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LegCo Panel on Home Affairs

**Subcommittee on review of the
Building Management Ordinance**

**Minutes of meeting
held on Monday, 9 July 2001 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Hon Albert CHAN Wai-yip (Chairman)
Hon Albert HO Chun-yan
Hon Andrew WONG Wang-fat, JP
Hon CHOY So-yuk
Hon IP Kwok-him, JP

Member Attending : Hon LAU Ping-cheung

Members Absent : Hon Cyd HO Sau-lan
Hon Andrew CHENG Kar-foo

Attendance by Invitation : The Hong Kong Association of Incorporated Owners
Committees

Ms LIU Huan-yee
Chairman

Mr LEE Tze-wing
Secretary

Incorporation Owner of Rhine Garden

Mr SO Yiu-kwan
Deputy Secretary

Joint Conference of Members of Incorporated Owners and
Mutual Aid Committees of Buildings in Wanchai

Mr POON Fok-shing
Convenor

Mr LO Tin-sown
Consultant

Hong Lok Yuen Property Management Co Ltd

Mr CHAN Kam-fai
Director

Fairview Park Property Management Ltd

Ms Iris CHUI
General Manager

Mr Wilson CHAN
Administration Manager

Kai Shing Management Services Limited

Mr CHAN Shing-wai
General Manager (Property Management)

The Hong Kong Institute of Housing and Chartered
Institute of Housing - Hong Kong Branch

Mr Ricky YUEN
Chairman of Professional Practice Committee

Hong Kong Association of Property Management
Companies

Mr Simon SHAM
Chairman of Professional Practice Committee

Hong Kong Institute of Real Estate Administration

Mr Stanley WONG
Vice President

Association for Owners' Building Management Right

Mr TANG Ping
Secretary

Mr TAM Kwok-hung
Executive

Mr Raymond CHAN Wing-wai

The Incorporated Owners of Tai On Building, Shaukeiwan

Ms LAU Ying-han
The 10th administrative committee president

Ms KOO Kwan-ying
The 9th administrative committee treasurer

The Incorporated Owners of Tuen Mun Tai Hing Gardens,
Phase II

Ms LI Tsau-ha, Jessica
Chairperson

Public Officers : Mr Francis LO
Attending Principal Assistant Secretary for Home Affairs(5)

Mrs Kenny WONG
Assistant Director of Home Affairs (4)

Miss Stella CHANG
Assistant Secretary for Home Affairs(5)2

Mr MA Kam-ki
Senior Liaison Officer (Building Management)
Home Affairs Department

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Stanley MA
Senior Assistant Secretary (2)6

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The Chairman welcomed deputations/individual and representatives of the Administration to the meeting.

I. Meeting with deputations/individual

[Paper Nos. CB(2)1606/00-01(01)-(07), (09)-(16), CB(2)2018/00-01(01)-(05) and CB(2)2051/00-01(01)-(02)]

2. The Chairman said that the Subcommittee had received a total of 21 submissions to date. Of the 21 individuals/deputations which had given views on the matter, 13 of them would make representation at the meeting.

3. View and suggestions given by individual/deputations were summarised in the ensuing paragraphs.

The Hong Kong Association of Incorporated Owners Committees

4. Ms LIU Huan-ye presented the Hong Kong Association of Incorporated Owners Committees' submission [Paper No. CB(2) 2051/00-01(01)] which proposed a series of amendments to the Building Management Ordinance (BMO). The purpose of the amendments was to override provisions contained in the deeds of mutual covenant (DMCs) which were unfair to owners. In particular, Ms LIU highlighted the following proposed amendments -

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- a) An owners' corporation (OC) might, by a resolution of not less than 50% of owners (in terms of headcount) rather than of the owners of not less than 50% of the shares, terminate the building manager's appointment;
- b) An OC should be able to require a building manager appointed under a DMC to enter into a new three-year contract after its establishment;
- c) The Director of Lands should be empowered to set out criteria for fair calculation and allocation of undivided shares for common parts of composite and residential buildings;
- d) Owners of common parts of a building, who were invariably the developers, should not have voting rights at an OC's meeting; and
- e) Building manager should not be allowed to use the building fund to bring legal action against owners and/or individual members of OC.

5. Mr LEE Tze-wing also said that BMO should specify the election arrangements for the formation of a management committee (MC).

Incorporated Owners of Rhine Garden

6. Mr SO Yiu-kwong introduced the Incorporated Owners of Rhine Garden's submission [Paper No. CB(2) 1606/00-01(03)] which proposed that the number of shares required for terminating a building manager's appointment by an OC should be lowered from 50% to 30%.

