

# 立法會 *Legislative Council*

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## **Report of the Bills Committee on Fire Safety (Industrial Buildings) Bill**

### **Purpose**

This paper reports on the deliberations of the Bills Committee on Fire Safety (Industrial Buildings) Bill.

### **Background**

2. At present, the enhancement of fire safety measures for better protection for occupants and users of, and visitors to, certain kinds of commercial premises or commercial buildings and certain kinds of composite buildings and domestic buildings is provided in the Fire Safety (Commercial Premises) Ordinance (Cap. 502) ("FS(CP)O") and the Fire Safety (Buildings) Ordinance (Cap. 572) ("FS(B)O") respectively. Industrial buildings ("IBs"), however, are not subject to the regulatory framework under FS(CP)O and FS(B)O. The planning, design and construction of an IB requires compliance with the prevailing Buildings Ordinance (Cap. 123) ("BO") and its subsidiary legislation, as well as the codes of practice in force at the time of submission of the relevant building plans, including: (a) the requirements on fire safety construction<sup>1</sup> as stipulated in the Codes of Practice published by the Buildings Department ("BD"); and (b) the requirements on the provision of fire service installations and equipment ("FSIs")<sup>2</sup> according to the Code of Practice on Minimum Fire Service Installations and Equipment ("FSI Code") published by the Fire Services Department ("FSD").

3. According to the Administration, while existing IBs generally meet the prevailing fire safety standards at the time of their construction, the fire safety standards of IBs constructed before the publication of the codes of practice by

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<sup>1</sup> Examples of "fire safety construction" are protection of exit routes and staircases with separating walls of fire resisting construction, provision of exit routes of sufficient width for the means of escape, etc.

<sup>2</sup> Examples of "FSIs" are automatic sprinkler systems, fire hydrant/hose reel systems, fire alarm systems, emergency lighting, exit signs, etc.

FSD and BD currently in force may fall short of the latest requirements. In the light of the rising public concern over fire risks at certain old IBs in recent years, the Administration considers it necessary to introduce measures to bring the fire safety standards of old IBs up to date. The Fire Safety (Industrial Buildings) Bill ("the Bill"), which largely follows the enforcement approach adopted in FS(CP)O and FS(B)O, is thus proposed to be introduced into the Legislative Council ("LegCo") in order to enhance the fire safety standards of IBs constructed, or with building plans first submitted to the Building Authority (i.e. the Director of Buildings ("D of B")) for approval, on or before 1 March 1987.

4. FSD and BD have jointly conducted a study on the technical feasibility of mandatorily requiring pre-1987 IBs to upgrade the fire safety provisions of the buildings to modern standards. According to the Administration, the study reveals that it is generally feasible to carry out the necessary fire safety improvement works for pre-1987 IBs, except that the building structure and actual circumstances would make it difficult for these buildings to add fire-fighting and rescue stairways or to provide refuge floors or staircases interchanges. The Bill would therefore not seek to impose such requirements on the owners concerned.

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

5. The Bill was published in the Gazette on 30 November 2018 and received its First Reading at the Council meeting of 12 December 2018. The Bill seeks to provide for a regulatory mechanism under which the Director of Fire Services ("D of FS") and D of B as the Enforcement Authorities ("EAs") would be empowered to take various enforcement actions to require owners and occupiers of IBs constructed or with building plans first submitted for approval on or before 1 March 1987 to upgrade the fire safety of such buildings to the required standards.

6. The Bill, if passed, would come into operation on a day on which it is published in the Gazette as an Ordinance.

### **The Bills Committee**

7. At the House Committee meeting on 14 December 2018, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Tony TSE Wai-chuen, the Bills Committee held five meetings with the Administration. The membership of the Bills Committee is in **Appendix I**. The Bills Committee has also received public views at one of its meetings. A list of organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

8. Members in general are in support of the legislative proposals put forward in the Bill to improve the fire safety standards of target IBs. They have also raised various issues of concern.

