

LegCo Panel on Home Affairs

Subcommittee on review of the Building Management Ordinance

A summary of proposals on amendments to the Building Management Ordinance

(up to 3 March 2004)

Part I - Members' views/suggestions which were covered in the Administration's consultation paper

	Members' views	Results of the consultation/way forward
<u>Personal liabilities of members of a management committee (MC) for the decisions of an owners' corporation (OC)</u>		
1.	<i>To add an express provision so that management committee members of an OC would not be held personally liable for any collective decision of the OC, which is neither ultra vires nor tortious, solely on the ground that they are members of the management committee.</i>	
	Members consider that an express provision should be incorporated in Building Management Ordinance (BMO) for the purpose of preventing the transfer of the liabilities of an OC to individual members of the Management Committee (MC) of that OC because -	Comments received from various fronts are generally in support of the proposal, on the understanding that it would help encourage greater participation of owners in the work of OCs. Some professional bodies have expressed concern that a blanket exemption of liability would encourage MC

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	<p>(a) members of an MC can apply for a striking out order in court on the basis of the relevant statutory provisions under BMO, instead of going through the legal proceedings;</p> <p>(b) the cost of legal proceedings can be reduced if an express provision protecting members of an MC from legal liabilities for a collective decision of an OC is provided under BMO; and</p> <p>(c) incorporation of an express provision would facilitate the Lands Tribunal or the High Court to exercise its discretion in striking out the name of a member of an MC from the proceedings.</p>	<p>members to make unreasonable decisions which may not be in the interest of the majority of owners. To avoid this, the Administration would build in assurance in the amendment bill that MC members would still be liable to collective responsibility, and ultra vires and tortious acts are not covered. The proposed amendment has not given any extra "protection" to MC members but only serves to give them explicit assurances.</p>
<p><u>Termination of appointment of the deeds of mutual covenant (DMC) manager by an OC</u></p>		
<p>2.</p>	<p><i>To specify in BMO that paragraph 7(1) of the Seventh Schedule shall only be used to terminate the DMC manager's appointment and to remove the provision that not more than one manager can be terminated within any three consecutive years.</i></p>	
	<p>Members raised no objection to the proposal. They have expressed concern that many DMC managers simply carry on providing their services for the buildings concerned after the expiry of the initial period of management</p>	<p>Having considered the views received, the Administration will go ahead with the proposal.</p>

Members' views	Results of the consultation/way forward
<p>stipulated in the DMC without being subject to any review mechanism of their performance.</p>	
<p>3. <i>To provide an alternative mechanism whereby an OC can terminate the appointment of the DMC manager upon a resolution passed by a majority of the votes of the owners present (or by proxy) at a general meeting, provided that a quorum of 20% of owners has been met at that meeting and a new manager has been effectively appointed upon termination of the DMC manager's appointment.</i></p>	
<p>Members have expressed support for the Administration's proposal to provide for a more effective alternative mechanism for an OC to terminate appointment of the DMC manager. They have also expressed the following views -</p> <ul style="list-style-type: none"> (a) the resolutions for the actual appointment of a new manager and for the termination of the appointment of an existing manager should preferably be passed at the same general meeting; (b) references and guidelines for the termination of the first and subsequent manager should be provided for OCs to follow; and (c) the percentage of owners required for implementing the proposed alternative mechanism should be adjusted to 20%, in line with the requirement for 	<p>The proposal was one of the most controversial ones in the consultation exercise. While most of the owners, OCs and District Councilors and certain professional organizations strongly support the amendment, real estate developers, property management companies and associations and some professional organizations are strongly opposed to the amendments.</p> <p>The Administration agrees that the proposal to change the threshold of terminating the appointment of the DMC manager from 50% to a simple majority present at an owners' meeting will mean a drastic change to the existing mechanism. Moreover, since the allocation of undivided shares is different amongst buildings (especially for buildings which were built prior to the adoption of the Lands Department's DMC Guidelines in 1987), it is difficult to set a specific threshold which will suit the circumstances of all buildings.</p>