Joint Conference of Members of Incorporated Owners and Mutual Aid Committees of Buildings in Wanchai

7. Mr POON Fok-shing presented the Joint Conference of Members of Incorporated Owners and Mutual Aid Committees of Buildings in Wanchai's submission [Paper No. CB(2) 1606/00-01(04)]. Notably, the Joint Conference was of the view that the Government should relax the requirement of 100% owners' agreement for merging two DMCs under a development occupying two lots of land to 75%. Mr LO Tin-sown also said that BMO should be amended to require owners of common parts of a building to pay management fees.

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Hong Lok Yuen Property Management Co. Ltd.

8. Mr CHAN Kam-fai introduced the Hong Lok Yuen Property Management Co. Ltd.'s submission [Paper No. CB(2) 1606/00-01(05)] which considered the BMO adequate to meet its legislative intent. On the issue of expanding the scope of BMO to cover the management of house-type properties, the Hong Lok Yuen Property Management Co. Ltd. considered this matter required careful consideration as house developments were by nature outside the ambit of the BMO. Furthermore, owners of individual houses or lots of land possessed different land rights which did not relate to each other. Any change or modification of the rights would have far reaching implications on the existing relationship between individual houses or lots.

Fairview Park Property Management Ltd.

9. Ms Iris CHUI introduced the Fairview Park Property Management Ltd.'s submission [Paper No. CB(2) 1606/00-01(06)]. Notably, Ms CHUI said that in order to facilitate on-going maintenance, developers should be legally required to provide the building manager with a complete set of drawings and records. In turn, building managers should also be required to keep these drawings in good conditions and professionally updated for major changes, and to pass the intact sets of drawings to the succeeding manager.

Kai Shing Management Services Limited

10. Mr CHAN Shing-wai said that he had nothing to add to the views given by Kai Shing Management Services Limited in its submission [Paper No. CB(2) 1606/00-01(07)]. Members noted that the views were similar to those given by the Hong Lok Yuen Property Management Co. Ltd.

The Hong Kong Institute of Housing and Chartered Institute of Housing - Hong Kong Branch, Hong Kong Association of Property Management Companies and Hong Kong Institute of Real Estate Administration

11. Mr Ricky YUEN took members through the joint submission by the above four organisations [Paper No. CB(2) 1606/00-01(09)] which comprised the following four suggestions -

- a) To remove the ambiguities on the appointment of a MC, section 3(2)(b) of BMO should be amended to the effect that if there was no DMC, or DMC contained no provision for the appointment of a MC, a MC might be appointed by a resolution of a simple majority of the owners of not less than 30% of the shares. This meant that no MC

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might be appointed if, say, owners of 31% of the shares voted against the motion and owners of 30% of the shares voted in favour of it;

- b) To avoid conflict of interest, convenor of the meeting to appoint a MC should not chair the meeting if he/she stood for election to serve on MC;
- c) To avoid the adjournment of an OC meeting to consider the expenditure relating to commercial or carpark portion of a mixed development, quorum at a meeting of OC stipulated in paragraph 5 of the Third Schedule to BMO should be amended. This was because flat owners, who invariably held the majority of the shares of a composite development, say, 92%, were usually not interested in attending an OC meeting to consider a proposal not concerning their own properties; and
- d) Paragraph 5 of the Seventh Schedule to BMO should be amended to allow a minimum percentage of management fee collected, say, 5%, be set aside to meet non-recurrent or capital expenditure.

Association for Owners' Building Management Right

12. Mr TANG Ping and Mr TAM Kwok-hung briefed members on the Association for Owners' Building Management Right's submission [Paper No. CB(2) 1606/00-01(10)]. The submission proposed various amendments to sections 12 and 38 of BMO and to the First Schedule, Second Schedule and Third Schedule to BMO. Mr TANG said that the Association was still in the process of reviewing BMO with a view to strengthening the accountability of MC members, having regard to the fact that at present many MCs failed to comply with the rules set out by BMO. He added that OC Chairmen failing to convene owners' meeting at the request of 5% of the owners was a case in point.

Mr Raymond CHAN Wing-wai

13. Mr Raymond CHAN briefed members on the salient points of his submissions [Paper Nos. CB(2) 1606/00-01(13) and (14)]. In particular, Mr CHAN was of the view that there should be provisions in BMO to improve the accountability of MC and safeguard the interests of owners. Moreover, action should be taken to educate the chairman and members of MC on the accounting principles and guidelines. To minimise legal cost, a mechanism operating in the form of a tribunal should be established by the Administration to reconcile minor management disputes among owners.

