



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : SBCR 1/2361/16  
本函檔號 OUR REF : LS/B/6/18-19  
電話 TELEPHONE : 3919 3505

傳真 FAX : 2877 5029  
電郵 E-MAIL : jyschan@legco.gov.hk

By Fax (2868 9159)

11 January 2019

Mr Alex CHAN  
Principal Assistant Secretary for Security (B)  
Security Bureau  
B Division  
9th Floor, East Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Mr CHAN,

### **Fire Safety (Industrial Buildings) Bill**

We are scrutinizing the legal and drafting aspects of the Bill and would be grateful if you could clarify the following matters:

Clauses 7 and 11 – directing owner or occupier to take other measures and reasonable excuse for non-compliance with a fire safety direction

Under clause 7 of the Bill, if an enforcement authority ("EA") considers that it would be unreasonable to direct the owner or occupier of an industrial building ("IB") or a part of an IB to comply with a fire safety requirement having regard to, among others, the structural integrity of the IB or its part, the EA may issue and serve on the owner or occupier a fire safety direction to direct the owner or occupier to take other measures the EA considers appropriate. Please clarify whether the EA would do so on its own initiative or the owner or occupier has to apply to take other measures after receiving a fire safety direction. In this connection, please consider whether provisions on such application procedure should be included in the Bill.

Please also clarify whether the fire safety requirements referred to in the proposed Schedules 1 and 2 to the Bill are all replaceable by alternative measures, or whether certain items listed in the proposed Schedules are in fact indispensable fire service installations and equipment.

Clauses 8 and 13 – time limit for compliance

We note that under clauses 8 and 13, it is proposed that a fire safety direction and a fire safety compliance order must specify the time limit for compliance with it. Please clarify whether the policy intent is that the relevant IB owner or occupier has to complete all the requisite fire safety improvement works within the specified time limit, or whether the commencement of such works within the specified time limit would be considered sufficient for the purpose of compliance. Please also clarify whether there is any procedure for the owner or occupier to apply for extension of the specified time limit.

Clauses 13 and 18 – right of IB owner or occupier to be heard

Under clause 13(2), it is proposed that an IB owner or occupier would be entitled to be heard at the hearing of an application to a magistrate for a fire safety compliance order. However, in respect of application to the District Court for a prohibition order by an EA, it is not proposed in clause 17 or 18 that the relevant IB owner or occupier would be entitled to be heard at the hearing. Please clarify the rationale for this proposed arrangement.

Clauses 11, 16 and 23 – penalties for non-compliance

Please clarify whether the proposed penalties in clauses 11, 16 and 23 are proportionate to the proposed offences, and whether they are consistent with existing penalties in related legislation, such as the penalties for non-compliance with fire safety measures stipulated in the Fire Safety (Commercial Premises) Ordinance (Cap. 502) and the Fire Safety (Buildings) Ordinance (Cap. 572).

Clauses 14, 20 and 21 – revocation of fire safety compliance order, revocation of prohibition order, and discharge of prohibition order

We note that under clause 14, it is proposed that a magistrate may make an order revoking a fire safety compliance order on the application of an EA or an owner or occupier. Under clause 20, it is proposed that an EA, upon issuing a certificate of compliance, would be under a duty to apply to the District Court for an order discharging a prohibition order for an IB or its part. Under clause 21, it is proposed that an IB owner or occupier would be able to apply to the District Court for an order to revoke a prohibition order under specified conditions. Please clarify, in connection with the above clauses, the distinction between "revocation" and "discharge" in the context of the Bill.

Clause 24 – service of copy of prohibition order

We note that clause 24(1)(b) seeks to provide that "... the enforcement authority must in another way serve a copy of the order on the

owner or occupier concerned". It is further noted that the proposed methods of service of documents are prescribed in clauses 48 and 49 in the proposed Division 3 of Part 4 of the Bill. Please clarify whether clause 24(1)(b) is intended to be read together with clauses 48 and 49 and if so, whether specific references to clauses 48 and 49 should be made in clause 24(1)(b) to reflect precisely the intended legal effect.

#### Clause 28 – rejecting request for certificate of compliance

Under clause 26, it is proposed that an IB owner or occupier may request an EA to issue a certificate of compliance for the IB or its part. The EA may either issue a certificate of compliance to the IB owner or occupier concerned under clause 27, or it may reject the request under clause 28 and inform the IB owner or occupier by written notice of its decision and the reasons for it as soon as practicable. Please clarify whether the IB owner or occupier would have an avenue to appeal against such decision and if not, the rationale for not proposing an appeal mechanism under the Bill.

#### Clause 32 – publishing information

We note that under clause 32, it is proposed that an EA may publish certain information by for example uploading them onto its departmental website, for the purpose of providing appropriate information to the public. We also note that the information which an EA may publish includes but is not limited to the four types of information stated in clause 32(a) to (d). Please clarify what other types of information would be published by an EA. Please also clarify whether such information may involve personal data and whether the publication of such information would be in compliance with the Personal Data (Privacy) Ordinance (Cap. 486).

#### Clause 36 – power to enter IB without warrant

Under clause 36, it is proposed that an authorized officer, who knows or reasonably believes that an IB is one to which the Bill applies, or knows or reasonably believes that an offence under the Bill is being or has been committed in an IB, may enter and inspect the IB without warrant. Please clarify whether an authorized officer, in the scenario where an IB or its part is in fact being used by an owner or occupier for domestic purposes, would still enter and inspect the relevant IB without warrant under clause 36.

#### Clause 54 – power to make regulations

It is proposed in clause 54 that the Secretary for Security may make regulations for the better carrying into effect of the provisions and purposes of the Bill. Please clarify the policy intent behind this proposed empowering



provision, which appears to give a wide power to the Secretary for Security to make regulations. Please also provide examples of the regulations that the Secretary for Security may make under the Bill, and consider stating in clause 54 the intended areas to be covered in the regulations for the sake of clarity and certainty.

Clause 57 – amendment to section 4 of Cap. 502

In relation to the proposed amendment to section 4 of Cap. 502, please clarify whether it is intended to clarify the scope of application of Cap. 502, or whether the policy intent is to revise the scope of application of Cap. 502 such that Cap. 502 would only apply to prescribed commercial premises. If it is the latter case, please further clarify the rationale for including this amendment in the Bill, as it appears to be a substantive amendment (instead of a textual amendment) to Cap. 502.

Clauses 58 and 59 – amendments to Cap. 502 and Cap. 572

We note that in relation to the offence of disclosure of information obtained officially under Cap. 502 and Cap. 572, the effect of clauses 58 and 59 appears to be that the scope of the exceptions to the offence under the two legislation would be expanded. In this connection, please clarify the policy intent behind these proposed amendments, and also the rationale for including these amendments (which appear to be substantive ones) to Cap. 502 and Cap. 572 in the Bill.

It is appreciated that your reply in both English and Chinese could reach us as soon as practicable, preferably before the second meeting of the Bills Committee.

Yours sincerely,



(Joyce CHAN)

Assistant Legal Adviser

c.c. Department of Justice  
(Attn: Miss Elaine NG, Sr Govt Counsel (By Fax: 3918 4613))  
Legal Adviser  
Senior Assistant Legal Adviser 1  
Clerk to the Bills Committee