

Legislative Council Panel on Home Affairs

**Building Safety Loan Scheme
for Owners' Corporations Subject to
Statutory Building Improvement Directions**

Purpose

This paper sets out the Administration's proposals on how building owners who are subject to statutory orders under the Buildings Ordinance and fire safety improvement directions and statutory orders could borrow from the Building Safety Loan Scheme ("Loan Scheme"), in the event of irresponsible or missing owners not paying their share of the costs involved.

Background

Statutory building safety directions or orders

2. Under a number of legislation, the authorities may require owners of buildings to undertake works in respect of the common parts to ensure public safety. For example, under the Buildings Ordinance, the Director of Buildings may issue statutory orders on individual owners to compel them to carry out repair works on the common parts of the building. Under the Fire Services Ordinance, the Director of Fire Services may issue Fire Hazard Abatement Notices to require removal of fire hazards (including proper maintenance of fire services installations) in buildings. Under the Fire Safety (Commercial Premises) Ordinance, the Director of Buildings and the Director of Fire Services may issue directions on individual owners of certain commercial premises and old commercial buildings to require them to improve the building fire safety. Under the Fire Safety (Buildings) Bill 2000, it is proposed that the Director of Buildings and the Director of Fire Services may issue fire safety improvement directions to Owners' Corporations (OCs) and individual owners of a building to improve the fire safety of the building. Where the maintenance or improvement works required are in respect of the common areas of a building and the building is managed by an OC, the

statutory orders or directions must, by virtue of section 16 of the Building Management Ordinance (BMO) (Cap. 344), be served on the OC instead of the owners themselves.

What individual private building owners could do to comply with statutory fire safety improvement directions or any statutory orders under the Buildings Ordinance

3. At present, private building owners encountering financial problems in complying with the statutory directions or orders may apply for low interest loans from the Loan Scheme launched by the Building Department in July 2001. The loan can be made out to an individual owner, or owners on behalf of the other co-owners of the same flat if they have obtained consent from such other co-owners. The loan amount to each owner is not necessarily limited to the share of the owners in respect of the flat concerned. Rather, the loan amount is limited to the share of the total cost of the works as apportioned among the owners who are required to contribute towards it. It follows that in case there is a small proportion of missing or dissenting owners, the remaining owners may have to borrow more in order to cover the share of the missing dissenting ones. This has been criticized as being unfair to those responsible owners, for they have to shoulder the extra loan and the costs of borrowing (i.e. the interest).

What OCs could do in order to comply with statutory building improvement directions or orders

4. In response to a statutory order affecting the common parts of a building, the OC shall carry out the work required by the statutory order and may for this purpose pass a resolution, which is binding on all owners. The owners have to observe the relevant provisions in the Deed of Mutual Covenant in determining and making appropriate contributions to pay for the cost of the work. The amount payable by an owner shall be a debt due from him to the OC under section 22(3) of the BMO.

5. The OC may take all steps reasonably necessary to recover the debt due to it from any missing or irresponsible owner. For instance, pursuant to section 24 of the BMO, it may apply for a warrant of distress under Part III of the Landlord and Tenant (Consolidation)

Ordinance as if the debt were rent payable to it as landlord of the owner's flat. Pursuant to section 19 of the BMO, it may register a charge against the owner's interest in the Land Registry in certain circumstances.¹ It may also sue the owner in civil proceedings. If the claim is upheld in court, the OC may enforce the judgement by various means, including the registration of charges against the owner's interest in the Land Registry.

6. Under Section 18 of the existing BMO, the powers and duties of an OC do not include borrowing money on behalf of any or all of the owners for the purpose of performing its management duties. It follows that, in the event of some missing or irresponsible owners not contributing their share of the costs, an OC is not empowered to borrow any money to make up the shortfall. In such circumstances, if the other compliant owners refuse to borrow more than their share of the improvement costs from the Loan Scheme, all that an OC could do is to take legal actions against the irresponsible owners under the BMO. This may not be conducive to the timely implementation of the works required under the statutory directions or orders.

7. We need to work out an appropriate mechanism to ensure that the works as required under statutory orders and statutory building improvement directions will not be unduly delayed by irresponsible or missing owners not paying their share of the costs involved. Such a mechanism should not be inequitable to the other owners.

Proposals

8. We propose to amend the BMO to specifically empower an OC to

¹ **“19. Corporation may sell or register charges against flat in certain circumstances**

(1) If a deed of mutual covenant provides that if an owner fails to pay any sum which is payable under the deed of mutual covenant, a person may sell that owner's interest in the land or register a charge against such interest in the Land Registry, then, notwithstanding the provisions of the deed of mutual covenant, the corporation may, to the exclusion of such person, exercise such power of sale or register such charge in the same manner and subject to the same conditions as if it were the person referred to in the deed of mutual covenant.

(2) The reference in subsection (1) to "fails to pay any sum which is payable under the deed of mutual covenant" shall be construed to extend to the failure by an owner to pay the costs incurred by the management committee in connection with the exercise by it of the powers conferred by section 40(1)(a)(ii) or (b).”

borrow from the Loan Scheme, for the purpose of complying with statutory fire safety or building safety improvement directions or statutory orders an amount equivalent to the costs which should be borne by the missing owners and/or owners who refuse to pay their share of the improvement costs as determined by a resolution which is binding on all building owners. In borrowing from the Loan Scheme, the OC, as the borrower of the loan, will be acting as an agent on behalf of those missing or irresponsible owners, instead of all the owners of the building. In other words, only those missing and irresponsible owners will be liable for the loan from the Government under the Loan Scheme. It then follows that the liability for the loan will not be transferred to all other owners who have already contributed their share of the costs to the OC.

9. We also propose to empower the Director of Building under the BMO to register a charge upon the property titles of those missing and irresponsible owners, as a form of security for the loan. Before such a legal charge is to be registered, the Director would be required to serve a notice upon each of these identified owners both informing them of the matter, and giving them a specified one-month period to express objection to his or her share of the improvement costs if they wish to do so. Once an objection has been lodged, the share of the objecting owner would be deducted from the total loan amount until and unless the objection has been resolved between the objecting owner and the relevant OC. This aims to strike a balance between giving the affected owners a right to a fair hearing and ensuring the timely implementation of the building improvement works required under the relevant statutory order.

10. As the group of missing or irresponsible owners would be made liable for the loan, we propose also that the Government be given the right under the BMO to take appropriate measures to recover the loan amount from any one of these owners for whom the OC has borrowed on their behalf. The legal charge in respect of any of these affected owners' property would only be released upon the repayment of their respective share of the loan either from the owners direct, or through the OC.

The way forward

11. Subject to Members' views on the above proposals, we will

proceed to draw up the necessary legislative amendments to the BMO and the associated implementation arrangements. We will consult Members again when the details of the proposals are ready.

Home Affairs Bureau

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