### Scope of application of the Bill

9. Under clause 3 of the Bill, target IBs to be regulated under the Bill referred to those buildings which were wholly or partly constructed on or before 1 March 1987 for use as factories, industrial undertakings<sup>3</sup>, godowns, warehouses, places of bulk storage or similar industrial premises, or those constructed for the above uses with their building plans first submitted to the Building Authority for approval on or before the same date.

10. In response to members' enquiry about the number of target IBs to be regulated under the Bill, the Administration has advised that both FSD and BD have not yet carried out a comprehensive inspection of old IBs. Based on BD's records, there are some 1 100 IBs constructed in or before 1987 (i.e. with the Occupation Permits issued in or before 1987), which should cover the majority of the buildings to be regulated under the Bill. To implement the Bill upon its enactment, FSD and BD would carry out comprehensive inspection. The Administration has further advised that the Bill would be implemented in two phases, starting with some 400 IBs constructed or with building plans first submitted for approval in or before March 1973, as a majority of these IBs were not installed with the automatic sprinkler system, which is a highly effective FSI capable of extinguishing or limiting the spread of a fire prior to the arrival of firefighters. The remaining target IBs would be included in the second phase of the Bill's implementation.

11. Some members have pointed out that consequent upon revitalization of IBs, some target IBs may have been approved to be converted for carrying out non-industrial activities. They have sought clarification as to whether the Bill would be applicable to partially converted IBs. The Administration has affirmed that the Bill would be applicable to an IB even if part of it has been converted for carrying out non-industrial activities. However, as the fire safety standards of the converted part should have been improved to the standards prevailing at the time of the conversion, it is envisaged that if the fire safety standard of such converted part has met the modern-day requirements, no

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<sup>3</sup> Under clause 3(4) of the Bill, "industrial undertaking" includes any premises on which articles are manufactured, altered, cleansed, repaired, ornamented, finished, adapted for sale, broken up or demolished, or on which materials are transformed.

further improvement works for such part of the IB would be required under the Bill.

### Compliance with fire safety requirements under the Bill

12. An EA would be empowered under Division 1 of Part 2 of the Bill (clauses 5 to 12) to issue and serve a fire safety direction ("FSDn") on an owner or an occupier of a target IB or part of it to direct such owner or occupier to, within a specified time limit, comply with the fire safety requirement(s) specified in the proposed Schedule 1 or 2 to the Bill (which relate to the provision of FSIs and fire safety construction as set out in the codes of practice published by D of FS and BD respectively<sup>4</sup>). If an owner or occupier fails to comply with an FSDn without a reasonable excuse, the owner or occupier would be guilty of an offence and liable upon conviction to a fine at level 4 (i.e. \$25,000) and a further fine of \$2,500 for each day (or part of a day) during which the failure continues after the expiry of the time limit for compliance.

13. Members have raised concern about the extent of improvement works expected to be carried out by owners and occupiers concerned in the target IBs in order to comply with the fire safety requirements under the Bill, and under what circumstances would FSDns be issued to owners and occupiers of target IBs.

14. The Administration has drawn members' attention to the fact that although the fire safety measures in existing IBs generally met the standards prevailing at the time of their construction, some of them still considerably fall short of the current standards. Requirements of fire safety improvement works for target IBs may differ depending on the actual conditions of individual IBs (such as height, area, layout and the existing provision of FSIs of the building). As far as FSIs are concerned, the FSI Codes at different times have some differences in terms of FSIs required of an IB. For example, the provision of emergency lighting, exit signs and automatic cut-off device for the mechanical ventilating system was generally not required for IBs constructed in or before 1987. On the other hand, some of the IBs constructed in or before 1973 were not required to be equipped with the automatic sprinkler system. Certain target IBs would also be required to carry out improvement works on fire safety construction in respect of the means of escape, means of access for firefighting and rescue, as well as fire resisting construction so as to meet the modern standards. The Administration has further advised that in terms of implementing the Bill upon its enactment, authorized officers under EAs would

