

Bills Committee on Building Management (Amendment) Bill 2005

Consolidated Response – The Administration’s response to Members’ Suggestions/Views

Concerns and Views	Suggestions made by Members	Administration’s Response
A. Appointment of a Management Committee (MC)		
Building Management Ordinance (BMO) – Section 3(2) and Paragraph 1, 2(1), 5(2) and 12 of Schedule 2		
Building Management (Amendment) Bill 2005 (Bill) – Clause 4(b), 23(c), 23(d)(i), 23(g)(ii) and 36		
A1. Some Members have concerns over the Administration’s proposal of imposing mandatory requirements on owners to follow the procedures set out in the BMO, instead of the deed of mutual covenant (DMC), for the appointment of an MC.	<p>(a) Owners should be allowed to follow provisions in the DMCs that set out clear and fair procedures for the appointment of an MC.</p> <p>(b) Administration should not impose mandatory requirements across the board unless the relevant provisions in the DMCs were clearly unfair or improper.</p> <p>(c) A detailed mechanism should be provided in the BMO to require owners to opt into the statutory scheme by passing a resolution at an owners’</p>	<p>- According to a court judgement, unless the DMC of a building specifically refers to the appointment of an MC under section 3 of the BMO, otherwise, the committee referred to in the DMC is not the same creature as the one provided for in the BMO.</p> <p>- As such, the DMC provisions regarding the composition of the committee should apply to that committee referred to in the DMC only.</p> <p>- There is no provision in the BMO that governs the composition of the MC. So long as the MC members are appointed from amongst the owners at an owners’ meeting, they will have fulfilled the</p>

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	meeting for the appointment of MCs so that existing MCs which had been appointed in accordance with DMC provisions would be allowed to maintain their status quo if they wished to do so.	requirements under paragraphs 2(1) and 5(2) of Schedule 2 and such appointments will be valid.
BMO – Section 5(4) and Paragraph 2 of Schedule 2		
Bill – Clause 4(c), 5(c), 6(b), 7, 8, 19(d) and 23(d)(i)		
A2. Members expressed concerns over the agenda of the owners' meeting at which an MC was appointed.	(a) The existing section 5(4) of the BMO stipulates that a notice of meeting convened under sections 3, 3A, 4 and 40C shall specify (a) the date, time and place of such meeting; and (b) the resolutions which are to be proposed and, in particular, the resolution for the appointment of an MC. The words "in particular" raised doubts on whether resolutions other than the appointment of an MC could be raised at these owners' meeting where an owners' corporation (OC) has not yet been formed.	<ul style="list-style-type: none"> - Regarding suggestion (a), we <i>propose</i> to amend the provision such that the notice of meeting shall specify the resolutions that are related only to the appointment of an MC under sections 3, 3A, 4 and 40C respectively and the incorporation of owners. This will allow the owners to pass resolutions regarding the appointment of an MC as well as such related matters as the size and composition of the MC and the name and registered address of the OC. - Regarding suggestion (b), the revised paragraph 2 of Schedule 2 states that at a meeting of owners convened under section 3, 3A, 4 or 40C, after an MC is appointed, the owners shall, by a resolution

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	(b) The Administration should consider whether the appointment of chairman, the secretary and other members of an MC had to take place at the same owners' meeting at which an MC was appointed and whether flexibility could be allowed in this regard.	passed by a majority of votes of the owners voting either personally or by proxy, appoint members of the MC and the chairman, secretary and treasurer of the MC. This already shows that the appointment of chairman, the secretary and other members of an MC has to take place at the same owners' meeting at which an MC is appointed.
<p>A3. Some Members were concerned about how Home Affairs Department (HAD) could ensure that –</p> <p>(a) owners who have enjoyed the free land search service will return the land search records to HAD;</p> <p>(b) the owners will not use the records for commercial purpose; and</p> <p>(c) the land search records are up-to-date.</p>	<p>(a) Penalties should be introduced against persons who failed to return the records to District Offices before deadlines or any unauthorized use of information contained in the records for commercial purposes.</p> <p>(b) The Administration should ensure that the records of owners were updated before they were to be provided to owners.</p>	<p>- HAD will require owners applying for the waiver to sign an undertaking. By signing the undertaking, the owners concerned undertake to return the land search records to the District Office within 60 days (subject to extension to be granted by the District Officer), no matter whether an OC is formed.</p> <p>- The owners also undertake that the land search records obtained from HAD will not be used for any purpose other than the OC formation.</p> <p>- The undertaking is legally binding on the owners. If they fail to comply with the terms of the undertaking, the Government may take civil action</p>

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		<p>against them.</p> <ul style="list-style-type: none"> - HAD is unable to guarantee that the land search records provided are up-to-date, because – <ul style="list-style-type: none"> (a) According to the Land Registration Ordinance (Cap. 128), an instrument needs only be registered with the Land Registry within one month of its execution. (b) The convenor will need to obtain the land search records from the Land Registry at least 14 days before the owners' meeting. (c) For subsequent groups of owners who would like to convene an owners' meeting after the first group has failed, the land search records obtained at an earlier date may not be able to reflect any change of ownership which may occur after the issuance of the records by the Land Registry. <p>This was clearly explained to the owners concerned.</p>

