

Fire Safety (Industrial Buildings) Bill

Contents

Clause	Page
--------	------

Part 1

Preliminary

1.	Short title .....	C2101
2.	Interpretation .....	C2103
3.	Application .....	C2105
4.	Unoccupied building regarded as occupied by owner .....	C2107

Part 2

Fire Safety Requirement

Division 1—Fire Safety Direction

5.	Directing owner to comply with fire safety requirement .....	C2111
6.	Directing occupier to comply with fire safety requirement .....	C2113
7.	Directing other appropriate measures .....	C2113
8.	Fire safety direction: general requirements .....	C2113
9.	Amending or withdrawing fire safety direction .....	C2115
10.	When fire safety direction ceases to be in force .....	C2115
11.	Not complying with fire safety direction is offence .....	C2115
12.	Advisory committee .....	C2117

Clause	Page
--------	------

## **Division 2—Fire Safety Compliance Order**

13.	Magistrate may make fire safety compliance order .....	C2119
14.	Varying or revoking fire safety compliance order .....	C2119
15.	When fire safety compliance order ceases to be in force .....	C2119
16.	Not complying with fire safety compliance order is offence .....	C2121

## **Division 3—Prohibition Order**

17.	Applying for prohibition order .....	C2121
18.	District Court may make prohibition order .....	C2123
19.	Effect of prohibition order .....	C2125
20.	Discharging prohibition order .....	C2125
21.	Revoking prohibition order .....	C2127
22.	Validity period of prohibition order .....	C2127
23.	Offences relating to prohibition order .....	C2129
24.	Posting and service of copy of prohibition order .....	C2131
25.	Power to remove persons from building .....	C2133

## **Division 4—Certificate of Compliance**

26.	Requesting certificate of compliance .....	C2133
27.	Issuing certificate of compliance .....	C2133
28.	Rejecting request for certificate of compliance .....	C2135

## **Division 5—Registering Certain Instruments in Land Registry**

29.	Orders may be registered in Land Registry .....	C2135
-----	---	-------

Clause		Page
30.	Instruments to be registered .....	C2135
31.	Registration in relation to owners' corporation .....	C2137

### **Division 6—Publishing Information**

32.	Publishing information .....	C2139
-----	------------------------------	-------

### **Part 3**

### **Enforcement**

### **Division 1—Authorized Officers**

33.	Appointment of authorized officers .....	C2141
34.	Assistant to authorized officer .....	C2141
35.	Production of identification documents required when performing function .....	C2141

### **Division 2—Power to Enter Building and Other Powers**

36.	Power to enter building without warrant .....	C2143
37.	Magistrate may issue warrant .....	C2143
38.	When warrant ceases to be in force .....	C2145
39.	Security to be maintained after entering unoccupied building with warrant .....	C2145
40.	Power to require information .....	C2145

### **Division 3—Offences Relating to Enforcement**

41.	Offence relating to providing information .....	C2147
42.	Offence of disclosing information .....	C2147
43.	Offence to obstruct authorized officers .....	C2149

Clause	Page
--------	------

**Part 4**

**Miscellaneous**

**Division 1—Government’s Liability**

44.	Government not liable for failure to perform function .....	C2151
45.	Immunity from civil liability .....	C2151

**Division 2—Other Matters Relating to Offences**

46.	Offences by body corporate and partnership .....	C2151
47.	Prosecution deadline .....	C2153

**Division 3—Service of Documents**

48.	Service on non-body corporate .....	C2155
49.	Service on body corporate .....	C2155
50.	Date of giving or service of documents .....	C2159

**Division 4—Evidence**

51.	Certificate of giving or service admissible as evidence .....	C2161
52.	Power to certify documents .....	C2161
53.	Certified true copy admissible as evidence .....	C2163

**Division 5—Regulations and Codes of Practice**

54.	Power to make regulations .....	C2163
55.	Substituted or amended codes of practice .....	C2165

Clause	Page
--------	------

**Part 5**

**Minor Amendments to Other Fire Safety Legislation**

**Division 1—Enactments Amended**

56.	Enactments amended .....	C2167
-----	--------------------------	-------

**Division 2—Amendments to Fire Safety (Commercial Premises) Ordinance  
(Cap. 502)**

57.	Section 4 amended (application of Ordinance) .....	C2167
58.	Section 21 amended (offence to disclose information obtained officially) .....	C2167

**Division 3—Amendments to Fire Safety (Buildings) Ordinance (Cap. 572)**

59.	Section 22 amended (offence to disclose information obtained officially) .....	C2169
Schedule 1	Requirements to be Complied with by Owners .....	C2171
Schedule 2	Requirements to be Complied with by Occupiers .....	C2177

# A BILL

## To

Provide for a mechanism for fire safety improvements to be made to certain industrial buildings and for related matters; to rectify a textual error in the application section of the Fire Safety (Commercial Premises) Ordinance; and to amend specified exceptions to the offences of disclosing information obtained officially under that Ordinance and under the Fire Safety (Buildings) Ordinance.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title**

This Ordinance may be cited as the Fire Safety (Industrial Buildings) Ordinance.

