope and purpose of the inspection and testing performed by DFS and RFE(FSI) (where there should be none), the Administration has agreed to move a CSA to delete the phrase "for checking its safety and the efficiency of its working order" in the proposed new regulation 7(4) of the Fire Service (Installations and Equipment) Regulations.

27. At the suggestion of the Legal Adviser to the Bills Committee, the Administration will move a further CSA to substitute the wordings "fire service equipment" in the existing regulation 10(1) of the Fire Service (Installations and Equipment) Regulations with "fire service installation or equipment" to align it with the standardized references to the same object in the Fire Service (Installations and Equipment) Regulations and to clear any possible ambiguity.

Implementation of the proposed RFE Scheme

28. The Administration has advised the Bills Committee that subject to the passage of the 2016 Bill, it will work towards introducing a new regulation under the principal Ordinance to provide for the implementation details of the proposed RFE Scheme. The proposed RFE Scheme will be rolled out after the passage of the new regulation. The plan of FSD is to conduct a review to assess the effectiveness of the Scheme after its running for about two years, and consider whether and to what extent the scope of duties of RFEs should be expanded.

Committee stage amendments

29. The CSAs to be moved by the Administration as mentioned in paragraphs 26 and 27 above is in **Appendix IV**. The Bills Committee does not object to these CSAs.

30. The Bills Committee will not propose any CSAs to the Bill.

Follow-up actions by the Administration

31. The Administration has made the following undertakings:

- (a) engage the relevant professional bodies and stakeholders before finalizing the implementation details of the proposed RFE Scheme and regulation of RFEs to be set out in the new regulation made under the principal Ordinance after the passage of the 2016 Bill (paragraph 16 refers); and
- (b) consider, in the context of its review of the existing legislation that regulates RFSIC, the need to amend regulations 6, 7, 8 and 9 of the Fire Service (Installations and Equipment) Regulations to cater for the situation where fire service installations or equipment is installed for the premises but not within any premises (paragraph 25 refers).

Resumption of Second Reading debate on the Bill

32. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 1 March 2017, subject to the moving of the CSAs by the Administration.

Advice sought

33. Members are invited to note the deliberations of the Bills Committee and the date for the resumption of the Second Reading on the Bill.

Bills Committee on Fire Services (Amendment) Bill 2016

Membership List

Chairman	Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Members	Hon James TO Kun-sun Hon Tommy CHEUNG Yu-yan, GBS, JP Hon WONG Ting-kwong, SBS, JP Hon CHAN Hak-kan, BBS, JP Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon Frankie YICK Chi-ming, JP Hon YIU Si-wing, BBS Hon CHAN Han-pan, JP Dr Hon Elizabeth QUAT, JP Hon Alvin YEUNG Hon Jimmy NG Wing-ka, JP (up to 20 December 2016) Hon Wilson OR Chong-shing, MH Hon YUNG Hoi-yan Hon CHAN Chun-ying Dr Hon YIU Chung-yim
	(Total : 15 members)
Clerk	Ms Maisie LAM
Legal adviser	Ms Vanessa CHENG
Date	21 December 2016

Bills Committee on Fire Services (Amendment) Bill 2016

Organizations and individual which have/who has provided written views to the
Bills Committee

1. Buildings Department Local Building Surveyors' Association
2. Fire Division of The Hong Kong Institution of Engineers
3. Hong Kong Catering Industry Association
4. Passive Fire Protection Research Centre
5. Royal Institution of Chartered Surveyors
6. The Hong Kong Institute of Surveyors
7. The Institution of Fire Engineers (Hong Kong Branch)
8. Mr Robin Sinclair Howes

Bills Committee on Fire Services (Amendment) Bill 2016

Types of prescribed premises
intended to be covered under the proposed RFE Scheme

- public dance hall and dancing school established under the Miscellaneous Licences Regulation (Cap. 114A)
- general restaurant, light refreshment restaurant, factory canteen, bakery, food factory, composite food shop established under the Food Business Regulation (Cap. 132X)
- billiard centre, bowling centre and public skating rink established under the Places of Amusement Regulation (Cap. 132BA)
- cinema, theatre and place of public entertainment (other than a cinema or theatre) established under the Places of Public Entertainment Regulations (Cap. 172A)
- school established under the Education Ordinance (Cap. 279)
- premises for conducting registered courses or exempted courses established under the Non-local Higher and Professional Education (Regulation) Rules (Cap. 493B)
- premises for the sale and consumption of intoxicating liquor established under the Dutiable Commodities (Liquor) Regulations (Cap. 109B)
- funeral parlour established under the Funeral Parlours Regulation (Cap. 132AD)
- child care centre established under the Child Care Services Ordinance (Cap. 243)
- massage establishment established under the Massage Establishments Ordinance (Cap. 266)
- hotel and guesthouse established under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349)
- club-house established under the Clubs (Safety of Premises) Ordinance (Cap. 376)

- amusement game centre established under the Amusement Game Centres Ordinance (Cap. 435)
- bedspace apartment established under the Bedspace Apartments Ordinance (Cap. 447)
- residential care home established under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)
- drug dependence treatment centre established under the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566)
- karaoke establishment (other than that in a restaurant, hotel, guesthouse or club), karaoke establishment in a hotel, guesthouse or club and karaoke establishment in a restaurant established under the Karaoke Establishments Ordinance (Cap. 573)
- residential care home established under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)

Fire Services (Amendment) Bill 2016

Committee Stage

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
7(3)	In the proposed regulation 7(4), by deleting “for checking its safety and the efficiency of its working order”.
New	In Part 3, by adding— “8A. Regulation 10 amended (standard of inspection) Regulation 10(1)— Repeal “service equipment” Substitute “service installation or equipment”.”.