

Bills Committee on Building Management (Amendment) Bill 2005

Way Forward on the Proposal about Borrowing Power of Owners' Corporations

PURPOSE

1. This paper briefs Members about the Administration's decision to withdraw the proposal of empowering owners' corporations (OCs) to borrow from the Government on behalf of the defaulting owners to carry out statutory repair works.

BACKGROUND

2. At the meeting of the Bills Committee on 20 April 2006, Members discussed the Administration's paper "*Borrowing Power of Owners' Corporations*"¹ which sets out the proposed borrowing power scheme for OCs. Members in general appreciated the merits of the proposal but expressed concerns over the complexity and implications of the proposal. It was decided that another round of consultation had to be conducted.

3. At the meeting of the Bills Committee on 21 September 2006, Members discussed the Administration's paper "*Consolidated Response – The Administration's Response to Members' Suggestions/Views*"². Members noted the professional bodies' concerns and also the associations of owners' corporations' and public deputations' strong reservations on the proposal. Members also noted that whilst the proposed borrowing power scheme was workable, it might not be very useful to OCs given the complexity of the scheme.

ADMINISTRATION'S PROPOSAL ON THE WAY FORWARD

4. Having considered the results of the public consultation and Members' views on the proposed borrowing power scheme, we decide that it should not be included in the Building Management (Amendment) Bill 2005. The main reasons are summarized as follows –

- (a) In order to strike a fair balance between the timely completion of statutory works and the interests of individual owners (who may have

¹ LC Paper No. CB(2)1049/05-06(01).

² LC Paper No. CB(2)2368/05-06(01).

genuine reasons for defaulting payment of their share), an appeal mechanism³ has to be built into the borrowing power scheme. For those owners who deliberately refuse to pay (whether their reasons are valid or not), the appeal mechanism will enable them to delay the whole process for a very long period of time. The original aim of the proposal, which is to facilitate the timely compliance with statutory repair orders by OCs, could not be met.

- (b) Whilst the proposal, coupled with the procedural safeguards, are likely to be able to satisfy the fair balance test and therefore to be consistent with the property right guarantees under the Basic Law, for some, this could still be seen as a crude violation of human rights, as the owners concerned are forced to become a borrower and if they want to object, forced into court⁴ without a choice. We might still face legal challenge of constitutionality.
- (c) During consultation, the associations of owners' corporations and most organizations/individuals which have made submissions to the Bills Committee have expressed strong reservation against the proposal. The various professional bodies have also raised concerns on the practicality of the proposal. In other words, the stakeholders who are supposed to benefit from the proposal do not welcome the proposal and the stakeholders who are expert in the area of building management and maintenance also have doubts on the proposal. There is hardly any justification for the Administration to continue to pursue the proposal.
- (d) Under the proposal, the management committee of the OC shall convene a general meeting under paragraph 1(1)(c) of Schedule 3 to the BMO to pass a specified resolution relating to the exercise of the borrowing power. Certain problems arise from here which will likely cause disputes among owners –
 - i. The resolution could be passed at a general meeting held for the

³ Under the proposed borrowing power scheme, if an appeal against the determination of the respective share of cost of works to be contributed is filed with the Lands Tribunal within the prescribed period of time, the OC will have to withhold the application for the loan to the Buildings Department pending the Lands Tribunal's judgment.

⁴ Under the proposed borrowing power scheme, if the owners concerned want to object to the OC's decision to borrow from the Government on their behalf, they must submit an appeal to the Lands Tribunal within 30 days after being served the notice by the OC.

purpose of endorsing the renovation works and selection of tenders, i.e. before the OC knows if there is any defaulting owner. In this case, the resolution would only be a very general one, with owners agreeing on broad principles for the OC to take follow-up actions. This might not be in the best interests of owners.

- ii. If the OC chooses to pass a specific resolution with regard to the borrowing power (i.e. the unit who has refused to pay, the amount of the loan, etc.), they would have to convene a minimum of two owners' meetings in order to proceed with the application. Procedures would get even more cumbersome if maintenance works are to be carried out in stages. OCs would have to go through a series of preparatory works before submitting an application to Government.
 - iii. Validity of the resolutions passed at an owners' meeting might still be subject to challenges as disgruntled owners could always resort to the Lands Tribunal for adjudication.
- (e) In order to ensure the best use of public resources, the proposed borrowing power of OCs must be restricted to the scope of works demanded by statutory directions, notices or orders. Such restriction, however, would render it economically inefficient for the OCs to tackle the maintenance problems of their buildings as a whole. Disputes will likely arise among owners in determining whether a specific repair item is within the scope of the statutory directions, notices or orders and the cost allocation of repair works which are not directly related to the statutory directions, notices or orders.
- (f) Under the Building Safety Loan Scheme administered by the Buildings Department, individual borrowers are required to provide security under various forms including, as appropriate, the execution of a legal charge registered against the title of the property. The current form of security requirements⁵, however, could not be met as it would be impossible for an OC to acquire the necessary details/documentation of the defaulting owner. This would lead to

⁵ Borrowers under the BSLS who are already on mortgages are required to negotiate with their first lender in removing the "all monies" clause. This is to ensure the chance of recovery for the Government.

considerable risk to the Government.