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BMO – Sections 3, 3A, 4, 40C and Paragraph 2 of Schedule 2		
Bill – Clause 4(c), 5(c), 6(b), 7, 8, 19(d) and 23(d)(ii)		
<p>A4. The Assistant Legal Advisor considered that there is no express provision stipulating that the convenor shall continue to chair the meeting convened under sections 3, 3A, 4 and 40C after the MC has been appointed, so as to appoint the MC members under paragraph 2 of Schedule 2.</p>		<p>We <i>propose</i> to amend the new paragraph 2(4) of Schedule 2 by making the new section 3(7), 3A(3E), 4(9) and 40C(8) (i.e. the convenor shall preside at a meeting of owners) applicable for the purpose of appointing MC members at a meeting of owners convened under section 3, 3A, 4 and 40C respectively.</p>
B. Avoidance of Formation of More than One OC		
BMO – Section 8		
<p>Some Members had concerns on whether there are sufficient safeguards under the BMO to avoid the formation of more than one OC in a building.</p>	<p>(a) Section 8 of the BMO should be amended to stipulate expressly that the Land Registrar could not issue more than one certificate of registration for an OC in respect of one building.</p> <p>(b) A mandatory mediation mechanism may be introduced for dealing with disputes</p>	<p>- We <i>propose</i> to include an express provision in Part III of the BMO that the Land Registrar shall not issue a certificate of registration to more than one OC for a building in respect of which a DMC is in force.</p> <p>- Regarding suggestion (b), please see Section M “Alternate Dispute Resolution for Building</p>

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	<p>arising from different groups of owners trying to convene owners' meetings at different times for the appointment of an MC.</p> <p>(c) As a long term measure, BMO may be amended to empower the Administration to take appropriate actions to intervene for resolving such disputes.</p>	<p>Management Disputes" below. Both the Hong Kong Mediation Council and Hong Kong Mediation Centre are of the view that for mediation to succeed, the disputing parties must participate on a voluntary basis.</p>
C. Filling of Vacancies of an MC		
BMO – Paragraph 6 of Schedule 2		
<p>Members considered that in case the size of an MC dropped below the quorum requirement (i.e. 50%), an easier mechanism should be provided for the OC to fill the casual vacancies in the MC without resorting to the Lands Tribunal.</p>	<p>(a) Chairman of an MC should be allowed to convene an owners' meeting even without having received a request of not less than 5% of the owners, provided that the meeting is solely for the purpose of filling the casual vacancies in the MC.</p> <p>(b) An inquorate MC should be allowed to convene an owners' meeting for the purpose of filling the casual vacancies in</p>	<ul style="list-style-type: none"> - We propose to expand paragraph 6(2) of Schedule 2 along the line of paragraph 6(1B) so that a casual vacancy in an MC could be filled not only by the MC, but also by the OC at a general meeting. - We also propose to stipulate clearly the terms of those members who are appointed to fill the vacancies. - We further propose to expand paragraph 6 of

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	<p>the MC.</p> <p>(c) The Authority could order an owners' meeting be convened for the purpose of filling the casual vacancies in the MC.</p> <p>(d) The list of agents who could apply to the LT for the appointment of an administrator under section 31 of the BMO should be expanded.</p> <p>(e) For the suggestions (b) and (c) above, the Administration should also work out who would be given the authority to determine and cross-check validity of proxies received in case an owner's meeting is convened.</p>	<p>Schedule 2 to the BMO to provide for situation where the number of MC members drops below 50% –</p> <ul style="list-style-type: none"> - where the chairman is still in post, he may convene an owners' meeting for the only purpose of filling the casual vacancies in the MC; - where the chairman is not in post, the remaining members of the MC may appoint amongst themselves a person to convene an owner's meeting, for the only purpose of filling the casual vacancies. - No other matters could be discussed at this special owners' meeting. - Procedures of this special owners' meeting should comply with the requirements in Schedule 3. - The chairman or the person responsible for convening the owners' meeting will have the authority to determine and cross-check validity of proxies received. (Please see Section H3 "Appointment of Proxy" below.)

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D. Self-declaration made by MC Members		
Bill – Clause 9 and 23(f)(iii)		
Some Members expressed concerns over the self-declaration requirement proposed by the Administration.	The Administration should consider the situation where a person appointed as an MC member refused to make declaration.	We <i>propose</i> to include a new sub-paragraph under paragraph 4 of Schedule 2 to stipulate that an MC member shall cease to be a member of the MC if he does not comply with the self-declaration requirement.
E. Appropriateness of the MC Chairman to Preside over Owners' Meeting		
BMO – Paragraph 3(1) of Schedule 3		
Bill – Clause 24(d)(i)		
Some Members considered that the MC Chairman should refrain from presiding over owners' meeting when there is conflict of interest.	In case the owners present at an owners' meeting decided by passing a resolution that the MC chairman should not preside the meeting due to direct conflict of interest, the meeting would have to be presided by the deputy chairman, or the secretary, and if both are unavailable, a person to be elected by the owners present.	We have reservations on the suggestion – - There is so far no insurmountable problem with the present arrangement. - By way of analogy, neither are there any express provisions in the Companies Ordinance (Cap. 32) which state the circumstances under which the chairman of the board of directors should refrain from presiding over the shareholders' meeting.

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F. Owners' Rights to Request the MC Chairman to Convene a General Meeting of the Corporation		
BMO – Paragraph 1(2) of Schedule 3 and Section 40B(1)		
<p>F1. Members expressed concerns over the situation where the chairman refused to convene an owners' meeting in accordance with paragraph 1(2) of Schedule 3 to the BMO.</p>	<p>The owners concerned should be allowed to apply to the Authority for an order that the building manager concerned must convene an owners' meeting within a reasonable period of time. The Administration should confirm whether section 40B(1)(b) of BMO could apply in such a case.</p>	<ul style="list-style-type: none"> - Apart from the existing requirement under paragraph 1(2) of Schedule 3, we <i>propose</i> to include another time limit for the actual holding of the general meeting. We <i>propose</i> that the general meeting should be held within 35 days on receipt of owners' request. - Section 40B(1) stipulates that for the Authority to consider ordering the MC to appoint a building management agent within a reasonable period of time for the purpose of managing that building, it must appear to the Authority that <u>all</u> the following conditions occurred – <ul style="list-style-type: none"> (a) no person is, for the time being, managing that building; (b) the MC has, in any material particular, failed substantially to perform the duties of a corporation under section 18; and (c) by reason of the circumstances mentioned in paragraphs (a) and (b), there is danger or risk

