

**HPLB/BAB Paper/07/04**

**Bills Committee on  
Buildings (Amendment) Bill 2003**

**Supplementary Information on  
Relationship between Individual Owners and Owners' Corporations**

At the Bills Committee meeting on 27 November 2003, the paper on Relationship between Individual Owners and Owners' Corporations (OCs) (LC Paper No. CB(1) 407/03-04(03)) was discussed. Some Members have further asked the Administration to provide legal advice on whether disputes between individual owners and owners' corporation in relation to the manner of complying with a statutory order issued by the Buildings Authority (BA) and any works in addition to the works necessary to comply with an order are covered by the Tenth Schedule to the Building Management Ordinance (BMO), and thus under the jurisdiction of the Lands Tribunal.

**Lands Tribunal**

2. Indeed, before compiling LC Paper No. CB(1) 407/03-04(03), the Home Affairs Department (HAD) has sought legal advice on issues pertaining to the jurisdiction of the Lands Tribunal. According to legal advice and as stated in paragraph 5 of the Paper, when disputes arise between individual owners and their OCs regarding the manner of complying with a statutory order, the exact grounds of challenge will have to be ascertained before it can be established as to whether they fall within the Tenth Schedule, and hence may be heard and determined by the Lands Tribunal. These grounds vary in different cases, e.g., over the interpretation of the deed of mutual covenant (DMC), allocation of the contribution by owners, the scope of works to be carried out (whether they are confined to or beyond the orders), whether the location concerned is regarded as common area or exclusive area under the DMC, the validity of an owners' meeting, procurement of service requirement under section 20A of the BMO, etc. Notwithstanding that it is not pertinent to point out which proceedings under the Tenth Schedule are applicable to a particular kind of dispute, we consider that proceedings stipulated in paragraphs 1 and 5 of the Tenth Schedule, read together with

section 45 of the BMO, will generally be relevant to most building management disputes, including the two kinds of disputes mentioned by Members.

### **Appeal Tribunal (Buildings)**

3. At the same meeting, some Members have asked the Administration to consider the proposal of extending the scope of the Appeal Tribunal (Buildings) to hear and determine cases regarding the manner of complying with a statutory order issued by the BA.

4. Under sections 44(1) and 47 of the Buildings Ordinance (BO), a person aggrieved by any decision made by the BA in the exercise of a discretion conferred on him under the BO may give a notice of appeal to the Secretary to the Appeal Tribunal. Under section 48(1), where a notice of appeal is given under section 47, the Chief Executive shall appoint from the Appeal Tribunal Panel a tribunal to hear and determine the appeal. In other words, the jurisdiction of the Appeal Tribunal is confined to determining an appeal against any decision made by the BA in the exercise of a discretion. In the event of serving an order on an OC, the BA only states the purpose of the order, e.g. removal of unauthorized building works and repair of drainage system, etc. but does not specify the manner in which the OC should comply with the order. The manner of complying with the order has nothing to do with a decision made by the BA and should thus fall outside the jurisdiction of the Appeal Tribunal. To extend the scope of the Appeal Tribunal to cover matters relating to disputes between individual owners and OCs would have profound legal, financial and staffing implications and has to be considered very carefully and thoroughly. Since the scope of the Appeal Tribunal is not part of the Bill and the Bill already contains a number of substantive proposals, we consider that it would be advisable to deal with this issue separately.

### **Mediation**

5. Mediation could be a possible channel for resolving disputes between individual owners and their OCs over building management issues, including those concerning the manner of compliance with BA's statutory orders. Since mid-2002, HAD has, in conjunction with the Hong Kong Mediation Council and the Hong Kong Mediation Centre, launched a pilot scheme on mediation to resolve building management

disputes. The Legislative Council Panel on Home Affairs studies and monitors the operation of the Building Management Ordinance and related issues, including resolution of building management disputes. We believe that the Panel on Home Affairs will continue to look into the feasibility and effectiveness of mediation as an alternative mechanism for handling building management disputes, without necessarily resorting to litigation.

### **Excising the proposed section 39(B) from the Bill**

6. Having regard to the discussion in the Bills Committee meetings and the contentious issues involved, we have further considered the feasibility of the proposed section 39(B) (Clause 38) on prosecuting uncooperative owners who obstruct OCs in complying with orders issued by the BA. Despite the good intention of facilitating the OCs in complying with statutory orders, it may not be appropriate to provide legal sanctions in relation to disputes between individual owners and OCs under the BO. After due consideration, we would have no objection to excising the proposed section 39B from the Bill. Since this proposal is a stand-alone proposal, its excision from the Bill should not have any impact on the other proposals under the Bill. Subject to Members' agreement, we will propose a Committee Stage Amendment to delete section 39B. With regard to any disputes between individual owners and OCs, HAD will continue to play a coordinating role and strengthen their existing efforts in education, publicity, advisory service, mediation and arbitration in handling such disputes.

Housing, Planning and Lands Bureau  
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