

For discussion on
14 November 2002

**Legislative Council Panel on Home Affairs
Subcommittee on Review of the
Building Management Ordinance (Cap. 344)**

Purpose

This paper sets out the Administration's proposals to amend the Building Management Ordinance (BMO) relating to the following areas:

- a) appointment of a management committee of an owners' corporation (OC);
- b) procedural requirements regarding procurement of supplies, goods and services; and
- c) rights of owners to obtain copies of certain building management documents.

Appointment of a management committee of an owners' corporation

2. According to section 3(2) of the BMO, a management committee may be appointed at a meeting of the owners duly convened in accordance with the deed of mutual covenant; or if there is no deed of mutual covenant or the deed contains no provision for the appointment of a management committee, by a resolution of the owners of not less than 30% of the shares. Paragraph 2(1) of the Second Schedule provides that the owners shall at such meeting appoint a chairman, a vice-chairman (if any), a secretary, a treasurer and members of the management committee, and may at such meeting appoint other holders of office. However, it has not been specified how exactly these individual members and holders of office are to be appointed.

3. As mentioned in paragraph 5 of the Administration's paper for the meeting of the Subcommittee on 26 September 2002, we are of the view that as long as the appointment of a management committee has been supported by a resolution of the owners holding not less than 30% of the shares at an owners' meeting convened under section 3(2), it is not necessary to adopt the same threshold for appointing members and holders of office of the management committee. At the same time, we have to ensure that the appointment of members and holders of office of the management committee, a very important decision of the OC, has to be made by a reasonable number of owners. We therefore propose to specify in paragraph 2(1) of the Second Schedule that members and holders of office of the management committee shall be appointed by a resolution passed by a majority of the votes of the owners at the same owners' meeting with a quorum of 10%. This is in line with the quorum requirement for a normal general meeting of an OC under paragraph 5(1)(b) of the Third Schedule.

Procedural requirements regarding procurement of supplies, goods and services

4. Section 20A(2) of the BMO stipulates that:
- “Any supplies, goods or services the value of which exceeds or is likely to exceed-
- (a) the sum of \$100,000 or such other sum in substitution therefor as the Authority (Secretary for Home Affairs) may specify by notice in the Gazette; or
 - (b) a sum which is equivalent to 20% of the annual budget of the corporation or such other percentage in substitution therefor as may be approved by the corporation by a resolution passed at a general meeting, whichever is the lesser, shall be *procured by invitation to tender.*”

The same provision is also set out in paragraph 1 of the Code of Practice on procurement of supplies, goods and services issued by Secretary for

Home Affairs under section 44(1) of the BMO. According to section 44(2), a failure on the part of any person to observe any Code of Practice shall not of itself render that person liable to criminal proceedings of any kind but any such failure may, in any proceedings whether civil or criminal, be relied upon as tending to establish or to negative any liability which is in question in those proceedings.

5. While section 20A(2) imposes a legal obligation, section 44(2) implies that compliance with the Code of Practice is not mandatory under the law. The co-existence of the same provision in both section 20A(2) and Code of Practice issued under section 44(1) often gives rise to disputes between owners and management committees as to whether it is legally necessary to comply with the stipulated tender requirements in procuring goods or services. For the sake of convenience, many management committees choose not to comply with section 20A(2). This is not our intention. To rectify the above anomaly, we propose to make clear our legislative intent by deleting paragraph 1 from the Code of Practice.

6. We have also taken this opportunity to review the requirements for invitation to tender, in the light of feedback from the concerned parties regarding protection of owners' rights in relation to funding for procurement of goods or services. As a result of this review, we propose the following amendments to be made to section 20A of the BMO:

- a) To lower the minimum percentage of an OC' s annual budget for the purpose of tendering in section 20A(2)(b) from the existing 20% to 10%;
- b) To include a requirement that any tender of a value exceeding a sum which is equivalent to 10% of the annual budget of the corporation shall be submitted to the corporation, and any such tender shall be accepted or rejected by a resolution passed at a general meeting of the corporation (the existing paragraph 8 of the Code of Practice should be deleted as a result); and

- c) To insert a punitive clause to the effect that in the event of a contravention of the above requirements, every member of a management committee shall be guilty of an offence and shall be liable on conviction to a fine at level 5 (i.e. \$50,000), unless he proves that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.

7. The proposal at paragraph 6(a) above is effectively to impose a clear statutory requirement that any goods or services exceeding \$100,000 or 10% of an OC's annual budget (unless substituted by another percentage as approved by the corporation by a resolution passed at a general meeting), whichever is the lesser, shall be procured by invitation to tender. The proposal at paragraphs 6 (a) and (b) above would also in effect mean that any procurement of a value equivalent to around 1.2 months' of the total management fees or more could only be done through invitation to tender, and that any tender of the same value or above could only be accepted or rejected upon the passage of a resolution of owners. The proposal at paragraph 6(c) above seeks to ensure compliance with the relevant statutory requirements, by inserting a punitive clause which is in line with that under section 27(3) of the BMO relating to accounting requirements.

8. Taken together, this strikes a balance between the need for an appropriate safeguard against possible abuse of management funds, and the need to provide adequate flexibility for a management committee to deal with emergency repair works which may require to complete the relevant tender procedures within short periods.

9. We have considered but decided not to pursue the option of simply converting the relevant provisions in paragraph 8 of the Code of Practice into a statutory requirement regarding acceptance or rejection of tenders. According to paragraph 8,

“Tenders of a value exceeding-

- (a) the sum of \$200,000 or such other sum in substitution therefor as the Authority may specify by notice in the Gazette; or
 - (b) the sum which is equivalent to 45% of the annual budget of the corporation or such other percentage in substitution therefor as may be approved by the corporation by a resolution passed at a general meeting,
- whichever is the lesser, shall be submitted to the corporation which may, by a resolution passed at a general meeting of the corporation, accept or reject them.”

While the minimum threshold of \$200,000 (as compared to 10% of annual budget) in the above paragraph may have the merit of providing a higher degree of protection for owners over the use of management funds, it would pose undue operational constraints for relatively large building estates (\$200,000 takes up a relatively small share of their annual budgets) especially in the face of emergency repairs such as pipe leakage, escalator breakdowns etc. Neither do we consider it desirable to adopt a threshold pitched at 45% of the annual budget, as it could translate into very large sums of money for large property developments.

Rights of owners to obtain copies of certain building management documents

10. According to paragraph 10(4B) of the Second Schedule and paragraph 6(3) of the Third Schedule, the minutes of a management committee’s meeting and those of an OC’s general meeting shall, within 28 days of the respective dates of the meetings, be displayed by the secretary in a prominent place in the building. However, an owner does not have the right to request copies of such documents from the management committee under the existing BMO. There are concerns that some owners have had difficulty obtaining copies of these important building management documents from their management committees. We consider that owners should have the right to request copies of these documents. We therefore propose to specify in the BMO that the

management committee shall, on payment of a reasonable copying charge, supply any owner with a copy of the minutes of a management committee's meeting and those of an OC's general meeting. This is in line with similar provisions regarding copies of annual budget, income and expenditure accounts and balance sheet in paragraph 4 of the Fifth Schedule and paragraph 3 of the Sixth Schedule.

The way forward

11. Subject to Members' views, we intend to consult building owners, the relevant professional bodies and trade associations on the above proposals together with those other proposals generally agreed with Members during the previous meetings.

Home Affairs Bureau
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