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The Incorporated Owners of Tai On Building, Shaukeiwan

14. Ms LAU Ying-han presented the views of the Incorporated Owners of Tai On Building, Shaukeiwan as detailed in its submission [Paper No. CB(2) 2018/00-01(01)]. In particular, the powers, responsibilities and liability of an OC should be reviewed. A Building Management Bureau should be established to enforce statutory requirements under BMO on the operation of an OC, particularly on procedures for tenders and financial accounts, and to co-ordinate education and publicity of good practices of building management, prepare related guidelines and codes of practices, etc. for the purpose of enhancing professional development of building management in Hong Kong on an on-going basis.

15. Ms KOO Kwan-ying supplemented that the power given to MC members was too great and should be counter-balanced by new provisions in BMO to improve the accountability of MCs.

The Incorporated Owners of Tuen Mun Tai Hing Gardens, Phase II

16. Ms LI Tsau-ha briefed members on the submission of the Incorporated Owners of Tuen Mun Tai Hing Gardens, Phase II [Paper No. CB(2) 2051/00-01(02)]. She highlighted the following points -

- a) BMO should provide the Home Affairs Bureau and the Home Affairs Department (HAD) with the appropriate powers and authority to resolve conflicts between developers and owners on matters relating to building management;
- b) BMO should be amended to the effect that a DMC might be amended by a resolution of not less than 75% of the shares at an OC meeting;
- c) The number of shares required for terminating a building manager's appointment by an OC should be lowered from 50% to 30%;
- d) Legal liabilities of OC members should be clearly stipulated in BMO; and
- e) BMO should stipulate that the common parts specified in DMCs should be the same as those specified in the First Schedule . This was to rectify the existing deficiency whereby developers did not have to pay management fees for the common parts specified in paragraphs 13 and 14 of the First Schedule.

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Discussion

17. Mr Albert HO concurred with the depositions that HAD should render more support to OCs, say, by acting as a mediator to resolve building management disputes among owners, and issuing various guidelines to assist OCs in managing their buildings. He added that consideration could be given to streamlining the adjudication process of the Lands Tribunal. Mr HO also concurred with the suggestions that there should be provisions in BMO stipulating the arrangements and procedures for electing people to serve on a MC, and the powers and responsibilities of MC members. However, Mr HO considered the proposed amendment to section 3(2)(b) of BMO to the effect that a MC might be appointed by a resolution of a simple majority of the owners of not less than 30% of the shares not necessary. In his view, no resolution would be passed if owners of only 30% of the shares supported whereas owners of 35% of the shares voted against the motion. Mr HO further said that he was pleased that the Hok Lok Yuen Property Management Co. Ltd, and the Fairview Park Property Management Ltd. had no strong objection to the proposal of expanding the scope of BMO to cover house-type properties. He urged the Administration to re-consider this proposal which was in the best interests of owners.

18. Mr Andrew WONG said that although the President of the Legislative Council (LegCo) had ruled in June 2000 that amendments seeking to extend the application of BMO to house-type properties were not relevant to the subject matter of the Ordinance, it did not mean that no amendment could be made to BMO to override the terms and conditions of DMCs. The reason why the President had made such a ruling was because the aforesaid proposed amendments were beyond the ambit of the Building Management (Amendment) Bill 2000. The Chairman concurred with Mr WONG, adding that certain terms and conditions of DMCs had been overridden by BMO in the past.

19. Noting the various deficiencies mentioned by some depositions in their submissions about the appointment of proxy, Mr Albert HO asked about the measures which could be adopted to address such deficiencies. Ms LAU Ying-han of the Incorporated Owners of Tai On Building, Shaukeiwan responded that in order to prevent people from falsifying the instrument appointing a proxy in writing, a mechanism should be put in place to verify the authenticity of such instruments, notably signatures of owners. Moreover, a limit should be set on the number of proxies to be appointed by one owner for an owners' meeting. Mr TAM Kwok-hung of the Association for Owners' Building Management Right said that the proxy system was useful as not every owner could attend owners' meeting all the time. He further said that to avoid any abuse of the proxy system, the best way was to ensure the authenticity of the instrument appointing a proxy in writing. Mr TAM further said that people who had violated DMC should be

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prohibited from serving on MC. Ms LIU Huan-ye of the Hong Kong Association of Incorporated Owners Committees said that another way of deterring people from falsifying the instrument appointing a proxy in writing was to publicise the proxy list within the building premises prior to the owners' meeting.