## 2. Interpretation

In this Ordinance—

***authorized officer*** (獲授權人員) means—

- (a) the Director of Fire Services;
- (b) the Director of Buildings;
- (c) a police officer; or
- (d) a public officer appointed under section 33;

***certificate of compliance*** (符合安全證明書) means a certificate of compliance issued under section 27;

***enforcement authority*** (執行當局) means—

- (a) in relation to any fire service installation or equipment—the Director of Fire Services; or
- (b) in relation to the planning, design and construction of a building—the Director of Buildings;

***fire safety compliance order*** (符合消防安全令) means a fire safety compliance order made under section 13, and includes a fire safety compliance order varied under section 14;

***fire safety direction*** (消防安全指示) means a fire safety direction issued under section 5, 6 or 7, and includes a fire safety direction amended under section 9;

***fire safety requirement*** (消防安全規定) means—

- (a) in relation to an owner of a building or a part of a building—all or any of the requirements in Schedule 1; or
- (b) in relation to an occupier of a building or a part of a building—all or any of the requirements in Schedule 2;

***fire service installation or equipment*** (消防裝置或設備) means any installation or equipment manufactured, used or designed to be used for—

- (a) extinguishing, attacking, preventing or limiting a fire;
- (b) giving warning of a fire;
- (c) providing access to any premises or place for extinguishing, attacking, preventing or limiting a fire;
- (d) facilitating evacuation from any premises or place in case of fire; or
- (e) providing a stand-by power supply to an installation or equipment that is for any purpose mentioned in paragraph (a), (b), (c) or (d) in the event of the loss of normal power supply;

***function*** (職能) includes a power and a duty;

***mechanical ventilating system*** (機械通風系統) includes an air conditioning system;

***occupier*** (佔用人) means a person who is occupying a building or a part of a building, whether as an owner or under any form of lease or licence;

***owner*** (擁有人) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

***owners' corporation*** (業主立案法團) means a corporation registered under section 8 of the Building Management Ordinance (Cap. 344);

***prohibition order*** (禁止令) means a prohibition order made under section 18.

### 3. Application

- (1) This Ordinance applies to the whole of a building that is an industrial building.



- (2) For subsection (1), a building is an industrial building only if—
  - (a) all or part of the building was constructed for use as a factory, industrial undertaking, godown, warehouse, place of bulk storage, or similar industrial premises; and
  - (b) either—
    - (i) the building or the part was constructed in accordance with building plans that had first been submitted to the Building Authority for approval on or before 1 March 1987, and that were approved under the Buildings Ordinance (Cap. 123); or
    - (ii) the building or the part was constructed on or before 1 March 1987, and no building plans for it had been submitted to the Building Authority for approval under the Buildings Ordinance (Cap. 123) on or before that date.
- (3) However, this Ordinance does not apply to a building if the Fire Safety (Commercial Premises) Ordinance (Cap. 502) or the Fire Safety (Buildings) Ordinance (Cap. 572) applies to the whole of the building.
- (4) In this section—

***industrial undertaking*** (工業經營) 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.

#### 4. Unoccupied building regarded as occupied by owner

For the purposes of this Ordinance, if a building or a part of a building is unoccupied—

- (a) its owner is regarded as its occupier;
  - (b) an enforcement authority may exercise any of its powers under this Ordinance in relation to an occupier for the building or part by exercising them in relation to the owner for that building or part; and
  - (c) the owner's liability arising from an enforcement authority's exercise of powers under paragraph (b) is unaffected by the building or part being subsequently occupied.
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## **Part 2**

### **Fire Safety Requirement**

#### **Division 1—Fire Safety Direction**

##### **5. Directing owner to comply with fire safety requirement**

- (1) If a building has only 1 owner, an enforcement authority may issue and serve on the owner a fire safety direction to direct the owner to comply with a fire safety requirement for the building.
- (2) If a building has more than one owner and each owner has the right to exclusively occupy a part of it, an enforcement authority may issue and serve on any of the owners a fire safety direction to direct the owner to comply with a fire safety requirement for—
  - (a) the part of the building that the owner has the right to exclusively occupy; or
  - (b) a part of the building that none of the owners has the right to exclusively occupy.
- (3) If different owners of a building have the right to exclusively occupy different parts of the building, then in order to integrate fire service installations or equipment among those parts, a fire safety direction may include a direction to any of the owners to provide the relevant connections, or other forms of integration, for the installations or equipment.
- (4) Moreover, in order to integrate fire service installations or equipment between—
  - (a) a part of a building that an owner of the building has the right to exclusively occupy; and

(b) a part of the building that none of the owners of the building has the right to exclusively occupy,

a fire safety direction may include a direction to the owners concerned to provide the relevant connections, or other forms of integration, for the installations or equipment.

**6. Directing occupier to comply with fire safety requirement**

An enforcement authority may issue and serve on the occupier of a building or a part of a building a fire safety direction to direct the occupier to comply with a fire safety requirement for the building or part.

**7. Directing other appropriate measures**

If an enforcement authority considers that it would be unreasonable to direct the owner or occupier of a building or a part of a building to comply with a fire safety requirement having regard to—

- (a) the structural integrity of the building or part;
- (b) the technology available to comply with the requirement; or
- (c) any other relevant factors,

the authority may issue and serve on the owner or occupier a fire safety direction to direct the owner or occupier to take other measures the authority considers appropriate instead of complying with the requirement.

**8. Fire safety direction: general requirements**

- (1) A fire safety direction must be in writing.

- (2) A fire safety direction must specify the time limit for compliance with it.
- (3) The time limit must allow reasonable time for compliance.

**9. Amending or withdrawing fire safety direction**

An enforcement authority that has issued a fire safety direction may from time to time amend or withdraw it by written notice.

**10. When fire safety direction ceases to be in force**

A fire safety direction for a building or a part of a building ceases to be in force if—

- (a) a certificate of compliance is issued for the building or part;
- (b) the enforcement authority withdraws the direction under section 9; or
- (c) the direction is replaced by a fire safety compliance order.

**11. Not complying with fire safety direction is offence**

- (1) An owner or occupier of a building or a part of a building who, without reasonable excuse, fails to comply with a fire safety direction for the building or part commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on conviction—
  - (a) to a fine at level 4; and
  - (b) to 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 complying with the fire safety direction.

- (3) The reasonable excuse referred to in subsection (1) includes, but is not limited to, it not being reasonable to expect the owner or occupier to comply with the direction during the time for complying with it—
  - (a) because compliance would pose a risk of prejudicially affecting the structural integrity of the building or part; or
  - (b) because the technology required for compliance is not reasonably available.

