

**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 13 March 2000, Government undertook to provide written response to a list of follow-up items which is contained in the Clerk to the Bills Committee's letter of 15 March 2000.

Formation of owners' corporations for properties with divided shares

2. At the meeting on 13 March 2000, Government advised that the situation regarding groups of houses such as Fairview Park were quite outside the scope of the Building Management Ordinance (Cap. 344) which has its emphasis on the management of multi-storey and multi-ownership buildings. The definition of "buildings" under section 2 of Cap. 344 refers to flats rather than houses. House developments like Fairview Park need to refer to their DMCs to ascertain whether Cap. 344 is applicable to their situation.

3. We responded to the Democratic Alliance for the Betterment of Hong Kong (DAB)'s proposal in this regard in our response to items raised by Members at the meeting of the Bills Committee on 25 February 2000 (LegCo ref.: CB(2)1258/99-00(01)). We have advised that the owners concerned may consider devising a scheme to allocate undivided shares amongst themselves in accordance with section 39(b) of Cap. 344. The Land Registry will consider the validity of the scheme in connection with any application to register an owners' corporation. As the circumstances of individual cases are different, the owners concerned should seek independent legal advice.

“Inconsistency” between the proposed section 3(3) and section 5(5)

4. The concern expressed by Members was that the ‘one vote, one share’ requirement in existing section 5(5)(a) which applies to the meetings to appoint a management committee convened under existing sections 3, 3A and 4 may be ruled by the court to be applicable to a meeting convened under proposed section 3(3) in the absence of explicit provisions reflecting the legislative intent of adopting a ‘head count’ of owners under new section 3(3). We are grateful for this observation and shall clarify the legislative intent by introducing a committee stage amendment.

Constitution of “a majority vote of the owners voting” under new section 3(3)

5. As mentioned in the paragraph above, the quorum requirement under new section 3(3) is on a number of owners, or ‘head count’ basis. The ‘majority vote’ is a simple majority vote of the number of owners present, either in person or by proxy. We believe the current drafting is clear in this respect.

Proposal for giving proxies

6. We see merit in the proposal (to allow the giving of proxies by any of the co-owners and, in case the co-owners have given separate proxies, count only the proxy given by the co-owner whose name stands first in relation to that share in the register) and will introduce committee stage amendments to this effect.

Proposal to require the secretary and the treasurer of a management committee to be members of the management committee or stipulating their tenure

7. Paragraph 2(1) of the Second Schedule requires the appointment of a secretary and a treasurer of the management committee. The persons appointed may, but need not be, members of the management committee. An owners' corporation is free to appoint the secretary and the treasurer from members of the management committee. In such a situation, the management committee members appointed to be the secretary and the treasurer will be required to retire with the management committee under paragraph 5(1) of the Second Schedule.

8. In other situations, the management committee may decide to co-opt non-management committee members, e.g. staff of building management company, to work as the secretary and the treasurer. The provisions in the existing paragraph 2(1) provide due flexibility for MCs to decide whether they would enlist assistance of non-management committee members to help them carry out their duties.

9. As a matter of principle, the appointments of the secretary and the treasurer should be co-terminated with the management committee but this can be achieved by either specifying such a requirement in the original appointment of the secretary or treasurer or by way of a resolution of the owners' meeting before its term expires.

Government's policy intention in dealing with unauthorized building works

Unauthorized building works (UBW)

10. UBWs are those building works carried out by owners without prior approval and consent of the Building Authority under the Buildings Ordinance (Cap. 123). Examples of UBW are: structures erected on roofs or attached to external walls, canopies, metal racks, alterations affecting the structure of buildings or fire escape, etc. Under the Buildings Ordinance, it is an offence to carry out UBW and the penalty

on conviction is a fine of up to \$100,000 and imprisonment for two years. It is also an offence for not complying with a removal order.

Policy

11. Government's policy is to remove dangerous UBW posing hazard to life and property as a matter of priority and to clear all significant new UBW. We also carry out regular clearance operations to achieve progressive reduction of existing UBW.

Removal of UBW

12. The Buildings Department investigates any complaint about UBW and takes enforcement action in accordance with a system of priorities. It is, however, the responsibility of building owners to remove their UBW.

13. We have adopted a proactive approach to deal with the problem of large number of existing UBW in the territory. Large scale clearance operations were carried out over the past years to remove UBW on external walls on a building by building basis. In addition, Buildings Department has participated in the improvement of "*target buildings*" identified by the District Building Management Co-ordination Committees of the Home Affairs Department. The UBW of target buildings are subject to clearance by Buildings Department and, since 1992, a total of 322 target buildings have been successfully dealt with.

14. To step up our enforcement action against UBW, we initiated a large scale clearance operation (the *Blitz UBW Clearance*) in September 1999 to remove UBW on the external walls of 307 buildings in the densely-populated districts. About 8,000 statutory orders have been issued to some 14,000 UBW in these 307 buildings. We have extended our Building Safety Improvement Loan Scheme to assist those owners who have financial difficulties in the removal of UBW. So far, response from the concerned owners is encouraging and many of the UBW have been, or are being, removed by the owners voluntarily. For those owners who fail to remove the UBW by the due date as stipulated in the statutory orders, we will instigate prosecution action.

