

**Legislative Council Panel on Home Affairs
Subcommittee on Review of the
Building Management Ordinance (Cap. 344)
Meeting on 18 December 2001**

Purpose

This paper sets out a review framework of the Building Management Ordinance (BMO) to be conducted by the Administration.

Background

2. The BMO was substantially amended in 1993 and again in 2000. After the enactment of the Building Management (Amendment) Ordinance (BMAO) in June 2000, the Administration has established an inter-departmental Steering Committee to monitor and evaluate the implementation of the BMAO and to make recommendations as appropriate to further improve the BMO. In addition, the Administration is working closely with the Subcommittee on Review of the Building Management Ordinance (the Subcommittee) of the Legislative Council Panel on Home Affairs to review the BMO.

Consultation

3. The Administration intends to consult in detail the relevant professional bodies and trade associations with a view to identifying common grounds of the parties concerned to facilitate further possible amendments to the BMO.

4. The consultation will focus on the following issues as indicated at the meeting of the Subcommittee on 27 November 2001:

- (i) formation of OCs by owners of house developments holding divided shares;
- (ii) liabilities of members of OCs;
- (iii) voting rights of undivided shares which are not liable to pay management fees;

- (iv) procedures for formation of OCs;
- (v) amendments to the terms and conditions of deeds of mutual covenant (DMCs);
- (vi) termination of managers' appointment by OCs; and
- (vii) establishment of a mediation mechanism to resolve management disputes.

Formation of OCs by owners of house developments holding divided shares

5. The objectives of the BMO are to facilitate the incorporation of owners of flats in buildings and to provide for the management of such buildings. Under the BMO, the decision-making process of an OC is premised on an ownership structure of undivided shares. Owners of house developments own land lots or divided shares and their properties are independent houses as opposed to flats. Therefore, both the ownership structure and nature of property of house developments at present do not quite fit in the ambit of the BMO.

6. The Administration has no in principle objection to owners of house developments forming OCs if such developments contain areas for the owners' common use and enjoyment. The Administration intends to conduct detailed discussions with the parties concerned to ascertain how the scope of the BMO can be expanded to accommodate house developments, in particular, whether OCs for house developments can be formed on the basis of areas of land or properties owned by individual owners.

Liabilities of members of OCs

7. The BMO already stipulates the rights and responsibilities of OCs. Under normal circumstances, collective liabilities of an OC should not and cannot be transferred to individual members. Generally speaking, if individual members of an OC act in good faith in providing their services, there is little worry in this regard. If an individual member out of his own accord commits a criminal offence such as theft or corruption, he will of course be held personally liable for the offence.

8. It must be stressed that any general provision to absolve OC members from civil and criminal liabilities may result in unfettered rights with no corresponding legal consequences. If there is amendment in this regard, we must adopt a cautious, narrow and focused approach and specify clearly the particular liability to be excluded and the circumstances of doing so. This is a complicated and contentious matter, and will require in-depth consultation with the relevant parties. The Administration will be pleased to listen to the views of the Subcommittee and the parties concerned.

Voting rights of undivided shares which are not liable to pay management fees

9. Paragraph 7 of the Seventh Schedule to the BMO was already amended in 2000 to the effect that owners of shares who are not liable to pay management expenses shall not be entitled to vote in determining whether a manager's appointment should be terminated. Some have suggested further limiting the rights of such owners to the extent that they cannot vote at an owners' meeting or will not be counted for the purpose of forming a quorum (please refer to paragraph 11 of the Administration's paper for the meeting of the Subcommittee on 27 April 2001). As private property rights and obligations are involved, the Administration considers that a cautious, narrow and focused approach be adopted, and that a blanket limitation of rights would be inappropriate. The Administration will be pleased to listen to the views of the Subcommittee and the parties concerned before formulating recommendations as appropriate.

Procedures for formation of OCs

10. The issues of proxy, quorum and representatives of blocks were respectively dealt with in paragraphs 4, 5 and 6 of the Administration's paper for the meeting of the Subcommittee on 27 April 2001. The Administration is of the view that the relevant provisions in the BMO are working well but will be glad to consider the views put forward by the Subcommittee and the relevant parties. With the purpose of making the provisions clearer and more user friendly to owners, we will consider adding a schedule to the BMO setting out the appropriate

procedures for formation of OCs.

Amendments to the terms and conditions of DMCs

11. A DMC is a private contract executed between the developer and owners, stipulating the property rights and obligations of the parties concerned. A DMC is expressly defined in section 2 of the 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.

12. The BMO does contain provisions which shall be impliedly incorporated into a DMC. It must be noted that these statutory provisions mainly deal with the determination of the total amount of management expenses payable by owners, accounting procedures and termination of managers' appointment by OCs, as opposed to property rights and monetary considerations.

13. When asked to introduce legislation to amend and obliterate provisions in DMCs, understandably the Administration needs to adopt a very cautious approach particularly when property and monetary rights and obligations of private parties are affected. This is a complicated and contentious subject and we need to carefully examine the policy, legal and technical issues involved. The Administration will be pleased to consider proposals which are acceptable to all of the parties concerned.

Termination of managers' appointment by OCs

14. We dealt with this issue in paragraph 8 of the Administration's paper for the meeting of the Subcommittee on 27 April 2001. The Administration considers that termination of a manager's appointment is an important building management decision which should be made jointly by owners. They may vote either personally or by proxy at a general meeting convened for this purpose. The BMAO has amended paragraph 7 of the Seventh Schedule to the effect that for the purpose of termination of a 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. This amendment has already in effect reduced the percentage of undivided shares required for termination of managers' appointment. We are of the view that this 50% requirement is reasonable. If the percentage is further lowered, the decision to dismiss the manager may be challenged as not reflecting the wishes of the majority of the owners. The existing requirement is appropriate and practicable.

Establishment of a mediation mechanism to resolve management disputes

15. Where disputes arise between owners or between owners and OCs, staff of the Home Affairs Department and its District Offices assist in liaison and providing 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 provides a quicker and cheaper way to resolve disputes than resorting to the Court of First Instance. The Administration considers that the present system is working well. We however have an open mind and will be pleased to listen to the views of the Subcommittee and the parties concerned.

Epilogue

16. Many of the above issues are complex and contentious. The Administration adopts a very cautious approach especially when private property and monetary rights and obligations are at stake. It is therefore essential to have in-depth consultation with the parties concerned before embarking on further legislative amendments to the BMO. We will continue to work closely together with the Subcommittee and the parties concerned with a view to formulating recommendations as appropriate.

**Home Affairs Bureau
December 2001**