Members' views	Results of the consultation/way forward
<p>passing a resolution to dissolve an existing OC at a general meeting.</p>	<p>The Administration will, in consultation with all stakeholders, re-consider the proposal to relax the existing requirements for terminating the appointment of DMC manager.</p>
<p><u>Appointment of a management committee</u></p>	
<p><i>4. To specify that the first management committee may be appointed by a resolution of the owners of not less than 30% of the shares, and the resolution must also be passed by a majority of the votes of the owners voting either personally or by proxy at the same owners' meeting.</i></p>	
<p>Hon Albert HO considers that the proposed amendment is not necessary because no resolution will be passed if owners of only 30% of the shares support the motion while owners of another 35% of the shares against the motion.</p>	<p>The proposal received general support. The Administration would go ahead with the proposal to make it clear that the resolution under section 3 of the BMO must be passed by a majority of votes of not less than 30% shares.</p> <p>In view of the other problems in application of section 3 of the BMO in the past, the Administration proposes to further amend section 3(2) as detailed in proposals 12 and 13.</p>

Members' views	Results of the consultation/way forward
<u>Appointment of members and holders of office of the first management committee</u>	
<p>5. <i>To specify that members and holders of office of the MC have to be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy at the same owners' meeting at which the first MC has been successfully appointed, provided that there is a quorum of 10% of owners at that meeting</i></p>	
<p>Members have expressed support for the Administration's proposal to adopt the quorum requirement of 10% of owners for the appointment of individual members of an MC because it will ensure greater participation of owners in the affairs of OC and will not create additional difficulties for the conduct of OC meetings. However, Hon Andrew WONG is of the view that it should be specified in the principal Ordinance instead of in a schedule.</p>	<p>The proposal received extensive support from the respondents. The Administration would go ahead with the proposal.</p> <p>Having considered the practical implications, the Administration also proposed to refine the original proposal as follows -</p> <ul style="list-style-type: none"> (a) For an owners' meeting convened with a view to appointing an MC for the formation of an OC under sections 3, 3A, and 4, the quorum of 10% of owners should apply for the whole meeting; (b) Once a resolution has been passed on the appointment of an MC under sections 3, 3A and 4, the appointment of the members and office bearers of the MC shall be appointed by a resolution passed by a simple majority of votes (shares). The 10% quorum requirement remains.

Members' views	Results of the consultation/way forward
<u>Appointment of members and holders of office of any subsequent management committee</u>	
6.	<i>To specify that an OC shall, by a resolution passed by owners at an annual general meeting of the OC at which the existing management committee retires, appoint a new management committee, its members and holders of office</i>
	<p>Members have expressed support for the Administration's proposal to specify that MC members should hold office until a new MC is appointed and assume office at the next annual general meeting of the DC.</p>
	<p>The proposal received general support during the consultation. The Administration will refine the provisions regarding the appointment of the secretary and the treasurer of the MC as detailed in proposal 16.</p>
<u>Procurement of supplies, goods and services by an OC</u>	
7.	<i>To delete the provisions on tendering requirement from the Code of Practice on procurement of supplies, goods and services issued by the Secretary for Home Affairs, so that any procurement with a value exceeding the prescribed threshold has to be done through tendering in accordance with the BMO</i>
	<p>Members have expressed support for the Administration's proposals to improve the procedural requirements regarding procurement of supplies, goods and services. Members, however, consider that contracts on renewal should only be required to be approved by the OC without the need to invite tenders.</p>
	<p>The proposal has attracted heated debates. While many respondents supported strengthening of the requirements for procurement in the BMO, there were arguments for and against the proposed threshold.</p>

