

14 May, 2001.

Miss Flora Tai  
Clerk to Subcommittee on Review  
of the Building Management  
Ordinance (Cap. 344)  
Legislative Council  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong.

Thank you for your letter of 28 April 2001. We (Tai/Lo) thoroughly discussed the content of the letter. As discussed, I wish to put the following on record.

Item (a) – formation of owners’ corporations (OCs) by owners of house developments holding divided shares

At the meeting of the Subcommittee on 27 April 2001, I emphasized that under Cap. 344, the decision making process of an OC was premised on ownership of undivided shares. Owners of house developments own land lots or divided shares. Moreover, their properties are houses as opposed to flatted buildings. Therefore both their ownership structure and nature of property do not quite fit in the ambit of Cap. 344 (paragraph 2 of the Administration’s paper for the meeting of the Subcommittee on 27 April 2001 refers). I have agreed to conduct preliminary discussions with my colleagues in the Department of Justice to ascertain whether and how Cap. 344 could be expanded to accommodate house developments. It would be premature for the Administration to put forward legislative proposals in this regard.

Item (b) – developer holding the majority of undivided shares in a house development

At the meeting of the Subcommittee on 27 April 2001, I refer members to paragraph 7 of the Administration’s paper. I emphasized that we should be extremely cautious in contemplating legislative measures to override the terms and conditions of deeds of mutual covenant (DMCs) which were private contracts between the developers and owners stipulating the rights and obligations of the parties concerned. The Government is not a party to the contract and is therefore not in a position to meddle with the terms and conditions in the DMCs, particularly those which affect the property rights and obligations of the parties concerned. I have not undertaken to put forward legislative proposals in this regard.

Item (c) – examples of house developments

The Director of Home Affairs has advised that there are two relatively significant house developments where the shares of the owners are “divided”. These two developments are Fairview Park in Yuen Long and Hong Lok Yuen in Tai Po.

Item (d) – “remedy” to owners subject to “unfair” DMCs

Please refer to item (b) above.

Item (e) – 10% of owners’ shares to form OC

Pursuant to S.4 of Cap. 344, the Lands Tribunal may, upon application by the owners of not less than 10% of the shares, order that a meeting of owners shall be convened by such owner as the Tribunal may direct to appoint a management committee. Cap.344 therefore already provides for this.

Item (f) – list of building management problems arising from unfair DMCs

A DMC is a private contract between the developer and owners stipulating the property rights and obligations of the parties concerned. Whether the terms and conditions of a DMC are considered to be unfair can be rather subjective and judgmental. It very much depends on a party's property and other vested interests. The Administration is not a party to DMCs. It would therefore be inappropriate for the Administration to contemplate to judge whether the terms and conditions of a particular DMC are fair or unfair. Based on the above analysis, I trust that you will understand that the Administration is not quite in a position to provide you with a list of building management problems arising from "unfair" DMCs.

Item (g) – public consultation exercise on the review

The Administration's recollection is that the Subcommittee considered to conduct a public consultation exercise. I said that the Building Management Resource Centres (BMRCs) of the Home Affairs Department could assist in the context that the Subcommittee's letters and leaflets could be placed in the BMRCs for the public's collection. I have not undertaken to conduct a public consultation exercise.

I trust that the above has set the record straight.

With warm regards,

Yours sincerely,

(Francis Lo)  
for Secretary for Home Affairs

c.c. DHA