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LegCo Panel on Home Affairs

**Subcommittee on review of the
Building Management Ordinance**

Discussion paper prepared by Legislative Council Secretariat

Proposals to improve the Building Management Ordinance

Purpose

This paper seeks members' views on various proposals to improve the Building Management Ordinance (BMO).

Background

2. At the meeting of the Establishment Subcommittee on 21 February 2001, Members requested the Administration to conduct a comprehensive review of BMO without delay. However, the Administration only undertook to revert to the Panel on Home Affairs on the review in one year's time. Members of the Panel on Home Affairs decided at the meeting on 13 March 2001 to set up a subcommittee to discuss with the Administration the review of BMO in order to expedite the process.

3. The Subcommittee has so far held four meetings with the Administration to discuss various building management issues and inadequacies of the provisions and operation of BMO. The Subcommittee also met with deputations at one of the meetings.

4. At the meeting of the Subcommittee on 27 November 2001, the Administration informed members that after having considered the views expressed by members and the deputations, the Administration would consider devising concrete proposals on the following issues in its review of BMO -

- (a) formation of owners' corporations (OCs) by owners of house developments holding divided shares;

- (b) specific exemption of members of an OC from legal liabilities; and
- (c) voting rights of the shares allocated to the common parts of a building.

The Administration also undertook to revert to the Subcommittee on the review in the first half of 2002.

5. Members welcome that the Administration has eventually agreed to consider these issues, which have been raised by Legislative Council Members on various occasions, in its review of BMO. However, members are of the view that the Administration should also consider the following issues in its review -

- (a) formation and election procedures of an OC;
- (b) mechanism to amend provisions in DMCs which are unfair to owners;
- (c) percentage of shares required for the termination of the appointment of building manager; and
- (d) mediation mechanism to resolve building management disputes.

6. To tie in with the schedule of the Administration's review, the Subcommittee decided to focus its discussion on these seven issues so that recommendations would be put forward by March 2002 for the Administration to consider in the review.

Advice sought

7. Members and deputations have expressed views and put forward various proposals on the seven issues. To facilitate members' discussion, the relevant views and proposals are summarised in the **Appendix**. Members are invited to give their views on the various proposals to improve BMO.

LegCo Panel on Home Affairs

Subcommittee on review of the
Building Management Ordinance

A summary of relevant views and proposals
(as at 12 December 2001)

I. Formation of owners' corporations (OCs) by owners of house developments holding divided shares			
	<u>Views/present situation</u>	<u>Proposal for improvement</u>	<u>Administration's response/ preliminary ideas</u>
	<p>(a) Property owners in some house developments are holding "divided shares", but the scope of the Building Management Ordinance (BMO) only covers the management of multi-storey and multi-ownership buildings with undivided shares. Owners holding "divided shares" are thus unable to form OCs.</p> <p>(b) The scope of BMO should be expanded to cover management of house-type properties. The Administration should ensure that all property owners enjoy the right to form OCs in order to collectively manage their properties.</p>	<p>The definition of "building" under section 2 of BMO should be amended to include houses built on lots of lands with divided shares.</p>	<p>The Administration has no objection in principle to owners of house developments forming OCs, if such developments contain areas for the common use and enjoyment of the owners. An owner's share may be determined -</p> <p>(i) in proportion to the total number of houses owned by the owner, that is, one share for one house; or</p> <p>(ii) in proportion to the size of a land lot, for example, one share for one square metre of land; or</p> <p>(iii) in proportion to the areas of the structures built on a land lot.</p>

<p>(c) The concept of "condominium management" (共有共管) should be used in the application of BMO so that only one single OC will be formed for the joint management of properties on different land lots in the same neighbourhood.</p>		
<p>II. Specific exemption of members of an OC from legal liabilities</p>		
<p><u>Views/present situation</u></p> <p>(a) The collective liabilities of an OC should not be transferred to individual members of an OC.</p> <p>(b) BMO has not specified clearly the scope of power of owners and that of a management committee (MC), hence resulting in conflicts between the two parties.</p>	<p><u>Proposals for improvement</u></p> <p>(a) Possible exemption of owners and individual members of an OC from civil liabilities should be considered.</p> <p>(b) The legal liabilities of OC members should be clearly stipulated in BMO.</p> <p>(c) There should be provisions in BMO to improve the accountability of a MC and safeguard the interests of owners.</p>	<p><u>Administration's response/ preliminary ideas</u></p> <p>It will be inappropriate to give a blanket exemption to individual members of an OC. The Administration will consider exemption of individual members of an OC from legal liabilities only under very clear, specific and narrow circumstances in order to prevent any abuse.</p>

