

**Paper for the Legislative Council Bills Committee on
Building Management (Amendment) Bill 2000**

Building Management Ordinance (Cap. 344)

Introduction

At the meeting of the Bills Committee on 30 March 2000, Government undertook to provide written response to a list of follow-up items referred to in the Clerk to the Bills Committee's letter of 30 March 2000. The Clerk also sought a response to the submission by the Real Estate Developers Association of Hong Kong vide her letter of 3 April 2000.

Follow-up on possible long-term solutions to deal with the problems of owners of properties with divided shares in forming owners' corporations

2. As we explained at the meeting of the Bills Committee on 30 March 2000, we will further look into this matter outside the context of this Bill.

Operation of the Legal Advisory and Conveyancing Office (LACO), its work of vetting of deeds of mutual covenants (DMCs) and its accountability

3. The LACO is an operational office of Lands Department with solicitors and staff both at Lands D headquarters and in the several Urban and New Territories Districts primarily to provide legal advice to District Lands Officers in Government land transactions. It is accountable to the Director of Lands and through him to the relevant policy bureaux, namely the Planning and Lands Bureau and the Housing Bureau.

4. The authority of LACO in approving, on behalf of the Director of Lands, the DMC derives from the land grant, a sample of the relevant Special

Condition of the land grant is at Appendix 1 attached. No sale of flats and units will be permitted unless the DMC has been approved by LACO and no amendment to the approved DMC can be made except with the further approval of LACO.

5. In approving the DMCs, LACO will ensure that the current Guidelines for approving DMCs as stipulated in the LACO Circular Memorandum (“CM”) No. 41 dated 29.6.99 as slightly varied by LACO CM Nos. 41A and 41B are complied with. Copies of these CMs have been provided to Members via the Clerk to the Bills Committee previously. These CMs are available to the public on the Lands Departments website www.info.gov.hk./landsd/.

6. The objectives of setting those Guidelines are to promote the concept of building management in private developments, with particular reference to residential developments, and to try to strike a fair balance of interests between purchasers and developers as co-owners, owners and managers and as between owners themselves. The Guidelines in LACO CM 41 were adapted from an earlier set issued by the Registrar General in October 1987 under the Land Office Circular Memorandum No. 91, taking into account changes in developments over the years. In order that the objectives will be achieved through the Guidelines, LACO had conducted wide consultation before the Guidelines in LACO CM 41 were issued for compliance. The views of interested groups including the Consumer Council, the Law Society, Hong Kong Institute of Surveyors and policy bureaux including the Secretary for Planning, Environment and Lands, and Secretary for Housing had been consulted.

7. Developers are not bound to sell off all undivided shares in a lot. It is not uncommon for developers to retain part or parts of the lot (not being common areas) in sole ownership for rental income or disposal at a later date. So long as reasonable numbers of undivided shares and management shares have been allocated to these areas being retained and the developers remain responsible for the management and other charges for such areas, LACO will not raise any objection in approving the DMCs. A developer may also be a major flat owner in a development because he chooses to retain a number of flats pending sale. In those circumstances a developer may have greater say in the management through exercising its voting power as the holder of

undivided shares in a development.

Conduct a case study of DMCs with a view to identifying the problems of unfair provisions in DMCs

8. The feasibility of a case study will be further looked into. However, it should be noted that a reasonable period of time would be needed to conduct a study of this type thoroughly.

Parameters of the proposed Building Management (Insurance) Regulation

9. The parameters have been further discussed with the Hong Kong Federation of Insurers. A copy of the draft parameters of the Building Management (Insurance) Regulation is at Appendix 2 for reference.

Incorporate the interpretation of quorum or vote counting of owners in the Ordinance

10. We agree to the proposal and will introduce a committee stage amendment in this regard.

To devise a quicker measure for the calculation of the number of owners in a property

11. We will explore administratively with the relevant parties and examine the feasibility of the proposal.

Response to the Real Estate Developers Association of Hong Kong's submission of 3 April 2000

12. The Association has made similar points in its letter dated 20 March 2000 to the Administration. A copy of our reply dated 23 March 2000

to the Association is at Appendix 3 for Members' reference.

Home Affairs Bureau
April 2000

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23 March 2000

Mr. Stewart Leung
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The Real Estate Developers Association of Hong Kong
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Hong Kong

Dear

Building Management (Amendment) Bill 2000

Thank you for your letter dated 20 March 2000 to the Secretary for Home Affairs. We had a discussion over phone and I promised to let you have a reply in writing.

You are concerned about the implications of clause 3(b) of the captioned Bill, in that it might (i) violate the principle of majority rule; (ii) cause disruptions to multiple phase developments; and (iii) lead to factions competing to form owners' corporations (OCs).