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<sup>4</sup> The codes of practice referred to in the proposed Schedules 1 and 2 to the Bill are the Code of Practice for Minimum fire Service Installations and Equipment 2012 published by D of FS and the Code of Practice for Fire Safety in Buildings 2011 (October 2015 version) published by BD.

inspect target IBs to assess and ascertain the condition of these IBs. If any fire safety requirement listed in the proposed Schedule 1 or 2 to the Bill is found to be necessary for improving the fire safety standards of the buildings concerned, FSDns would be issued to the owners and/or occupiers concerned.

15. Members have pointed out that in relation to FS(CP)O, when carrying out fire safety improvement works in old buildings, a relatively common technical difficulty encountered by the owners is the physical constraints for installation of fire service water tanks for water supply for the automatic sprinkler system or the fire hydrant and hose reel system. Members have requested the Administration to take this into full account in drawing up fire safety requirements for target IBs.

16. The Administration has stressed that while the proposed Schedules 1 and 2 to the Bill set out the requirements which could be included in FSDns to be complied with by an owner or occupier respectively, the inclusion of those requirements in an FSDn would depend on the actual circumstances. FSD and BD would adopt a flexible and pragmatic approach in handling each case. If the owners or occupiers face genuine difficulties such as structural, spatial or technical constraints, alternative measures may also be accepted provided that fire safety is not compromised.<sup>5</sup> The Administration has added that as a matter of fact, the loading capacity of the target IBs is in general higher than the old commercial, composite and domestic buildings. Many of the target IBs are also installed with fire service water tanks. It is therefore expected that owners and occupiers of the target IBs would face less technical constraints when carrying out fire safety improvement works in IBs.

### *Taking alternative measures*

17. Under clause 7 of the Bill, if an EA considers that it would be unreasonable to direct the owner or occupier of an IB or a part of it to comply with a fire safety requirement having regard to, among others, the structural integrity of IB or its part, EA may issue and serve on the owner or occupier an FSDn to direct the owner or occupier to take other measures (i.e. alternative measures) the EA considers appropriate.

18. Members have enquired about the circumstances under which an IB owner or occupier would be directed to take alternative measures. The Legal Adviser to the Bills Committee ("the Legal Adviser") has also sought clarification as to whether an EA would on its own initiative require the owner or occupier to take alternative measures, or the owner or occupier has to apply to the EA to take other appropriate measures after receiving an FSDn.

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<sup>5</sup> Please see paragraphs 17 to 20 below regarding the acceptance of alternative measures.

19. The Administration has explained that if it is apparent that any particular fire safety requirement listed in the proposed Schedule 1 or 2 to the Bill is infeasible, EAs may direct the owner and/or occupier to comply with an alternative measure other than a requirement stipulated in the Schedules by specifying so in FSDns. Under such circumstances, EA would require the owner or occupier to take alternative measures on its own initiative. On the other hand, if an owner or occupier concerned encounter practical difficulties in compliance with an FSDn, the owner or occupier may apply, with justifications, to EAs for taking alternative measure(s) in place of the requirement(s) concerned in the Schedules. For example, a fire service water tank with a smaller capacity may be allowed if the building concerned faced insurmountable spatial constraint for installing a standard-sized water tank. The Administration has stressed that EAs would adopt a flexible and pragmatic approach in considering each application. The standard of such alternative measures would be subject to the defence to the offence of reasonable excuse for not complying with FSDns under clause 11 of the Bill. Where an alternative measure is accepted by an EA, a fresh FSDn would be issued to the owner or occupier concerned to supersede the previous one.