## **12. Advisory committee**

- (1) An enforcement authority may set up an advisory committee to advise the authority on—
  - (a) whether to direct the owner or occupier of a building or a part of a building to take other appropriate measures under section 7; and
  - (b) if so—what measures would be appropriate.
- (2) Members of an advisory committee must be persons with relevant expertise whom the enforcement authority considers appropriate.
- (3) Only the enforcement authority may refer a case to an advisory committee for advice.
- (4) An advisory committee may by written notice invite representations from the owner or occupier, and consider them before advising on a case.
- (5) If an advisory committee has advised on a case, the enforcement authority must consider the advice.

## **Division 2—Fire Safety Compliance Order**

### **13. Magistrate may make fire safety compliance order**

- (1) A magistrate who finds an owner or occupier guilty of an offence under section 11(1) for failing to comply with a fire safety direction may, on the application of the enforcement authority, make a fire safety compliance order to order the owner or occupier to comply with any requirement or measure specified in the direction.
- (2) The owner or occupier is entitled to be heard at the hearing of the application.
- (3) A fire safety compliance order must specify the time limit for compliance with it.
- (4) The time limit must allow reasonable time for compliance.
- (5) A fire safety compliance order replaces the fire safety direction.

### **14. Varying or revoking fire safety compliance order**

- (1) If a magistrate makes a fire safety compliance order against an owner or occupier, the magistrate may vary or make an order revoking the fire safety compliance order on the application of the enforcement authority or the owner or occupier.
- (2) The enforcement authority and the owner or occupier are entitled to be heard at the hearing of the application.

### **15. When fire safety compliance order ceases to be in force**

- (1) A fire safety compliance order for a building or a part of a building ceases to be in force if—
  - (a) a certificate of compliance is issued for the building or part; or

- (b) the magistrate revokes the order under section 14.
- (2) If subsection (1)(a) applies, the enforcement authority must as soon as practicable—
  - (a) give written notification to the magistrate's clerk that a certificate of compliance has been issued; and
  - (b) serve on the owner or occupier a copy of the notification.

**16. Not complying with fire safety compliance order is offence**

- (1) An owner or occupier of a building or a part of a building who fails to comply with a fire safety compliance order for the building or part commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on conviction—
  - (a) to a fine at level 5; and
  - (b) 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 complying with the fire safety compliance order.

**Division 3—Prohibition Order**

**17. Applying for prohibition order**

- (1) An enforcement authority may apply to the District Court for a prohibition order for a building or a part of a building if the authority considers that a requirement or measure specified in a fire safety direction, or in a fire safety compliance order, for the building or part has not been complied with by an owner or occupier of the building or part.



- (2) An application may only be made after the expiry of the time limit for complying with the fire safety direction or the fire safety compliance order.
- (3) An enforcement authority must give at least 7 days' notice to the owner or occupier before making the application.
- (4) As soon as practicable after giving notice under subsection (3), the enforcement authority must post a copy of the notice at a conspicuous place—
  - (a) inside the building or part; or
  - (b) at, or in the immediate vicinity of, each entrance to the building or part.

**18. District Court may make prohibition order**

- (1) An application under section 17 is to be heard and determined in accordance with the rules of court made under section 72 of the District Court Ordinance (Cap. 336).
- (2) At the hearing of an application under section 17, the District Court may make an order for a building or a part of a building prohibiting the occupation of the building or part if satisfied that—
  - (a) the owner or occupier of the building or part has failed to comply with a requirement or measure specified in a fire safety direction or in a fire safety compliance order;
  - (b) it is reasonable to expect the owner or occupier to comply with the requirement or measure;
  - (c) the time allowed for complying with the requirement or measure is reasonable;
  - (d) it is reasonable and necessary in the circumstances to make the order; and

- (e) there are substantial fire risks if the building or part is occupied.

**19. Effect of prohibition order**

- (1) While a prohibition order is in force for a building or a part of a building, no person may occupy the building or part, except—
  - (a) a person with a permission granted under subsection (2); or
  - (b) an authorized officer acting in the course of duty.
- (2) If an enforcement authority considers appropriate, it may, subject to suitable conditions, by written notice permit a person to occupy the building or part for implementing measures necessary for the discharge or revocation of the prohibition order.
- (3) The enforcement authority may cancel the permission granted under subsection (2) at any time.
- (4) While a prohibition order is in force for a building or a part of a building, the owner and occupier of the building or part must take all practicable measures to ensure the building or part is effectively secured against entry by any person other than a person referred to in subsection (1)(a) or (b).

**20. Discharging prohibition order**

- (1) If a prohibition order is in force for a building or a part of a building, the enforcement authority must, as soon as practicable after issuing a certificate of compliance for the building or part, apply to the District Court for discharge of the order.
- (2) The application must be accompanied by a copy of the certificate of compliance.

- (3) The District Court must on the application make an order to discharge the prohibition order, unless it considers that there are special grounds for not doing so.

## **21. Revoking prohibition order**

- (1) If a prohibition order is in force for a building or a part of a building and the enforcement authority—
  - (a) rejects a request for a certificate of compliance made under section 26(1) for the building or part by the owner or occupier concerned; or
  - (b) fails to issue a certificate of compliance for the building or part within 28 days after the date on which the owner or occupier concerned gives a notice under the section requesting the certificate,the owner or occupier may apply to the District Court for an order to revoke the prohibition order.
- (2) The applicant must, within 7 days after making the application, give written notice of the application by delivering it personally or sending it by post to the enforcement authority.
- (3) The enforcement authority is entitled to be heard at the hearing of the application.
- (4) At the hearing of the application, the court may make any order it considers appropriate.