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		<p>of danger to the occupiers or owners of that building.</p> <p>It is thus not applicable in cases where the chairman refuses to convene an owners' meeting.</p>
<p>F2. Some Members expressed concerns that some owners might abuse their rights to request the MC chairman to convene an owners' meeting.</p>	<p>(a) There should be a non-judicial mechanism to determine whether the owners had reasonable grounds in making the request and the determination made would serve to give protection to the MC chairman in case he was sued by civil proceedings on the grounds of his refusal to convene the owners' meeting. The District Officers should be responsible for making the determination.</p> <p>(b) Chairman of MC could take the case to court for a determination. If the court considered that the conduct of owners concerned amounted to an abuse of proceedings, it could order that the chairman of MC did not need to convene</p>	<p>- Regarding suggestion (a), we considered that it is not appropriate for District Officers to interfere into building management matters as to whether the owners have grounds to request an owners' meeting. This may create even more disputes between the OC and the owners.</p> <p>- Regarding suggestion (b), we have concerns that the MC chairman may abuse this mechanism to avoid the need to comply with the time limit in holding the owners' meeting as requested. The chairman may say that he has already applied to the court and thus an owners' meeting would not be convened until the hearing is held, which may only happen several months later. This will deprive the rights of the minority owners to request an owners' meeting.</p>

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	the owners' meeting.	
G. Interpretation of the term "Majority"		
BMO – Paragraph 2(1), 5(2) and 6 of Schedule 2 and Paragraph 3(3) and 3(4) of Schedule 3		
Bill – Clause 23(d)(i) and 23(g)(ii)		
G1. Members in general considered that there would be practical difficulties for applying the majority voting system to appointment of MC members.		Given the practical problem of appointment to MC under a "majority" voting system, we <i>propose</i> that the simple or relative majority system (otherwise known as the "first past the post" voting system) should be adopted in the appointment of members of MC in the BMO.
G2. Members in general considered that it should be stated clearly in the BMO concerning how votes should be counted at owners' meetings.		We <i>propose</i> to set out clearly in Schedule 3 to the BMO that abstention votes and invalid votes should not be counted. Abstention votes include blank votes as well as those who are present at an owners' meeting but do not vote at all.
G3. Members expressed concerns over situation where nominees for the same office received the same number of votes.	The BMO should stipulate that if nominees for the same office received the same number of votes, the person presiding over the meeting should exercise his casting vote in	We <i>propose</i> that in the appointment of MC members in the BMO, if two or more of the most successful nominees have an equal number of votes, the person presiding over the owners' meeting shall determine the

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	accordance with the lot drawn by him.	result by drawing lots. The nominee on whom the lot falls will be deemed to be appointed. This is in line with the arrangement under the District Councils Ordinance (Cap. 547).
G4. Members expressed concerns over situation where the number of nominees was the same as the number of members of an MC.	The Administration might explore whether it would be feasible to endorse the appointment of these nominees as MC members by a resolution passed at the owners' meeting so that voting would not be required.	<ul style="list-style-type: none"> - To pass a resolution to endorse the appointment of the nominees as MC members will in fact require the nominees to obtain over 50% of votes (i.e. going back to the majority voting system). If the only nominee fails to obtain over 50% of votes, the post will become vacant and this creates practical problems for the operation of the MC. - We therefore <i>propose</i> that if there is only one nominee for the post (i.e. the number of nominees is the same as the number of members of an MC), that nominee will be deemed to be appointed. This is in line with the arrangement under the District Councils Ordinance (Cap. 547).

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H. Appointment of Proxy		
BMO – Section 5(6), Paragraph 4(2) and 4(3) of Schedule 3 and Paragraph 14(1) and 14(2) of Schedule 8		
Bill – Clause 4(c), 5(c), 6(b), 19(d), 22, 24(e)(ii), 24(e)(iii), 29(j)(i) and 29(j)(ii)		
<p>H1. Members expressed diverse views on the format of the proxy instrument.</p>	<p>(a) Some Members suggested that owners should be allowed to indicate voting instructions on the proxy instrument. Other Members disagreed and considered that would make the proxy instrument too complicated.</p> <p>(b) Some Members suggested that owners should be given the flexibility to alter the statutory format of the proxy instruments. However, other Members were of the view that this flexibility could lead to more disputes.</p> <p>(c) If the proxy instrument stipulated in the Bill was adopted, it should be clearly stated in the relevant guidelines that OCs could not impose any additional requirement in respect of the statutorily</p>	<p>- We <i>propose</i> that owners should not be allowed to indicate the voting instructions on the proxy instrument or alter the statutory format.</p> <p>- We will launch extensive publicity programmes after the passage of the Bill so as to allow public to have a better understanding of the amendments. The statutory format of the proxy instruments will also be widely publicised.</p>

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	stipulated format of proxy instrument and the format should be widely publicised.	
H2. Members considered that some measures should be introduced to prevent the abuse of proxy instruments by some owners.	<p>(a) Some Members considered that owners should provide additional information, namely the first four digits of their Hong Kong Identity Card number, their contact telephone number, date and time of signing the proxy instrument and name and signature of a witness, on the proposed statutory proxy instrument. Other Members however had reservations over this suggestion.</p> <p>(b) The MC secretary should acknowledge receipt of all valid proxy instruments submitted by depositing a receipt slip in the letter box of the owner.</p> <p>(c) The MC secretary should post the information in respect of those flats where a proxy had been appointed in a</p>	<p>- We <i>propose</i> to include the following requirements in Schedule 3 to the BMO for owners' meetings –</p> <p>(a) The secretary of the MC should be required to acknowledge receipt of all proxy instruments submitted by leaving a receipt slip at the flat of the owner or depositing the slip into the letter box of the owner before the owners' meetings. The receipt slip should be signed by the secretary.</p> <p>(b) The secretary of the MC should be required to post, throughout the owners' meeting, information in respect of those flats where a proxy instrument has been submitted in a prominent place of the venue of the owners' meeting for inspection by owners.</p> <p>- For owners' meetings convened for the purpose of the appointment of an MC under section 3, 3A, 4 and 40C of the BMO, the above requirements will</p>