New Initiatives

15. The Financial Secretary announced in his Budget Speech on 8 March 2000 that new resources amounting to \$90 million would be allocated to Buildings Department for removal of more UBW in the next three years. For this purpose, we will step up large scale clearance operations to remove UBW on external walls of buildings. We plan to clear the UBW of 400 buildings in 2000, 500 buildings in 2001 and 600 buildings in 2002. We will also clear the UBW erected on the rooftops of some 300 single staircase buildings in 2000, extending to 400 buildings in 2001 and 500 buildings in 2002.

Incorporate the determination of quorum and owners' shares into the Ordinance

16. Members requested that when the requirement under Cap. 344 is a percentage of owners, the way the number of owners is to be counted should be stated explicitly in the Ordinance. We believe that given the definition of 'owner' in Cap. 344 and the CSA to be introduced on making clear the legislative intent on counting a 'percentage of owners' quorum requirement on the basis of the number of owners, there is little uncertainty in how the number of owners should be counted. With regard to the counting of undivided shares, we consider that DMCs already contain provisions for the number of shares each unit or flat is allocated. There is no need for Cap. 344 to duplicate such provisions.

Clarify the inconsistency between the interpretation in respect of calculating the number of owners in case of an owner owning more than one unit and the Lands Tribunal judgment in the *U Wai Investment Co. Ltd.* case

17. Having further considered the judgment in the *U Wai Investment Co. Ltd.* case, it appears that there is no inconsistency between our view and the judgment on the point that a person who owns more than one flat or unit will be counted as one owner when the quorum or

voting requirement is based on a percentage of the owners. However, as mentioned above in our response to the second and third items, we intend to introduce committee stage amendment to make it explicit that the 'number of owners' should be determined on the basis of the number of persons rather than the number of undivided shares.

Table setting out the various quorum and percentage requirements in respect of the meetings and procedure of owners' corporations

18. A table listing the quorum and voting requirements by either the number of owners or the number of shares in Cap. 344 is at Annex I for Members' information. This could be read with a table we provided earlier (in LegCo paper CB(2)1283/99-00(01)) showing the way of quorum or vote counting in different circumstances.

**Home Affairs Bureau
March 2000**

ANNEX I**Sections concerning numbers of owners or shares in the Building Management Ordinance (Cap. 344)**

Section	Number	Provision	Purpose
3(1)(c)	5%	owners of not less than 5% of the shares	to convene a meeting of the owners to appoint a management committee
3(2)(b)	50%	by a resolution of the owners of not less than 50% of the shares	to appoint a management committee at a meeting convened under §3(1)
3A(1)	30%	the owners of not less than 30% of the shares	apply to the Authority to order a meeting of the owners to appoint a management committee
3A(5)(a)	30%	the owners of not less than 30% of the shares	to negate the Authority's order to convene a meeting under §3A(1)
3A(5)(b)	30%	the owners of not less than 30% of the shares to support an eligible person to file a notice of objection	to negate the Authority's order to convene a meeting under §3A(1)
4(1)(a)	20%	the owners of not less than 20% of the shares	to apply to the Lands Tribunal for an order to convene a meeting of owners to appoint a management committee
34E(5)	50%	the owners of not less than 50% of the shares	to object to the Authority's notice in the Gazette to exclude the application to the building of paragraph 7 of the Seventh Schedule for a period not exceeding 3 years
34E(7)(a)	50%	the owners of not less than 50% of the shares	to object to any estate being added or deleted from the Ninth Schedule
1(2) of 3 rd Schedule	5%	not less than 5% of the owners	may request the chairman of the OC management committee to convene a general meeting of the corporation for the purposes specified by such owners

5(a) of 3 rd Schedule	20%	20% of the owners	the quorum required at a meeting of the OC at which a resolution for the dissolution of the management committee is proposed
5(b) of 3 rd Schedule	10%	10% of the owners	the quorum required at a meeting of the OC
7(1) of 7 th Schedule	50%	not less than 50% of the shares	to pass a resolution to terminate by notice the manager's appointment without compensation at a general meeting of the OC convened for the purpose
8(b) of 8 th Schedule	5%	the owners of not less than 5% of the shares	may convene a meeting of the owners
11 of 8 th Schedule	10%	10% of the owners	the quorum required at a meeting of the owners convened under the 8 th Schedule

Sections concerning numbers of owners or shares in the Building Management (Amendment) Bill 2000

New section	Number	Provision	Purpose
3(3)	10%	not less than 10% of the owners	the quorum required at a meeting of the owners to appoint a management committee
40C(3)(a)	10%	not less than 10% of the owners	the quorum required at a meeting of the owners ordered by the Lands Tribunal to consider the appointment of a management committee and a building management agent (for a building without an OC)