20. While raising no objection to the above proposed arrangements, some members have raised concern as to whether the standards and requirements of the alternative measures should be provided in the Bill. The Administration has advised that clause 7 aims to empower EAs to handle cases in a flexible and pragmatic manner, with a view to assisting the owner or occupier concerned to resolve practical difficulties encountered in complying with the fire safety requirements on the premises of not compromising basic fire safety. Given that the condition of each target IB varies, and that the relevant fire safety technologies would continue to advance, the Administration is of the view that the current drafting of clause 7 would achieve its objective as well as cater for circumstances that cannot be envisaged for the time being.

#### *Time limit for compliance*

21. Members have expressed concern about the time limit for owners or occupiers of target IBs, especially those who face genuine technical problems, to comply with the fire safety requirements or take forward the alternative measures accepted by EAs. The Legal Adviser has sought clarification as to what constitutes compliance, whether an owner or occupier has to complete all the requisite fire safety improvements works, or that the commencement of the improvement works would be considered sufficient for the purpose of compliance. She has further enquired about the procedure for the owner or occupier to apply for extension of the time limit specified in an FSDn, and the factors for considering such extension application.

22. The Administration has advised that under clause 8 of the Bill, EAs would, after taking into account all relevant factors, stipulate in FSDns a reasonable time limit for the target IBs to complete the required fire safety improvement works. The policy intent is that the relevant IB owner or occupier should complete the fire safety improvement works within the time limit, rather than merely having commenced the works, in order to be considered as having complied with the requirements. That said, EAs would also reasonably consider applications for extension of the time limit for compliance, having regard to the justifications provided and/or the scale of works, etc. For instance, if the owner concerned needs time to form an Owners' Corporation ("OC"), or needs a longer period of time to organize and carry out improvement works, EAs may grant extension of the specified time limit in the FSDn on a case-by-case basis. In addition, as provided for under clause 9 of the Bill, an EA may amend or withdraw an FSDn. This provides flexibility for owners or occupiers to carry out fire safety improvement works when faced with genuine technical difficulties to comply with the requirements within the specified time limit.

#### *Advisory committee*

23. Members note that clause 12 provides that an EA may set up an advisory committee to advise it on whether to direct an owner or occupier of a target IB under the Bill or part of it to take alternative measures and what alternative measures would be appropriate. Hence, FSD and BD would each set up an advisory committee to be chaired by an Assistant Director of FSD and BD respectively, comprising representatives of FSD and BD, relevant professionals, academics and members of the public with the relevant expertise, so as to offer advice on the proposed alternative measures from different perspectives. The Administration has further advised that the composition of the proposed advisory committees would be broadly similar to the existing ones set up under FS(B)O.

#### Application to a magistrate for a fire safety compliance order

24. Division 2 of Part 2 of the Bill (clauses 13 to 16) provides that if an IB owner or occupier is found guilty of the offence of failing to comply with an FSDn, an EA may apply to a magistrate for a fire safety compliance order ("FSCO") to order the owner or occupier to comply with any requirement specified in an FSDn. An owner or occupier who fails to comply with an FSCO would commit an offence and be liable on conviction to a fine at level 5 (i.e. \$50,000) and to a further fine of \$5,000 for each day (or part of a day) during which the failure continues after the expiry of the time limit for compliance.

25. Members note that the magistrate would, having regard to all relevant factors, including the time limit suggested by EAs for compliance, decide a reasonable time limit for compliance and specify it in an FSCO. An FSCO

would cease to be in force when the owner or occupier has completed the relevant fire safety improvement works and a certificate of compliance has been issued. Pursuant to clause 14(1), the magistrate may also revoke an FSCO on the application of the EA or the owner or occupier.

#### Application to the District Court for a prohibition order

26. Division 3 of Part 2 of the Bill (clauses 17 to 25) provides that an EA may apply to the District Court for a prohibition order ("PO") if an IB owner or occupier fails to comply with an FSDn or FSCO within the specified time limit for compliance. Any person who, without reasonable excuse, contravenes a PO would commit an offence, and be liable on conviction to a fine of \$250,000 and to imprisonment for three years, and to a further fine of \$25,000 for each day (or part of a day) during which the contravention continues.