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	<p>prominent place of the venue of the owners' meeting for inspection.</p> <p>(d) The secretary of the MC should, within seven days of the date of the owners' meetings, display the information in a prominent place in the building. The secretary would be held liable and subject to penalty if he failed to do so.</p> <p>(e) Failure of the secretary to post the information prior to the owners' meeting would be taken into consideration by the court in deciding whether there were material irregularities in the holding of the owners' meeting concerned when the voting results of the meeting were challenged.</p> <p>(f) If it was permissible to copy or take photos of the information posted out, this should be specified in the guidelines for</p>	<p>be the responsibilities of the convenor.</p> <ul style="list-style-type: none"> - As this is a procedural requirement of all owners' meetings, non-compliance may be subject to challenge in court over the validity of the meeting. - In order to facilitate the implementation of the proposed amendments listed above, we <i>propose</i> to further increase the time-limit for lodging the proxy instruments to 48 hours before the owners' meeting. - Regarding suggestion (g), if an owner appoints more than one proxy to attend the owners' meeting, then the proxy who was last appointed by the owner should be valid. Clarification has to be sought from the owner if it is not clear which of the proxies was last appointed. If the owner attends the meeting and casts a vote in person, all the proxy instruments he made would be deemed void. - We have reservations on suggestion (h). Members may like to note that for large estates, the number of

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	<p>reference of owners and OCs.</p> <p>(g) In case two different proxy instruments signed by the same owner on the same date were lodged with the MC secretary, both proxy instruments would become void. This arrangement, if adopted, should be included in the guidelines for reference by OC and owners.</p> <p>(h) The OC should be required to keep the proxy instruments for a certain period of time, say one year, after the holding of the owners' meeting.</p>	<p>proxy instruments received could be over thousands. It is normal for an OC to have an annual general meeting and one or two extraordinary meeting(s) each year. The number of meetings held during renovation will be even more. It will create a huge burden for the OC to keep all these proxy instruments. Even for tenement buildings, while the number of proxy instruments received may be fewer, these OCs usually do not have any common area designated for storage purpose and hence the proposal will create a burden for the individual MC members to store them at home. We understand that most MCs do keep the proxy instruments in cases of disputes. We see no need to stipulate in the law such a requirement which will then be applicable to all OCs. There is also no such requirement under the Companies Ordinance.</p>
<p>H3. Members expressed concerns over who should have the power to determine the validity of a proxy</p>	<p>(a) An express provision should be added to the BMO to the effect that the chairman of an owners' meeting had the final</p>	<p>- We <i>propose</i> the chairman of the MC, and if he is not readily available, the person presiding over the owners' meeting in accordance with paragraph 3(1)</p>

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instrument.	<p>authority in determining the validity of proxy instruments.</p> <p>(b) There should be provisions that stipulated clearly as to who should be given the power to determine the validity of questionable proxy instruments in the absence of the MC chairman, or in case his office was left vacant before the meeting was held.</p> <p>(c) In the situation that an OC wished to appoint a professional to assist in verifying proxy forms for the OC, the Administration should liaise with the chairman of the professional body concerned to seek his assistance in providing such a referral.</p> <p>(d) Representatives of HAD attending owners' meeting should play a more active role in the verification of proxy</p>	<p>of Schedule 3 to the BMO should be given the power to determine the validity of the questionable proxy instruments.</p> <p>- For meetings convened for the purpose of appointing an MC under sections 3, 3A, 4 and 40C, we <i>propose</i> that the convenor should be given such powers.</p>

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	forms and in handling disputes arose.	
H4. Members expressed concerns over the validity of proxies deposited prior to an adjourned meeting of the corporation.	It should be specified in the proposed proxy instruments that proxies deposited prior to the adjourned meeting would remain valid unless new proxies from the same owners had been received.	<ul style="list-style-type: none"> - We <i>propose</i> to make specific provisions in the BMO to the effect that the proxy instruments deposited for the original owners' meetings could be used at adjourned meetings, unless revoked, replaced by a new proxy instrument submitted by the owner, or specifically instructed by the owner to the contrary in accordance with the statutory format. - We further <i>propose</i> to stipulate that all adjourned meetings should comply with the requirements set out in Schedule 3 to the BMO.
I. Protection of Members of MC		
Bill – Clause 15		
I1. Some Members considered that the proposed new section 29A is too loose if members of MC could escape liability simply when they have acted in good faith.	Members of the MC should be required to act in good faith and also in a reasonable manner in order that they could exercise the proposed new section 29A.	We <i>propose</i> that members of an MC would have to prove that they have acted in good faith as well as acted in a reasonable manner in order that they could exercise the proposed section 29A.

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<p>I2. Some Members considered that the protection provided for MC members under the proposed new section 29A should be extended to cover statutory duty of individual members.</p>	<p>Protection may be given to an MC chairman who fails to comply with paragraph 1(2) of Schedule 3 to the BMO only because the other MC members have been uncooperative.</p>	<ul style="list-style-type: none"> - We have reservations over extending protection to cover statutory duty of individual members. - If this suggestion is adopted, it will mean that an aggrieved party under the BMO will not be able to obtain any relief in respect of the act or default of the MC member if the latter could claim that he is acting in good faith and in a reasonable manner. - While there is case law ruling that the responsibility to convene an owners' meeting under paragraph 1(2) of Schedule 3 rests with the chairman, there are also precedent judgements showing that the court will take into account different factors when deciding whether the chairman has breached the law.
<p>I3. Some Members expressed concerns over libel cases arising from disputes in building management.</p>	<p>(a) The proposed Building Affairs Tribunal (BAT), if implemented, should handle libel cases arising from disputes in building management as well.</p>	<ul style="list-style-type: none"> - We have passed on the request concerning the proposed BAT to the Housing, Planning and Lands Bureau (HPLB) for their consideration.

