

**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 held on 17 May 2000, Members examined the 6th working draft of the Committee Stage Amendments (CSAs) proposed by the Government and raised no objection. The Assistant Legal Advisor also confirmed that the CSAs were in order. However, at Members' suggestion, the Government undertook to consider possible ways to address the concerns raised by the Real Estate Developers' Association of Hong Kong in its letter of 16 May 2000 and the views put forward by the Law Society of Hong Kong in its letter of 4 May 2000.

The Real Estate Developers' Association of Hong Kong (REDA)

2. The Administration met representatives of REDA on 15 May and 18 May to discuss their concerns. At the meeting on 18 May, REDA proposed that for buildings constructed by the private sector, the method for convening an owners' meeting to appoint a management committee under new Section 3(3) should be applicable only after occupation permits in respect of all the buildings in a single development (including a multi-phased development) have been issued under the Building Ordinance (Cap.123). Owners who took possession of their flats in the early phase of a multi-phased development would still be able to convene an owner's meeting under sections 3, 3A or 4 of the Ordinance (i.e. as proposed in the CSAs with 30%, 20% or 10% of undivided shares as the case may be). The proposal would not affect buildings other than the phased developments.

3. After careful consideration, the Administration agreed REDA's proposal is acceptable as it could address the special circumstances of multi-phased developments without unduly affecting owners' rights and ability to form owners' corporations. Accordingly, we have included new

clauses in the 7th draft of our CSAs to give effect to the proposal. In doing so, we have limited the application of the proposed CSAs to multi-phased private developments only. In other words, single phase developments and developments which do not require the issue of occupation permits such as HOS and NT exempted houses will still be able to form OC under new section 3(3).

The Law Society of Hong Kong

4. The Administration met representatives of the Property Committee of the Law Society on 22 May 2000 to exchange views on the Building Management Ordinance and the Bill. We explained to the representatives the policy considerations underlying our legislative proposals. In conclusion, we consider that the Government could take on board two of the suggestions made by the Society.

5. The first amendment concerns whether “carparks” should be regarded as ‘flats’ for the purposes of new section 27(1A) (requirement for auditing by professional accountants for buildings with 50 flats or more) and paragraph 1 of the Second Schedule (determination of the number of members of management committees). The Society considered that the legislative intent should be clarified to avoid possible legal uncertainty. The Administration agreed and has accordingly included new provisions in the CSAs to specify that for the purposes of sections 27(1A) and paragraph 1 of the Second Schedule, “garages, carparks or carports” should not be counted as “flats”.

6. The second amendment concerns the appointment of building managers by order of the Lands Tribunal under new section 40D(2). The Society considered that there is no justification for appointment of a building manager ‘for an indefinite period’ as this would preclude the appointment of managers by the OC even if one has been formed. We are agreeable to this suggestion as it will not affect the mandatory management scheme. Accordingly, we have proposed in the latest draft CSAs to remove the reference “for an indefinite period” from new section 40D.

Home Affairs Bureau

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