- (g) There are already a number of provisions⁶ under the BMO which assist an OC to collect payment from owners. The crux of the matter is for the OC to establish the liability of the defaulting owner. When a judgment is entered against the defaulting owner, various orders may be made to execute the judgment debt. There are numerous precedents of OCs successfully using these channels to deal with defaulting owners.
- (h) The general economic situation in Hong Kong in 2001/02 (i.e. when the borrowing power proposal was first put forward) was very different from now. There were also not many financial assistance schemes available for OCs and property owners in carrying out repair works then. However, in recent years, in addition to the Building Safety Loan Scheme administered by the Buildings Department, both the Hong Kong Housing Society and the Urban Renewal Authority have introduced a series of loan and grant schemes to assist eligible OCs and property owners.

THE FIRE SAFETY (BUILDINGS) ORDINANCE

5. In passing the Fire Safety (Buildings) Ordinance⁷ [FS(B)O] in 2002, the Legislative Council decided that the provisions in the FS(B)O should not come into operation until after the BMO has been amended regarding the borrowing power of OCs. As such, our decision to exclude the borrowing power proposal from the Building Management (Amendment) Bill 2005 will have implications on the commencement of FS(B)O.

6. We have already discussed with the Security Bureau and the Fire Services Department of our policy decision regarding the borrowing power proposal. Subject to Members' views, the Home Affairs Department will, jointly with the Security Bureau and Fire Services Department, explain to the Legislative Council Panel on Security the Administration's stance on the matter shortly. We will also brief the Panel on Security the measures to be adopted by Fire Services Department in facilitating the commencement of the FS(B)O, which include a phased implementation timetable based on the age

⁶ Section 19, 21, 22, 23, 24, 25 of the BMO. For details, please refer to LC Paper No. CB(2)3038/05-06(02) "*Recovery of Management Fees*".

⁷ The Fire Safety (Buildings) Ordinance 2002 requires OCs and owners to upgrade the fire service installations and equipments and to improve the fire safety construction in their buildings.

of buildings, a flexible approach in enforcing the requirements based on the physical structure of the building, and the various financial and technical assistance schemes available for owners in carrying out the required works, and seek the Panel's agreement to commence the FS(B)O. Details of the facilitation measures are set out in the paper at **Annex**.

WAY FORWARD

7. Members' views are invited on the above.

Home Affairs Department
December 2006

**Proposed Facilitation Measures for the Commencement of the
Fire Safety (Buildings) Ordinance**

(A) Phased Implementation

The Fire Services Department (FSD) and the Buildings Department (BD) propose to implement the captioned Ordinance in phases as follows.

(a) Composite Buildings

2. Given the unsatisfactory fire safety condition in composite buildings and in view of the high fire load, mixed occupancies and large number of visitors in the non-domestic (commercial) parts of composite buildings, we plan to implement the Fire Safety (Buildings) Ordinance [FS(B)O] in pre-1987 composite buildings in the first instance for completion in 10 years. In the first six years, we will deal with about 5,000 pre-1973 private composite buildings. In the remaining four years, we will cover some 4,000 private composite buildings built between 1973 and 1987.

(b) Domestic Buildings

3. Upon completion of the improvement programme for composite buildings, we will deal with about 3,000 pre-1987 domestic private buildings, with priority given to the pre-1973 buildings, and making reference to similar fire safety requirements for the domestic parts of composite buildings. Domestic buildings with not more than three storeys high will be exempted.

(B) Flexible and Pragmatic Implementation

4. We are aware of the practical difficulties for some building owners to comply with some of the fire safety requirements. These difficulties may arise from the physical constraints and/or structural problems of the buildings, as well as the lack of sufficient financial means despite the financial assistance mentioned in paragraphs 6 to 8 below. FSD and BD will adopt a flexible and pragmatic approach in handling these cases. Some examples are given below:

- (a) Under the FS(B)O, FSD and BD are empowered to serve fire safety directions on owners and occupiers, directing them to improve the fire safety measures of their premises/buildings within a specified period. The compliance period could be extended upon application by owners/occupiers for Extensions of Time. Prosecution will only be considered if, without reasonable excuse, the owners/occupiers fail to comply with the directions.
- (b) In implementing the FS(B)O, FSD and BD will exercise flexibility in granting relaxations or even exemptions having regard to the particular circumstances of each case. For instance, if an authorized person or a registered structural engineer certified that the rooftop of the building cannot support a standard fire service water tank due to structural problems, FSD will consider accepting a water tank of smaller capacity. Where justified, FSD will even consider waiving the installation of a water tank if firemen can rely on the water supply from the town's main in the vicinity.
- (c) For those buildings which have been included in the urban renewal programme, FSD and BD will only require the minimum upgrading of fire safety measures, such as the provision of portable fire extinguishers.