Members' views	Results of the consultation/way forward
<p>8. <i>To lower the minimum percentage of an OC's annual budget for the purpose of tendering from the existing 20% to 10%, and to include a requirement that any tender of a value exceeding a sum equivalent to 10% of the annual budget of an OC has to be accepted or rejected by a resolution passed at a general meeting of an OC</i></p>	
<p>Members have pointed out that it is not uncommon that some OCs do not prepare their annual budgets. Hence, it will be more appropriate to refer to 10% of the annual expenditure instead of annual budget of an OC in the proposed amendments.</p>	<p>Some respondents regard 10% of the annual budget to be too huge a sum (10% could mean millions for the large estates) while others, mostly office-holders of MC and the property managers, regard it too minimal to require tendering and endorsement at owners meetings. On the other hand, 10% of the annual budget may only mean at most thousands of dollars for single block tenement buildings. There is also a suggestion for a tiered system to cater for buildings of different sizes.</p> <p>Taking all the views into consideration, the Administration have refined the proposal as follows -</p> <ul style="list-style-type: none"> (a) any procurement of supplies, goods and services which exceeds the sum of \$200,000 (\$100,000 in the original proposal) or a sum which is equivalent to 20% (10% in the original proposal) of the annual budget of the corporation (or such other sum or percentage in substitution which may be specified in the Gazette), whichever is the lesser, shall be done by invitation to tender; and

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		<p>(b) any procurement of supplies, goods and services which exceeds the sum of 20% (10% in the original proposal) of the annual budget of an OC(or such other percentage in substitution which may be specified in the Gazette) shall be accepted or rejected by a resolution passed at a general meeting of the OC.</p> <p>The Administration will work with the Department of Justice (DoJ) during the drafting of the amendment bill to allow OCs to formulate a list of urgent matters which do not need to go through the normal process of tendering and owners' meetings. This list must be pre-approved by owners at a general meeting. Any procurement which is not within the pre-approved list should follow the necessary tendering procedure and going through the owners' meeting.</p>
9.	<i>To add a punitive clause for non-compliance with the above requirements</i>	
	<p>Members have expressed reservations about the proposed punitive clause. A majority of members have suggested that while a punitive clause is necessary to ensure compliance with procedural requirements regarding procurement of goods and services, the wording of the punitive clause should be revised so that only those members of an MC who have been involved in the award of the contracts concerned should bear the criminal liability</p>	<p>Many respondents were strongly against the insertion of the punitive clause, arguing that the introduction of the clause would discourage owners from participating in the voluntary work of OCs and serve no healthy purpose. On balance, the Administration proposes to do away with such a clause in the amendment bill and allow non-compliance to be dealt with through civil means.</p>

Members' views	Results of the consultation/way forward
<p>for contravening the procedural requirements, and the onus of proof should lie on the prosecution instead of members of an MC. Hon Andrew CHENG, however, holds a different view. He has pointed out that civil proceedings to resolve disputes over abuse of management funds are preferable to criminalization of contravention of the procurement procedures as such punitive clause would discourage owners from participating in the work of an MC.</p>	
<p><u>Power of an OC to borrow money from the government in compliance with certain statutory notices, orders or other documents</u></p>	
<p><i>10. To empower an OC to borrow from the Government, on behalf of those individual owners who fail or refuse to pay, for the purpose of complying with statutory notices, orders or other documents which relate to the common parts of a building</i></p>	
<p>Members raised no objection to the proposal.</p>	<p>While the response to the proposal is largely positive, some were concerned about the potential danger of abuse by the OCs in exercise of such power. Many urged the Government to introduce a mechanism with detailed procedures for the Administration to vet and process the OCs' applications and an appeal mechanism for the owners concerned.</p> <p>The Administration considers the chance of abuse on the part of OCs would be reduced or avoided under the current proposal which is confined solely to statutory notices and orders. By restricting the OCs' borrowing power to cases</p>