	<p>(c) Powers, responsibilities, liabilities and monitoring of MC members under BMO should be comprehensively reviewed. [Submission of the Incorporated Owners of Tai On Building, Shau Kei Wan issued vide LC Paper No. CB(2)2018/00-01(01) dated 4 July 2001]</p>	<p>(d) There should be provisions in BMO to forbid the building manager from using the funds of an OC to pay for legal expenses for the protection of the interests of the manager. [Submission of the Hong Kong Association of Incorporated Owners Committee issued vide LC Paper No. CB(2)2051/00-01(01) dated 6 July 2001]</p> <p>(e) A maximum tenure should be specified for the chairmanship of a MC. [Submission of Mr CHAN Wing-wai issued vide LC Paper No. CB(2)1606/00-01(14) dated 21 May 2001]</p> <p>(f) A person should not hold the chairmanship of a MC for more than four years. [Submission of Mr K L WAN issued vide LC Paper No. CB(2)2018/00-01(04) dated 4 July 2001]</p>	
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	<p>(d) Conflicts will arise between the power of an OC and that of the building manager appointed under the deed of mutual covenant (DMC) if the former has not terminated the appointment of the latter when an OC is formed.</p>	<p>(g) The distribution of duties and powers between an OC and a building manager, appointed under DMC (in case of co-existence) should be clearly specified. [Submission of Mr Thomas CHAN v issued vide LC Paper No. CB(2)1606/00-01(16) dated 21 May 2001]</p>	
<p>III. Voting rights of the shares allocated to the common parts of a building</p>			
	<p><u>Views/present situation</u></p> <p>(a) It is unfair that a large number of shares have been allocated to the common parts of a building but the developers which own these common parts have no liability to pay management fees on a pro-rata basis.</p>	<p><u>Proposals for improvement</u></p> <p>(a) Developers which hold a majority of shares, but are not liable to pay management expenses in respect of the shares should not be allowed to take part in any voting in respect of the formation of an OC or of a proposed increase in management fees.</p> <p>(b) Shares which do not attract the liability to pay management fees should not carry any voting rights at an owners' meeting and should not be taken into account for the purpose of calculating the quorum of any meeting.</p>	<p><u>Administration's response/ preliminary ideas</u></p> <p>As private property rights and obligations are involved, the Administration considers that a cautious, narrow and focused approach should be adopted, and that a blanket limitation of rights will be inappropriate.</p>

IV. Formation and election procedures of an OC			
	<u>Views/present situation</u>	<u>Proposals for improvement</u>	<u>Administration's response/ preliminary ideas</u>
	<p>(a) The quorum requirement for convening an owners' meeting which is calculated on the basis of the number of shares instead of the number of owners does not facilitate the formation of OC.</p> <p>(b) The mandatory requirement to convene a meeting of all the owners of a housing estate for the appointment of a MC does not facilitate the formation of OC.</p> <p>(c) Formation of OCs is sometimes restricted if a DMC contains provisions which specify a distribution of undivided shares between developers (by way of ownership of common parts) and flat owners which is unfair to the latter.</p>	<p>(a) The quorum requirement for convening an owners' meeting for the appointment of a MC should be calculated on the basis of the number of owners.</p> <p>(b) A MC should be composed of representatives elected by the owners of each block in a housing estate.</p> <p>(c) A period should be specified in BMO after which owners with a smaller percentage of undivided shares can convene a meeting of owners and appoint a MC at the meeting.</p>	<p>(a) Section 3 of BMO stipulates that a meeting of the owners to appoint a MC 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.</p> <p>(b) An OC will represent all the owners within the housing estate covered by DMC. The notion of introducing a new category of "block representatives", either as a substitute for or an addition to MC, may unduly complicate the structure of BMO and the decision-making process of OC. This may also contravene the relevant provisions of DMC.</p>