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	(b) The Administration might explore whether it is feasible to provide for privilege which specifically applied to libel cases arising from discussion of affairs of OC.	<ul style="list-style-type: none"> - We have reservations on suggestion (b) – <ul style="list-style-type: none"> - MC members should act prudently in discharging their building management duties. - It will be too lax to exclude individual MC members from their civil or criminal liability in this way. - This will also impose a procedural bar on an individual's right to institute legal proceedings before a court.
J. Procurement Requirements		
BMO – Section 20A and Paragraph 5 of Schedule 7		
Bill – Clause 13 and 28(e)		
J1. Members expressed concerns over the consequences of non-compliance with the statutory procurement requirements, especially in relation to the validity of procurement contracts.	(a) Members in general agreed that where proceedings were taken for the enforcement of any procurement contract to which section 20A(2) and (2A) applied, the court may make such orders and give such directions in respect of the rights and obligations of the contractual parties. However, they considered that	<ul style="list-style-type: none"> - We <i>propose</i> the following arrangements and procedures for OCs and owners to deal with contracts that are procured without following section 20A(2) and the new section 20A(2A) – <ul style="list-style-type: none"> (a) A procurement contract shall not be rendered void by reason only of non-compliance with section 20A(2) and (2A). (b) A procurement contract is voidable by a

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	<p>owners should be given the opportunity to decide whether to honour the contract or not before the judicial mechanism is triggered.</p> <p>(b) Some Members considered that a procurement contract should be rendered void in case of non-compliance, but could be ratified by a resolution passed at an owners' meeting. Other Members, however, considered that the procurement contract should only be voidable at the option of the owners.</p> <p>(c) Where a contract was invalidated, the contractor concerned should be compensated on the basis of a quantum meruit. Members later agreed that the determination of liability among contractual parties was beyond the scope of BMO and the Bill and there was no need to introduce a provision in BMO to</p>	<p>resolution passed by the majority votes of the owners at a general meeting of the corporation by reason only of non-compliance with section 20A(2) and (2A).</p> <p>(c) Where proceedings are taken for the enforcement of any procurement contract to which section 20A(2) and (2A) applies, the court may make such orders and give such directions in respect of the rights and obligations of the contractual parties, including whether the procurement contract is void or voidable at the instance of the OC, as the court may deem fit having regard to all the circumstances of the case and in particular (but not limited to) several factors to be listed out in the BMO.</p> <p>- To avoid unnecessary litigation, we also <i>propose</i> to include an express provision that a procurement contract shall not be rendered void or voidable by reason only of non-compliance with the Code of</p>

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	<p>set out the mechanism.</p> <p>(d) A standard form which included all necessary procurement procedures to be followed should be issued for use by OCs and building managers in making procurement.</p> <p>(e) A manual setting out new procurement requirements and the consequences of non-compliance should be drawn up for contractors' reference.</p> <p>(f) The consequence of non-compliance could be stipulated by codifying the civil liability involved in the BMO.</p> <p>(g) Members agreed that it would not be appropriate to introduce a punitive clause for deliberate non-compliance of the statutory procurement requirements in the current legislative exercise. Yet, they</p>	<p>Practice [i.e. section 20A(1) and (3)].</p> <p>- Regarding suggestion (f), we <i>propose</i> to include an express provision under section 20A that for the avoidance of doubt, any person who enters into a procurement contract on behalf of the corporation in breach of section 20A(2) and (2A) of the BMO shall be held personally liable for any claims unless the new section 29A applies.</p> <p>- To allow the public to have a better understanding of the amended BMO, we will launch extensive publicity programmes and issue a layman's guide when the Bill is passed. The revised procurement requirements will be included in the guide.</p>

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	<p>considered that the Administration should review the need for such a clause after the implementation of the proposed procurement requirements.</p> <p>(h) Mandatory mechanism of mediation should be introduced for dealing with disputes arising from non-compliance of the statutory procurement requirements.</p> <p>(i) Building managers should be required to file the original copy of receipt of any procurement of goods and services the cost of which would be charged to OCs.</p>	
<p>J2. Members expressed concerns that OCs might split huge-sum contracts into mini-contracts so as to avoid the need to comply with the procurement requirements.</p>	<p>(a) It should be specified in the BMO that any procurement of supplies, goods and services of the same nature undertaken within the same period of time but was covered by different contracts should be deemed as one single procurement contract.</p>	<p>We <i>propose</i> that where proceedings are taken for the enforcement of any procurement contract to which section 20A(2) and 20A(2A) applies, the court may make orders and give directions with regard to whether the procurement contract is void or voidable at the instance of the OC. The court has to take into account all circumstances of the case and in particular (but not</p>

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	<p>(b) An express provision should be included in the BMO stipulating that any procurement contract which was artificially split for the sole purpose of avoiding the need to comply with the statutory procurement requirements would be rendered void. It would be up to the court to determine whether the contract was artificially split.</p>	<p>limited to) several factors to be listed in the BMO. One of these factors would be whether the contract of procurement has been split for the sole purpose of avoiding the requirements in section 20A(2) and (2A).</p>
<p>J3. Members expressed diverse views as to whether owners should be allowed to retain the existing service without the need to go through tendering requirement –</p> <p>(a) Some Members considered that as long as the ultimate decision of whether to retain the existing service rested with owners at an owners' meeting, there would be no need to go through the</p>	<p>If tendering requirements could be waived for continuous engagement of the same contractor/supplier, owners should be requested to make a conscious decision at a general meeting of the corporation to waive the tendering requirements and to award the contract to the incumbent contractor/supplier.</p>	<ul style="list-style-type: none"> - We <i>propose</i> to revise the procurement requirements to the effect that for contracts engaging the same contractor/supplier which exceeds the sum of \$200,000 or a sum which is equivalent to 20% of the annual budget of the OC, whichever is the lesser (i.e. the threshold set for tendering), the MC may seek approval from the owners' meeting to waive the tendering requirement and to accept the procurement proposal. - While the tendering requirement could be waived, the procurement still needs to be endorsed by

