

**President's ruling on
Committee Stage Amendments proposed by Members to the
Building Management (Amendment) Bill 2000**

Hon CHENG Kai-nam, Hon Albert HO and Hon LEE Wing-tat have respectively proposed amendments in respect of the above Bill at its Committee Stage.

2. The Secretary for Home Affairs (SHA) has been invited to offer his comments on the proposed amendments and the Members concerned have been invited to respond. For easier reading, details of these proposed amendments, SHA's comments on them and the Members' respective responses are summarized in the attached **Appendix**.

3. The provisions in the Rules of Procedure relating to amendments to bills, which SHA has referred to, are:

(a) Rule 57(4)(a)

An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

(b) Rule 57(4)(c)

An amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.

(c) Rule 57(4)(d)

An amendment which is in the opinion of the Chairman (of Committee of the whole Council) frivolous or meaningless may not be moved; and

(d) Rule 57(6)

An amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

- (a) the Chief Executive; or
- (b) a designated public officer; or
- (c) a Member, if the Chief Executive consents in writing to the proposal.

4. The main objection of SHA to the proposed amendments concern Rule 57(4)(a), as detailed in the **Appendix**.

5. For completeness, I should mention Rule 56(2) which provides that any Committee of the whole Council shall have power to make such amendments to a bill as it thinks fit, provided that the amendments, including new clauses and new schedules, are relevant to the subject matter of the bill.

Opinion of Counsel to the Legislature

6. Counsel to the Legislature is of the opinion that, in determining what the subject matter of a bill is for the purpose of Rule 57(4)(a) of the Rules of Procedure, the President has to form a view after studying the intended effect of the provisions in the bill and other relevant materials such as the long title and Explanatory Memorandum of the bill and relevant information made available to her, for example Legislative Council Brief on the bill and submissions from the Administration and the Members concerned on whether the CSA contravene any of the Rules of Procedure.

7. According to the Explanatory Memorandum of the Bill, the purpose of the Bill is "to amend the Building Management Ordinance to facilitate better management of buildings through the provisions described" in the Memorandum. The object of the Building Management Ordinance as stated in its long title is "to facilitate the incorporation of owners of flats in buildings or groups of buildings, to provide for the management of buildings or groups of buildings". In the Legislative Council Brief on the Bill, it was stated that the introduction of the Bill was to implement the relevant recommendations in the 1998 public consultation document on "Proposal to improve fire safety in private buildings" and to rectify certain deficiencies in the Building Management Ordinance.

8. In determining the subject matter of a bill of this nature, the President may have to decide between adopting an approach of confining herself to the provisions in the bill for setting the parameter within which amendments could be allowed under Rule 57(4)(a) or another approach of ascertaining the principal objectives intended to be achieved by the provisions in the bill as the subject matter of the bill against which relevance of proposed CSAs to the objectives is tested. Counsel to the Legislature thinks that the latter approach is applicable to most cases except where a bill's objectives are narrowly prescribed by the bill.

9. Counsel to the Legislature thinks it is clear from the Explanatory Memorandum that the purpose of the Bill is to amend the Building Management Ordinance to facilitate better management of buildings. The expression "through the provisions described as follows" appears to serve the purpose of identifying those provisions in the Bill (i.e. the 9 clauses out of the 15 in the Bill) which are for that purpose. The expression is not intended to limit the scope of the Bill to those specific areas covered by the identified

provisions. This may be borne out by the fact that the long title of the Bill is couched in the broadest possible term: to "amend the Building Management Ordinance". This view is consistent with the policy rationale for the introduction of the Bill as stated in the LegCo Brief on the Bill, i.e. to implement the relevant recommendations in the 1998 public consultation document on "Proposal to improve fire safety in private buildings" and to rectify certain deficiencies in the Building Management Ordinance.

My opinion

10. I am in full accord with Counsel to the Legislature regarding the approach to be adopted for determining the subject matter of a bill, as stated in paragraph 8, and his analysis in paragraph 9 that the purpose of the Bill is to amend the Building Management Ordinance to facilitate better management of buildings.

