

Bills Committee on Fire Safety (Industrial Buildings) Bill

Government's response to issues raised by deputations/individuals at the meeting on 13 February 2019

Purpose

This paper sets out the Government's consolidated response to issues raised by deputations/individuals in relation to the Fire Safety (Industrial Buildings) Bill ("the Bill") at the meeting on 13 February 2019.

Assisting owners or occupiers to comply with fire safety directions

2. Some deputations are concerned whether the Government would render support to owners and occupiers of industrial buildings ("IBs") to be regulated under the Bill ("target IBs") to help them comply with the fire safety directions ("FSDns") to be issued by the two Enforcement Authorities ("EAs") (i.e. the Fire Services Department ("FSD") and the Buildings Department ("BD")). Upon enactment of the Bill, the Government will render support to the owners and occupiers on three fronts – namely technical, financial and coordination of owners, which is briefly summarised in the ensuing paragraphs.

Technical support and acceptance of alternative measures

3. Upon enactment of the Bill, the two EAs will deploy officers to conduct joint inspections of the target IBs before issuing FSDns to owners and/or occupiers in light of the actual condition of the buildings and in accordance with the requirements of the Bill. The FSDns will require them to provide appropriate fire service installations and equipment ("FSIs") and/or carry out fire safety construction works, with a view to enhancing the fire safety of their buildings.

4. FSD and BD will adopt a flexible and pragmatic approach in handling each case. If it is found during a joint inspection that any particular fire safety requirement listed in Schedule 1 or 2 to the Bill is apparently infeasible, the departments may direct the owner and/or occupier to take alternative measure(s) other than that stipulated in the Schedules by specifying so in the

FSDn. On the other hand, after receipt of an FSDn with any requirement(s) as per Schedule 1 or 2, it is possible that the owner or occupier may encounter difficulties in compliance (for instance in terms of structural integrity). Under such circumstances, the owner or occupier may apply, with justifications, to FSD and BD to take alternative measure(s) in place of complying with the relevant requirement(s) in the Schedule. Having regard to the condition of individual buildings and the information provided by the owners, occupiers or Authorized Persons (“APs”), the departments will carefully consider the alternative proposals put forward by the owners. If options suitable for the buildings concerned, which are also technically feasible and can meet the purpose of enhancing fire safety, are identified, the departments will actively consider them and render assistance.

5. In addition, as stated in the paper submitted to the Bills Committee earlier (LC Paper No. CB(2)770/18-19(04)), the two EAs will assign case officers to follow up on cases of individual target IBs and provide technical advice and assistance. Where necessary, the case officers of FSD and BD are prepared to attend seminars and meet with the owners and occupiers to explain to them the contents of FSDns and assist them in solving potential problems concerning the works.

6. Some deputations are also concerned about whether the Government would accept the use of fibre glass fire service water tanks, which are lightweight, by owners. In general, fire service water tanks supplying water to automatic sprinkler systems and fire hydrant/hose reel systems need to comply with relevant requirements of the Water Supplies Department (“WSD”), which also approves the use of water tanks made of fibre glass. On the other hand, any building works involving the installation of fire service water tanks must comply with the requirements of the Buildings Ordinance (Cap. 123) and its subsidiary legislation. The APs and registered structural engineers concerned should prepare the required plans (including structural details) and submit them to the Building Authority for approval.

7. Regarding the time limit for compliance with FSDns, under clause 8 of the Bill, the EAs must allow reasonable time for compliance by owners and occupiers. If the owners of target IBs need time to form an Owners’ Corporation (“OC”), or need a longer period of time to organise and carry out improvement works, the EAs will also reasonably consider their applications for extension of the time limit for compliance, having regard to the

justifications provided by the owners and/or the scale of works, etc.

Financial Assistance

8. Some deputations have suggested that the Government should, with reference to the Fire Safety Improvement Works Subsidy Scheme, introduce a similar scheme to provide financial assistance to the owners of target IBs.

