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Legislative Council

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Panel on Home Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 12 December 2008**

Self-declaration requirement for management committee members

Purpose

This paper provides background information on the self-declaration requirement for management committee (MC) members and gives an account of past discussions on the subject matter held by Legislative Council (LegCo) Members.

Background

2. At the Panel meeting on 14 October 2008, a member pointed out that members of MCs had encountered problems in meeting the self-declaration requirement specified under Schedule 2 of the Building Management (Amendment) Ordinance 2007 (the Amendment Ordinance). Panel members agreed that the issue should be discussed at the December meeting.

Building Management (Amendment) Bill 2005

3. The Building Management Ordinance (BMO) first enacted in May 1993 was introduced to set out the rights and responsibilities of owners and owners' corporations (OCs) in legal terms. The BMO was amended in 1998 and 2000 to meet the needs arising from the field developments. After the enactment of the Building Management (Amendment) Ordinance 2000, the Panel on Home Affairs set up a subcommittee to discuss with the Administration the review of the BMO, and made a number of recommendations on how the BMO could be further refined. Following discussions with the subcommittee, the Administration issued a paper on the proposed amendments to the BMO for public consultation in 2003. In April 2005, the Administration introduced into

the Legislative Council (LegCo) the Building Management (Amendment) Bill 2005 (the Amendment Bill) to rationalise the appointment procedures of a MC, assist OCs in performing their duties and exercising their powers, and safeguard the interests of property owners.

4. The Amendment Bill proposed, among other things, the introduction of a self-declaration requirement whereby all members appointed to an MC had to lodge with the Land Registrar (LR) a declaration that they did not fall within the description of ineligible persons, as specified in paragraph 6 below, for the purpose of becoming such members.

5. At the House Committee meeting on 29 April 2005, members formed a Bills Committee to study the Amendment Bill. The Administration proposed further amendments to the Bill in response to members' views and concerns. The amendments proposed by the Administration were passed by LegCo on 25 April 2007.

Disqualification of MC members

6. Paragraph 4 (1) of Schedule 2 to the Amendment Ordinance stipulates that a person is not eligible to be appointed as a member of a management committee if he -

- (a) is an undischarged bankrupt at the time of the appointment or has, within the previous five years, either obtained a discharge in bankruptcy, or entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his creditors, in either case without paying the creditors in full; or
- (b) has, within the previous five years, been convicted of an offence in Hong Kong or any other place for which he has been sentenced to imprisonment, whether suspended or not, for a term exceeding three months without the option of a fine.

Declaration requirement for MC members

7. Paragraph 4 of Schedule 2 of the Amendment Ordinance provides for the new declaration requirement for MC members, the key features of which are summarized below -

- (a) all members appointed to an MC are required to, within 21 days after the appointment, lodge with the Secretary of the MC a declaration stating that they are not disqualified under paragraph 4 (1) of Schedule 2;

- (b) a member of MC will cease to be a member of the committee if he does not comply with the self-declaration requirement;
- (c) the Secretary of MC is required to lodge the declaration forms with LR within 28 days of the appointment; and
- (d) for subsequent appointments to the MC and where the members' situation has changed which necessitates the submission of a new declaration form, the 21-day requirement will still apply. The Secretary in such cases is required to lodge the declaration form with LR within 28 days from the date of his receipt of the forms.

Past discussion relating to the declaration requirement

8. Members discussed the new declaration requirement in their scrutiny of the Amendment Bill. Some members requested the Administration to consider the situation where a person appointed as an MC member refused to make declaration. In response, the Administration had provided in the legislation that a member of an MC would cease to be a member of the committee if he did not comply with the self-declaration requirement.

9. Some members expressed concern that there might not be sufficient time for members to fill in the declaration form. Having considered members' concern, the Administration had allowed at most 21 days for an individual member to submit the declaration form to the secretary of the MC. For subsequent appointments of MC members which necessitated the submission of a new declaration form, the Secretary was given a longer time (i.e. 28 days from the date of his receipt of the forms) to lodge the declaration with LR.

10. Members also expressed concern that the operation of a newly-appointed MC would be adversely affected if some of its members were found unqualified for appointment. They requested the Administration to publicise widely the new grounds for disqualification, such as setting them out in the forms for nomination of MC members. The Administration undertook to provide the necessary assistance to MC members to facilitate their compliance with the new requirements.

Latest Development

11. The Administration reverted to the Panel on various measures taken to prepare for the commencement of the Amendment Ordinance vide an information paper on 13 July 2007. These measures included conducting intensive training for all the Liaison Officers of Home Affairs Department (HAD), and a series of briefings for the various professional organizations and Government departments concerned. Staff of HAD had also attended

meetings of the 18 District Councils or their relevant committees to brief members about the Amendment Ordinance. To ensure that the owners' corporations and owners' associations understood the new requirements, HAD had lined up some 30 district briefings in July and August 2007 and distributed new guidebooks on BMO and the Amendment Ordinance to the attendants at these district briefings.

Relevant papers

12. A list of the relevant papers is in the **Appendix**. Softcopies of these documents are available on the LegCo website at <http://www.legco.gov.hk>.

Council Business Division 2
Legislative Council Secretariat
10 December 2008

Panel on Home Affairs

Relevant documents on self-declaration requirement for management committee members

Date of meeting	Meeting	Paper/Minutes	LC Paper No.
---	Bills Committee on Building Management (Amendment) Bill 2005	Legislative Council Brief	Ref No. : HAD HQ IV 20/5/1 http://www.legco.gov.hk/yr04-05/english/bills/brief/b16_brf.pdf
Legal Service Division Report on the Bill		LS57/04-05 http://www.legco.gov.hk/yr04-05/english/hc/papers/hc0429ls-57e.pdf	
Major proposals of legislative amendments to the Building Management Ordinance		CB(2)2192/04-05(03) http://www.legco.gov.hk/yr04-05/chinese/bc/bc58/papers/bc580712cb2-2192-3ce.pdf	
Administration's response to the views of the professional bodies in the building management sector		CB(2)222/05-06(03) http://www.legco.gov.hk/yr04-05/english/bc/bc58/papers/bc581110cb2-222-3e.pdf	
25.4.2007	Council meeting	Report of the Bills Committee on Building Management (Amendment) Bill 2005 to the Legislative Council	CB(2)1603/06-07 http://www.legco.gov.hk/yr04-05/english/bc/bc58/reports/bc580425cb2-1603-e.pdf
13.7.2007	Panel on Home Affairs	Paper on "Building Management (Amendment) Ordinance 2007" provided by the Administration	CB(2)2308/06-07(02) http://www.legco.gov.hk/yr06-07/english/panels/ha/papers/ha0713cb2-2308-2-e.pdf