11. Having determined what the subject matter of the Bill is, the next question to consider is whether a proposed amendment is within the scope of, and relevant to, that subject matter. This question of relevance often involves a judgement which is made on finely balanced matters. The fundamental principle which I have adhered to is that I would only make a ruling after having given all parties concerned the opportunity to make submissions on the matter and taking in account all relevant materials made available. My concern is a purely procedural one, i.e. whether the substance of a proposed amendment is within the scope of, and relevant to, the subject matter of the Bill. In other words, if an issue raised by a proposed CSA is a substantially new issue which is not related to the purpose of the Bill, it should be considered as not relevant to the subject matter of the Bill within the meaning of Rule 57(4)(a). Moreover, when making a ruling under Rules 56(2) and 57(4), I am not concerned with the merits of the proposed amendment

Ruling

12. Having considered the arguments put forth by SHA and the Members concerned, together with the opinion of Counsel to the Legislature, I rule that:

- (a) Hon CHENG Kai-nam may move his proposed amendments in respect of new clause 5A, paragraphs (b) to (e) of the substitute clause 14 and the substitute clause 15, as they are relevant to the subject matter of facilitating better management of buildings.
- (b) Hon CHENG Kai-nam may not move his proposed amendments in respect of new clause 7D, new clause 16A and paragraph (a) of the substitute clause 14, because providing a mechanism by

which an owners corporation may resolve to vary the terms of its deed of mutual covenant is not the subject matter of the Ordinance or of the Bill. To seek, as Mr CHENG does, to provide such a mechanism concerns a substantially new issue which goes beyond the scope of the Bill.

- (c) Hon Albert HO may move his proposed amendments in respect of new clause 7BA, new clause 13B, and the substitute clause 15, as they are relevant to the subject matter of facilitating better management of buildings.
- (d) Hon Albert HO may not move his proposed amendments in respect of clause 2, new clause 9A and new clause 17 because the amendments seek to extend the application of the Ordinance to a new type of building i.e. house-type properties which neither the Ordinance nor the Bill covers. They are not relevant to the subject matter of facilitating better management of flatted buildings or groups of flatted buildings covered by the Ordinance, and exceed the scope of the Bill.
- (e) Hon LEE Wing-tat may move his proposed amendments in respect of clause 3(b), as the intention and the terms of his amendment are not unintelligible or meaningless; the purpose of facilitating the early appointment of a management committee of a corporation after the issuance of an occupation permit or a temporary occupation permit is relevant to the better management of buildings.
- (f) Hon LEE Wing-tat may not move his proposed new clause 7D and new clause 16A (which are a different way to provide a mechanism for varying deeds of mutual covenant which Hon CHENG Kai-nam proposes - see sub-paragraph (b) above). Same as in Hon CHENG Kai-nam's proposed amendment, to seek to provide such a mechanism concerns a substantially new issue which goes beyond the scope of the Bill.

(Mrs Rita FAN)
President
Legislative Council

21 June 2000

Building Management (Amendment) Bill 2000

Summary of Members' proposed Committee Stage amendments, Secretary for Home Affairs (SHA) comments and Members' responses

| Committee Stage Amendments by | SHA's comments | Members' responses |
|---|---|--|
| <i>Hon CHENG Kai-nam</i> | | |
| <p><u>New clause 5A</u> To provide that an owners corporation shall establish and maintain a contingency fund.</p> | <p>Amendment is outside the subject matter of the Bill, and the purported mandatory requirement to establish the fund is meaningless as the proposed clause does not provide details of the requirements or the penalty for non-compliance - contravenes Rule 57(4) of the Rules of Procedure.</p> | <p>The establishment of a contingency fund will help meet non-recurrent expenses for building repairs and improve the management of buildings; this is in line with the Bill's proposal to facilitate better management of buildings. Not providing penalty for non-compliance is in line with the provision in section 20(1) of the Ordinance regarding the mandatory establishment and maintenance of a general fund by an owners corporation.</p> |
| <p><u>New clause 7D</u> <u>New clause 16A</u> <u>Para. (a) of the proposed substitute clause 14</u> To provide a mechanism by which an owners corporation may resolve to vary the terms of its deed of mutual covenant.</p> | <p>Neither the Ordinance nor the Bill provides for a procedure for amending deeds of mutual covenant which are contracts between the parties to the deeds. The amendment is outside the subject matter of the Bill. It also puts a burden on the Lands Tribunal to adjudicate on the variations to the terms of the deeds proposed by the owners and so has a charging effect - contravene Rules 57(4) and 57(6).</p> | <p>The proposal is relevant to the Bill's purpose to facilitate better management of buildings, by helping minority owners overcome difficulties caused by unfair terms in the deeds.</p> |