## **22. Validity period of prohibition order**

- (1) A prohibition order for a building or a part of a building comes into force—

- (a) if the owner or occupier concerned does not appeal against the order—on the 29th day after the date on which the order is served on the owner or occupier; or
  - (b) if the owner or occupier appeals against the order (including an appeal against a decision determining the appeal)—on the day following the date on which the appeal is finally rejected or is withdrawn.
- (2) However, the District Court may, if it considers appropriate in a particular case, order that a prohibition order comes into force—
  - (a) on the date on which a copy of the prohibition order is served on the owner or occupier concerned; or
  - (b) on a date within 28 days after the date of service.
- (3) A prohibition order ceases to be in force on the earliest of—
  - (a) the discharge of the order under section 20;
  - (b) the revocation of the order under section 21; or
  - (c) the building or part ceasing to exist.

## **23. Offences relating to prohibition order**

- (1) A person who, without reasonable excuse, contravenes section 19(1) commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on conviction—
  - (a) to a fine of \$250,000 and to imprisonment for 3 years; and
  - (b) to a further fine of \$25,000 for each day (or part of a day) during which the contravention continues.

- (3) A person who, without reasonable excuse, contravenes section 19(4) commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

**24. Posting and service of copy of prohibition order**

- (1) As soon as practicable after the District Court makes a prohibition order for a building or a part of a building, the enforcement authority must—
  - (a) post a copy of the order at a conspicuous place—
    - (i) inside the building or part; or
    - (ii) at, or in the immediate vicinity of, each entrance to the building or part; and
  - (b) in another way serve a copy of the order on the owner or occupier concerned.
- (2) Failure to comply with subsection (1) does not affect the validity of the prohibition order.
- (3) If a prohibition order is in force and a copy of the order is posted under subsection (1)(a), a person who, without lawful authority, removes, defaces or in another way interferes with the copy commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 2.
- (5) The enforcement authority must, as soon as practicable after a prohibition order ceases to be in force, remove all copies of the order posted under subsection (1)(a).

**25. Power to remove persons from building**

While a prohibition order is in force for a building or a part of a building, a police officer of or above the rank of inspector may—

- (a) remove from the building or part any person who is apparently contravening, or about to contravene, section 19(1); and
- (b) prevent the person from re-entering the building or part while the order is in force.

**Division 4—Certificate of Compliance****26. Requesting certificate of compliance**

- (1) While a fire safety direction or fire safety compliance order is in force for a building or a part of a building, the owner or occupier concerned may, by written notice given by delivering it personally or sending it by post to the enforcement authority, request the authority to issue a certificate of compliance for the building or part.
- (2) A certificate of compliance must certify that the requirements or measures specified in a fire safety direction or in a fire safety compliance order have been complied with.

**27. Issuing certificate of compliance**

- (1) If the enforcement authority is satisfied that the requirements or measures specified in a fire safety direction or in a fire safety compliance order have been complied with, the authority must as soon as practicable issue a certificate of compliance to the owner or occupier concerned.
- (2) The function under subsection (1) may be performed—

- (a) at the request of the owner or occupier concerned made under section 26(1); or
- (b) on the enforcement authority's own initiative.

**28. Rejecting request for certificate of compliance**

If the enforcement authority rejects the request of the owner or occupier made under section 26(1), the authority must as soon as practicable by written notice inform the owner or occupier of the rejection and the reasons for it.

## **Division 5—Registering Certain Instruments in Land Registry**

**29. Orders may be registered in Land Registry**

An enforcement authority may cause to be registered by memorial in the Land Registry against the land register of a building or a part of a building—

- (a) a fire safety compliance order for the building or part; or
- (b) a prohibition order for the building or part.

**30. Instruments to be registered**

- (1) If a fire safety compliance order is registered under section 29 for a building or a part of a building, the enforcement authority must—
  - (a) if the order is subsequently varied or revoked under section 14(1)—cause the varied fire safety compliance order or the revocation order to be registered for the building or part; or

- (b) if a certificate of compliance is subsequently issued for the building or part—cause the certificate to be registered for the building or part.
- (2) If a prohibition order is registered under section 29 for a building or a part of a building, the enforcement authority must—
  - (a) if the order is subsequently discharged under section 20(3)—cause the discharge order to be registered for the building or part; or
  - (b) if an order is subsequently made under section 21(4)—cause the subsequent order to be registered for the building or part.
- (3) If an enforcement authority is required to cause an instrument to be registered under this section, the authority must, as soon as practicable within 1 month beginning on the date of the instrument, cause it to be registered by memorial in the Land Registry against the land register of the building or part.

**31. Registration in relation to owners' corporation**

- (1) This section applies for the purposes of registration under sections 29 and 30 only.
- (2) If an order referred to in section 29(a) or 30(1)(a) is made for a building or a part of a building against an owners' corporation, the order is regarded as having been made against each owner of the building or part individually.
- (3) If a certificate referred to in section 30(1)(b) is issued for a building or a part of a building to an owners' corporation, the certificate is regarded as having been issued to each owner of the building or part individually.



## **Division 6—Publishing Information**

### **32. Publishing information**

In order to provide appropriate information to the public, an enforcement authority may upload onto its departmental website, or in another way publish, information about a fire safety direction, a fire safety compliance order, or a prohibition order, for a building or a part of a building, including but not limited to—

- (a) the serial number of the direction or order;
  - (b) the address of the building or part;
  - (c) the date of the direction or order; and
  - (d) the compliance status of the direction or order.
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## **Part 3**

### **Enforcement**

#### **Division 1—Authorized Officers**

**33. Appointment of authorized officers**

An enforcement authority may appoint a public officer in writing to be an authorized officer for the purposes of this Ordinance.

**34. Assistant to authorized officer**

When performing a function under this Ordinance, an authorized officer may be assisted by the persons who are reasonably required for performing the function.

