

OUR REF. : L/M (35) in HAB/V/BM/2/12 Pt. 4
YOUR REF. : CB2/PS/2/00
TEL. NO. : 2835 1484
FAXLINE : 2591 6002

By Fax (2509 9055)

26 March 2003

Clerk to Subcommittee
LegCo Panel on Home Affairs
Subcommittee on
Review of the Building Management Ordinance
Legislative Council Building
8 Jackson Road
Hong Kong
(Attn: Miss Lolita Shek)

Dear Miss Shek,

**LegCo Panel on Home Affairs
Subcommittee on Review of the Building Management Ordinance**

Follow-up to Meeting on 10 July 2002

I refer to your letter of 26 February 2003 requesting an assessment of the effectiveness of the pilot scheme on mediation in resolving building management disputes.

The Hong Kong Mediation Council (the Council) and the Hong Kong Mediation Centre (the Centre) have agreed to undertake ten dispute cases as pilot cases under the trial scheme. The maximum

number of hours assigned for each case will be 3-1/2 hours. At the meeting of the Subcommittee on Review of the Building Management Ordinance on 10 July 2002, Members were advised that a total of eight dispute cases on building management had been referred to the Council and the Centre for assessment on whether they could be taken on for mediation under the pilot scheme. The eight cases are mostly related to the apportionment of maintenance expenses among owners, fees charged by the property manager, repair and maintenance works and performance of the owners' committee.

Progress of the Pilot Scheme on Mediation

The Council and the Centre subsequently selected five out of the eight cases for inclusion in the pilot scheme. Three cases were excluded on grounds of complexity – both the Council and the Centre considered that these cases could not be resolved within the 3-1/2 hour mediation session. As for the five selected cases, only one (Case A) could go ahead eventually as the disputing parties of the other four cases refused to participate in mediation despite persuasion.

Further to the first lot of eight cases, we forwarded two more cases to the Council and the Centre for consideration. One of the cases (Case B) concerned the apportionment of management fees among the owners and the other (Case C) concerned the amount of management fees collected by the management committee of an owners' corporation. Both cases were assessed by the two professional bodies as mediable and the disputing parties also agreed to participate in the mediation process.

Mediation sessions were conducted for all the three cases. For Case A, the dispute was between owners and the Mutual Aid Committee (MAC) over the interpretation of certain provisions of the Deed of Mutual Covenant (DMC) relating to apportionment of maintenance and repair expenses. Following a mediation session held in September 2002 by the Council, the disputing parties reached an agreement to adopt the MAC's interpretation of the DMC provisions. Under the agreement signed by both parties, the MAC is required to return to some owners an amount which has been over-collected from

them. However, we found out recently that the MAC had not acted in accordance with the agreement. The Council is conducting further mediation sessions to help resolve the case.

Case B concerned apportionment of management fees among the owners. A mediation session was held in early March 2003 by the Centre but the disputing parties were not able to come to any agreement after the mediation meeting.

Case C concerned the amount of management fees collected by the management committee of an owners' corporation. A mediation session was held in mid March 2003 by the Council but the disputing parties were not able to come to any agreement after the mediation meeting. The owners' corporation has decided to file an application to the Small Claims Tribunal for recovering the outstanding management fees from the owner concerned.

Effectiveness of Mediation on Building Management Disputes

As mentioned above, the Council and the Centre have agreed to handle a total of ten dispute cases with a view to assessing the effectiveness of mediation in resolving building management disputes. We consider it premature to draw any conclusion on the effectiveness of the pilot mediation scheme based on the outcome of the above three cases. We will review the effectiveness of mediation on building management disputes in six months' time after more cases have gone through the pilot scheme.

Yours sincerely,

(Ms Esther Leung)
for Secretary for Home Affairs

c.c. Director of Home Affairs (Attn: Mrs Angelina Cheung)