

**Bills Committee on Fire Safety (Industrial Buildings) Bill**

**Government's response to issues raised by the Bills Committee  
at the meeting on 6 May 2019**

**Purpose**

This paper sets out the Government's response to issues in respect of the Fire Safety (Industrial Buildings) Bill ("the Bill") raised by the Bills Committee at the meeting on 6 May 2019.

**The legislative intent of clause 54 of the Bill and the areas on which the Secretary for Security ("S for S") may make regulations**

2. Clause 54 empowers S for S to make regulations for the better carrying into effect of the provisions and purposes of this Ordinance. The purpose of making this provision is to maintain flexibility so that S for S can make regulations under the Bill should such a need arise in future. Should there be any need for making such regulations, the Security Bureau ("SB") would no doubt consult the relevant Panel of the Legislative Council ("LegCo") before submitting them to LegCo for scrutiny.

3. There are similar provisions in some existing ordinances under which the authorities concerned are empowered with certain flexibilities to make regulations for the better carrying into effect of the provisions and purposes of these ordinances. Such provisions include section 53 of the Rating Ordinance (Cap. 116), section 14 of the Community Service Orders Ordinance (Cap. 378), section 23 of the Fire Safety (Commercial Premises) Ordinance (Cap. 502), section 24 of the Fire Safety (Buildings) Ordinance (Cap. 572), section 66 of the Interception of Communications and Surveillance Ordinance (Cap. 589), section 62 of the Unsolicited Electronic Messages Ordinance (Cap. 593), section 77 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), etc. Extracts of the relevant provisions, as well as regulations made under them (if any), are set out in **Annex 1**.

4. Regarding the areas or matters on which S for S may make regulations under the Bill, as we explained in our reply dated 11 February 2019

to the Assistant Legal Adviser’s letter (LC Paper No. CB(2)770/18-19(05)), since the Bill has already comprehensively set out the legal framework of requiring owners and occupiers of pre-1987 industrial buildings (“IBs”) to upgrade the fire safety standards of such buildings, we currently do not envisage any particular matter which warrants the making of regulations in the near future. Indeed, although Cap. 502 and Cap. 572 each consists of similar rule-making provisions, no subsidiary legislation has been made under them since enactment.

5. Since the legislative framework and implementation details of the Bill (including the IBs to be regulated under the Bill (“target IBs”), enforcement mechanism, scope of fire safety requirements, the enforcement powers of authorized officers, etc.) have already been set out in the provisions of the Bill, any necessary adjustments to the above issues must be made by way of an amendment bill<sup>1</sup>. The remaining matters that may need to be regulated by making regulations should therefore be relatively simple and limited in terms of areas involved. Having carefully considered the nature of the Bill and the actual operation, examples of matters which may necessitate the making of regulations under the Bill include: recovering costs from the owners or occupiers of target IBs by the Government arising from the enforcement of the ordinance (such as costs for requesting copies of fire safety direction or certificate of compliance), or making provisions on relevant documents under the Bill (such as fire safety direction or certificate of compliance).

6. However, we have to stress that we have no plans to make regulations under the Bill at present. Should such a need arise in future, SB would no doubt consult the relevant LegCo Panel before submitting the regulations to LegCo for scrutiny.

### **The legislative intent of clauses 42, 58 and 59 of the Bill as well as their scope of application**

7. Clause 42(1) of the Bill provides that “[a] person who, without lawful authority, discloses to another person information obtained while performing a function under this Ordinance commits an offence.” Clause 42(2) specifies

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<sup>1</sup> Except for substitution or amendment of the code of practice in Schedule 1 or 2 to the Bill. This is because clause 55 of the Bill already provides that S for S may, by notice, make amendments to the Schedules, yet such notice is subject to the approval of the LegCo.

the conditions or circumstances under which the person has lawful authority to disclose the information, including those under clause 42(2)(c): “*in relation to performing a function, or for enabling or facilitating any thing or work to be done by any person, under any law of Hong Kong*”.

8. Clauses 58 and 59 of the Bill aim at amending section 21 of Cap. 502 and section 22 of Cap. 572 respectively (both sections are about offence to disclose information obtained officially), with a view to aligning the provisions on offence of disclosing information under the Bill, Cap. 502 and Cap. 572.