**35. Production of identification documents required when performing function**

When performing a function under this Ordinance, an authorized officer must, if asked, produce for inspection identification documents that show his or her identity as an authorized officer, such as—

- (a) an identification document of the post held; and
- (b) a copy of any appointment under section 33.

## **Division 2—Power to Enter Building and Other Powers**

### **36. Power to enter building without warrant**

- (1) If an authorized officer knows or reasonably believes that a building is one to which this Ordinance applies, the officer may enter and inspect the building or a part of the building during any reasonable hours without warrant in order to perform a function under this Ordinance.
- (2) If an authorized officer knows or reasonably believes that an offence under this Ordinance is being or has been committed in a building or a part of a building, the officer may also enter and inspect the building or part during any reasonable hours without warrant.

### **37. Magistrate may issue warrant**

- (1) On application by an enforcement authority, a magistrate may issue a warrant for a building or a part of a building if it is shown to the magistrate's satisfaction on sworn or affirmed information that—
  - (a) the building is one to which this Ordinance applies or there is a good reason for an authorized officer to believe so;
  - (b) one of the following cases applies—
    - (i) the building or part is unoccupied;
    - (ii) an authorized officer, after making reasonable efforts, has not been able to contact the owner or occupier of the building or part;
    - (iii) admission to the building or part has been refused, or refusal of admission is reasonably expected;

- (iv) the owner or occupier of the building or part is unreasonably delaying admission to the building or part;
  - (v) the case is one of urgency; and
- (c) there is a good reason for an authorized officer to enter the building or part.
- (2) A warrant may authorize an authorized officer to enter the building or part, if necessary by force.
- (3) A warrant must state the purpose of entry.

**38. When warrant ceases to be in force**

A warrant issued under section 37(1) ceases to be in force on the earlier of—

- (a) the end of 1 month beginning on the date of issue; or
- (b) the fulfilment of the purpose stated in the warrant.

**39. Security to be maintained after entering unoccupied building with warrant**

If an authorized officer enters an unoccupied building or an unoccupied part of a building pursuant to a warrant issued under section 37(1), the officer must ensure that, on leaving the building or part, it is as effectively secured against trespassers as it was immediately before the entry.

**40. Power to require information**

An authorized officer may require a person to provide information that may identify an owner or occupier of a building or a part of a building, but only if—

- (a) the officer reasonably believes that the person has the information; and
- (b) the information cannot readily be obtained by inspecting a public record.

### **Division 3—Offences Relating to Enforcement**

#### **41. Offence relating to providing information**

- (1) A person commits an offence if the person, without reasonable excuse—
  - (a) refuses or fails to answer a question put to the person under section 40; or
  - (b) provides an answer that the person knows or ought reasonably to know is false or misleading.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4.

#### **42. Offence of disclosing information**

- (1) A person who, without lawful authority, discloses to another person information obtained while performing a function under this Ordinance commits an offence.
- (2) For subsection (1), the person has lawful authority if the person discloses the information—
  - (a) in order to perform a function under this Ordinance;
  - (b) in connection with proceedings brought under this Ordinance;
  - (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;
  - (d) in compliance with a court order; or

- (e) with the consent of each person who is entitled to have the information kept confidential.
- (3) For subsection (2)(e), information that a person is entitled to have kept confidential includes, but is not limited to, information that concerns the trade, business or profession of the person or another person with whom the person has business dealings.
- (4) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

**43. Offence to obstruct authorized officers**

- (1) A person who, without reasonable excuse, resists, obstructs or delays an authorized officer who is performing, or is attempting to perform, a function under this Ordinance commits an offence.
  - (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
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## **Part 4**

### **Miscellaneous**

#### **Division 1—Government’s Liability**

**44. Government not liable for failure to perform function**

The Government, an enforcement authority or an authorized officer does not incur liability for damages only because of a failure to perform a function under this Ordinance.

**45. Immunity from civil liability**

- (1) An authorized officer is not civilly liable for an act done or omitted to be done by the officer in good faith in performing or purportedly performing a function under this Ordinance.
- (2) Subsection (1) does not affect any liability of the Government for the act or omission.

#### **Division 2—Other Matters Relating to Offences**

**46. Offences by body corporate and partnership**

- (1) If an offence under this Ordinance is committed by a body corporate (other than an owners’ corporation) and it is proved that the offence—
  - (a) was committed with the consent or connivance of a director of the body corporate or other person concerned in the management of the body corporate;  
or

- (b) was attributable to any neglect or omission on the part of the director or the other person,  
the director or the other person also commits the offence.
- (2) If 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.
- (3) If an offence under this Ordinance is committed by a partner of a partnership and it is proved that the offence—
  - (a) was committed with the consent or connivance of any other partner concerned in the management of the partnership; or
  - (b) was attributable to any neglect or omission on the part of the other partner,  
the other partner also commits the offence.

**47. Prosecution deadline**

A prosecution for an offence under this Ordinance may only be started before the end of 12 months beginning on the date on which the offence is discovered by, or comes to the notice of, the enforcement authority.

**Note—**

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).



### **Division 3—Service of Documents**

#### **48. Service on non-body corporate**

If a document for a building or a part of a building is given to or served on a person under this Ordinance by an enforcement authority and the person is not a body corporate, the document may be—

- (a) delivered personally to the person;
- (b) sent by registered post to the person's usual address of residence or business, or (if that address is unknown) to the person's last known address of residence or business;
- (c) left with an adult occupier of the building or part;
- (d) posted at a conspicuous place inside the building or part;
- (e) sent by facsimile transmission to the facsimile number of the person, or (if that number is unknown) to the person's last known facsimile number; or
- (f) sent by electronic mail to the electronic mail address of the person, or (if that address is unknown) to the person's last known electronic mail address.