27. The effect of a PO is that no person, except with the EA's permission or is an authorized officer under the Bill acting in the course of duty, would be allowed to occupy an IB or part of it to which the PO applies. Members have raised concern about the need to provide for the District Court's power to make a PO to prohibit the occupation of an IB or part of it, given that the main purpose of the Bill is to provide for a mechanism to enhance the fire safety standards of target IBs, as opposed to addressing fire hazards in the buildings.

28. The Administration has explained that the purpose of clause 17 is to prevent any substantial fire risks arising from the occupation of the relevant IB or part of it when the owner or occupier concerned has failed to comply with an FSDn or FSCO, thereby ensuring public safety. The Administration has stressed that before applying to the District Court for a PO, EAs would consider very carefully from the angle of public safety. While similar provisions exist in FS(CP)O and FS(B)O, no PO has ever been made.

#### *Service of copy of prohibition order*

29. Members note that after the District Court has made a PO, EAs are required under clause 24 to serve a copy of PO on either the IB owner or occupier concerned. EA must post a copy of PO in the building or part of it in accordance with clause 24(1)(a), and "in another way" serve a copy of PO on the owner or occupier concerned in accordance with clause 24(1)(b).

30. Members and the Legal Adviser have raised concern about the meaning of the phrase "in another way" in clause 24(1)(b), in particular whether clause 24(1)(b) has to be read together with clauses 48 and 49 and if so, whether the Administration would consider expressly providing for that clearly. The Administration has advised that as a copy of PO under clause 24(1)(b) is a document to be served by an EA under the Bill, the means of service of

documents provided under clauses 48 and 49 of the Bill are applicable. In order to clarify the intended legal effect of clause 24(1)(b), the Administration has proposed to move an amendment to clause 24(1)(b) and add a new clause 22(2A)(a) to reflect more clearly the policy intent that in addition to posting a PO at a conspicuous place, EA would also be under a duty to serve a copy of PO on the owner or occupier concerned through the other means provided for in clauses 48 and 49 of the Bill. The issue of whether a PO would be served on an owner or occupier in more than one of the ways proposed under clauses 48 and 49 was also raised. The Administration has advised that to ensure successful service of documents for the purposes of the Bill, a document may be served concurrently through deployment of more than one of the means of service proposed under clauses 48 and 49.

31. Some members have expressed concern that under clause 24(1), either the IB owner or the occupier would be served with a copy of the PO. As such, an IB owner may be unaware of a PO if it is served on the occupier only. The Legal Adviser has also pointed out that clause 24(1) may be inconsistent with clause 19(4), which provides that both the owner and the occupier must take all practicable measures to ensure the IB or part is effectively secured against entry when a PO is in force. It is suggested that both the owner and the occupier should be served with a copy of the PO to ensure that both parties are aware of the issuance of a PO by the court for the relevant building or part of it, as well as their respective statutory responsibilities under the Bill. Having considered members' views, the Administration has proposed to move amendments to clause 24(1)(b) and the related clause 22(1)(a) and (2)(a) to require EAs to serve a copy of PO on both the owner and occupier concerned. In addition, the Administration has proposed to add a new clause 22(2A)(b) in respect of the date of service of a copy of PO to the owner and occupier.

32. Some members are concerned about the legal effect of clause 24(2), whether it means that EAs are not required to comply with clause 24(1) to post a copy of the PO at a conspicuous place, since the validity of PO is not contingent on the fulfilment of that duty on the part of EA. They have cast doubt on the necessity of clause 24(2). The Administration has stressed that it is a mandatory requirement under the Bill that EAs have to post a copy of PO and serve the same on the owner and occupier concerned. That said, the Administration agrees that in practice, deletion of clause 24(2) would not affect the validity of the Bill and would propose an amendment to delete clause 24(2).