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		<p>involving statutory orders and notices, unnecessary disputes among owners could also be avoided. The Administration is now considering the detailed requirements and arrangements under which an OC can exercise the borrowing power in consultation with departments concerned.</p>
<p><u>Individual owners' rights to obtain copies of certain building management documents from an OC</u></p>		
<p>11.</p>	<p><i>To provide for the owners' rights to obtain copies of minutes of meetings of both OCs and management committees upon payment of reasonable copying charges</i></p>	
	<p>Members have expressed support for the Administration's proposal. Hon Albert CHAN has suggested that the provision should cover other building management documents and that the charge should be specified in BMO so as to prevent MCs from over-charging owners in order to deter them from obtaining the documents.</p>	<p>The principle of the proposed amendment is supported by an absolute majority of the respondents. The only concern is that the term "reasonable copying charge" may cause disputes between owners and the OCs.</p> <p>The Administration does not consider it appropriate to stipulate the level of copying charges in the legislation. To complement the proposed amendment, the Administration will also require an MC to keep the minutes of meetings for a period of not less than six years. In addition, the Administration will expand the scope of the amendment to cover the auditor's report of the OC.</p>

Part II - Members' views on new amendments proposed by the Administration

	Members' views	Justifications for the proposed amendment
<u>Appointment procedures of a management committee</u>		
12.	<i>To amend section 3(2) so that an MC formed under the BMO may only be appointed by a resolution of the owners of not less than 30% of the shares, which must also be a majority of votes cast at the same meeting.</i>	
	<p>The Chairman suggests that HAD should specify a deadline, say three years, for the existing 58 OCs registered in the Land Registry in accordance with the DMC provisions to retire so that new MCs can be established in accordance with the BMO requirements within a specified period.</p>	<p>The amendment will remove ambiguity in the legislation as to whether an MC should be appointed in accordance with the DMC or the BMO.</p> <p>Following the amendment, all references to the DMC in the Second Schedule to the BMO concerning the composition and procedure of an MC should also be deleted. This means that the composition and procedure of the MC formed under section 3 of the BMO should follow the BMO instead of the DMC.</p> <p>Only 58 of the 7 000 OCs registered in the Land Registry were formed under section 3(2)(a) (i.e., in accordance with the DMC provisions rather than the BMO provisions) will remain valid upon the enactment of the proposed amendment. These MCs would be required to follow the BMO requirements on composition and procedures as set out in the revised Second Schedule when the incumbent MC retires at the second alternate annual general meeting</p>

Members' views	Justifications for the proposed amendment
	of the corporation in accordance with paragraph 5(1) of the Second Schedule.
<p>13. <i>To include a provision in section 3 of the BMO to remind owners of the necessity to make reference to the voting rights of shares which are specified in the DMC</i></p>	
<p>The Chairman pointed out that some DMCs might stipulate a disproportionate distribution of undivided shares and management shares between the residential and non-residential portions in a building or development. This has given rise to the problem of disproportionate distribution between voting rights and management liability whereby residential owners are shouldering more management expenses while possessing less voting rights, whereas non-residential owners (invariably the developers) hold more voting rights but shoulder less management liability. The Chairman considers that the voting rights of individual owners for the establishment of an MC should be determined on the basis of the management shares instead of the undivided shares. Hon CHOY So-yuk shares the view of the Chairman's view.</p>	<p>Under the BMO regime, ownership of multi-storey buildings takes the form of co-ownership in common with others of the land. Right of ownership is expressed in the form of <i>undivided shares</i> (not management shares). Section 2 of the BMO provides that an "owner" means "a person who for the time being appears from the records at the Land Registry to be the owner of an <i>undivided share</i> in land on which there is a building." Section 39 of the BMO provides that an owner's share shall be determined in the manner provided in an instrument including a DMC which is registered in the Land Registry. As such, it is not practical to adopt management shares as the basis for voting at owners' meeting.</p> <p>The crux of the question is on the voting rights of the shares. Provisions in DMC regarding voting rights may have significant implications for the calculation of the 30% shares required for the appointment of an MC. This is especially for the cases of DMCs approved since 1999 as these DMCs normally contain a provision to the effect that undivided shares allocated to the common areas shall not carry any voting rights, nor shall such undivided</p>