#### **49. Service on body corporate**

- (1) If a document for a building or a part of a building is given to or served on a person under this Ordinance by an enforcement authority and the person is a body corporate (other than a registered non-Hong Kong company), the document may be—

- (a) delivered personally to any address in Hong Kong at which the body corporate carries on business, and given to a person apparently concerned in the management of, or employed by, the body corporate;
  - (b) sent by registered post to the registered office in Hong Kong of the body corporate, or to any address in Hong Kong at which the body corporate carries on business, or (if that address is unknown) to the last known registered or business address of the body corporate;
  - (c) left with an adult occupier of the building or part;
  - (d) posted at a conspicuous place inside the building or part;
  - (e) sent by facsimile transmission to the facsimile number of the body corporate, or (if that number is unknown) to the last known facsimile number of the body corporate; or
  - (f) sent by electronic mail to the electronic mail address of the body corporate, or (if that address is unknown) to the last known electronic mail address of the body corporate.
- (2) If a document for a building or a part of a building is given to or served on a person under this Ordinance by an enforcement authority and the person is a registered non-Hong Kong company, the document may be—
- (a) delivered personally to the address of the authorized representative as shown in the Companies Register, and given to the authorized representative;
  - (b) sent by registered post to the authorized representative at that address;
  - (c) left with an adult occupier of the building or part;

- (d) posted at a conspicuous place inside the building or part;
- (e) sent by facsimile transmission to the facsimile number of the authorized representative, or (if that number is unknown) to the last known facsimile number of the representative; or
- (f) sent by electronic mail to the electronic mail address of the authorized representative, or (if that address is unknown) to the last known electronic mail address of the representative.

(3) In this section—

***authorized representative*** (獲授權代表) means an authorized representative as defined by section 774(1) of the Companies Ordinance (Cap. 622);

***Companies Register*** (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

***registered non-Hong Kong company*** (註冊非香港公司) means a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622).

## 50. Date of giving or service of documents

For the purposes of this Ordinance, a document given or served is taken, in the absence of evidence to the contrary, to have been given or served—

- (a) if delivered personally, left with a person or posted at a place—on the day after the day on which it was delivered, left or posted;
- (b) if sent by post—on the second working day after the day on which it was posted;

- (c) if sent by facsimile transmission—on the day after the day on which it was sent; or
- (d) if sent by electronic mail—on the day after the day on which it was sent.

## **Division 4—Evidence**

### **51. Certificate of giving or service admissible as evidence**

- (1) A certificate purporting to be signed by, or for, an enforcement authority stating that a document has been given or served is admissible in evidence in any proceedings brought under this Ordinance.
- (2) Unless there is evidence to the contrary, it is presumed that—
  - (a) the certificate is signed by, or for, the enforcement authority; and
  - (b) the document to which the certificate relates was duly given or served.

### **52. Power to certify documents**

- (1) An enforcement authority or a public officer appointed under section 33 may certify a copy or print of (or an extract from) a document made, issued, given or served for the purposes of this Ordinance as a true copy or print of (or extract from) the document.
- (2) The document referred to in subsection (1) includes, but is not limited to—
  - (a) a fire safety direction;
  - (b) a notice amending or withdrawing a fire safety direction under section 9;
  - (c) a fire safety compliance order;

- (d) a prohibition order;
- (e) a certificate of compliance;
- (f) building plans showing that a building is one to which this Ordinance applies; and
- (g) correspondence by the enforcement authority with an owner or occupier of a building or a part of a building in connection with this Ordinance.

**53. Certified true copy admissible as evidence**

- (1) A copy or print of (or an extract from) a document is admissible in evidence in proceedings before any court on its production without further proof if the copy, print or extract—
  - (a) purports to be a true copy or print of (or extract from) the document; and
  - (b) has been certified under section 52.
- (2) The court before which the certified true copy, print or extract is produced must, unless there is evidence to the contrary, presume that—
  - (a) the certification is by an enforcement authority or a public officer appointed under section 33; and
  - (b) it is a true copy, print or extract.

**Division 5—Regulations and Codes of Practice**

**54. Power to make regulations**

The Secretary for Security may make regulations for the better carrying into effect of the provisions and purposes of this Ordinance.

**55. Substituted or amended codes of practice**

- (1) The Secretary for Security may, by notice published in the Gazette, amend Schedule 1 or 2 by substituting or amending the references to any code of practice in the Schedule.
  - (2) A notice under subsection (1) is subject to the approval of the Legislative Council.
  - (3) A notice under subsection (1) must not take effect on a day before the date on which the notice is published in the Gazette.
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## **Part 5**

### **Minor Amendments to Other Fire Safety Legislation**

#### **Division 1—Enactments Amended**

**56. Enactments amended**

The enactments specified in Divisions 2 and 3 are amended as set out in those Divisions.

#### **Division 2—Amendments to Fire Safety (Commercial Premises) Ordinance (Cap. 502)**

**57. Section 4 amended (application of Ordinance)**

Section 4(1)(a), after “as well as to”—

**Add**

“prescribed commercial”.

**58. Section 21 amended (offence to disclose information obtained officially)**

(1) Section 21(2)—

**Repeal paragraph (ba)**

**Substitute**

“(ba) 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; or”.

(2) Section 21(2)—

**Repeal paragraph (c)**

**Substitute**

“(c) in compliance with a court order; or”.

### **Division 3—Amendments to Fire Safety (Buildings) Ordinance (Cap. 572)**

**59. Section 22 amended (offence to disclose information obtained officially)**

(1) Section 22(2)—

**Repeal paragraph (ba)**

**Substitute**

“(ba) 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;”.

(2) Section 22(2)—

**Repeal paragraph (c)**

**Substitute**

“(c) in compliance with a court order; or”.