Concerns and Views	Suggestions made by Members	Administration's Response
<p>tendering requirement.</p> <p>(b) Some other Members considered that the tendering requirement should be kept even for retaining existing service, as this would allow the owners to obtain the best quotations and the most up-to-date market information.</p>		<p>majority of the owners at an owners' meeting.</p>
<p>J4. Members in general supported the Administration's proposal to delete from the Bill the proposed provisions regarding the list of urgent items.</p>	<p>Some Members suggested that, to cater for an urgent need to convene MC meeting, paragraph 8 of Schedule 2 to the BMO may be amended to the effect that if 75% of members of an MC were satisfied that there was an urgent need for convening a meeting of MC, a shorter period of notice could be allowed.</p>	<ul style="list-style-type: none"> - We <i>propose</i> to delete from the Bill clause 13(a)(iii) relating to urgent items. - We have consulted a number of associations of OCs on whether a shorter period of notice should be allowed for MC meeting. The associations of OCs in general considered that they have not encountered any particular difficulties under the current seven-day requirement and they see no need to shorten the notice period.

Concerns and Views	Suggestions made by Members	Administration's Response
<p>J5. Members expressed diverse views over the procurement of legal service.</p>	<p>(a) Some Members considered that it should be stipulated in the BMO that OCs or building managers could not engage in lawsuits unless such a decision had been endorsed at owners' meetings by resolution.</p> <p>(b) However, Members in general considered that suggestion (a) failed to provide flexibility for OC to cope with any urgent needs for procurement of legal service. An OC should be given the discretion to procure legal service without the need to seek owners' endorsement by a resolution passed at an owners' meeting, if the initial cost required was not expected to exceed the statutory threshold.</p> <p>(c) An express provision should be added to the BMO requiring an OC to notify owners of any appointment of lawyers so that owners would be given the</p>	<p>- The procurement of legal service, like procurement of all other services, should also be subject to the statutory procurement requirements.</p> <p>- We <i>propose</i> to add a new provision in the BMO such that the MC should have the duty to inform the owners whenever the OC is sued or the OC decides to sue somebody.</p> <p>- We <i>propose</i> that in cases where the OC is sued, the MC shall notify the owners by posting a notice about the details of the case in a prominent place in the building within seven days of receipt of the legal documents by which the legal proceedings are commenced. In cases where the OC decides to sue, the MC has to post the notice within seven days once the decision is made by the MC.</p> <p>- Upon enactment of the Bill, we will issue administrative guidelines as to what types of details of the case should be included in the notice to owners, such as the name and capacity of the</p>

Concerns and Views	Suggestions made by Members	Administration's Response
	<p>opportunity to revoke the decision if necessary. The Administration should also consider how detailed the information should be required for the notification of owners.</p>	<p>plaintiff/defendant, the legal representatives of the other parties (if any), the case number of the legal action, etc.</p>
K. Posting of Notice		
BMO – Paragraph 10(4B) of Schedule 2, paragraph 6(3) of Schedule 3 and paragraph 2 of Schedule 6		
<p>Members noted that there is no requirement under the BMO on how long the financial statements should be displayed in the building.</p>	<p>A time period should be set for the display of financial statements.</p>	<p>According to paragraph 10(4B) of Schedule 2 and paragraph 6(3) of Schedule 3 to the BMO, the minutes of an MC meeting and those of a general meeting of an OC shall, within 28 days of the respective dates of the meetings, be displayed by the secretary in a prominent place in the building. According to paragraph 2 of Schedule 6, the MC treasurer shall prepare a quarterly summary of the income and expenditure of the OC and display a copy of it in a prominent place in the building within one month after each consecutive period of three months. We <i>propose</i> to include in these provisions a time period of seven days for the display of the documents specified in the respective provision.</p>

Concerns and Views	Suggestions made by Members	Administration's Response
L. Formation of OC or Committee in House Developments		
<ul style="list-style-type: none"> - Members noted that given the so-called “common parts” of Hong Lok Yuen (and house developments with similar ownership structure) are private properties retained by the developer and that the owners do not own undivided shares, the owners are unable to incorporate under the BMO. - Members also noted that, by the same token, the setting up of a non-statutory committee would not enable the owners concerned to have any management control of the “common parts” of relevant house developments. 		<p>As agreed at the Bills Committee meeting, given the complexity of the issue, this subject will not be included in the current legislative amendment exercise.</p>
M. Alternate Dispute Resolution for Building Management Disputes		
Members considered that mediation might be an alternative mechanism for	(a) The mode of mediation should be revamped. Instead of asking the parties	- We are discussing with HPLB (in the context of the proposed BAT) and the Judiciary on how best to

Concerns and Views	Suggestions made by Members	Administration's Response
resolving building management disputes at court.	<p>in disputes to go to the mediation centre, mediators could attend meetings of the OC.</p> <p>(b) A mandatory mechanism of mediation may be introduced to deal with minor building management disputes.</p>	<p>promote mediation among OCs and property owners.</p> <ul style="list-style-type: none"> - We have drawn up a list of professionals who would provide out-reach service to OCs at their owners' meetings. - Regarding suggestion (b), both the Hong Kong Mediation Council and Hong Kong Mediation Centre are of the view that for mediation to succeed, the disputing parties must participate on a voluntary basis.
N. Minority Owners to Sue OC or Members of an MC		
Some Members expressed concerns over the situation where minority owners sue OC or MC members.	<p>(a) The mechanism of making of a prospective pre-emptive costs order in favour of minority owners might be subject to abuses by law firms in collaboration with individual owners to initiate proceedings.</p> <p>(b) The BMO may be amended to the effect</p>	<ul style="list-style-type: none"> - Regarding concern (a), we consider that the possibility of such abuses is minimal. The court will consider a number of factors before exercising its discretion in making a pre-emptive costs order in favour of the minority owners. It is highly unlikely for the court to grant such orders without very sound justifications.

