

立法會

Legislative Council

LC Paper No. LS57/04-05

**Paper for the House Committee Meeting
on 29 April 2005**

Legal Service Division Report on Building Management (Amendment) Bill 2005

I. SUMMARY

- 1. Object of the Bill** To amend the Building Management Ordinance (Cap. 344) (“the Ordinance”) and to provide for incidental and transitional matters.
- 2. Comments** To amend the Ordinance :—
 - (a) to make further provisions on the appointment of a management committee (“MC”);
 - (b) to make further provisions on the composition of an MC;
 - (c) to make further provisions on the better operation of an owners’ corporation (“OC”); and
 - (d) to make miscellaneous and consequential amendments.
- 3. Public Consultation** In finalising the proposals in the Bill, in May 2003, the Administration conducted an extensive public consultation exercise and sought the views of the 18 District Councils, all the OCs and owners’ associations, the professional organizations and the general public. The LegCo Secretariat has received from a member of the public a written comment on the technical aspects of the Bill.
- 4. Consultation with LegCo Panel** In the last LegCo’s term, the Panel on Home Affairs (“the Panel”) was briefed on the proposals to be included in the Bill at its meeting on 28 November 2003. The Subcommittee on Review of the Building Management Ordinance (“the Subcommittee”) under the Panel held three further meetings on 6 February, 4 March and 29 April 2004 to discuss the proposals.
- 5. Conclusion** The Bill contains proposals which are broadly in line with the recommendations of the Subcommittee. However, the Subcommittee did not have the opportunity to consider the detailed provisions to implement its proposals. There are certain recommendations of the Subcommittee which have not been adopted in the Bill, and one proposal in the Bill which has not been discussed at the Subcommittee. In view of this, members are recommended to form a Bills Committee to consider the Bill in detail.

II. REPORT

Object of the Bill

To amend the Building Management Ordinance (Cap. 344) (“the Ordinance”):—

- (a) to make further provisions on the appointment of a management committee (“MC”);
- (b) to make further provisions on the composition of an MC;
- (c) to make further provisions on the better operation of an owners’ corporation (“OC”); and
- (d) to make miscellaneous and consequential amendments.

LegCo Brief Reference

2. HAD HQ IV 20/5/1 issued by the Home Affairs Bureau and Home Affairs Department in March 2005.

Date of First Reading

3. 27 April 2005.

Comments

Procedure for appointment of an OC or MC (clauses 4, 5, 6, 19, 22 and 23)

4. The Bill repeals provisions in the Ordinance which have caused doubts as to whether an MC within the meaning of the Ordinance may be appointed in accordance with a deed of mutual covenants (“DMC”).

5. In relation to the owners’ meeting to appoint an MC, the Bill specifies who should convene the meeting, provides for the procedure for appointing the various office bearers on an MC and further imposes a quorum requirement of 10% of the owners throughout the meeting.

6. The Bill makes further provisions on the requirements for appointment of proxy and a standard format of proxy instrument in the Ordinance.

Composition of an MC (clauses 9, 10 and 11)

7. The Bill relaxes the qualifications of MC members by providing that a person who:—

- (a) has been sentenced to imprisonment for three months or more will not be disqualified from being a member of an MC after five years;
- (b) has been discharged from bankruptcy and has paid the creditors in full will not be barred from being a member of an MC; and
- (c) has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement (in either case without paying the creditors in full) will be eligible for MC membership after five years.

8. The Bill also specifies that an OC may, at its discretion, pay each of its members an allowance provided that the payment has been approved by owners at an annual general meeting and the level of the allowance is capped by rates specified in Schedule 4.

Operation of an MC (clauses 13, 14, 15 and 28)

9. The Bill introduces a new provision that MC members acting in good faith shall not be held personally liable for any act done or default made by or on behalf of the OC.

10. The Bill further provides for the procedure for procurement by OCs and managers.

11. The Bill requires managers to open and maintain one or more segregated trust or client accounts for holding money received in respect of the management of the building with the OC as the client.

12. The Bill clarifies that the termination mechanism under the Ordinance shall only be applicable to the termination of the appointment of the DMC manager.

Procurement of third party risks insurance

13. The Building Management (Amendment) Ordinance 2000 (69 of 2000) introduced a new section in the Ordinance (section 28) which provides that all OCs shall procure and keep in force in relation to common parts of the building a policy of third party risks insurance. Section 28 has yet to come into operation. To implement section 28, the Administration has now drawn up the draft Building Management (Third Party Risks Insurance) Regulation to set out the detailed requirements. The Administration has annexed the draft Regulation to the LegCo

Brief to facilitate consideration and discussion of the Bills Committee if one is formed.

Public Consultation

14. In finalising the proposals in the Bill, in May 2003, the Administration conducted public consultation and sought the views of the 18 District Councils, all OCs and owners' associations, professional organizations and the general public.

15. On 27 April 2005, the LegCo Secretariat received from a member of the public a written comment on the technical aspects of the Bill. The comment will be referred to the Bills Committee, if one is formed, for its consideration.

Consultation with LegCo Panel

16. In the last term of the Legislative Council, the Panel on Home Affairs ("the Panel") set up the Subcommittee on Review of the Building Management Ordinance ("the Subcommittee") to discuss with the Administration the review of the Ordinance. Following discussions with the Subcommittee, the Administration issued a paper on the proposed amendments to the Ordinance for public consultation on 12 May 2003. At its meeting on 28 November 2003, the Panel received a briefing from the Administration on the result of the public consultation exercise, and the proposals to be included in the amendment bill (except the proposed amendments in respect of the qualifications of members of an MC). The Subcommittee held three further meetings on 6 February, 4 March and 29 April 2004 to discuss these proposals. Members made a number of suggestions for the Administration to consider in finalising its proposals to amend the Ordinance.

17. The following suggestions made by members have not been included in the legislative proposals in the Bill:—

- (a) the proposed threshold for passing the resolution to terminate the appointment of the manager specified in the DMC by an OC after the specified period of management provided in DMC could be lowered to 30% of the undivided shares;
- (b) the time limit for the lodging of proxy instrument should be extended to 48 hours before an owners' meeting; and
- (c) a list of the owners who had appointed proxies should be displayed at a prominent place of the building concerned and at the entrance of the meeting venue before an owners' meeting.

18. Members may wish to refer to the minutes of the Panel meeting on 28 November 2003, and the final report of the Subcommittee which summarises the deliberations of the three above-mentioned meetings of the Subcommittee (issued vide LC Paper Nos. CB(2)912/03-04 and CB(2)3065/03-04 respectively) for further details.

Conclusion

19. The Bill contains proposals which are broadly in line with the recommendations of the Subcommittee. However, the Subcommittee did not have the opportunity to consider the detailed provisions to implement its proposals. There are certain recommendations of the Subcommittee which have not been adopted in the Bill, and one proposal in the Bill which has not been discussed at the Subcommittee. In view of this, members are recommended to form a Bills Committee to consider the Bill in detail. Meanwhile, the Legal Service Division will continue to scrutinise the legal and drafting aspects of the Bill.

Prepared by

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