	Members' views	Justifications for the proposed amendment
		<p>shares be taken into account for the purpose of calculating the quorum of any meeting. The Administration proposes to highlight this point in the BMO to remind owners to make reference to the DMCs with regard to voting rights.</p>
<p>14.</p>	<p><i>To specify in the BMO that for owners' meetings convened under section 3(1)c (by owners of not less than 5% of the shares), the owners should nominate among themselves a person to preside over the meeting.</i></p>	
	<p>Hon Andrew CHENG suggests that HAD should review and specify the procedures for the issue of a certificate of waiver to owners holding not less than 5% of the undivided shares. The Chairman also suggests that HAD should require these owners to nominate among themselves a person to preside over the first owners' meeting and coordinate for the necessary preparation work for the meeting before the issue of the certificate of waiver.</p>	<p>The person so nominated should also be the one to serve the notice of meeting under section 5(1)(b). This will avoid the situation of having a group of owners (5% could mean tens or hundreds of owners in the cases of large estates) to be the person presiding over the meeting.</p>
<p>15.</p>	<p><i>To amend the Second Schedule to delete references to DMC and to provide owners with the discretion to decide whether a vice-chairman is need in the MC for the management of the building</i></p>	
	<p>Some members expressed concern that a DMC might specify the establishment of an OC/MC in accordance with the BMO, and incorporate a compulsory provision on election of a vice-chairman. They suggest the</p>	<p>Paragraph 2(c) of the Second Schedule restricts those buildings whose DMC had not specified the vice-chairman post from appointing such a post. It is also confusing if the OC has to refer to the DMC on such appointment</p>

Members' views	Justifications for the proposed amendment
<p>Administration to consider stipulating in the proposed amendment that the provisions in BMO should override the provisions in DMCs on election of a vice-chairman.</p>	<p>matter if the MC itself is appointed under the BMO.</p> <p>The Administration is of the view that the composition of the MC should be set out in BMO and that owners should be given the discretion to decide whether a vice-chairman is needed in the MC for the management of the building.</p>
<p>16. <i>To specify in the Second Schedule that all secretaries and treasurers, no matter whether they are members of the MC or not, should retire together with other members of the MC under paragraph 5(1) of the Second Schedule at the second and alternate annual general meeting of the OC.</i></p>	
<p>Members have not raised objection.</p>	<p>MC secretary and treasurer appointed under paragraph 2(1) of the Second Schedule may be but need not be an MC member. Secretary and treasurer who are also MC members will be required to retire with other MC members under paragraph 5(1) of the Schedule at the second annual general meeting of the OC, but those who are not MC members are not required to do so. This has sometimes caused disputes among MC members.</p> <p>The Administration is of the view that the secretary and treasurer, who are not persons appointed as members of the MC, should not become members of the MC by their appointment and all secretaries and treasurers, no matter they are members of the MC or not, should retire together with other members of the MC.</p>

Members' views	Justifications for the proposed amendment
17. To impose a quorum requirement of 10% of owners for owners' meetings convened with a view to appointing an MC	
Members have not raised objection.	There is at present no quorum requirement for owners' meetings convened with a view to appointing an MC under sections 3, 3A and 4. The proposal will rationalize the arrangement for all owners' meetings convened for the purpose.
18. To remove the term "holders of office" in the BMO (including section 18, the Second and the Fourth Schedule)	
Members have not raised objection.	<p>The definition of "holders of office" is unclear. The question of whether posts other than the Chairman, vice-chairman, secretary and treasurer should be regarded as the holders of the offices who will be eligible for allowances has caused disputes among owners.</p> <p>Following the amendment, all members of the MC would be eligible for allowances as approved by the OC by resolution passed at a general meeting not exceeding the maximum allowances specified in the Fourth Schedule.</p>
<u>Appointment of proxy</u>	
19. To amend the requirement of having a common seal to a rubber stamp of a body corporate together with an authorized signature	
Members have not raised objection.	The definition of the term "seal" under section 4(2) of the Third Schedule is confusing as it can be construed to mean the common seal normally applied by companies. If a

