

LCQ4:Property manager's appointment of private buildings

Following is a question by the Hon Cheng Kai-nam and a reply by the Secretary for Home Affairs, Mr David Lan, in the Legislative Council today (Wednesday):

Question:

In respect of the terms of deeds of mutual covenants, the Building Management Ordinance (Cap. 344) stipulates that if an Owners' Corporation seeks to terminate the property manager's appointment, a general meeting must be convened to pass a resolution by not less than 50% of ownership shares in the building. In this connection, will the Government inform this Council:

(a) of the criteria and justifications used in setting such a percentage in the Ordinance; whether it has assessed if such a percentage is too high, resulting in many cases in which Owners' Corporations were unable to gather sufficient shares to terminate the appointment of incompetent property managers; if so, the results of the assessment;

(b) whether it will review if such a percentage is still appropriate; if so, the timetable for the review; if not, the reasons for that; and

(c) whether it has assessed if the assistance offered to Owners' Corporations in respect of the termination of the property managers' appointment is adequate; if it has, the result of the assessment?

Reply:

Madam President,

My response to the above question is as follows:

(a) Paragraph 7(1) of the Seventh Schedule to the Building Management Ordinance provides that at a general meeting convened for the purpose of the Ordinance, an owners' corporation may, by a resolution of the owners of not less than 50% of the ownership shares, terminate by notice the manager's appointment without compensation. I would like to take this opportunity to explain the criteria and justifications used in setting such percentage.

Years ago, the Government found that there were unfair terms in the deeds of mutual covenants of many private multi-storey buildings, under which, for example, developers had the power to offer permanent appointments to property managers while the flat owners, as employers of the managers, were deprived of the right to have their say. The Government, therefore, proceeded to study how to rectify such situation.

We drafted the Multi-storey Building (Owners Incorporation) (Amendment) Bill in 1991 and gazetted it in the form of a white bill in May of the same year for public consultation. One of the proposed amendments allowed an owners' corporation,

by a resolution of the owners of not less than 2/3 of the shares at a general meeting, to dismiss the manager appointed under the deeds of mutual covenant.

We received 340 submissions in the course of consultation and the public generally supported the above amendment proposed in the Bill. The percentage of ownership shares required to terminate a manager's appointment as suggested by the public ranged from 33% to 75%. But the majority opined that a manager's appointment could be terminated so long as owners of not less than 50% of the shares consented.

We carefully considered the opinions of various parties and found that the consent of no less than 50% ownership shares in a decision to terminate the appointment of a property manager was acceptable to us. If a majority of ownership shares had to be obtained for the dismissal of an incompetent manager, then the chances for his dismissal would be remote and difficult to attain for practical purposes. On the other hand, if only a minority of ownership shares was required, the termination process might become so simple as to affect the interests of the employee (i.e. the manager) and lead to frequent changing of hands which would have adverse impact on the effective management of buildings. Given the above considerations, we amended the Bill by changing the required ownership shares from 2/3 to not less than 50% and submitted it to the former Legislative Council for consideration in 1992. The Bill was passed in 1993.

To our knowledge, since the implementation of the Ordinance in 1993, a total of 156 owners' corporations have successfully invoked it to dismiss managers appointed under the deeds of mutual covenant while no evidence shows that there often is the case that owners' corporations are unable to terminate the appointment of incompetent managers simply because they cannot meet the requirement on ownership shares. Therefore, we think the present Ordinance is effective in practice and the then legislative purpose has been served.

(b) In our opinion, the termination of a property manager's appointment is an important decision on building management which should be made jointly by owners. Support from no less than 50% of ownership shares for the dismissal of the manager well demonstrates that it is the common wish of the majority of owners. Owners may vote either personally or by proxy at a general meeting convened for this purpose. Therefore, it should not be too difficult to obtain support from 50% of ownership shares. We are of the view that this percentage is reasonable and works well. If the percentage is lowered, it cannot reflect that the dismissal of the manager is a decision of the majority of owners for its lack of representation. However, if a significant portion of ownership shares has to be obtained, it may be difficult and practicably impossible to do so. We consider, therefore, that the existing requirement on the percentage of shares is appropriate and feasible and at this stage, there is no need for review or amendment.

(c) Owners' corporations are statutory bodies registered under the Building Management Ordinance to enable owners of private buildings to deal with the management, administration, maintenance, etc, of common parts of their buildings in an effective way. Generally, if an owners' corporation considers it necessary to dismiss the manager appointed under the deed of mutual covenant, a general meeting can be

convened under the Ordinance to discuss and vote for a decision. The management committee of the owners' corporation is responsible for organizing and conducting the general meeting, such as issuing notices of meeting to every owner and preparing the agenda and ballots. These jobs have to be done by the committee itself and the Government cannot meddle in and take up the job on its behalf. Staff members of our District Offices can provide guidance on the general provisions of the Ordinance and procedures of the general meeting. An impartial Government must remain neutral on matters like the dismissal of managers. It is neither proper nor desirable for the Government to participate in the discussions of the general meeting or influence the decisions of owners. Someone may say that in some large scale housing developments, it is technically difficult to obtain support from 50% of ownership shares for the dismissal of a property manager so assistance has to be sought from the Government. In my opinion, whether it is a small building or large scale housing development, so long as most owners tend to support the dismissal of the incompetent manager, they will naturally come together to vote for it. On the contrary, if the proposal to dismiss a manager can only gain support from the minority of owners, that means most owners have reservations about the proposal. I have to reiterate that in order not to influence the wish of owners, the Government should not intervene in such matters and it is inappropriate to do so.

I would like to add that when considering the dismissal of the manager appointed under the deeds of mutual covenant, an owners' corporation may have to study the related clauses in the deeds of mutual covenant and the content of the employment contract on the appointment of the manager. Since some legal knowledge may be required in this respect, the corporation should engage legal consultants to examine these documents in order to safeguard the interests of owners.

The first Building Management Resource Centre set up by the Home Affairs Department in Yau Ma Tei has secured support from many professional bodies such as the Hong Kong Law Society. Members are sent from these bodies to the Centre to provide the public with free preliminary professional advice on building management. The public can make maximum use of the service offered by the Centre.

We consider that the various measures currently adopted by the Government to assist owners' corporation as proper and adequate. Under the principle that owners of private buildings are responsible for the management and maintenance of their private properties, we are open to opinions and ideas on service improvement. We will adhere to the principle of "helping owners to self-manage their buildings" and continue to actively provide assistance for owners' corporations and owners of private buildings in order to achieve the objective of "A good home is a safe home".

End/Wednesday, May 12, 1999

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