

本局檔號 OUR REF : L/M(20) in HAB/V/BM/2/12
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21 January 2000

Clerk to Legislative Council Panel on Home Affairs
Legislative Council
8 Jackson Road
Central
Hong Kong
(Attn.: Mrs Constance Li)

Dear Mrs Li,

**LegCo Panel on Home Affairs
Follow-up to meeting on 7 December 1999**

I refer to the third paragraph of your letter of 7 December 1999 and Item 3 of your list of follow-up actions as at 3.1.2000.

At the meeting of the Panel on 7.12.99, the Administration briefed Members on Section 17 of the Building Management Ordinance (Cap.344) which reads as follows-

S.17 Enforcement of judgments etc. against a corporation

(1) If a judgment is given or an order is made against a corporation, execution to enforce the judgment or order may issue –

(a) against any property of the corporation; or

(b) with leave of the tribunal, against any owner.

(2) An application for leave under subsection (1)(b) shall be made by summons served personally upon the owner against whom execution is sought.

The purpose of Section 17 is to protect an individual owner from creditors abusing their power of execution of judgment debts in choosing an innocent owner to take up the debts incurred by an owners' corporation (OC). If a creditor is unsuccessful in pursuing his claim against an OC, under certain circumstances he can pursue it against an individual owner but, first of all, he must obtain leave from the Lands Tribunal. In this connection, we consider that there is a need to retain this provision to protect the innocent individual owners.

In a recent Court of Appeal case (No. CACV 143/99 dated 25.11.99), the court ruled that the Lands Tribunal should consider the following factors in deciding whether to grant leave under Section 17(1) of the Building Management Ordinance (Cap.344) –

- (i) what steps the creditor has taken to pursue claim and to execute a judgment debt against the OC;
- (ii) the financial condition of the OC and whether it has any assets;
- (iii) whether a particular owner receives special benefits from the services provided by the creditor; and
- (iv) why is the particular owner chosen vis-à-vis other owners.

The Lands Tribunal, when considering an application for leave under Section 17(1), is bound by the above factors which are not exhaustive. It would only grant leave under Section 17(1) if the creditor can satisfy the Lands Tribunal that it is fair to execute the judgment debt against that particular owner vis-à-vis the OC and other owners, taking into account the above factors and other relevant circumstances of the case.

Since the Court of Appeal has set down the factors for the Lands Tribunal to consider when granting leave under Section 17(1), the interests of individual owners can duly be safeguarded. Therefore, we consider that there is no cogent need to amend Section 17 to restrict its application only to specified exceptional circumstances.

A copy of the judgment (in Chinese only) mentioned above is enclosed for your information, please.

Yours sincerely,

(Ben W H Chong)
for Secretary for Home Affairs