Members' views	Justifications for the proposed amendment
	<p>rubber stamp together with an authorized signature of the body corporate on the proxy form could serve the purpose well, there is no reason for not clarifying so in the legislation.</p>
<p>20. <i>To set the deadline in the BMO for submission of proxy at 24 hours before the holding of the meeting</i></p>	
<p>Members in general support the proposal.</p>	<p>Paragraph 4(3) of the Third Schedule and section 5 of the BMO allow the chairman/convenor of an OC/owners meeting to accept proxies which were submitted less than 24 hours before the time for the holding of the meeting. Such practice has caused disputes among owners at owners' meetings and hindered the MC chairman or the person presiding at the meeting from checking and verifying the proxy forms received at the last minute.</p>
<p>21. <i>To include a subparagraph under paragraph 4 of the Third Schedule to the BMO which requires that an instrument appointing a proxy shall follow a sample specimen as near as possible</i></p>	
<p>Hon Andrew CHENG considers that to avoid unnecessary disputes, BMO should incorporate sample proxy instruments for different purposes for strict adherence by OCs and MCs. The Chairman is of the view that some flexibility should be allowed in the acceptance of proxy instrument under special circumstances.</p>	<p>There is a general view that the format of the proxy instrument, or at least the basic elements for a valid proxy instrument, should be stipulated in the law.</p>

	Members' views	Justifications for the proposed amendment
22.	<i>To stipulate in the BMO the person(s) who has the power to determine the validity of questionable proxy instrument lodged with secretary</i>	
	<p>Members do not consider it appropriate for the MC chairman to have the power to determine the validity of the questionable proxy instrument. Some members suggest that the MC or at least two to three MC members should be given the power to do so. Hon WONG Sing-chi considers that the procedures for submission and collection of proxies should be set out in detail. He suggests that independent persons such as lawyers and accountants should be invited to supervise the verification and counting of proxies at meetings.</p> <p>The Chairman suggests that a mechanism should be set up in the BMO for owners holding a certain percentage of shares to apply to HAD for checking the validity of proxy instruments held by an OC/MC. Some members consider it necessary to require OC/MC to disclose the details of the proxy instruments received to owners through appropriate means, such as posting of the details of the proxy instruments at prominent positions of the building before the holding of the relevant meeting.</p>	<p>The existing BMO has not specified the authority to determine whether certain questionable proxy instruments are valid or not. The Administration considers that the chairman of the MC should be given the power to determine the validity of the questionable proxy instrument. Having considered Members' views, the Administration has revised its proposal so that the MC would be given such power in a collective manner.</p>

Part III - Members' views/proposals which were not included in the Administration's consultation paper

Members' views	Administration's response
<p>1. Voting rights of the shares allocated to common parts of a building</p>	
<p>Some members suggest to limit the rights of owners of shares who are not liable to pay management fees to the extent that they cannot vote at an owners' meeting or will not be counted for the purpose of forming a quorum for the formation of OCs.</p> <p>Some members also suggest that as an alternative to facilitate formation of OCs, the Administration should consider empowering SHA to exercise discretion on the number of undivided shares required in special circumstances.</p> <p>Members request the Administration to explore ways to address the problems found in DMCs approved before the 90s.</p>	<p>According to the current DMC Guidelines which were revised in June 1999, owners of common areas are not entitled to any voting rights and nor shall they be calculated towards the quorum of any meeting. In proposal 13 above, the Administration will include a provision in the amendment bill to remind owners to make reference to the DMCs in ascertaining the voting rights of each type of shares.</p> <p>Moreover, with effect from June 2002, The Legal Advisory and Conveyancing Office (LACO) has stipulated that management shares and undivided shares in a building or development should be allocated on <u>one and the same basis (i.e. gross floor area)</u>. This will avoid the situation of disproportionate distribution of the two types of shares.</p> <p>As for DMCs approved before June 1999, though they do not contain the clause which provides that undivided shares allocated to the common areas shall not carry any voting rights, the management company is required to hold the shares allocated to the common parts of a building for the owners in the form of a trustee. A blanket limitation of rights for shares that are not eligible to pay management fees is neither appropriate nor necessary.</p>

