

Legislative Council Panel on Home Affairs
Subcommittee on Review of the
Building Management Ordinance (Cap. 344)

Purpose

This paper sets out the Administration's proposals on the issue of termination of appointment of a manager of a private building, in the light of past deliberations of the Subcommittee.

Background

2. Prior to the adoption of the Lands Department's Guidelines for Deeds of Mutual Covenant (the DMC Guidelines) on 15 October 1987, a deed of mutual covenant (DMC) usually provided for perpetual management of a building by the developer or by a manager associated with the developer. A DMC which was approved in accordance with the DMC Guidelines after 15 October 1987 should normally contain a provision to the effect that the initial period of management by the **first** manager shall not exceed two years.

3. Paragraph 7 of the Seventh Schedule to the Building Management Ordinance (BMO) was introduced in 1993 for the purpose of enabling an owners' corporation (OC) to dismiss a manager by a resolution of the owners holding not less than 50% of the undivided shares. Our legal advice is that the manager's appointment can continue after the initial period of two years (or any period specified in a DMC) until the appointment has been terminated by the OC in accordance with paragraph 7 of the Seventh Schedule to the BMO. This in effect means that no matter whether there is any initial period of management specified in a DMC or whether the initial period has expired, an OC has to obtain a

resolution of owners holding not less than 50% of the shares in order to terminate appointment of the first manager in accordance with paragraph 7 of the Seventh Schedule.

4. In the case of a **subsequent** manager appointed by an OC, the relevant management contract normally provides for a specified period of management. There are incidences where the manager refuses to leave service even after the specified period has expired, claiming that the appointment can only be terminated by a resolution of owners of not less than 50% of the shares under paragraph 7 of the Seventh Schedule. There are also cases where the manager refuses to go even though a decision on termination of his appointment has been made in accordance with paragraph 7 of the Seventh Schedule. In such cases, the manager could claim that the appointment of no more than one manager can be terminated within a period of three years under subparagraph 7(5)(c) of the Seventh Schedule.

5. Under paragraph 7, only the owners of shares who paid or who were liable to pay the management expenses would be entitled to vote at a general meeting for the purpose of terminating the appointment of a manager, and the owners could vote by proxies. However, the Subcommittee expressed concern that it would still be practically difficult for an OC to obtain a resolution of the owners of not less than 50% of the shares for the purpose.

Proposal

6. Having re-considered the matter, we propose to include an alternative mechanism in the BMO whereby an OC could terminate the appointment of the first or any subsequent manager without compromising on the need to minimize the possibility of a management vacuum. Our preliminary proposals are as follows:-

- a) If a DMC or a management contract provides for a specified initial period of management of a manager, that manager's appointment can only be terminated in accordance with

paragraph 7 of the Seventh Schedule **during** this specified period.

- b) **After** the initial period of management as specified in a DMC or a management contract, the owners may at a general meeting convened under paragraph 3(3) of the Third Schedule by the OC for the purpose decide by a majority of votes to appoint a new manager **and** to terminate the appointment of the existing manager. The appointment of the new manager should take effect on the day immediately after the date of termination of the existing manager's appointment, in order to prevent the incidence of a management vacuum.
- c) If there is no specified initial period in a DMC or a management contract, the procedure at (b) above shall only apply **after** the manager's initial two years of management.
- d) If no new manager has been appointed following the procedure at (b) above, the existing manager's appointment can only be terminated in accordance with paragraph 7 of the Seventh Schedule, either within or after the specified initial management period.

7. The reasons underlying our proposal to retain the application of paragraph 7 of the Seventh Schedule to two scenarios, as set out respectively in para 6(a) and (d) above, are as follows:

- a) Termination of a manager's appointment **during** the specified initial period of management, or during the initial two years (if there is no specified initial management period)

Reasons:

- i) According to the relevant DMC guidelines which have been effective since 15 October 1987, a DMC should contain a provision that the first manager should manage the building

for an initial period of two years. The underlying rationale is that since the first manager is invariably appointed by the developer of a new building, this would enable the developer to carry out any outstanding works or obligations during the initial period, especially when the building has yet been fully occupied by residents. Given the special significance of the initial period of management by the first manager appointed by the developer as explained in (a) above, any decision to terminate the first manager during the specified initial period should be backed up by a majority of owners holding more than 50% of the undivided shares (those who are entitled to vote) in the building.

- ii) As regards the termination of a subsequent manager's appointment during the tenure of a management contract (or during the first two years if the contractual period has not been specified), the application of paragraph 7 of the Seventh Schedule is to ensure that any pre-mature termination of a running management contract (which implies a more frequent change in managers than that envisaged in a management contract) is supported by an actual majority of owners holding more than 50% of the shares (those who are entitled to vote) in the building, rather than by a simple majority of votes of owners attending a general meeting of the OC.
- b) Termination of the manager's appointment without being accompanied by the appointment of replacement manager which takes effect immediately following the date of the termination.

Reason:

Any decision to terminate the appointment of a serving manager (be it the first manager named in a DMC or a subsequent manager appointed by the OC), which is not

immediately followed by the appointment of a replacement manager, could result in a management vacuum in the building. Such an important decision should therefore be supported by a majority of owners holding more than 50% of the shares (those who are entitled to vote) in the building, rather than by a simple majority of votes of owners attending a general meeting of the OC.

The way forward

8. Subject to Members' views, we intend to consult the professional bodies and trade associations on the above proposal, and revert to Members on the way forward.

Home Affairs Bureau

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