9. Owners of target IBs under the Bill who need to carry out improvement and building maintenance works (including the fire safety improvement works required by the Bill) may apply for the Building Safety Loan Scheme launched by BD. The Scheme offers loans to individual owners of private buildings for carrying out maintenance and repair works to reinstate or improve the safety of their buildings, subject to a ceiling of \$1 million per unit of accommodation. As indicated in the paper submitted to the Bills Committee earlier in response to the issues raised at the meeting on 14 January 2019 (see pages 6 to 7), according to the rough estimate of FSD and BD, the cost of works to be borne by the owners of target IBs is about \$200,000 to \$300,000¹ on average. Therefore, we consider that the Building Safety Loan Scheme can provide sufficient financial assistance to the owners.

Coordination of owners

10. Some deputations are concerned that some target IBs may not have formed an OC, and their owners may therefore face certain difficulties in coordinating the fire safety improvement works required by the Bill.

11. It has always been the Government's policy in respect of building management to encourage and assist owners to form appropriate residents' organisations (such as OCs) for managing their buildings effectively. Upon implementation of the Bill, FSD, BD and District Offices will continue to maintain close communication and proactively offer professional advice and assistance to owners of target IBs, so as to help them resolve difficulties in coordination work.

¹ The rough estimate provided here is based on the technical feasibility study conducted by FSD and BD earlier. In fact, the actual cost to be paid by each IB unit may differ, depending on the condition of individual IBs, the improvement works required to be conducted, and the sharing arrangement of the works cost amongst individual IB owners.

12. As pointed out in the paper submitted to the Bills Committee earlier, records of the Land Registry show that out of the some 1 100 IBs completed in or before 1987 in Hong Kong², more than 50% have established OCs, nearly 30% are under single ownership, and only some 20% are under multiple ownership and without OCs. In addition, during regular inspections, FSD observes that most IBs have engaged property management companies to provide property management service. Hence, it should be less difficult for owners of IBs to coordinate and implement fire safety improvement works.

Departments to carry out works and recover expenses from the owners afterwards

13. Some deputations have suggested that the Government may undertake the fire safety improvement works for owners of IBs and then recover the expenses from them.

14. It has all along been the Government's policy that works on private premises should be carried out by the owners or occupiers concerned. If government departments are to conduct certain works on their behalf, particularly non-emergency works relating to private properties or works addressing situations that do not pose imminent danger, the departments will face great operational difficulties. For instance, the owners or occupiers concerned may not agree with the works proposal made by the departments, or disagree with the location for installing water tanks or hose reel due to title issues or spatial constraints. If the government departments forcibly carry out the works, it may lead to litigation. In addition, the suggestion will have far-reaching implications on the operation of the Government and public expenditure, hence cannot be accepted.

² Buildings to be regulated under the Bill are IBs constructed on or before 1 March 1987, or those with their building plans first submitted to the Building Authority for approval on or before that date. As both BD and FSD have not yet carried out comprehensive inspection in respect of these buildings, for indicative purposes, we have thus initially adopted, based on BD's records, IBs constructed in or before 1987 (i.e. with the Occupation Permit issued) (over 1 100 numbers) as the indicator. We believe that these 1 100 IBs should cover the majority of buildings to be regulated under the Bill. More accurate figures will be available after the two Departments have conducted comprehensive inspection.

Manpower for implementing the Bill and stepping up publicity

15. Some deputations have suggested that the Government should increase manpower to expedite the inspection and law enforcement work under the Bill; and strengthen publicity to enhance the awareness on fire safety amongst owners and occupiers of IBs.

16. With reference to the experience in implementing the Fire Safety (Commercial Premises) Ordinance (Cap. 502) and the Fire Safety (Buildings) Ordinance (Cap. 572), and taking into account the complexity and scale of IBs, FSD and BD will make suitable manpower deployment based on actual operational needs. The departments will also closely monitor the workload of staff and review the manpower situation. When necessary, additional resources will be sought under the established mechanism for the effective implementation of relevant law enforcement work.