	<p>(d) Allowing a proxy to be treated as an owner present at the meeting may lead to manipulation.</p> <p>(e) Allowing the appointment of proxy will encourage and facilitate owners' participation in building management.</p>	<p>(d) As DMCs may require more than 30% of owners' shares for appointment of MCs, the phrase "if there is no DMC, or the deed contains no provision for the appointment of a MC" in section 3(2)(b) should be deleted in order to facilitate the formation of OCs. [Submission of Mr Thomas CHAN issued vide LC Paper No. CB(2)1606/00-01(16) dated 21 May 2001]</p> <p>(e) Owners should not be allowed to appoint proxies unless they are not in Hong Kong and a limit should be set on the number of proxies to be appointed by an owner for an owners' meeting.</p>	<p>(c) Allowing the appointment of proxy encourages and facilitates owner's 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.</p>
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<p>(f) Rules for the formation process of OCs should be issued for the reference of owners and frontline staff of the Home Affairs Department (HAD).</p> <p>(g) Procedures including calculation of quorum and shares for convening the first owners' meeting to appoint a MC should be comprehensively reviewed and specified in detail.</p>	<p>(f) If a person stands for the election to serve on a MC, he/she should not chair the meeting for the appointment of the MC. [Submission of Kai Shing Management Services Limited issued vide LC Paper No. CB(2)1606/00-01(09) dated 21 May 2001]</p> <p>(g) Section 3(1)(c) should be amended to state explicitly whether the signature(s) of only one of the "co-owners" or all of the "co-owners" is/are required for the total shares of the flat to be counted in convening a meeting of the owners to appoint a MC. [Submission of Mr Thomas CHAN issued vide LC Paper No. CB(2)1606/00-01(16) dated 21 May 2001]</p> <p>(h) The wording of relevant provisions should be revised to clearly indicate that Part II (Management Committee) of BMO applies to the first appointment of a MC. [Submission of Mr Thomas CHAN issued vide LC Paper No. CB(2)1606/00-01(16) dated 21 May 2001]</p>	<p>(d) The Administration is of the view that the relevant provisions in the BMO are working well. However, with the purpose of making the provisions clearer and more user-friendly to owners, the Administration will consider adding a schedule to BMO setting out the appropriate procedures for formation of OCs.</p>
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V. Mechanism to amend provisions in DMCs which are unfair to owners		
Views/present situation	Proposals for improvement	Administration's response/ preliminary ideas
<p>(a) Some DMCs of large house-type properties contain terms which are unfair to owners. For example, according to the DMC of Discovery Bay, the developer holding 77.4% of the undivided shares only need to pay 1.4% of the management expenses, while the owners holding 22.6% of shares have to shoulder 98.6% of the management expenses.</p> <p>(b) Some DMCs, particularly those of mixed developments comprising both commercial and residential units, have specified a distribution of management fees under which owners of the residential units are required to pay an unreasonable large percentage of management fees but the developers</p>	<p>(a) A mechanism should be set up so that the terms of a DMC can be amended by a resolution of an OC and with the approval of the Secretary for Home Affairs, or the court.</p> <p>(b) BMO should be amended to the effect that a DMC may be amended by a resolution of not less than 75% of the shares at an OC meeting. [Submission of the Incorporated Owners of Tuen Mun Tai Hing Gardens Phase II issued vide LC Paper No. CB(2)2051/00-01(02) dated 6 July 2001]</p> <p>(c) Registration of separate DMCs for commercial and residential units of a mixed development should be allowed in order to safeguard the interest of flat owners.</p> <p>(d) The Administration should review whether management expenses for</p>	<p>(a) 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 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>which own the commercial units need to shoulder a small percentage of management fees only.</p> <p>(c) While Government should be cautious in contemplating legislative measures to override unfair terms and conditions of DMCs, the Seventh Schedule of BMO already contains provisions which have the effect of overriding unreasonable terms in DMCs.</p> <p>(d) The Legal Advisory and Conveyancing Office of the Lands Department should ensure that the numbers of undivided shares allocated to each flat or house and common parts of a development are stipulated in the DMCs of new private buildings.</p>	<p>commercial units and those for residential units in a mixed development should be specified separately in DMCs.</p> <p>(e) Overriding provisions should be added to BMO in order to protect the interest of flat owners against unfair terms in a DMC.</p> <p>(f) BMO should empower the Director of Lands to set out the criteria for fair calculation and allocation of undivided shares for the common parts of a mixed or residential development. [Submission of the Hong Kong Association of Incorporated Owners Committee issued vide LC Paper No. CB(2)2051/00-01(01) dated 6 July 2001]</p>	<p>(b) 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.</p>
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<p>(e) Some buildings in old districts have two DMCs. As one OC should be formed for one DMC, confusion in building management will arise. [Submission of Joint Conference of Members of Incorporated Owners and Mutual Aid Committees of Buildings in Wanchai issued vide LC Paper No. CB(2)1606/00-01(04) dated 21 May 2001]</p> <p>(f) It is specified in some DMCs that areas under paragraphs 13 and 14 of the First Schedule of BMO are used by residential owners so that the developers which own the commercial units have no liability to pay the management fees for these common parts. [Submission of the Incorporated Owners of Tuen Mun Tai Hing Gardens, Phase II issued vide LC Paper No. CB(2)2051/00-01(02) dated 6 July 2001]</p>	<p>(g) The Administration should relax the requirement of 100% owners' agreement for merging two DMCs under a development occupying two lots of land to 75%. [Submission of Joint Conference of Members of Incorporated Owners and Mutual Aid Committees of Buildings in Wanchai issued vide LC Paper No. CB(2)1606/00-01(04) dated 21 May 2001]</p> <p>(h) It should be stipulated in BMO that the common parts specified in DMCs should be the same as those specified in its First Schedule. [Submission of the Incorporated Owners of Tuen Mun Tai Hing Gardens, Phase II issued vide LC Paper No. CB(2)2051/00-01(02) dated 6 July 2001]</p>	
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VI. Percentage of shares required for the termination of the appointment of building manager		
Views/present situation	Proposals for improvement	Administration's response/ preliminary ideas
<p>(a) The percentage of shares required (i.e. 50%) for the termination of the appointment of building manager is too high.</p>	<p>(a) An OC should, by a resolution of not less than 50% of owners (in terms of headcount) rather than of the owners of not less than 50% of the shares, terminate the appointment of the building manager. [Submission of the Hong Kong Association of Incorporated Owners Committee issued vide LC Paper No. CB(2)2051/00-01(01) dated 6 July 2001]</p> <p>(b) The number of shares required for terminating the appointment of a building manager by an OC should be lowered from 50% to 30%. [Submission of the Incorporated Owners of Rhine Garden issued vide LC Paper No. CB(2)1606/00-01(03) dated 21 May 2001 and the submission of the Incorporated Owners of Tuen Mun Tai Hing Gardens, Phase II issued vide LC Paper No. CB(2)2051/00-01(02) dated 6 July 2001]</p>	<p>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. 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.</p>