#### *Validity period of prohibition order*

33. It is provided under clause 22 of the Bill that the date on which a PO comes into force is to be determined in connection with the date on which a copy of PO is served on the owner or occupier concerned. Members and the Legal Adviser have enquired about the validity period of a PO for the purposes

of the Bill in the event that a copy of a PO is given or served in more than one way and such service is not effected on the same date.

34. The Administration has advised that if a copy of PO is to be given or served in more than one way, it would be effected on the same date as far as practicable. If a PO is given or served in more than one way but is not effected on the same date, the earlier date would be regarded as the date on which a copy of the order is given or served. Furthermore, clause 51 seeks to provide that where there is a certificate of giving or service of a document, it is presumed that the document to which the certificate related is duly given or served, unless there is evidence to the contrary.

#### Power of enforcement agencies to enter target industrial buildings without warrant

35. Under clause 36, an authorized officer may enter and inspect an IB or a part of it without warrant. Some members have enquired under what circumstances an authorized officer may enter an IB without warrant, whether prior notice in writing would be issued to the IB owner or occupier, and whether such power conferred on an authorized officer is necessary. The Legal Adviser has queried whether the power to enter an IB without warrant would be exercised in cases where the IB is actually being used for domestic purposes, and whether the exercise of the power would infringe upon the occupier's rights.

36. The Administration has explained that the purpose of clause 36 is to facilitate EAs' day-to-day inspection, or their entry and inspection when an offence under the Bill is committed, with a view to upgrading the fire safety standards of target IBs as soon as possible. Clause 36 should be read together with clause 37, under which a magistrate may, on application by EAs, issue a warrant for a building or a part of it under special circumstances set out in clause 37(1)(b). The Administration has pointed out that similar provisions are found in FS(CP)O and FS(B)O. Having regard to the experience in implementation of these two Ordinances, the two EAs have put in place administrative measures, for example, when an EA intends to carry out an initial inspection of a target IB, it would issue a written notification to the owner or occupier concerned in advance. EAs may only enter and inspect a building or a part of it for the purpose of performing its functions under the respective Ordinances, so as to ensure that the power of warrantless entry to a building would not be abused. The Administration has stressed that authorized officers would not exercise the power under clause 36 to perform enforcement actions against illegal domestic premises. Any illegal domestic premises identified during inspection would be referred to relevant divisions under BD for follow-up.

37. The Administration has further advised that given that there are some 1 100 targeted IBs with tens of thousands of units to be regulated under the Bill, it would be operationally more effective to provide for such power under clause 36 so that an authorized officer can enter and inspect an IB or part of it, in particular the common areas, during reasonable hours without warrant, in order to carry out the officer's functions under the Bill.

#### Power to make regulations

38. Clause 54 provides that the Secretary for Security ("S for S") may make regulations for the better carrying into effect of the provisions and purposes of the Bill. The Legal Adviser has sought clarification on the purpose and intended effect of clause 54, which appears to give wide power to S for S to make regulations. Members have also enquired about potential matters which may be dealt with by regulations.

39. The Administration has explained that the purpose of clause 54 is to allow S for S to make regulations under the Bill should such a need arise in future. Such provisions are found in both FS(CP)O and FS(B)O. That said, as the Bill has already set out comprehensively the legal framework to require owners and occupiers of targeted IBs to upgrade the fire safety standards of such buildings, and clause 55 has provided for the mechanism to amend Schedule 1 or 2 to the Bill (which is subject to the approval of LegCo), the Administration has no plans to make regulations pursuant to clause 54 of the Bill at present. Such regulations, if ever made, would be introduced into LegCo for scrutiny.