17. Moreover, after enactment of the Bill, FSD and BD will introduce the requirements and details of the new legislation to the public through different channels, including broadcast of TV and radio Announcements in the Public Interest (APIs), production and distribution of promotional leaflets, setting up of hotlines, etc. The departments will also promote the importance of enhancing fire safety of old IBs in large-scale fire prevention campaigns in a bid to raise the fire safety awareness of IB owners and occupiers.

Criminal liabilities of owners

18. Some deputations are concerned about the criminal liabilities of individual owners, OCs and their members, as well as staff members of property management companies, in respect of the criminal offences under the Bill, and the threshold for conviction.

Target IBs with OC

19. If a target IB has formed an OC which is registered under section 8 of the Building Management Ordinance (Cap. 344), the EAs will, in accordance with section 16 of Cap. 344³, issue FSDn(s) to the OC of the IB in respect of

³ The section stipulates that “[w]hen the owners of a building have been incorporated under section 8

the fire safety requirements in relation to the common parts of the IB under the Bill. As the OC is a body corporate set up under Cap. 344, if it fails to comply with the FSDn(s) served on it, it shall bear legal responsibility under the Bill.

20. Whether members of the management committee (“MC”) of an OC will bear criminal liability depends on the circumstances of each case. Clause 46(2) of the Bill provides that “[i]f an offence under this Ordinance is committed by an owners’ corporation and it is proved that the offence —

- (a) was committed with the consent or connivance of a person concerned in the management of the corporation; or
- (b) was attributable to any neglect or omission on the part of the person, the person also commits the offence.”

21. Generally speaking, a “person concerned in the management of the corporation” includes a member of the MC of an OC, or an employee of the OC with sufficient managerial authority, but not an owner who only exercises his/her voting rights at a general meeting. The prosecution shall prove beyond reasonable doubt the situation under clause 46(2)(a) or (b) of the Bill, otherwise the person shall not be personally liable for any offence committed by the OC. Since the circumstances in respect of an MC member may be different from that of another, it is not a must that all MC members will have to bear criminal liability concurrently.

22. Separately, section 29A(1) of Cap. 344 provides that “[n]o member of a management committee, acting in good faith and in a reasonable manner, shall be personally liable for any act done or default made by or on behalf of the corporation —

- (a) in the exercise or purported exercise of the powers conferred by this Ordinance [i.e. Cap. 344] on the corporation; or
- (b) in the performance or purported performance of the duties imposed

[of Cap. 344], the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by, and the liabilities of the owners in relation to the common parts of the building shall, subject to the provisions of this Ordinance, be enforceable against, the corporation to the exclusion of the owners, and accordingly—

- (a) any notice, order or other document which relates to any of the common parts of the building may be served upon the corporation at its registered office; and
- (b) any proceedings in the tribunal in respect of any of the common parts of the building may be brought and pursued by or against the corporation. ”

by this Ordinance on the corporation.”

Target IBs without OC

23. For a target IB without an OC, the EAs will, pursuant to clause 5(2)(b) of the Bill, serve FSDn(s) in respect of the common parts on all individual owners of the IB for their compliance. Under clause 11 of the Bill, if an owner concerned fails to comply with the direction without reasonable excuse, he/she commits an offence.

Property Management Company

24. Under the Bill, the EAs have no right to issue an FSDn to the property management company of a target IB which is neither an owner nor occupier of the IB. Therefore, the property management company and its employees generally do not have to bear criminal liability for non-compliance with FSDns. Nevertheless, the property management company still has to bear the legal responsibilities specified in the Deed of Mutual Covenant and/or the management contract signed between the OC (or the owners) and the manager. Hence, depending on the actual circumstances of each case, a property management company may have to bear the relevant civil liability for non-compliance with FSDns.