		<p>(c) The purpose of paragraph 7 in the Seventh Schedule of BMO is to provide an easy alternative to terminate the appointment of a building manager in case the DMC has stipulated a stringent requirement. If a DMC or a management contract contains provisions for an easier and quicker termination of the service of a building manager, the requirement to follow paragraph 7 in the Seventh Schedule should be waived. Either a new paragraph 7(1A) "A corporation may terminate the manager's appointment in accordance with the DMC or other contract (if any);" should be added; or paragraph 7(1) should be re-phased to read "No matter what the provisions of DMC or contract (if any) be, subject to subparagraph (5) and (5A), at a general meeting convened for the purpose a corporation may, by a resolution of the owners of not less than 50%" should be considered. [Submission of Mr Thomas CHAN issued vide LC Paper No. CB(2)1606/00-01(16) dated 21 May 2001]</p>	
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	<p>(b) If the building manager is appointed under a DMC by the developer who holds a majority of shares and is entitled to vote for all purposes, it is unlikely that the appointment of the manager can be terminated even if an OC is established.</p>	<p>(d) A building manager appointed under a DMC should enter into a new three-year contract with an OC after the establishment of the OC. [Submission of the Hong Kong Association of Incorporated Owners Committee issued vide LC Paper No. CB(2)2051/00-01(01) dated 6 July 2001]</p> <p>(e) BMO should require a building manager appointed under a DMC to enter into a contract with an OC within three months after the establishment of the OC in a standard format. [Submission of the Incorporated Owners of Rhine Garden issued vide LC Paper No. CB(2)1606/00-01(03) dated 21 May 2001]</p>	
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VII. Mediation mechanism to resolve building management disputes			
	<u>Views/present situation</u>	<u>Proposal for improvement</u>	<u>Administration's response/ preliminary ideas</u>
	<p>(a) It is not uncommon that people will not approach the Lands Tribunal to resolve disputes because of the legal cost involved.</p> <p>(b) HAD should render more support to OCs, say, by acting as a mediator to resolve building management disputes among owners, and issuing various guidelines to assist OCs in managing their buildings.</p> <p>(c) The adjudication process of the Lands Tribunal should be streamlined.</p>	<p>(a) A mediation mechanism should be established to resolve building management disputes. The operation of this mechanism should be modelled on the Labour Tribunal or Small Claims Tribunal.</p> <p>(b) A Building Management Bureau should be established to enforce requirements under BMO on the operation of an OC. [Submission of the Incorporated Owners of Tai On Building, Shau Kei Wan issued vide LC Paper No. CB(2)2018/00-01(01) dated 4 July 2001]</p>	<p>Where disputes arise between owners or between owners and OCs, staff of HAD and its District Offices should 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.</p>