#### Assistance to owners and occupiers of target industrial buildings

##### *Technical support*

40. Members have expressed concern whether the Administration would render support to owners and occupiers of target IBs to assist them in complying with FSDns issued by EAs. The Administration has advised that the two EAs would 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 would attend seminars on the Bill and meet with the owners and occupiers to explain the requirements under FSDns and assist them in solving potential problems concerning the works. The Administration has stressed that FSD and BD would handle each case in a flexible and pragmatic manner. Based on the conditions of individual IBs and the information submitted by the owners, occupiers or Authorized Persons, EAs would carefully consider accepting alternative measures put forth by the owners or occupiers. If suitable and technically feasible options are identified, which can also meet the purpose of enhancing fire safety, EAs would actively consider them and provide

assistance as far as practicable.

### *Financial assistance*

41. Members have raised concern about the estimated cost for carrying out improvement works to comply with FSDns and whether financial assistance would be provided to the owners of target IBs. The Administration has advised that based on the technical feasibility study conducted by FSD and BD (see paragraph 4 above), a rough estimation of the costs to be borne by the owners of target IBs is about \$200,000 to \$300,000 per flat on average, which is considered to be affordable by owners of the target IBs. Owners of target IBs 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. The Administration considers that the Scheme can provide sufficient financial assistance to the owners of target IBs.

### *Coordination of owners to implement fire safety improvement works*

42. With regard to the experience of owners in complying with FS(CP)O and FS(B)O, some members have expressed concern that some IB owners may face difficulties in coordinating the fire safety improvement works to be carried out in common areas of the buildings concerned, especially those without OCs.

43. The Administration has advised that based on the records of the Land Registry, out of some 1 100 target IBs, more than 50% of them have formed OCs, nearly 30% are under single ownership, and only some 20% are under multiple ownership and without OCs. In addition, during FSD's regular inspections, it is observed that most IBs have engaged property management companies to provide property management service. The Administration therefore considers that owners of target IBs would not encounter a lot of difficulties in coordinating amongst themselves to implement fire safety improvement works.

### Enforcement on mini-storages

44. Some members have pointed out that subsequent to the mini-storage fire at Amoycan Industrial Centre in June 2016, FSD has issued fire hazard abatement notices ("FHANs") in accordance with the Fire Services Ordinance (Cap. 95) to the operators of mini-storages where fire hazards were identified, whereas BD has issued statutory orders under BO to the owners of premises operating mini-storages for non-compliance with the Ordinance. These members consider that any mini-storage operators, having fulfilled the

requirements from FSD and BD pursuant to the existing laws, should not be required to alter the new structures or carry out further improvement works to meet the requirements under the Bill.

45. According to the Administration, as at early April 2019, there were a total of 564 mini-storages in 207 target IBs. Members are advised that FSD and BD have duly considered the requirements stipulated in FHANs and statutory orders issued to mini-storage operators and owners of premises operating mini-storages when formulating the proposed measures to enhance fire safety standards of the target IBs under the Bill, so as to ensure that the two sets of requirements would not be in conflict. That said, the Administration has pointed out that it cannot completely rule out the possibility that, under very specific circumstances, a small number of requirements under the Bill may entail alteration of existing structures at mini-storages located in the target IBs. Operators of mini-storages or owners of premises operating mini-storages can approach the case officers of FSD and BD for assistance. The Administration has assured members that it would continue to communicate with the mini-storage operators to assist them in complying with FHANs.

#### Amendments to other fire safety legislation

46. Part 5 of the Bill (clauses 56 to 59) provides for amendments to other fire safety legislation. In relation to the proposed amendment to section 4 of FS(CP)O under clause 57, the Legal Adviser has sought clarification on whether it is a substantive amendment or a textual amendment to FS(CP)O. The Administration has explained that the proposed amendment under clause 57 seeks to clarify the existing policy intent of the application of FS(CP)O by rectifying a textual error in section 4(1)(a) of FS(CP)O.

47. Clauses 58 and 59 seek to amend section 21 of FS(CP)O and section 22 of FS(B)O in relation to an offence to disclose information obtained officially. Under those provisions, an authorized officer who, without lawful authority, discloses to another person information obtained while exercising a function under these Ordinances is guilty of an offence. The two provisions also provide for certain exceptions. The Legal Adviser has raised concern that the effect of clauses 58 and 59 appears to be that the scope of the exceptions to the offence under FS(CP)O and FS(B)O would be expanded. She has asked about the policy intent of clauses 58 and 59 and the rationale for including these amendments, which appear to be substantive ones, in the Bill.

