

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

Uncooperative Owners

Purpose

This paper describes the proposal under the Buildings (Amendment) Bill 2003 on prosecuting owners who do not cooperate with the owners' corporation (OC) in complying with statutory orders.

Background

2. Section 16 of the Building Management Ordinance (Cap. 344) provides that, if there is an OC for a building, the liabilities of the owners in relation to the common parts of the building shall be enforceable against the OC. Thus for building repairs and removal of unauthorized building works (UBWs) in connection with the common parts of a building, the Buildings Department (BD) serves orders on the OC. BD has all along been working closely with OCs to assist them in complying with orders served on them under the BO. An example of such orders is one served on an OC requiring the demolition of UBWs built on the common parts of a building e.g. the roof.

3. However, in some cases some individual owners do not cooperate with their OC by, for example, obstructing the execution of works required or refusing entry to their individual properties for the execution of such works. This makes it difficult for the OC to comply with the statutory orders, and renders the OC liable to prosecution.

Proposal

4. The owners should bear the ultimate responsibility to carry out the necessary repair and removal works. We should facilitate OCs' compliance with statutory orders by reducing the obstruction of

uncooperative owners. The Bill, therefore, seeks to provide a deterrent against such non-cooperation.

5. Under the Bill (Clause 38), an owner commits an offence if, after notification by an OC of a building that an order has been served on it under the BO in relation to any common parts of the building, he, without reasonable excuse -

- (a) obstructs a person employed or engaged by the OC in the carrying out of any works or other action that is required for the purpose of complying with the order; or
- (b) refuses to allow a person employed or engaged by the OC access to or the use of any premises, which is reasonably necessary for the carrying out of any works or other action that is required for the purpose of complying with the order.

6. The Bill (Clause 39) also provides that a person guilty of the above offence shall be liable on conviction to a fine of \$300,000 and to imprisonment of one year for obstruction of the OC in complying with a section 24(1) or (1A) order, or to a fine of \$50,000 and one year imprisonment for obstruction of the OC in complying with an order served under other sections of the BO. The purpose for imposition of a higher level of fine for obstruction to comply with section 24(1) or (1A) orders is to contain the UBW problem through stronger deterrents.

Enforcement

7. As the proposed offence is meant to be a facilitating measure, we will resort to prosecution only after the owner concerned fails to cooperate with the OC without reasonable excuse. In practice, when it comes to the notice of BD that an owner obstructs the OC as described in paragraph 5(a) or (b) above, BD would consider the following course of action -

- (a) to obtain information from the OC relating to the uncooperative owner and details of his obstruction (e.g., records of meeting of OC relating to arrangement for compliance with the order, correspondence between the OC and the owner);
- (b) to check if sufficient notice has been given by the OC to the

uncooperative owner regarding the relevant order;

- (c) to ascertain if the explanation put forward by the uncooperative owner is valid;
- (d) to remind or warn the uncooperative owner of:
 - (i) the fact that the OC is also representing him as a building owner to comply with the order concerning the common areas and thus he should not obstruct or should cease the obstruction; and
 - (ii) the possible legal consequence that he may face due to his uncooperative act; and
- (e) having regard to the circumstances of the individual case, if the uncooperative owner still refuses to cooperate despite the above reminder or warning, to instigate prosecution action.

Conclusion

8. We believe that the proposal of dealing with uncooperative owners will help the OC comply with the orders issued under the BO and facilitate effective law enforcement actions by BD. Ultimately, safety of buildings would be enhanced.