Members' views	Administration's response
<p>2. Mechanism to amend terms and conditions of DMCs which are unfair to owners</p>	
<p>Members have expressed concern about cases of unfair allocation of undivided shares and management shares between the owners of residential portions and owners of non-residential (or commercial) portions in a building. They have pointed out that while voting rights in some private developments are determined on the basis of undivided shares, the management expenses are calculated on the basis of management shares. This inevitably gives rise to the problem of disproportionate distribution between voting rights and management liability. Residential owners who shoulder more management expenses possess less voting rights, while non-residential owners (invariably the developers) hold more voting rights but shoulder less liability to pay management expenses. Some members have suggested that the Administration might need to consider capping the discrepancy between the allocation of undivided shares and the management shares.</p> <p>Members consider that some DMC provisions are advantageous to developers at the expense of flat owners.</p> <p>They suggest that the Legal Advisory and Conveyancing Office (LACO) should set clear criteria and guidelines for approving DMCs and the Administration should ensure by way of legislation that DMCs would not contain provisions which are unfair to owners.</p> <p>Members have considered the following possible</p>	<p>A DMC which stipulates the property rights and obligations of the parties concerned is a private contract executed between the developer and owners, and is expressly defined in section 2 of BMO to mean a document which defines the rights, interests and obligations of owners among themselves. 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 and monetary rights and obligations of the parties concerned.</p> <p>LACO has amended the DMC Guidelines to require both the undivided shares and management shares in a building to be allocated on the basis of gross floor area (gfa) rather than market value of individual flats.</p> <p>Using legislative measures to amend and obliterate provisions in DMCs which would affect rights and obligations of private parties is a very complicated and contentious subject. The Administration would have to carefully examine the issue from the policy, legal and technical perspectives and consider the possible implications involved in such amendments.</p>

	Members' views	Administration's response
	<p>proposals to address the problems of unfair DMC provisions -</p> <ul style="list-style-type: none"> (a) setting up a mechanism for amending the provisions of a DMC by a resolution of an OC and with the approval of Secretary for Home Affairs or the Court; (b) amending BMO to the effect that a DMC might be amended by a resolution of owners of not less than 75% of the shares at an OC meeting; and (c) adding overriding provisions to BMO in order to protect the interest of owners against provisions in a DMC which are unfair to them. <p>Members have diverse views on proposal (b) as the interest of the minority of owners could be sacrificed by a resolution passed by a majority of owners at an OC meeting.</p>	
3.	Mediation mechanism to resolve building management disputes	
	<p>Members consider that the Administration should render more support and assistance to OCs and MCs in building management, in particular settlement of disputes among owners and between owners and developers arising from building management matters. Some members have suggested that the Administration should consider establishing a mediation mechanism modelled on the</p>	<p>Where disputes arise among owners or between owners and OCs, staff of Home Affairs Department (HAD) would assist in providing liaison services and offering advice. Owners and OCs may also resolve disputes through the Lands Tribunal which has jurisdiction to hear and determine cases in relation to building management under the BMO since 1993. The Lands Tribunal already</p>