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## Schedule 1

[ss. 2 & 55]

### Requirements to be Complied with by Owners

#### 1. Provision of fire service installations or equipment

- (1) In relation to the provision of fire service installations or equipment, an enforcement authority may direct an owner of a building or a part of a building to comply with the following requirements—
  - (a) to provide or improve an automatic sprinkler system, with or without a direct link to the system of the Fire Services Department, to control the spread of fire and to sound an alarm;
  - (b) to provide or improve a fire hydrant and hose reel system as a source of water supply for firefighting;
  - (c) to provide or improve a manual fire alarm system to alert persons in the building in the event of fire;
  - (d) to provide or improve emergency lighting within the common areas of the building to facilitate the evacuation of persons in the building in the event of a power failure;
  - (e) to provide or improve exit signs (including directional signs) indicating an exit route to facilitate the evacuation of persons in the building in the event of fire;

- (f) to provide or improve a secondary source of electrical power supply (whether in the form of an emergency generator or otherwise) to provide a stand-by power supply to fire service installations or equipment or a fireman's lift in the event of the loss of normal power supply;
  - (g) if a mechanical ventilating system is provided in the building or part and the system forms an integral part of the building or part—to provide or improve an automatic cut-off device for the system to limit the spread of smoke through the system; and
  - (h) to provide or improve other fire service installations or equipment in accordance with the requirements specified in the Code of Practice for Minimum Fire Service Installations and Equipment 2012 published by the Director of Fire Services (**2012 Code**).
- (2) The detailed specifications and requirements of the installations or equipment under subsection (1)(a), (b), (c), (d), (e), (f) and (g) are set out in the 2012 Code.

## **2. Fire safety construction**

- (1) In relation to the design, construction or installation of fire safety construction, an enforcement authority may direct an owner of a building or a part of a building to comply with the following requirements—
- (a) in relation to means of escape—to improve the exit arrangements on storeys and at ground storeys;
  - (b) in relation to means of access for firefighting and rescue—to provide fireman's lifts; and

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- (c) in relation to fire resisting construction—
- (i) to protect exit routes and staircases with separating walls of fire resisting construction;
  - (ii) to provide fire doors;
  - (iii) to improve the fire resistance of external walls, and to protect openings in the external walls to inhibit the spread of fire to adjoining buildings;
  - (iv) to provide fire resisting separation between different parts of the building; and
  - (v) to provide smoke vents to basements.
- (2) The detailed specifications and requirements of the fire safety construction under subsection (1) are set out in the Code of Practice for Fire Safety in Buildings 2011 (October 2015 version) published by the Buildings Department.
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## Schedule 2

[ss. 2 & 55]

### Requirements to be Complied with by Occupiers

#### 1. Interpretation

In this Schedule—

***fire compartment*** (防火間), in relation to a building, means a space enclosed at all sides by fire barriers (or appropriate construction) that meet the standards of fire resistance rating prescribed by the Code of Practice for Fire Safety in Buildings 2011 (October 2015 version) published by the Buildings Department.

#### 2. Provision of fire service installations or equipment

- (1) In relation to the provision of fire service installations or equipment, an enforcement authority may direct an occupier of a building or a part of a building to comply with the following requirements—
  - (a) to provide or improve emergency lighting within the area occupied by the occupier (***occupied area***) to facilitate the evacuation of persons in the area in the event of a power failure; and
  - (b) if—
    - (i) a mechanical ventilating system is provided in the occupied area and the system serves only the occupied area; and
    - (ii) the system—
      - (A) has a capacity to process air at a rate exceeding 1 cubic metre per second; or

- (B) serves more than one fire compartment located within the occupied area,  
to provide or improve an automatic cut-off device for the system to limit the spread of smoke through the system.
- (2) The detailed specifications and requirements of the installations or equipment under subsection (1) are set out in the Code of Practice for Minimum Fire Service Installations and Equipment 2012 published by the Director of Fire Services.
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## **Explanatory Memorandum**

The purpose of this Bill is to provide for a mechanism for the Director of Fire Services and the Director of Buildings (*enforcement authority*) to require the owners and occupiers of certain industrial buildings to provide or improve the fire safety measures in the buildings.

2. The Bill contains 5 Parts and 2 Schedules.

### **Part 1—Preliminary**

3. Clause 1 sets out the short title.
4. Clause 2 contains the definitions for the interpretation of the Bill.
5. Clause 3 provides for the scope of application of the Bill, including its relationship with the Fire Safety (Commercial Premises) Ordinance (Cap. 502) and the Fire Safety (Buildings) Ordinance (Cap. 572).
6. Clause 4 deals with unoccupied buildings.

### **Part 2—Fire Safety Requirement**

#### *Division 1—Fire Safety Direction*

7. Clause 5 empowers an enforcement authority to issue a fire safety direction to direct an owner to comply with a fire safety requirement.

8. Clause 6 empowers an enforcement authority to issue a fire safety direction to direct an occupier to comply with a fire safety requirement.
9. Clause 7 empowers an enforcement authority, having regard to relevant factors, to direct an owner or occupier to take other appropriate measures instead of complying with a fire safety requirement.
10. Clause 8 provides for the general requirements of a fire safety direction.
11. Clause 9 enables an enforcement authority to amend or withdraw a fire safety direction.
12. Clause 10 provides for when a fire safety direction ceases to be in force.
13. Clause 11 makes it an offence for an owner or occupier to fail to comply with a fire safety direction without reasonable excuse, and provides for examples of reasonable excuse.
14. Clause 12 enables the setting up of an advisory committee to advise on matters related to other appropriate measures.

*Division 2—Fire Safety Compliance Order*

15. Clause 13 enables a magistrate to make a fire safety compliance order if the magistrate finds an owner or occupier guilty of failing to comply with a fire safety direction.
16. Clause 14 enables a magistrate to vary or revoke a fire safety compliance order.

17. Clause 15 provides for when a fire safety compliance order ceases to be in force, and subsequent notification requirements.
18. Clause 16 makes it an offence for an owner or occupier to fail to comply with a fire safety compliance order.