5. Such pragmatic and flexible implementation approach has been proven to be effective in the implementation of the Fire Services (Commercial Premises) Ordinance [FS(CP)O] and its Amendment Ordinance. Since their commencement in 1997 and 1998, about 45% of prescribed commercial premises (PCP)¹ and 38% of specified commercial buildings (SCB)² have complied with the fire safety directions issued by FSD under the Ordinance. In terms of the fire safety directions issued by BD, about 61% of PCP and 25% of SCB have complied with the directions. So far, only 0.14% and 0.34% of the PCP and SCB owners/occupiers have been considered as failing to comply with the directions without reasonable excuse and have been prosecuted by FSD. For BD, only 0.28% and 0.47% of the PCP and SCB owners/occupiers have been prosecuted.

(C) Financial and Technical Assistance

¹ PCP refer to commercial premises with a total floor area exceeding 230 square metres in which businesses, which include banks, off-course betting centres, jewellery or goldsmith shops, supermarkets, departmental stores and shopping arcades, are being carried out.

² SCB refer to pre-1987 commercial buildings.

Financial Assistance

6. Various financial assistance schemes are now in place to help alleviate possible financial problems that some building owners may encounter. The Building Safety Loan Scheme, administered by the Director of Buildings, provides owners with loans at a no-gain-no-loss interest rate to carry out statutory works under FS(B)O. Elderly and/or disabled singletons/couples aged 60 and above eligible for grant of interest-free loan may even apply to attend the repayment for an unspecified period until the transfer of title of the property or death of the borrower, whichever is the earlier.

7. Other than the Building Safety Loan Scheme operated by the Government, the Hong Kong Housing Society (HKHS) also provides owners with loans and grants to carry out building repair and maintenance work, including statutory works under FS(B)O. Owners could apply for interest-free loans from the HKHS's Home Renovation Loan Scheme (HRLS) up to \$50,000. The HRLS was originally designed to help flat owners to carry out flat interior renovation on safety and hygiene items. With a view to facilitating owner to comply with FS(B)O, the HKHS has agreed to extend the coverage of the loan to statutory works carried out in common parts of the buildings under FS(B)O. Subsidies amounting to 50% of the loan or \$10,000, whichever is the lower, would also be granted to the loan applicant aged 60 or above who is the recipient of Comprehensive Social Security Assistance or medical fee waiver.

8. In addition, the HKHS has operated the Building Maintenance Incentive Scheme (BMIS), under which owners could obtain grants of not exceeding 20% of the total project cost or \$3,000 per residential unit, whichever is lower. To facilitate owners to carry out statutory works under FS(B)O, the HKHS has also agreed to consider, on individual merits, to relax the eligibility criteria of the BMIS, and provide owners with grant even if their estates/buildings comprise more than 200 residential units, as well as for the carrying out of fire safety upgrading works in the private areas of the buildings, such as the installation of fire resisting doors to flats.

Technical Assistance

9. Apart from financial assistance, technical support for owners to carry out the statutory works under FS(B)O will also be provided. Experience in implementing FS(CP)O shows that the existence of OCs could help coordinate the statutory works in the common parts of the buildings. Therefore, every effort is being made to improve building management. HAD, through its liaison networks in various districts, makes proactive efforts

to encourage, advise and assist owners to form OCs under the BMO. The HKHS also provides advice and a financial grant of up to \$3,000 to encourage owners of private buildings to form OCs. With the concerted efforts of the Government, non governmental organizations and the public, about 15,000 private buildings have already had OCs. We will continue to assist owners to form OCs to facilitate the implementation of FS(B)O.

10. Technical advice has and will also be given to owners to facilitate them to comply with FS(B)O. Although FS(B)O has not yet commenced, FSD and BD have inspected about 900 composite buildings each year since 2004 and issued advisory directions to these buildings to advise on the enactment of FS(B)O and the improvement works required under the Ordinance. FSD and BD have also arranged forums for owners and occupiers to explain the new requirements and the assistance available to them. From 2004 to 2006, FSD has conducted 9 forums to these owners/occupiers. The HKHS, under the Building Management and Maintenance Scheme, also provides “one-stop” technical advice to assist owners to comply with relevant Government orders, including engaging surveyors firm to help owners to make a basic cost estimate of carrying out the statutory works.

Security Bureau
4 December 2006