

Legislative Council Panel on Home Affairs

Venues through which Owners of Private Buildings Could Deal with Urgent Repairs and Maintenance Works

Purpose

This paper informs Members of the various existing venues through which owners of private buildings could deal with urgent repairs and maintenance works in respect of common areas of their buildings.

Non-emergency repairs and maintenance works

2. Owners of private buildings are responsible for repairing and maintaining their properties, including the common parts therein. The Government's policy objective on building management is to facilitate and assist owners in discharging this responsibility. To this end, we provide a legal framework in the Building Management Ordinance (Cap.344) (BMO) for the formation and functioning of owners' corporations (OCs), and provide advisory services to OCs on various aspects of building management work. Any repair and maintenance works in respect of common parts of a private building should primarily be carried out either by the owners themselves, or by the OCs formed under the BMO on their behalf.

3. According to section 18(1) of the BMO, an OC shall maintain the common parts of a building in a state of good and serviceable repair and clean condition, and carry out such work as may be required in respect of such common parts under any statutory orders.

4. In so far as contribution of costs and recovery of costs for the purpose of carrying out the above duty, an OC could rely on the following provisions under the BMO:

- a) Under section 20, an OC has to establish and maintain a general fund to defray the cost of exercising its powers and performing its

management duties, and to pay, inter alia, any outgoings in relation to any maintenance or repair work which are payable in respect of the building as a whole.

- b) Under section 22 of the BMO, the amount to be contributed by an owner to the fund established under section 20 shall be determined by the management committee in accordance with the deed of mutual covenant (DMC). If there is no DMC, or if the DMC does not provide for the fixing of contributions, the amount to be contributed by an owner shall be fixed by the management committee in accordance with the respective shares of the owners as determined under section 39 of the BMO. The amount payable by an owner shall be a debt due from him to the OC at the time when it is payable.
- c) According to section 24 of the BMO, Part III of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) shall apply to an amount payable by an owner under section 22 as if the amount were rent payable to the OC as landlord of the owner's flat. In other words, if an owner fails to pay the amount of contribution, the OC may apply to the District Court for a warrant of distress. In pursuance of such a warrant, a bailiff shall seize the movable property found in the flat concerned to cover the amount payable by the owner.
- d) Under section 19 of the BMO, the OC may sell or register a charge against the flat of an owner if he or she fails to pay any sum which is payable under the deed of mutual covenant (including the sum for repairs and maintenance of the common parts of the building).
- e) If an owner of a flat fails to pay any amount payable under section 22 within one month from its due date, and a registered mortgagee of the flat has paid such amount on the owner's behalf, such payment shall be recoverable by the registered mortgagee from the owner as if the amount of such payment formed part of the principal sum due under the registered mortgage of the flat.

5. There may be cases where there are missing owners or irresponsible owners who fail to pay their share of the costs of the repair,

maintenance and/or improvement works. To enable OCs to carry out the repair, maintenance and/ or improvement works under statutory building improvement orders in a timely manner, and to prevent such works from being delayed by such missing or irresponsible owners, we propose to allow OCs to borrow from the Comprehensive Building Safety Improvement Loan Scheme (“Loan Scheme”). The details of this proposal have been set out in another paper which is also concurrently submitted to the Panel for discussion at the meeting on 12 April.

Repair works arising from emergency situations

6. There exists an established mechanism under the Buildings Ordinance (Cap.123) whereby the Building Authority could carry out emergency building works and drainage works on behalf of the owners, and recover the costs from them, in emergency situations where a certain part of a private building is posing an imminent risk to life and limb or to public safety. The costs of the works could be recovered from any person liable for the costs of the works. There is therefore no need to set up a fund specifically for this purpose.

7. The relevant provisions of the Buildings Ordinance are as follows:

- a) Section 26(4) of the Buildings Ordinance provides that in cases of emergency, the Building Authority may carry out building works as may appear to him to be necessary either without notice to the owner, or before or after such notice, and so far as it is in the opinion of the Building Authority attributable to such emergency the cost thereof shall be recoverable from the owner. The decision of the Building Authority on whether a particular case is an emergency case shall be final and binding on all persons.
- b) Section 28(8) of the Buildings Ordinance provides that in cases of emergency, the Building Authority may carry out such drainage works as may appear to him to be necessary by reason of the emergency either with or without notice to the owner and the costs thereof shall be recoverable from the owner liable for the costs.

8. Based on the two provisions set out in paragraph 7 above, the Building Authority is empowered to carry out emergency building works and drainage works. Whether or not an emergency situation arises will be dictated by the prevailing site conditions. For instance, emergency demolition works to remove loose cracked or otherwise defective concrete or rendering from a building may be carried out by the Director of Buildings with a view to re-opening a busy public road which has been closed in an incident of falling concrete. The cost of the emergency demolition works will be recovered from the owner afterwards.

Home Affairs Bureau
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