*Division 3—Prohibition Order*

19. Clause 17 provides for the application by an enforcement authority to the District Court for a prohibition order for non-compliance with a fire safety direction or fire safety compliance order.
20. Clause 18 empowers the District Court, on being satisfied certain conditions are present, to make a prohibition order prohibiting the occupation of a building or a part of a building.
21. Clause 19 provides for the effect of a prohibition order and the exceptions, and requires an owner or occupier to ensure the building or part of the building is effectively secured against entry.
22. Clause 20 provides for the discharge of a prohibition order in the District Court.
23. Clause 21 allows an owner or occupier to apply to the District Court to revoke a prohibition order under certain conditions.
24. Clause 22 provides for the validity period of a prohibition order.



25. Clause 23 makes it an offence for a person not to comply with a prohibition order without reasonable excuse, and for an owner or occupier to fail to ensure compliance with the prohibition order without reasonable excuse.
26. Clause 24 provides for the posting of a copy of a prohibition order in the building or part of the building, and service of a copy to the owner or occupier.
27. Clause 25 empowers the police to remove persons from a building or a part of a building where a prohibition order is in force.

*Division 4—Certificate of Compliance*

28. Clause 26 allows an owner or occupier to request the enforcement authority to issue a certificate of compliance to certify that a fire safety direction or fire safety compliance order has been complied with.
29. Clause 27 requires the enforcement authority to issue a certificate of compliance to an owner or occupier if the authority is satisfied that a fire safety direction or fire safety compliance order has been complied with.
30. Clause 28 requires the enforcement authority to inform an owner or occupier by written notice of a rejection to issue a certificate of compliance and the reasons.

*Division 5—Registering Certain Instruments in Land Registry*

31. Clause 29 enables the enforcement authority to register in the Land Registry a fire safety compliance order or prohibition order.

32. Clause 30 requires the enforcement authority to register certain court orders and certificates of compliance (if any) related to a registered fire safety compliance order or prohibition order.
33. Clause 31 provides for registration in relation to an owners' corporation of a building.

*Division 6—Publishing Information*

34. Clause 32 provides that an enforcement authority may publish information about a fire safety direction, fire safety compliance order or prohibition order on its departmental website or in another way.

**Part 3—Enforcement**

*Division 1—Authorized Officers*

35. Clause 33 empowers an enforcement authority to appoint public officers as authorized officers.
36. Clause 34 provides that an authorized officer may be assisted by other persons when performing a function under the Bill.
37. Clause 35 obliges an authorized officer to produce identification documents if asked to do so.

*Division 2—Power to Enter Building and Other Powers*

38. Clause 36 empowers an authorized officer to enter and inspect a building or a part of a building without warrant under certain conditions.

- 39. Clause 37 enables an enforcement authority to apply under certain conditions to a magistrate for a warrant authorizing an authorized officer to enter a building or a part of a building, if necessary by force.
- 40. Clause 38 provides for when a warrant ceases to be in force.
- 41. Clause 39 requires an authorized officer, after entering an unoccupied building or an unoccupied part of a building pursuant to a warrant, to maintain security as it originally was.
- 42. Clause 40 empowers an authorized officer to require persons to provide certain information that may identify an owner or occupier.

*Division 3—Offences Relating to Enforcement*

- 43. Clause 41 makes it an offence to refuse or fail to answer, or to provide a false or misleading answer to, questions requiring information that may identify an owner or occupier without reasonable excuse.
- 44. Clause 42 makes it an offence to disclose information obtained while performing a function under the Bill, and provides for the exceptions.
- 45. Clause 43 makes it an offence to resist, obstruct or delay an authorized officer in performing a function under the Bill.

## **Part 4—Miscellaneous**

### *Division 1—Government's Liability*

46. Clause 44 provides that the Government, an enforcement authority or an authorized officer is not liable for damages only for failing to perform a function under the Bill.
47. Clause 45 provides immunity to an authorized officer for an act done or omitted to be done in good faith in performing a function under the Bill.

### *Division 2—Other Matters Relating to Offences*

48. Clause 46 provides for the vicarious liability of officers of a body corporate and partners of a partnership when a body corporate or partnership commits an offence under the Bill.
49. Clause 47 sets out the deadline for prosecuting offences under the Bill, replacing the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

### *Division 3—Service of Documents*

50. Clause 48 provides for the means of serving documents on a person who is not a body corporate.
51. Clause 49 provides for the means of serving documents on a body corporate, or a registered non-Hong Kong company as defined under the Companies Ordinance (Cap. 622).
52. Clause 50 provides for the date on which a document is taken to have been served for the different means of service.

*Division 4—Evidence*

- 53. Clause 51 provides for the admissibility of certain certificates in proceedings as evidence of giving or service of a document.
- 54. Clause 52 empowers an enforcement authority or a public officer appointed as an authorized officer to certify certain documents.
- 55. Clause 53 provides for the admissibility as evidence of certain certified true copies in proceedings.

*Division 5—Regulations and Codes of Practice*

- 56. Clause 54 empowers the Secretary for Security to make regulations for the better carrying into effect of the Bill.
- 57. Clause 55 provides for the way of amending the references to codes of practice in the Schedules.

**Part 5—Minor Amendments to Other Fire Safety Legislation**

- 58. Clauses 56 to 59 rectify a textual error in section 4 of the Fire Safety (Commercial Premises) Ordinance (Cap. 502), and amend specified exceptions to the offences of disclosing information obtained officially under that Ordinance and under the Fire Safety (Buildings) Ordinance (Cap. 572). The Bill makes no amendment on other aspects of the 2 Ordinances.

## **Schedules**

59. Schedule 1 sets out the requirements that may be included in a fire safety direction to be complied with by an owner.
60. Schedule 2 sets out the requirements that may be included in a fire safety direction to be complied with by an occupier.