| Committee Stage Amendments by | SHA's comments | Members' responses |
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| <p>Paras. (b) to (e) of the proposed substitute <u>clause 14</u></p> <p>To amend the Third Schedule relating to calculation of a quorum at meetings of an owners corporation.</p> | <p>The amendments are outside the scope of the Bill - contravenes Rule 57(4).</p> | <p>The amendment will make it easier for a quorum to be present for meetings of an owners corporation for making decisions, and is relevant to building management.</p> |
| <p><u>Substitute clause 15</u></p> <p>To amend the provisions in the Seventh Schedule concerning the termination of a manager's appointment.</p> | <p>The new clause is outside the scope of the Bill and of the Seventh Schedule. Cross-referencing to the Third Schedule, which is not part of the mandatory terms in deeds of mutual covenant covered in the Seventh schedule, makes the amendment unintelligible and hence not implementable - contravenes Rule 57(4).</p> | <p>The procedure concerning the termination of a manager's appointment relates to building management and is relevant to the Bill. The reference to the Third Schedule is in order, as the Schedule makes it clear that decisions at meetings of a corporation shall be made by a majority of votes of the owners, including the termination of a manager's appointment.</p> |
| <i>Hon Albert HO</i> | | |
| <p>Clause 2 New clause 9A New clause 17 to add a new <u>Eleventh Schedule</u></p> <p>To amend the definitions of "owner" and "building" so that the Ordinance also covers house-type properties and their owners, and to make consequential changes for the determination of owner's shares and the calculation of owners.</p> | <p>The amendments seek to extend the application of the Ordinance to house-type developments and are outside the scope of the Ordinance and of the Bill - contravenes Rule 57(4).</p> | <p>The long-title of the Ordinance is wide enough to cover house-type developments. The Administration has adopted too narrow a view in reading the Ordinance. It is fair and equitable to give owners of house-type development a formal mechanism to form owners corporations.</p> |

| Committee Stage Amendments by | SHA's comments | Members' responses |
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| <p><u>New clause 7BA</u> To provide that owners of undivided shares of the common parts of buildings and who do not pay fees for such under the deed of mutual covenant shall not have voting rights or constitute to a quorum.</p> | <p>The amendment is outside the scope of the Bill which does not cover section 34I of the Ordinance which the Member seeks to amend - contravenes Rule 57(4).</p> | <p>The drafting guidelines issued by the Lands Department relating to deeds of mutual covenants already impose an obligation on the drafting solicitors to ensure that no voting rights should be allocated to undivided shares of the common parts if such shares do not carry the obligation to pay fees. The amendment is in keeping with the principles of the guidelines.</p> |
| <p><u>New clause 13B</u> To amend the Second Schedule relating to composition of management committees, to require holders of offices in a management committee shall retire together with members of the committee.</p> | <p>The amendment is outside the scope of the Bill - contravenes Rule 57(4).</p> | <p>The amendment addresses a deficiency in the Ordinance and is within scope as it relates to better management.</p> |
| <p><u>New clause 15</u> To amend the Seventh Schedule relating to the termination of a manager's appointment.</p> | <p>The amendment is outside the scope of the Bill - contravenes Rule 57(4).</p> | <p>The amendment addresses a deficiency in the Ordinance and is within scope. A proposed new clause by the Administration also deals with the same issue.</p> |
| <i>Hon LEE Wing-tat</i> | | |
| <p><u>Clause 3(b)</u> To facilitate the early appointment of a management committee of a corporation after the issue of an occupation permit or a temporary occupation permit.</p> | <p>The amendment is unclear because the term "unit" in the amendment is not defined, neither is "occupation of a unit" defined. This makes it unclear how the "40% of the units occupied" is to be worked out under the amendment - contravenes Rule 57(4).</p> | <p>The term "unit" is a commonly used term in everyday language, so are the terms "occupied" and "occupation". There is no lack of clarity.</p> |

| Committee Stage Amendments by | SHA's comments | Members' responses |
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| <p>New clause 7D <u>New clause 16A</u> To provide a mechanism by which an owners corporation may resolve to vary the terms of its deed of mutual covenant.</p> | <p>The amendments are outside the scope of the Ordinance or Bill. By assigning new duties to SHA and the Lands Tribunal, they also have a charging effect - contravene Rules 57(4) and 57(6).</p> | <p>The amendments have the purpose of introducing mandatory terms to the deed of mutual covenants to address deficiencies in the Ordinance, one of which is the lack of a procedure for amending the deeds.</p> |