9. As we explained in our reply dated 11 February 2019 to the Assistant Legal Advisor’s letter, when formulating clause 42 of the Bill, the enforcement authorities (“EAs”) had reviewed the scope of exceptions under section 21 of Cap. 502 and section 22 of Cap. 572 in the light of experience in implementation over the past years, and considered the existing scope of exceptions to be rather stringent. If identical scope of exceptions is proposed under the Bill, it may compromise the EAs’ efficiency in enforcing the Bill or even hinder the relevant fire safety improvement works to be conducted by the target IBs concerned, as it does not allow information exchange within and amongst government departments even for legitimate purposes. Taking the work of the Fire Services Department (“FSD”) as an example, some possible scenarios are provided below to illustrate how EAs’ efficiency in enforcing the Bill (if enacted), Cap. 502 and Cap. 572 can be affected by the existing scope of exceptions under Cap. 502 and Cap. 572:

- (1) Dangerous Goods Ordinance (Cap. 295): When an FSD officer, pursuant to the Dangerous Goods Ordinance, processes a licensing application for a dangerous goods store which is proposed to be located in a target IB, he may need to obtain information about the fire safety requirements imposed on the IB under the Bill, so as to consider the licensing application in a more comprehensive manner and ensure the fire safety of the IB. However, an authorized officer responsible for enforcing the Bill will not be allowed to share such information if the Bill adopts the existing scope of exceptions under Cap. 502 and Cap. 572;
- (2) Fire Service (Installation Contractors) Regulations (Cap. 95A): According to regulation 10 of the Fire Service (Installation

Contractors) Regulations, if a registered contractor has been convicted by any court of such an offence, or has been guilty of such improper conduct or negligence in the installation, maintenance, repair or inspection of any fire service installation or equipment (“FSI”), the Director of Fire Services may refer the matter to the disciplinary board for inquiry. If the registered contractor’s improper conduct or negligence involves fire safety improvement works required under the Bill, Cap. 502 or Cap. 572, the disciplinary board may need to obtain information on the fire safety requirements imposed on the relevant buildings under the aforementioned legislation for due inquiry. However, if these three pieces of legislation continue to adopt the existing scope of exceptions under Cap. 502 and Cap. 572, the disciplinary board will not be able to obtain the required information, which may affect the conduct of the inquiry; and

- (3) Fire Service (Installations and Equipment) Regulations (Cap. 95B): When an FSD officer takes law enforcement actions<sup>2</sup> against the FSI of a particular building or premises in accordance with the Fire Service (Installations and Equipment) Regulations (Cap. 95B), if the building or premises is one to which the Bill, Cap. 502 or Cap. 572 applies, he may need to obtain information on the fire safety requirements imposed under the above legislation to complete the relevant evidence collection work and take further law enforcement actions. However, if these three pieces of legislation continue to adopt the existing scope of exceptions under Cap. 502 and Cap. 572, the Department’s law enforcement and evidence collection work may be affected.

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<sup>2</sup> For example, the owner of an FSI has not arranged for a registered contractor to inspect the FSI at least once every 12 months as required under the law; or the registered contractor has not issued a certificate and forwarded a copy thereof to FSD within 14 days after he completes the installation of, maintains, repairs or inspects any FSI, etc.

10. In addition, given that some prescribed commercial premises<sup>3</sup> under Cap. 502 may be located in target IBs under the Bill, authorized officers enforcing these two ordinances have a practical need to exchange fire safety requirements and information in relation to such premises. However, due to the restriction under the existing section 21 of Cap. 502, an authorized officer responsible for enforcing Cap. 502 is not allowed to share information in respect of prescribed commercial premises with another authorized officer enforcing the Bill, even if both officers are under the same EA.

11. Furthermore, it may be necessary for other law enforcement agencies with a regulatory function to request from EAs the information they have obtained through enforcement of the Bill, Cap. 502 and Cap. 572 for legitimate purposes. For instance, before carrying out any fire safety improvement works as required under the Bill, Cap. 502 or Cap. 572, an owner or occupier of a building or premises will normally engage a contractor or consultant by tendering, in which anti-competitive conduct may occur. During investigation of conduct suspected to have contravened or may contravene the competition rules, the Competition Commission may have to request information from EAs in respect of the fire safety requirements imposed on the building or premises concerned under the above legislation. However, if these three pieces of legislation continue to adopt the existing scope of exceptions under Cap. 502 and Cap. 572, EAs will not be able to accede to such requests.

12. As shown in the examples set out in paragraphs 9 to 11 above, in the enforcement of the Bill, Cap. 502 and Cap. 572, from time to time, officers of FSD and the Buildings Department (“BD”) have to disclose information on request from other law enforcement officers, or information exchange is required within or amongst EAs, pursuant to the requirements under other ordinances and enforcement arrangements. Therefore, we consider that the lawful authority for FSD and BD officers enforcing the Bill, Cap. 502 and Cap. 572 to make disclosure must be specified in the provisions on offence of disclosing information in a way that better meets enforcement needs, with a

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<sup>3</sup> According to Cap. 502, a building or part of a building is prescribed commercial premises subject to regulation by the Ordinance if the building or part is used, or is proposed to be used for carrying on the following commercial activities:

- (i) banking (other than merchant banking);
- (ii) conduct of off-course betting;
- (iii) conduct of a jewelry or goldsmith’s business on premises that have a security area;
- (iv) use as a supermarket, hypermarket or department store; or
- (v) use as a shopping arcade;

and the total floor area of the building or part exceeds 230 square metres.

view to ensuring smooth implementation of the Bill and enhancing the existing operation of Cap. 502 and Cap. 572.

