

**立法會**  
***Legislative Council***

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**Paper for the House Committee Meeting  
on 14 December 2018**

**Legal Service Division Report on  
Fire Safety (Industrial Buildings) Bill**

**I. SUMMARY**

- 1. The Bill**

The main purpose of the Bill is to provide for a mechanism for fire safety improvements to be made to certain industrial buildings and for related matters.
- 2. Public Consultation**

The Administration conducted a two-month public consultation exercise from 9 August to 8 October 2018. A total of 19 written submissions were received and the respondents were all generally supportive of the legislative proposal. Some respondents requested the Director of Fire Services and the Director of Buildings to be flexible in imposing the fire safety requirements and to accept alternative measures if there are practical difficulties. Others suggested that the Administration should provide financial assistance to owners and occupiers of industrial buildings affected by the proposal.
- 3. Consultation with LegCo Panel**

The Clerk to the Panel on Security has advised that the Panel was briefed on 11 April 2017. Members generally supported the legislative proposal but expressed concerns on various issues.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to provide for a new mechanism for fire safety improvements to be made to certain old industrial buildings, Members may consider forming a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 12 December 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Reference: SBCR 1/2361/16) issued by the Security Bureau on 28 November 2018 for further details.

### **Object of the Bill**

2. The main purpose of the Bill is to provide for a mechanism for fire safety improvements to be made to certain industrial buildings and for related matters.

### **Background**

3. At present, protection for fire safety 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 are provided in the Fire Safety (Commercial Premises) Ordinance (Cap. 502) and the Fire Safety (Buildings) Ordinance (Cap. 572) respectively. Industrial buildings, however, are not subject to the regulatory framework provided in Cap. 502 and Cap. 572. They are at present only regulated by the codes of practice published by the Director of Fire Services ("D of FS") and the Buildings Department ("BD"). According to the Administration, the fire safety of industrial buildings constructed before the publication of the codes of practice currently in force may thus fall short of the latest requirements.

4. According to paragraph 4 of the LegCo Brief, in the light of the casualties arising from fires at certain old industrial buildings in recent years, the Administration considers it necessary to introduce measures to bring the fire safety standards of old industrial buildings up to date. The Bill, which follows the approach adopted in Cap. 502 and Cap. 572, is thus introduced into LegCo in order to enhance the fire safety standards of industrial buildings constructed or with building plans submitted to the Building Authority for approval on or before 1 March 1987 ("IBs").

### **Provisions of the Bill**

5. The Bill seeks to provide for a regulatory mechanism for IBs under which D of FS and the Director of Buildings as the Enforcement Authorities ("EAs") would be empowered to take various enforcement actions to ensure compliance with fire safety standards by owners and occupiers of IBs. Key provisions of the Bill are summarized in the following paragraphs.

### Industrial buildings to which the Bill would apply

6. IBs refer to buildings which were wholly or partly constructed for use as factories, premises on which articles are manufactured, altered, cleansed, etc, godowns, warehouses, places of bulk storage or similar industrial premises.

### Power of EAs to direct IB owners and occupiers to comply with fire safety requirements or take other appropriate fire safety measures

7. Under the Bill, an EA would be empowered to issue and serve a fire safety direction ("direction") on an owner or an occupier of an IB or part of an IB to direct such owner or occupier to, within a specified time limit, comply with fire safety requirement(s) specified in the proposed Schedules 1 and 2 to the Bill.

8. The proposed Schedules 1 and 2 seek to set out the fire safety requirements to be complied with by IB owners and occupiers respectively, such as the provision of fire service installations or equipment (e.g. automatic sprinkler systems), which are codified and published by D of FS and BD.<sup>1</sup> The Secretary for Security ("Secretary") may, by notice published in the Gazette, amend the proposed Schedule 1 or 2 by substituting or amending the references to any code of practice in the Schedule. Such notice would be subject to the approval of LegCo under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1).

9. An IB owner or occupier who, without reasonable excuse, fails to comply with a direction would commit an offence and be liable on conviction to a fine at level 4 (\$25,000) and 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 compliance.

10. If an EA considers that it would be unreasonable to direct an IB owner or occupier to comply with a fire safety requirement having regard to factors such as the structural integrity of the IB or the technology available to comply with the requirement, the EA may issue and serve a direction to direct such IB owner or occupier to take other measures the EA considers appropriate.

### Power of EAs to apply to a magistrate for a fire safety compliance order

11. If an IB owner or occupier is found guilty of the offence of failing to comply with a fire safety direction, 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 the direction. An owner or occupier who fails to comply with a FSCO would commit an offence and be liable on conviction to a fine at level 5 (\$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.

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<sup>1</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.