II. Meeting with the Administration

20. At the Chairman's invitation, Principal Assistant Secretary for Home Affairs 5 (PAS(HA)5) gave a preliminary response to deputations' views expressed at the meeting as follows -

- a) Previous amendments to BMO to override certain terms and conditions of the DMCs only involved changes to procedural matters and termination of the appointment of building manager and did not involve changes which would affect private property rights. The reason for not introducing legislative amendments which would affect private property rights thus far was because the Administration considered it inappropriate to interfere with a DMC which was in essence a private contract between the developer and owners;
- b) Due to the need for respecting private property and contractual rights and obligations, HAD had refrained from involving itself in resolving building management disputes of such nature among owners. Notwithstanding, HAD for years had endeavoured to reconcile building management disputes and performing an advisory and liaison role in providing assistance to OCs;
- c) The Administration would give some preliminary thoughts to the suggestion of setting up a body to assist owners to resolve building management disputes, in addition to the existing advisory and liaison roles of HAD and the adjudication by the courts and the Lands Tribunal; and
- d) The Administration agreed with the observation of Mr Albert HO about section 3(2)(b) of BMO in paragraph 17 above. The Administration would consider improving the clarity of the provision during the next round of legislative amendments to BMO.

21. Mr LEE Tze-wing of the Hong Kong Association of Incorporated Owners Committees disagreed with the Administration's rationale for not introducing amendments to BMO to override terms and conditions of DMCs as stated in paragraph 20(a) above. He pointed out that there were legislation governing the

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sale of private property in order to safeguard the rights of the parties concerned. Mr LEE further urged the Administration to establish a body to assist owners to resolve building management disputes, thereby obviating the need to seek redress from the courts or the Lands Tribunal.

22. Mr LO Tin-sown of the Joint Conference of Members of Incorporated Owners and Mutual Aid Committees of Buildings in Wanchai clarified that although the Joint Conference proposed that the terms and conditions of DMCs could be amended by a resolution of 75% owners, such a resolution could not come into effect without ratification by the court.

23. Mr TAM Kwok-hung of the Association for Owners' Building Management Right was of the view that owners of carpark who were not living in the building should not be permitted to serve on the MC of the building concerned. Mr TAM also expressed concern that HAD staff rarely pointed out and rectified irregularities when they observed the proceeding of owners' meetings.

24. Ms LI Tsau-ha of the Incorporated Owners of Tuen Mun Tai Hing Gardens, Phase II echoed the views expressed by Mr LEE Tze-wing in paragraph 21 above. Ms LI remarked that the main reason why HAD staff failed to speak out against any irregularities at the owners' meetings was because they did not have the power to bring charges against people who failed to adhere to the rules set out in BMO. To remedy the situation, BMO must be amended to empower HAD staff to do so.

25. In response to the suggestion of a deputation that the composition of the Subcommittee should include members of the public, the Chairman explained that membership of LegCo's committees would comprise LegCo Members only. However, the Subcommittee would very much welcome any view and suggestion from the public.

26. With reference to the Administration's position about DMC as a private contract, the Chairman said that although DMC was a private contract between a developer and owners, it did not necessarily mean that the Administration played no role in the formulation of DMC. This was because the developer had to submit DMC to the Lands Department for approval before DMC could come into effect. On the question of establishing another body to resolve building management disputes, the Chairman suggested that the Administration could make reference to the operation of the Labour Tribunal.

27. Mr Albert HO said that BMO should have provisions forbidding building manager from using building funds to pay for legal expenses for the protection of their own interests. Mr HO was also of the view that decisions made by an OC should have retrospective effect as practised by company laws. As building

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management embraced a wide spectrum of expertise like maintenance, accountancy, insurance, law and other specialties. Mr HO added that HAD should produce booklets on the procedures of forming OCs and on effective building management, as well as rulings made by the courts on building management cases.

28. PAS(HA)5 said that the Administration would carefully consider the views given by deputations and members. PAS(HA)5 further said that some \$20 million had been allocated to HAD in the current financial year to promote effective building management in private multi-storey buildings and assist owners in the formation of OCs and tackling management problems in such buildings. This sum would increase to over \$40 million in the next financial year. To this end, more staff, including professional grade staff to provide advice internally to HAD's staff, would be recruited to render better support to building owners. Apart from this, HAD would continue to step up its work to enhance the knowledge and awareness of effective building management among the public by conducting a series of promotional programme, including talks, training courses, seminars, workshops and experience-sharing sessions for OCs, mutual aid committees and building management personnel in the private sector on a regular basis. A third Building Management Resource Centre would be set up in Tsuen Wan later in the year to strengthen the services and support to owners and OCs of private buildings in the New Territories.

29. In summing up, the Chairman said that the issues raised by deputations would be discussed in detail at future meetings.

III. Any other business

30. There being no other business, the meeting ended at 6:30 pm.

Legislative Council Secretariat
20 November 2001