Concerns and Views	Suggestions made by Members	Administration's Response
	that an OC would be bound to bear the legal costs if it was sued by a certain percentage of owners.	- Regarding suggestion (b), we have strong reservations. We are of the view that whether OC has to bear the legal costs of the owners should be determined in accordance with the individual circumstances of each case by the court. That certain percentage of owners may not be reasonable in initiating litigation against the OC. It will be unfair to other owners if OC are bound to bear their legal costs. This suggestion may also encourage owners to recklessly initiate legal proceedings, given that they do not have to bear the legal costs anyway.
O. Jurisdiction Vested in Lands Tribunal		
BMO – Section 45(4)(c) and 45(4)(f)		
Some Members expressed concerns over the proposal to delete section 45(4)(c) and (f) of the BMO.	(a) Under some DMCs, the power to initiate proceedings against individual owners for the purpose of enforcing the terms of the respective DMC might be specifically conferred upon the owners' committee. Deletion of section 45(4)(f) (i.e. owners' committee) might lead to a situation	Taking into account the views of the Law Society, we have earlier proposed to delete section 45(4)(c) and (f) on the ground that MC and owners' committee are not legal entities. Having regard to Members' views that section 45 does not automatically make MC a legal entity and the relevant judgments, we have no objection to retaining the two sub-sections. The Department of

Concerns and Views	Suggestions made by Members	Administration's Response
	<p>where no one could exercise the power to initiate proceedings.</p> <p>(b) Section 45(4)(c) and (f) should be retained and members of an MC or an owners' committee should be allowed to take representative action, provided that the MC or owners' committee concerned had passed a motion in support of taking such action.</p>	<p>Justice also has no objection to this change.</p>
<p>P. Communications among Owners</p>		
<p>Some Members considered that owners should be allowed to communicate with each other on matters relating to building management.</p>	<p>(a) The Administration should consider imposing a statutory obligation on a building manager that he had to allow communications among owners on matters relating to building management such as by distribution of leaflets into letter boxes. Some Members, however, considered that this would lead to the question of how to define the content of the communications to be allowed.</p>	<ul style="list-style-type: none"> - We consider that whether any communication channel among owners is acceptable or regarded as "nuisance" should best be decided by the owners themselves. - To ensure that the building manager will properly consult owners on such matters, we <i>propose</i> to include a new paragraph under Schedule 7 to require the manager to consult the owners' committee, and if there is a corporation, the general

Concerns and Views	Suggestions made by Members	Administration's Response
	<p>(b) A building manager and/or incumbent MC should ensure equal and fair treatment of information received from different sources and allow owners to have the right to choose whether they wished to obtain the information.</p> <p>(c) A building manager and/or incumbent MC should only disallow the distribution of information to owners if a resolution to this effect was passed at an owners' meeting.</p>	<p>meeting of owners, and adopt their decision on the channels of communication among owners on any business relating to the management of the building. The term "any business relating to the management of the building" is in line with the provision in section 34J of the BMO. Provisions in Schedule 7 are mandatory terms which must be impliedly incorporated into all DMCs.</p>
Q. Financial Arrangements for OCs and Managers		
BMO – Paragraph 3 and 4 of Schedule 7		
Bill – Clause 28(c) and 28(d)		
Some Members were concerned about non-compliance of the statutory requirements stipulated in paragraph 3 and 4 of Schedule 7 to the BMO.	A penalty clause should be introduced for non-compliance with the new requirement under the proposed amendments to paragraphs 3 and 4 of Schedule 7.	Schedule 7 contains provisions which shall be impliedly incorporated into any DMC. Failure to comply with the requirements in Schedule 7 is a breach of contract for which the owners may seek civil remedy through legal actions.

Concerns and Views	Suggestions made by Members	Administration's Response
R. Inspection of Documents		
BMO – Section 27 and Schedule 6		
Bill – Clause 14 and 27		
<p>Some Members expressed concerns over the situation where owners could not inspect bills, invoices, receipts etc referred under paragraph 1 of Schedule 6.</p>	<p>(a) Some Members suggested that a provision should be provided in the BMO to allow owners to inspect bills, invoices, receipts etc.</p> <p>(b) Some Members, however, considered that the requirement of having an accountant to audit the financial statements of the OC is sufficient. To allow owners to inspect bills, invoices, receipts etc. might add a huge administrative burden on the OC.</p>	<p>- Section 27(1) provides that an MC shall lay before the OC at the annual general meeting the income and expenditure account and a balance sheet. We have further proposed to strengthen section 27 by requiring the MC to lay before the OC the financial statements that are audited by a professional accountant. Section 27(2) provides that the MC shall permit the owners to inspect the books of account. Schedule 6 requires the treasurer to prepare a summary of the income and expenditure of the OC every three months and display a copy in a prominent place in the building. Interested owners could request the OC to supply him with copies of these documents under Schedule 6. We consider that the existing provisions regarding disclosures and auditing of the financial position of OC are already sufficient.</p> <p>- By way of analogy, under the Companies Ordinance</p>

Concerns and Views	Suggestions made by Members	Administration's Response
		<p>(Cap. 32), the annual accounts are the shareholders' only record of the company's financial position. Its books of account are only open to inspection by the directors, and not shareholders. A shareholder does not enjoy an unconditional right to inspect all documents of the company. According to section 152FA, shareholders of a company (i.e. members representing not less than 1/40th of the total voting rights of all members) may apply for a court order to inspect any records of the company, including the bills, invoices, vouchers, receipts, etc. The application has to be made in good faith and the inspection applied for has to be for a proper purpose.</p>
S. Regulation of Property Management Companies		
<p>Some Members expressed views that a regulatory scheme concerning the property management industry should be put in place in order to better protect owners' interests.</p>	<p>(a) The Administration may consider introducing a regulatory scheme under which different levels of regulation would be imposed on property management companies of different sizes.</p>	<ul style="list-style-type: none"> - We are now conducting a two-phase consultancy study on the feasibility of introducing a regulatory scheme for the property management industry. - This matter will not be included in the current legislative amendment exercise.

