



### Summary of Judgment

**U Storage Group Limited (“Applicant”) v Director of Fire Services (“Director”)  
and Director of Buildings (“DB”)  
HCAL 490/2019; [2020] HKCFI 2114**

<b>Decision</b>	<b>: Both application for extension of time to apply for leave for judicial review and application for leave for judicial review dismissed</b>
<b>Date of Hearing</b>	<b>: 27, 28 May 2020 and 11 June 2020</b>
<b>Date of Judgment</b>	<b>: 28 August 2020</b>

### Background

1. The Applicant was a company running mini-storage business in a 3-floor premises of an industrial building in Kowloon. The Director inspected the Applicant’s premises and identified fire hazards therein. Thus, the Director issued Fire Hazards Abatement Notices (“**FHANS**”) to the Applicant some of which were complied with while others, which related to *inter alia* undesirable layouts and insufficient windows, were not complied with (“**Subject Notices**”).
2. The Director’s inspection was part of the territory-wide inspection exercise for the purpose of identifying fire safety risks associated with mini-storage facilities and improving fire safety of these premises. The exercise followed the fire outbreak at a mini-storage facility in the Amoycan Industrial Centre in June 2016 resulting in casualties.
3. In the leave application for judicial review, the Applicant challenged, among others, the Director’s power to issue FHANS, his decisions to issue the Subject Notices and implement a fact sheet entitled "Potential Fire Hazards in Mini-Storages and Related Abatement Measures". The grounds for judicial review included that the Director acted *ultra vires* his power under the Fire Services Ordinance, Cap. 95 (“**FSO**”); that the Director was in breach of procedural legitimate expectation in failing to consult the mini-storage industry; and that the relevant statutory provisions were unconstitutional in failing to satisfy the “prescribed by law” requirement or alternatively, the Subject Notices were in breach of Articles 6 and 105 of the Basic Law (“**BL**”) (on protection of private property right). The Applicant also sought extension of time to make the application for leave for judicial review.



4. The Applicant's applications were heard before the Court of First Instance ("CFI") on 27, 28 May 2020 and 11 June 2020.
5. On 28 August 2020, the CFI dismissed both the Applicant's application for extension of time to apply for leave for judicial review and application for leave for judicial review.

### **Issues in dispute**

6. The main issues for determination were:
  - (i) whether the Director, in issuing the FHANs, acted *ultra vires* the FSO in that he was only empowered to deal with fire hazards which did not involve building works, the regulation of which lied with the DB under the Buildings Ordinance (Cap. 123) and its related regulations;
  - (ii) whether the Director's power to issue FHANs under sections 2(f) and 9 of the FSO<sup>1</sup> and the Subject Notices were unconstitutional in that they failed to satisfy the "prescribed by law" requirement in the restriction of private property rights;
  - (iii) whether the Director, in issuing the FHANs, had failed to consult the mini-storage industry and breached the Applicant's procedural legitimate expectation; and
  - (iv) whether the Director's issue of the Subject Notices was unconstitutional and in breach of BL 6 and BL 105 in that the Subject Notices were not proportionate measures to achieve fire safety.

### **Department of Justice's Summary of the Court's rulings**

(Full text of the judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=130475&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=130475&QS=%2B&TP=JU))

7. On **Issue (i)**, the CFI rejected the Applicant's approach to statutory interpretation and held that on proper construction of the FSO and the related regulations, the Director has the duty to take all lawful measures to protect life and property in case of fire and is clearly empowered to identify and abate fire hazards beyond those relating to fire service installation and equipment. Such powers are not

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<sup>1</sup> Section 2(f) of the FSO defines "fire hazards" to include, among other things, any matter or circumstance which materially increases the likelihood of fire, or other calamity, or the danger to life or property, or which would materially hamper the Fire Services Department in the discharge of its duties. Section 9 of the FSO provides for the power of the Director in respect of abatement and prevention of fire hazards including the power to issue FHANs.



confined to "non-building works". The roles of the Director and DB are complementary to each other, safeguarding fire safety from different perspectives. (paras. 37-68)

8. On **Issue (ii)**, the CFI held that first, any blanket challenge against the Director's power to issue FHANs under sections 2 and 9(a) of the FSO must fail because the said statutory provisions do not limit any fundamental rights in particular rights under BL 6 and BL 105; and, second, the window and layout requirements set out in the Subject Notices are of sufficient clarity and foreseeability because the relevant guidelines are publicly accessible and other mini-storage operators have no difficulty understanding these requirements. (paras. 94-101)
9. On **Issue (iii)**, the CFI held that the Director had not made any express promise, let alone one that is clear and unequivocal, that it would maintain existing standards and to consult the mini-storage trade if any enhanced standards were to be introduced. In any event, fairness does not require the Director to conduct prior consultation with the existing group of mini-storage operators including the Applicant. There is hence no issue of procedural legitimate expectation arising in this case. (paras. 120 & 131)
10. On **Issue (iv)**, the CFI held that in the present case, the window and layout requirements in the Subject Notices satisfy the 4-stage proportionality test as laid down in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372. Having regard to the operational experience of Fire Services Department to which a wide margin of deference will be given by the Court, the abatement measures in the Subject Notices are reasonable and feasible, and have not introduced any disproportionate interference with the Applicant's rights under BL 6 and BL 105. (paras. 136-162)
11. The CFI concluded that there are no merits in this judicial review application. This coupled with the very significant delay in the application, as well as the lack of any satisfactory explanations for the delay, the CFI therefore dismissed both the Applicant's application for extension of time to apply for leave for judicial review and application for leave for judicial review. (paras. 163-164)

**Civil Division**

**Department of Justice**

**12 October 2020**