12. If an EA is satisfied that a direction or a FSCO has been complied with, it must as soon as practicable issue a certificate of compliance ("CoC") either on its own initiative or upon the request of the IB owner or occupier concerned. Upon the issuance of a CoC, the FSCO would cease to be in force and the EA must as soon as practicable give written notification to the magistrate's clerk that a CoC has been issued and serve a copy of the notification on the relevant owner or occupier.

#### Power of EAs to apply to the District Court for a prohibition order

13. Under the Bill, an EA may apply to the District Court for a prohibition order ("PO") if an IB owner or occupier fails to comply with a direction or a FSCO within the specified time limit for compliance. The effect of a PO is that no person, except with the EA's permission, would be allowed to occupy an IB or a part of it to which the PO applies. 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.

14. While a PO is in force, an IB owner or occupier who, without reasonable excuse, fails to take all practical measures to ensure that the IB or its relevant parts is/are effectively secured against entry would commit an offence, and be liable on conviction to a fine at level 4 (\$25,000) and to imprisonment for six months.

#### Registration of FSCOs and POs in the Land Registry

15. To facilitate prospective buyers of IBs to acquire information on outstanding legal liabilities relating to IBs, it is proposed under the Bill that an EA may register by memorial in the Land Registry a FSCO or a PO against the land register of an IB or a part of it. Where a FSCO has subsequently been revoked or a CoC has been issued for the IB, or a PO has subsequently been discharged or revoked, an EA must arrange for the relevant instrument to be registered in the Land Registry as soon as practicable within one month.

#### Enforcement powers

16. For the purpose of enforcing the above provisions, Part 3 of the Bill proposes to confer certain powers on the EAs and authorized officers (including police officers and public officers appointed under clause 33). These include the power to enter and inspect an IB to check for compliance with the relevant provisions without warrant, the power to enter an IB by force if necessary upon the issuance of a warrant by a magistrate for that purpose, and the power to require a person to provide information for identification of an IB owner or occupier.

17. A person who, without reasonable excuse, resists, obstructs or delays an authorized officer in the performance of his functions would commit an offence and be liable on conviction to a fine at level 4 (\$25,000) and to imprisonment for six

months. A person who refuses or fails to provide the required information would commit an offence and be liable on conviction to a fine at level 4 (\$25,000).

### Other provisions relating to the regulatory mechanism for IBs

#### *Prosecution deadline*

18. It is proposed under clause 47 of the Bill that a prosecution must be brought for an offence under the Bill within 12 months from the date on which the offence is discovered by, or comes to the notice of, the EA. This seeks to replace the time limit of six months under section 26 of the Magistrates Ordinance (Cap. 227).<sup>2</sup>

#### *Service of documents*

19. The Bill seeks to provide for methods of service of different documents, such as directions, FSCOs or POs, on owners or occupiers of IBs, who may be (i) non body-corporates (i.e. persons), (ii) body corporates (i.e. registered companies), or (iii) owners' corporations. The methods of service prescribed under the Bill include personal service, service by registered post, service on an adult occupier of the IB, posting at a conspicuous place inside the IB, facsimile transmission and electronic mail.

#### *Regulation-making power*

20. Under clause 54 of the Bill, it is proposed that the Secretary may make regulations for the better carrying into effect of the provisions and purposes of the Bill.

### Amendments to Cap. 502 and Cap. 572

21. Part 5 of the Bill seeks to amend section 4 of Cap. 502 to specify clearly the types of premises regulated under Cap. 502. It also seeks to amend Cap. 502 and Cap. 572 to provide for further exceptions to the offences of disclosing information obtained officially under the two Ordinances.

### Commencement

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

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<sup>2</sup> Section 26 of Cap. 227 provides that: "In any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within six months from the time when the matter of such complaint or information respectively arose."

## **Public Consultation**

23. According to paragraph 24 of the LegCo Brief, the Administration conducted a two-month public consultation exercise from 9 August to 8 October 2018. A total of 19 written submissions were received and the respondents were all generally supportive of the legislative proposal. Some respondents requested the EAs to be flexible in imposing the fire safety requirements and to accept alternative measures if there are practical difficulties. Others suggested that the Administration should provide financial assistance to owners and occupiers of IBs affected by the proposal.

## **Consultation with LegCo Panel**

24. As advised by the Clerk to the Panel on Security, the Panel was briefed on the legislative proposal at its meeting on 11 April 2017. While members were generally supportive of the proposal, some members expressed concerns on various issues, including the scope of the fire safety requirements which IB owners and occupiers would have to comply with, compliance difficulties of owners and occupiers, and the costs of carrying out fire safety improvement works.

## **Conclusion**

25. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to provide for a new mechanism for fire safety improvements to be made to certain old IBs, Members may consider forming a Bills Committee to study the Bill in detail.

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