

**Legislative Council Panel on Home Affairs  
Subcommittee on Review of the  
Building Management Ordinance (Cap. 344)  
Meeting on 27 April 2001**

**Purpose**

This paper addresses the issues raised in the letter dated 4 April 2001 from the Clerk to Subcommittee to the Administration. The issues are:

- (i) formation of owners' corporation;
- (ii) provisions of deeds of mutual covenant (DMC);
- (iii) meetings and procedure of owners' corporation;
- (iv) composition and procedure of management committee;
- (v) liabilities of members of owners' corporation; and
- (vi) ambit of the Building Management Ordinance (BMO).

**Formation of owners' corporation (OC)**

*House development*

2. The feasibility of forming OCs for house developments was considered in 2000 by the Bills Committee on the Building Management (Amendment) Bill 2000. Having considered some of the Committee Stage Amendments proposed by Members and legal advice, the President of the Legislative Council ruled in June 2000 that "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". The Administration fully agrees with the ruling. The objectives of the BMO, previously known as the Multi-Storey Buildings (Owners' Incorporation) Ordinance are to facilitate the incorporation of owners of flats in buildings and to provide for the management of such buildings. A house is not a flatted building. Management of house-

type properties is akin to land management rather than management of buildings. House developments are therefore by nature outside the ambit of the BMO. In some cases, the ownership of house developments, like flatted buildings, is structured by undivided shares, so OCs can be formed under the BMO and there is no prohibition against that. Otherwise, the management of house developments needs to be addressed outside the BMO. Please see paragraph 3 below on a recent positive example.

3. As stated above, management issues of house-type developments need to be dealt with outside the context of the BMO. In this connection, we are pleased to report to the Subcommittee a recent positive development: through the intensive liaison efforts by a District Office of the Home Affairs Department, the management company of a house development is finalizing the procedure for the establishment of a management advisory committee which will comprise owners' representatives, the relevant District Council member and representatives of the management company. The management advisory committee will provide a forum for the owners and the management company to exchange views on a broad range of matters, thus ensuring that the views of the owners will be reflected to the company for consideration and action. We consider that this is a positive development in the right direction, and hope it would set a good example for other house-type developments without undivided shares.

#### *Proxy*

4. Under section 5(5)(b) of the BMO, at a meeting of the owners convened under section 3, 3A, 4 or 40C, a vote may be cast either personally or by a proxy appointed in accordance with paragraph 4(2) of the Third Schedule which stipulates that the "instrument appointing a proxy shall be in writing signed by the owner". The Administration considers that allowing the appointment of proxy encourages and facilitates owners' participation in building management. Appointing a proxy is a conscious decision of an owner. In deciding whether to appoint a proxy, the owner needs to have regard to the agenda of the meeting and the issues to be discussed.

### *Quorum*

5. Section 3 of the BMO stipulates that a meeting of the owners to appoint a management committee may be convened by owners of not less than 5% of the shares. The Administration considers that this requirement is not difficult to comply with and that it facilitates convening a meeting of the owners with a view to appointing a management committee.

### *Representatives of blocks*

6. Insofar as meetings of the owners are concerned, the BMO provides that the undivided shares shall form the basis of decision-making. The OC so formed will represent all the owners within the development covered by the DMC. The notion of introducing a new category of “block representatives”, either as a substitute for or an addition to the management committee, may unduly complicate the structure of the BMO and the decision-making process of the OC. This may also contravene the relevant provisions of the DMC. The Administration has reservations about the notion but will be pleased to listen to the views of Members.

### **Provision of deeds of mutual covenant (DMCs)**

#### *Amendments to the terms and conditions of DMCs*

7. This issue had been considered by the Bills Committee on the Building Management (Amendment) Bill 2000. After consideration, the President of the Legislative Council ruled in June 2000 that “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”. The Administration fully agrees with the ruling. A DMC is a private contract between the developer and owners, stipulating the property rights and obligations of the parties concerned. The Administration is not a party to the contract and is therefore

not in a position to meddle with its terms and conditions, especially those which affect the property rights of the parties concerned.