48. The Administration has explained that the two EAs have reviewed the scope of exceptions under section 21 of FS(CP)O and section 22 of FS(B)O in the light of implementation experience over the past years, and consider that the existing scope of the applicable exceptions to the offence is rather stringent. If identical scope of exceptions is proposed under the Bill, it may compromise

EAs' enforcement efficiency or even hinder the relevant fire safety improvement works to be carried out by the target IBs concerned, as it does not allow for information exchange within and amongst departments even for legitimate purposes. For example, when officers of FSD or BD perform a function (such as processing a licensing application for a dangerous goods store, carrying out the mandatory building inspection, etc.) in IBs to be regulated under the Bill, they may need to obtain information relating to fire safety requirements applicable to IBs concerned under the Bill. However, due to the restriction under the existing section 21 of FS(CP)O and section 22 of FS(B)O, an authorized officer is not allowed to share information with another authorized officer enforcing the Ordinances, even if both officers are under the same EA. Hence, to enable a smooth implementation and necessary exchange of information amongst departments and within and between EAs, the Administration has proposed a wider scope of circumstances where authorized officers may disclose information obtained officially under clause 42 of the Bill.<sup>6</sup> To align the relevant provisions in FS(CP)O and FS(B)O with clause 42 in the Bill for better enforcement efficiency, the Administration considers it appropriate to include clauses 58 and 59 in the Bill. The Administration has further pointed out that it is stipulated in the long title of the Bill that it seeks to, among others, amend specified exceptions to the offences of disclosing information obtained officially under FS(CP)O and FS(B)O.

### **Amendments proposed to the Bill**

49. In addition to the Administration's proposed amendments as elaborated in paragraphs 30 to 32 above, members note that the Administration has proposed to add the words "to be" before "given to or served" in clauses 48 and 49 of the English version of the Bill, so as to align them with section 22 of FS(CP)O and section 23 of FS(B)O. The Bills Committee does not object to these proposed amendments.

50. The Bills Committee will not propose any amendments to the Bill.

### **Resumption of Second Reading debate**

51. Subject to the Administration moving the proposed amendments to the Bill, the Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at a Council meeting to be advised by the Administration.

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<sup>6</sup> Clause 42 of the Bill seeks to make it an offence to disclose information obtained while performing a function under the Bill, and provide for the exceptions.

### **Consultation with the House Committee**

52. The Bills Committee reported its deliberations to the House Committee on 8 May 2020.

Council Business Division 2  
Legislative Council Secretariat  
19 May 2020

## Appendix I

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

#### **Membership list**

**Chairman**            Hon Tony TSE Wai-chuen, BBS

**Members**            Hon James TO Kun-sun  
                             Hon Abraham SHEK Lai-him, GBS, JP  
                             Hon CHAN Hak-kan, BBS, JP  
                             Hon WU Chi-wai, MH  
                             Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
                             Hon Holden CHOW Ho-ding  
                             Hon SHIU Ka-fai, JP  
                             Hon Jeremy TAM Man-ho

(Total : 9 members)

**Clerk**                Miss Betty MA

**Legal adviser**      Miss Joyce CHAN

## Appendix II

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

I. List of organizations and individuals which/who have given views to the Bills Committee:

1. Business and Professionals Alliance for Hong Kong
2. Democratic Alliance for the Betterment and Progress of Hong Kong
3. Liberal Party
4. Mr CHUNG Chi-fung

II. List of organizations which have provided written submissions:

1. Federation of Hong Kong Industries
2. Self Storage Association Asia
3. The Hong Kong Association of Property Management Companies
4. The Hong Kong Institution of Engineers