

Legislative Council Panel on Home Affairs
Meeting on 10 January 2000

**Item IV - Responsibilities and liabilities of owners' corporations
in respect of unauthorized building works in private buildings**

Purpose

This paper addresses the responsibilities and liabilities of owners' corporations (OCs) in respect of unauthorized building works (UBWs) in private buildings as raised in the letter of 20 December 1999 from the Clerk to Legislative Council Panel on Home Affairs to the Secretary for Home Affairs.

Government policy

2. Public safety is Government's primary concern. The Buildings Ordinance (Cap.123) provides for the planning, design and construction of buildings and associated works aiming to achieve building safety for the users and members of the public. It is the building owner's responsibility to seek the Building Authority's prior approval for commencement of building works regulated by Cap.123, as well as not to put up any UBWs in the first instance. It is the responsibility of a property owner to remove any UBWs on his property. In fact, they are liable to claims for damages caused by their UBWs under the common law. The current policy is to remove dangerous UBWs as a matter of priority and to contain the problem by removing other UBWs progressively.

Current practice to control UBWs

3. UBWs are building works carried out without prior approval of the Building Authority, or in contravention of the Building Regulations made under Cap.123. Examples of UBWs are: metal cages, flower racks, air-conditioning supporting frameworks, canopies to the exterior, rooftop structures, structural alterations or other internal modifications to a building (e.g. removal of fire door, diversion of drainage). Most UBWs create tremendous problems to the built environment and therefore should be removed. Specifically, they often-

- pose a structural or fire hazard to life or property;

- constitute a health nuisance such as serious water seepage and obstruction to light and air; and
- contribute to rapid deterioration of the environment, such as water pollution by unauthorized discharge of trade effluents.

4. The Buildings Department (BD), being the office of the Building Authority, investigates any complaint about UBWs and takes enforcement action in accordance with a policy of priorities. Under this policy, BD focuses its effort on removing UBWs which are newly built or pose an immediate threat to life and limb and deal with other UBWs in later time.

5. BD is tackling the problem of UBWs in three ways-

- i. Control of new UBWs by taking immediate enforcement action against all UBWs found under construction or newly completed.
- ii. Regular clearance operations to achieve progressive reduction of existing UBWs. This programme is spearheaded by BD's large-scale clearance operations to remove UBWs on external walls of buildings so as to achieve the best possible effect in terms of protecting public safety.
- iii. Education and vigorous prosecution to dissuade and most importantly deter offenders from taking chances to carry out UBWs.

Owners' corporations (OCs)

6. An OC is a legal entity formed under the Building Management Ordinance (Cap.344). It has the statutory duty and powers to maintain the common parts of the building in a state of good and serviceable repair and clean condition (pursuant to Section 18(1)(a)); and shall carry out such works as may be ordered or required in respect of the common parts by any public officer or public body in exercise of the powers conferred by any Ordinance (pursuant to Section 18(1)(b)). For UBWs erected in the common parts, BD may serve orders under Cap.123 on the OC requiring the UBWs to be removed. In default of such orders, BD may prosecute the OC and/or employ a contractor to carry out the removal works and subsequently recover the costs incurred from the OC. Except as may be provided in the deed of mutual covenant (DMC) of the building, "common parts", as defined in Cap.344, includes external walls and roofs where UBWs are commonly found.

7. Further, Section 18(1)(c) of Cap.344 allows an OC to enforce its obligations “contained in the DMC (if any)” for the control, management and administration of the building. If there is no DMC, or if a DMC does not so specifically provide such obligations, an OC cannot act, and its powers and duties would be confined to the matters provided in Section 18(1)(a) and (b) generally in respect of the common parts in the building. If a DMC obliges an OC for the control, management and administration of the building, a failure to act could be in breach of the obligations.

Powers of OC to deal with UBWs

8. As described in paragraphs 6 and 7 , an OC has the duties and powers to maintain the common parts of the building, and may also have obligations for the control, management and administration of the building if the DMC so provided. If an owner carries out UBWs in the common parts of the building, the OC may pass a resolution at a general meeting of an OC to remove the UBWs and such resolution shall be binding on all the owners. The OC can therefore enforce the resolution against the owner who carries out the UBWs in the common parts. The OC may also rely on the powers conferred under the DMC (if the DMC so provides) to request the relevant owner to remove the UBWs. Under section 45 of and the Tenth Schedule to Cap.344, an OC may apply to the Lands Tribunal for enforcement of the provisions of Cap. 344 and/or the terms and provisions of DMC against the UBWs. In so doing, it is advisable for the OC to consult their legal adviser for the enforcement proceedings. The Building Management Resource Centre of the Home Affairs Department provides free preliminary professional advice from lawyers and other volunteer professionals to owners and OCs.

Parties responsible for removing UBWs which existed for many years

9. All UBWs, regardless of the time of their construction, would need to be removed. BD will continue to carry out enforcement against UBWs under Cap.123 as described in paragraphs 3 to 5 above. Apart from reporting UBWs to BD for investigation, OC may consider invoking their powers under Cap.344, or DMC (if any), against UBWs erected in the common parts as described in paragraph 8 above. There have been successful cases of enforcement against UBWs by OCs.

Public liability insurance in private buildings

10. BD may take enforcement action against all UBWs in a building according to the current policy regardless of any public liability insurance taken out by the OC or owners.

11. Pursuant to Section 18(2)(d) of Cap.344, an OC may in its discretion, insure and keep insured the building or any part thereof to the reinstatement value thereof against fire and other risks. However, many OCs have not taken out insurance in respect of third party liabilities for the common parts of their buildings. In a case of claim for compensation in 1998, the court ordered the OC of a building in Mongkok to pay about \$20 million to compensate a worker for injuries suffered when carrying out maintenance works for the building. There was public concern about this case. We believe OCs should be required to take out third party insurance in respect of the common parts of their buildings so that in case accidents occur, the victims can be compensated. A Building Management (Amendment) Bill will soon be introduced into the Legislative Council. One of the proposals in the Bill is to require an OC to take out third party insurance in respect of the common parts of a building.

Epilogue

12. Members are requested to note the contents of this paper.

Home Affairs Bureau
Planning, Environment and Lands Bureau
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