### *Termination of manager's appointment by OC*

8. Since 1993, the BMO has provided a mechanism for OC to terminate manager's appointment. Paragraph 7 of the Seventh Schedule to the BMO stipulates that at a general meeting convened for the purpose, an OC may, by a resolution of the owners of not less than 50% of the shares, terminate by notice the manager's appointment without compensation. The Building Management (Amendment) Ordinance 2000 has amended paragraph 7 of the Seventh Schedule to the effect that for the purpose of termination of manager's appointment by an OC, only the owners of shares who pay or who are liable to pay the management expenses relating to those shares shall be entitled to vote. The Administration is of the view that the above mentioned provisions have struck a balance between the interests of the owners and those of the manager.

### **Meetings and procedure of OC**

#### *Notice of owners' meeting*

9. Under paragraph 2 of the Third Schedule to the BMO, notice of a meeting of owners shall be served by the secretary of the management committee upon each owner at least 14 days before the date of the meeting. The Administration is of the view that this provision has been working well. We however have an open mind and would be pleased to listen to Hon. Members' views.

#### *Quorum of an owners' meeting*

10. Under paragraph 5(1) of the Third Schedule to the BMO, the quorum at a meeting of the OC shall be 20% of the owners, in the case of a meeting at which a resolution for the dissolution of the management committee under Section 30 is proposed; or 10% of the owners in any

other case. The Administration is of the view that these requirements are not difficult to comply with, and that adding another standard may lead to confusion rather unnecessarily. We would be pleased to listen to the views of Hon. Members on this.

#### *Voting right of shares which do not pay management fees*

11. As discussed in paragraph 8 above, under paragraph 5A of the Seventh Schedule to the BMO, owners of shares who are not liable to pay management expenses are not entitled to vote in determining whether the manager's appointment should be terminated. The rights of such shares are therefore already limited in this context. We have reservations about limiting the rights of these shares, which are private property of the owners concerned, to the extent that they would not be counted for the purpose of forming the quorum. To do so may contravene Article 26 of the International Covenant on Civil and Political Rights and Article 22 of the Hong Kong Bill of Rights Ordinance which expressly prohibit against discrimination. Indeed, the rights and obligations of these shares are defined in DMCs which are private contracts entered into by the owners concerned and can only be amended by the parties to the DMCs.

### **Composition and procedure of management committee**

#### *Secretary and treasurer*

12. Under paragraph 2(1) of the Second Schedule to the BMO, a meeting convened under section 3, 3A, 4 or 40C shall appoint a secretary and a treasurer of a management committee. The persons so appointed may be, but need not be, members of the management committee. In other words, an OC is free to appoint the secretary and the treasurer from amongst the members of the management committee. In such a situation, the management committee members appointed as the secretary and the treasurer are required to retire with other management committee members under paragraph 5(1) of the Second Schedule. In other situations, the management committee may decide to co-opt non-management committee members, such as staff of building management company, to serve as the secretary and the treasurer. The provision in

the existing paragraph 2(1) of the Second Schedule provides due flexibility for the owners to decide whether they should enlist assistance of non-management committee members to facilitate the discharge of the OC's duties. If the owners consider that the appointments of the secretary and the treasurer (who are not management committee members) should be terminated at the same time with the management committee, this can be achieved by either specifying such a requirement in the original appointment of the secretary or the treasurer, or by way of a resolution at a meeting of the owners before the appointments expire.

*Liabilities of members of OC*

13. Under normal circumstances, the collective liabilities of an OC should not and cannot be transferred to individual members of an OC. If an individual member of an OC out of his own accord commits an offence, he will of course be held liable for the offence. Prima facie, it seems inappropriate to give a blanket exemption to the individual members of the OC from the criminal and civil liabilities incurred by the OC as each case has to be considered on its own merits. The Administration would nonetheless be pleased to listen to the views of Hon. Members in this respect.

*Ambit of the BMO*

14. The Administration would be pleased to listen to the views of Hon. Members on the ambit of the BMO.

**Home Affairs Bureau**  
**April 2001**