**Other matters: minor amendments to clauses 48 and 49 of the Bill**

13. In addition to the committee stage amendments (“CSAs”) proposed in our submission for the meeting on 6 May 2019 (LC Paper No. CB(2)1349/18-19(02)), we propose to add the words “to be” before “given to or served” in clauses 48 and 49(1) and (2) of the English version of the Bill, so as to align them with section 22 of Cap. 502 and section 23 of Cap. 572. Please refer to **Annex 2** for the proposed CSAs.

**Security Bureau**  
**Buildings Department**  
**Fire Services Department**  
**June 2019**

**Some provisions in existing ordinances similar to Clause 54 of the Fire Safety (Industrial Buildings) Bill**

<b>Ordinance</b>	<b>Relevant provision(s)</b>	<b>Regulation(s) made under the relevant provision</b>
<b>Cap. 116 – Rating Ordinance</b>	<b>53. Regulations</b> The Chief Executive in Council may make regulations for the better carrying out of the objects of this Ordinance.	Cap. 116C – Rating (Effective Date of Interim Valuation) Regulation
<b>Cap. 378 – Community Service Orders Ordinance</b>	<b>14. Power to make regulations</b> The Secretary for Labour and Welfare may make regulations for the better carrying out of the purpose and provisions of this Ordinance.	Nil
<b>Cap. 502 – Fire Safety (Commercial Premises) Ordinance</b>	<b>23. Chief Executive in Council may make regulations</b> The Chief Executive in Council may make regulations — (a) prescribing anything required or permitted to be prescribed by regulations under this Ordinance; and (b) generally providing for the better carrying into effect of the provisions and purposes of this Ordinance.	Nil
<b>Cap. 544 – Prevention of Copyright Piracy Ordinance</b>	<b>38. Regulations</b> The Secretary for Commerce and Economic Development may make regulations — (a) prescribing anything required or permitted to be prescribed under this Ordinance; (aa) for the purposes of any provision of this Ordinance which contemplates or authorizes the making of regulations with respect	Cap.544A – Prevention of Copyright Piracy (Notices) Regulation

<b>Ordinance</b>	<b>Relevant provision(s)</b>	<b>Regulation(s) made under the relevant provision</b>
	<p>to any matter; and</p> <p>(b) for the better carrying into effect of the provisions of this Ordinance in relation to any matter.</p>	
<p><b>Cap. 572 – Fire Safety (Buildings) Ordinance</b></p>	<p><b>24. Chief Executive in Council may make regulations</b></p> <p>The Chief Executive in Council may make regulations —</p> <p>(a) prescribing anything required or permitted to be prescribed by regulations under this Ordinance; and</p> <p>(b) generally providing for the better carrying into effect of the provisions and purposes of this Ordinance.</p>	<p>Nil</p>
<p><b>Cap. 589 – Interception of Communications and Surveillance Ordinance</b></p>	<p><b>66. Regulation</b></p> <p>The Chief Executive in Council may, subject to the approval of the Legislative Council, make regulations for —</p> <p>(a) the better carrying out of the purposes of this Ordinance; and</p> <p>(b) without limiting the generality of paragraph (a), prescribing any matter which this Ordinance provides is, or may be, prescribed by regulation made under this section.</p>	<p>Nil</p>
<p><b>Cap. 593 – Unsolicited Electronic Messages Ordinance</b></p>	<p><b>62. Regulations</b></p> <p>The Secretary may make regulations —</p> <p>(a) for the purposes of any provision of this Ordinance that contemplates or authorizes the making of regulations with respect</p>	<p>Cap. 593A - Unsolicited Electronic Messages Regulation</p>



Ordinance	Relevant provision(s)	Regulation(s) made under the relevant provision
	<p>to any matter;</p> <p>(b) providing for such matters as are necessary for giving full effect to the provisions of this Ordinance; and</p> <p>(c) generally for carrying out the purposes and provisions of this Ordinance.</p>	
<p><b>Cap. 615 – Anti-Money Laundering and Counter-Terrorist Financing Ordinance</b></p>	<p><b>51. Regulations</b> The Commissioner of Customs and Excise may make regulations for the better carrying out of the provisions and purposes of this Part.</p> <p><b>53ZM.Regulations</b> The Registrar of Companies may make regulations for the better carrying out of the provisions and purposes of this Part.</p> <p><b>77. Regulations by Chief Executive in Council</b> (1) The Chief Executive in Council may make regulations for the better carrying out of the provisions and purposes of this Ordinance (except Parts 5 and 5A). (2) Without limiting subsection (1), the regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).</p>	<p>Nil</p>

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Fire Safety (Industrial Buildings) Bill

**Committee Stage**

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
48	In the English text, by adding “to be” before “given to or served”.
49(1) and (2)	In the English text, by adding “to be” before “given to or served”.