Regarding (i), I wish to assure you that the “principle of majority rule” has not been abandoned. The proposed ‘10% of the owners’ is applicable in specific circumstances only. It is quorum requirement for a meeting convened to consider the appointment of a management committee. At the meeting, a resolution to appoint a management committee would need to be passed by a majority of the owners present either in person or by proxy. Once the management committee has been appointed and the OC registered with the Land Registry, the subsequent operation of the OC will continue to be governed by the existing rules, whereby voting by ownership of undivided shares is the norm.

Regarding (ii), the Mass Transit Railway Corporation has raised a similar point with the Legislative Council Bills Committee. We have explained to the Bills Committee that an OC formed under clause 3(b) will not result in a minority of owners controlling the OC. For large scale developments in multiple phases having one master deed of mutual covenant (DMC), developers would normally hold the undivided shares vested in the remaining undeveloped phases and therefore could vote to safeguard the interests of future purchasers and themselves. Furthermore, as drafter of the DMC, there should be means for the developer to see to it that, in the case of a multiple phase development under different land grants and separate DMCs, the OCs of the earlier phases would not have authority over areas beyond the intended scope.

Regarding (iii), the Building Management Ordinance contains procedure for proper notice of an owners’ meeting. All owners are assured of the opportunity to attend the meetings and vote.

I fully agree with you that owners should be allowed to decide whether to form an OC or an owners’ committee under the DMC. The Building Management Ordinance does not compel owners of new buildings to form OCs. It aims to provide a statutory mechanism for the formation of OCs, if owners decide to form one.

I thank you again for your interest and valuable views. I look forward to future consultation with your Association on issues concerning building management.

Yours sincerely,

(P. T. Cheung)
for Secretary for Home Affairs

Appendix 2**Building Management (Insurance) Regulation**
Draft parameters of the Regulation**Coverage**

- Insured party is the OC; coverage includes actions by employees and independent contractors of the OC in furtherance of the aims and duties of the OC.
- Third party coverage only –
 - Third party to be defined in terms of persons or classes of persons not covered.
- Unauthorised building works (UBWs) pre-existing at the time of inception of the policy shall be included subject to certification of safety by Authorised Persons or similar professional persons. Insurance company shall have right of recovery against owner of the UBW for liability or claims arising from or caused by the UBWs which come into existence after the inception of the policy.
- Coverage of policy will exclude contractual liability.
- Physical coverage of policy to include the specified lot and the buildings constructed thereupon.
- Minimum coverage per event to be provided for; the number of occurrence of events per insurance policy period shall be unlimited.
- Insured party's liability not limited by the amount of coverage.
- In case of failure or default on payment of premium due annually, coverage shall not end until, say, 1 month, after the inception date of the policy.

- Deductibles shall be allowed only for third party property damage claims.
- Terms which limit the third parties' recovery to the amount of the insurance coverage shall be void and of no effect. The amount of the court judgment in excess of the insurance coverage may still be recovered from the parties found to be liable.
- Liability covered by a policy may be inclusive of the liability for interest, costs and expenses indemnified under the policy and other costs and expenses incurred by the insured and recoverable from the insurer under the policy.

Conditions and requirements in respect of policies which are binding on corporations and the occupiers and owners of a building

- OC shall be required to display in a prominent location within the building the notice of insurance issued by the insurance company.
- Insurance policy to be effective upon a date and time to be mutually agreed by the insured and insurance company.

Conditions and requirements in respect of policies which are binding on insurance companies

- Insurance company shall issue to the policy holder a notice of insurance in the form specified by the Authority (specification to be promulgated in the Regulation). Insurance company shall provide a copy of the notice of insurance to the Authority for record.
- Notwithstanding any contrary provisions in other Ordinances, an insurance company issuing a policy of insurance under the Regulation shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons but only up to the policy limit.

- Third parties may be allowed to seek judgment directly against the insurance company up to the limit of the insurance policy only. Excess amounts shall be recovered from parties found to be liable.

Conditions to policies which are to be void and of no effect

- No waiver of rights by third parties by agreement.

Duty of insurance companies to satisfy judgments against corporations and the occupiers and owners of a building in respect of third party risks

- If judgment in respect of third party liability covered by a policy is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall pay to the persons entitled to the benefit of the judgment an amount payable thereunder in respect of the liability not in excess of the insured amount, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any law relating to interests on judgments.

Effect of insolvency and bankruptcy of corporations and the occupiers and owners of a building in respect of claims by third parties

- Rights of third party claimants arising under event which occurred before the insolvency or bankruptcy shall not be affected provided that insurance policy is in effect when event occurred.

Effect of the dissolution of a corporation in respect of claims by third parties

- Rights of third party claimants arising under event which occurred before the dissolution of corporation shall not be affected provided that insurance policy is in effect when event occurred.

**Home Affairs Bureau
April 2000**