Members' views	Administration's response
<p>operation of the Labour Tribunal or Small Claims Tribunal to resolve building management disputes.</p> <p>Members raised no objection to conducting a pilot scheme to assess the feasibility of establishing a non-statutory mediation mechanism for provision of free mediation services to owners in resolving building management disputes. They, however, consider that it may not be realistic to expect continuous provision of free mediation services by a few voluntary organizations in the long run. Members have also pointed out that instead of relying on the mediation mechanism, the staff members at Building Management Resource Centres should play a key role in offering advice to OC and MC members for resolving minor disputes on building management. The provision of free mediation service should follow when these minor disputes could not be resolved.</p>	<p>provides a quicker and cheaper way for owners and parties concerned to resolve disputes, compared with resorting to the Court of First Instance.</p> <p>With the support of the Hong Kong Mediation Council and the Hong Kong Mediation Centre, the Administration has launched a pilot scheme on mediation at the Building Management Resource Centres in mid-2002. The objective is to assess the feasibility of establishing a non-statutory mediation mechanism to resolve building management disputes, thereby reducing the number of cases referred to the Lands Tribunal. The response and result was, however, not very encouraging. Despite promotion and publicity, only four cases have been included in the mediation scheme, with two of them resolved after mediation. The Administration has encountered grave difficulties in encouraging the disputing parties to try mediation. The scheme would surely attract a higher take-up rate if mediation was mandatory. However, both professional bodies are of the view that for mediation to succeed, the disputing parties must participate on a voluntary basis. While mediation seems to apply quite successfully in the family dispute cases, the factors which are conducive to mediation, e.g. the disputing parties are willing to negotiate, have a history of trust and communication, and have some leverage on each other, etc. do not seem to apply in building management cases. Moreover, while OC and its MC are legally representing all owners of a building, whenever it comes to disputes, it is difficult for a small group to make decisions on behalf of</p>

Members' views	Administration's response
	<p>all owners at the mediation table. The pilot scheme will end in mid-2004 and we will assess the effectiveness of the scheme with the two professional bodies.</p> <p>At the same time, the Administration is considering the feasibility of establishing a panel (not necessarily under the judicial system) for resolving specific minor disputes. The proposal will involve legislative amendment and also have financial implication. A proposal will be put to the Subcommittee in due course.</p>
<p>4. Formation of OCs by owners of house developments holding divided shares</p>	
<p>Members consider that management of house-type properties such as Discovery Bay in Landau Island, Fairview Park in Yuen Long and Hong Lok Yuen in Tai Po should fall within the ambit of BMO. They are of the view that the Administration should ensure that all property owners, including owners of individual units in a house development, enjoy the right to form OCs so that owners can collectively manage their properties in accordance with the legislation and in their best interest.</p> <p>Members note that section 39(a) of BMO provides that an owner's share of a development can be determined in the manner provided in an instrument such as a DMC which is registered in the Land Registry. Hon Albert HO has informed the Subcommittee that small houses built on different land lots have been allowed to form an OC under</p>	<p>The Administration had no objection in principle to owners of house developments forming OCs if such developments contain areas and/or facilities for the common use of owners. However, according to the preliminary legal advice obtained from the DoJ, the ownership structure and the nature of the title of flats in multi-storey buildings and independent houses built on individual land lots are quite different. The Administration considers that to provide an alternative way to determine shares on the basis of area of land or number of houses owned by a mere amendment to the provision relating to determination of owner's shares i.e., section 39 of BMO, would not be sufficient to make BMO applicable to house developments.</p> <p>Most of the provisions and fundamental concepts in BMO are construed specifically to cater for the management of</p>

Members' views	Administration's response
<p>an instrument recognized by LACO. He has suggested that LACO should ensure that DMCs of new developments must stipulate the number of undivided shares allocated to each flat or house and common parts of a building or development. Hon Martin LEE, a non-Subcommittee member, has suggested that the definition of “building” under section 2 of BMO should be amended to include not only flats with undivided shares in multi-storey buildings, but also houses built on lots of lands with divided shares.</p>	<p>flats in multi-storey buildings. It appears difficult to apply them to house developments which have an entirely different nature of title and ownership from flats and which do not have common ownership of undivided shares in land. The Administration considers that a separate piece of legislation would be required in order to provide a proper legal framework to enable owners of house developments to manage their building through the formation of OCs.</p> <p>At the request of the Subcommittee, the Administration has undertaken to explore with the DoJ on how best to provide a legal framework to enable owners of house developments to form OC for the management of their properties. In order not to delay the review process, members agreed that the issue be dealt with in a separate exercise.</p>