Enforcement on mini-storages

25. Some deputations are concerned about FSD's requirements on mini-storages that there should be a separation distance of not less 2.4 metres between each storage area of 50 square metres, and a distance of not less than 1 metre between the top of storage cubicles and the ceiling; and whether fire safety standards for mini-storages will be revised in future.

26. FSD's requirements of keeping a separation distance of not less than 2.4 metres between storage areas of mini-storages and a distance of not less than 1 metre between the top of storage cubicles and the ceiling mainly serve to eliminate the fire hazard arising from undesirable layout of mini-storage cubicles. In formulating the requirements, FSD has taken into account various considerations including the operational needs and experience of FSD personnel in firefighting and rescue, as well as the comprehensive risk

assessment on the unique design, layout, construction and mode of operation of mini-storages. Reference has also been made to local and international standards and codes of practice, such as the Code of Practice for Minimum Fire Service Installations and Equipment published by FSD, and the relevant standards in places such as Singapore, the United Kingdom and the United States.

27. As regards the standards for mini-storages, in light of the potential fire hazards in mini-storages, FSD and BD have issued Fire Hazard Abatement Notices (FHANs) and statutory orders to mini-storage operators and owners of mini-storage premises pursuant to the Fire Services Ordinance (Cap. 95) and Cap. 123 respectively for their compliance. As a great majority of mini-storages are located in IBs, FSD has given due account to the requirements stipulated in the FHANs issued to mini-storage operators when formulating the requirement of upgrading fire safety of old IBs under the Bill, in order to ensure that the two sets of requirements will not be in conflict. FSD and BD have also uploaded their requirements on mini-storages to their departmental websites for public reference. Both departments will continue to take enforcement actions against fire hazards in mini-storages pursuant to the existing laws.

Regular review and update on fire safety legislation

28. Some deputations have suggested that the Government should review and update fire safety legislation by making reference to overseas experience, and consider requiring different types of buildings to undergo regular fire safety risk assessment.

29. With respect to regular review and update on fire safety guidelines, FSIs and fire safety standards have been enhanced and upgraded continuously with the advancement of technology nowadays. To meet societal needs and the development in fire safety technologies, FSD and BD will, in a timely manner, review and update the relevant legislation and requirements, including the Code of Practice for Minimum Fire Service Installations and Equipment and the Code of Practice for Fire Safety in Buildings published by FSD and BD respectively, to ensure that such requirements and guidelines can keep up with the times.

30. As for the suggestion of requiring regular fire safety risk assessment to be made on buildings, FSD in fact conducts such assessment for certain premises with higher risks (such as dangerous goods stores, hotels, food premises, places of public entertainment, theatres, etc.) and formulate fire safety requirements for compliance by operators or licensees pursuant to the requirements of the relevant legislation. Personnel of various FSD units also inspect different types of buildings (including IBs) according to their respective scopes of work, and take enforcement actions related to FSIs, means of escape, ventilating systems and the fire safety of dangerous goods storage in these buildings for ensuring fire safety. As opposed to the existing approach of requiring fire safety risk assessment to be made only on premises with higher risks, the suggestion of imposing the same requirement on all premises involves a completely different approach and thus has to be studied in a prudent manner.

Encouraging owners to revitalise IBs

31. Some deputations have suggested the Government to provide additional incentives and support to encourage owners of old IBs to revitalise their buildings.

32. The Chief Executive has announced in her 2018 Policy Address to reactivate the revitalisation scheme of IBs. According to information provided by the Development Bureau, new measures include exemption of waiver fees for wholesale conversion of IBs, which serves as an incentive for owners of old IBs to take the opportunity to revitalise their IBs adopting the prevailing fire safety standards. The floor areas of the old IBs which have undergone wholesale conversion can also be used for non-industrial uses. Moreover, the Government has, as a policy direction, allowed relaxation of the maximum permissible plot ratio by up to 20%, with a view to incentivising redevelopment of old IBs constructed before 1987.

Security Bureau
Buildings Department
Fire Services Department
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