Concerns and Views	Suggestions made by Members	Administration's Response
	(b) Members have later agreed that this issue would not be pursued in the current legislative exercise.	
T. Termination of Appointment of the DMC Manager		
BMO – Section 34D and Paragraph 7 of Schedule 7		
Bill – Clause 16 and 28(g)		
T1. Members expressed concerns over Clause 28(g) of the Bill which specifies that the termination mechanism under BMO is only applicable to the DMC manager (i.e. the manager specified in the DMC).	Clause 28(g) should be revised to the effect that the termination mechanism should also be applicable to any manager (other than the DMC manager) if the management contract has harsher terms than the proposed termination mechanism.	We <i>propose</i> that the termination mechanism of the appointment of managers under paragraph 7 of Schedule 7 to BMO shall apply <u>only</u> to the DMC manager as well as subsequent managers whose contract with the OC does not provide for a termination mechanism at all.
T2. Some Members considered that the existing requirement for termination of the appointment of DMC managers under paragraph 7(1) of Schedule 7 to the BMO should be relaxed.	(a) The current threshold of 50% of shares of owners for terminating the appointment of managers should be revised as a simple majority of votes at an owners' meeting. (b) The current threshold should be lowered	- We received diverse views during the public consultation exercise on the proposed amendments to the BMO. - We consider that the existing mechanism should remain – - The provision in paragraph 7(5A) of

Concerns and Views	Suggestions made by Members	Administration's Response
	<p>to 30% of shares of owners.</p> <p>(c) A lower threshold should be adopted only for terminating the appointment of contract managers whose contract with OCs did not specify a contract period.</p> <p>(d) The voting rights of owners for the termination of the appointment of the manager should be determined on the basis of management shares instead of undivided shares.</p>	<p>Schedule 7 which specifies that only owners of shares who pay or are liable to pay management expenses shall be entitled to vote in the resolution of termination of DMC manager has already balanced the interests of the general owners and those of the developers and DMC managers.</p> <ul style="list-style-type: none"> - There are OCs who have successfully terminated the appointment of their managers under the existing mechanism. - An owner of an undivided share in land on which there is a building is an owner of the building, irrespective of his number of management shares. It is the ownership of the undivided shares which grants him the voting rights, rather than the ownership of management shares. Management shares are devised to calculate the shares of owners of each individual unit that has to contribute towards the total management expenses of a building. Factors such as the frequency of the use of common facilities and common parts may be

Concerns and Views	Suggestions made by Members	Administration's Response
		<p>crucial in determining the ratio of management shares in the DMC. Management shares fail to reflect the share of other liabilities which the owners of a building have to bear, e.g. liability in the case of winding up of the OC. As such, it is not appropriate to use management shares as the basis for determining the ratio according to which the owners' voting rights are to be fixed.</p>
<p>U. Obligations after Manager's Appointment Ends</p>		
<p>BMO – Paragraph 8 of Schedule 7</p>		
<p>Some Members considered that the existing provision in paragraph 8 of Schedule 7 to the BMO is not sufficient in protecting the owners' interest.</p>	<p>(a) The period within which the manager had to deliver to the owners' committee or the manager appointed in his place the items specified under paragraph 8(b) of Schedule 7 should be shortened.</p> <p>(b) The words "equipment and items" should be added to paragraph 8(b) of Schedule 7.</p> <p>(c) Penalty Clauses should be introduced for non-compliance with the statutory</p>	<p>Regarding suggestions (a) and (b) –</p> <ul style="list-style-type: none"> - We <i>propose</i> to amend paragraph 8 of Schedule 7 to further require the outgoing manager to deliver, <u>within 14 days</u> after his appointment ends, to the owners' committee or the new manager any movable property in respect of the control, management and administration of the building that is under his control or in his custody or possession and belonging to the corporation. - As for books or records of account, papers,

Concerns and Views	Suggestions made by Members	Administration's Response
	<p>obligations under paragraph 8 of Schedule 7.</p>	<p>documents, other records, as they are needed for the preparation of the income and expenditure account and balance sheet required under paragraph 8(a) of Schedule 7, they should be delivered within two months after his appointment ends.</p> <p>Regarding suggestion (c) –</p> <ul style="list-style-type: none"> - Schedule 7 contains provisions which shall be impliedly incorporated into any DMC. Failure to comply with the requirements in Schedule 7 is a breach of contract for which the owners may seek civil remedy through legal actions.
<p>V. Resolving Problems arising from DMC provisions</p>		
<p>Members considered that some DMC provisions are unfair and problematic.</p>	<p>A mechanism should be put in place under the BMO to rectify unfair DMC provisions, such as the unfair allocation of undivided shares and management shares between owners and developers (where developers may have a large number of undivided share but only need to pay a small amount of management expenses).</p>	<ul style="list-style-type: none"> - DMC is a private contractual agreement among all the co-owners, the manager, and also the developer of a building. The Government is not a party to this private contract. As in other private contracts, any terms in a DMC could not be amended unilaterally without the consent of the parties to the contract.

Concerns and Views	Suggestions made by Members	Administration's Response
		<ul style="list-style-type: none"> <li data-bbox="1350 292 2069 611">- Any amendment to a DMC will inevitably affect the rights and responsibilities of the contractual parties. For example, re-distribution of undivided or management shares will likely benefit one group of owners at the expense of another group of owners. This could be regarded as having impact on the property rights of owners. <li data-bbox="1350 675 2069 946">- The Government had already introduced some measures to try resolving the problems, such as requesting DMCs to be drawn up in line with DMC Guidelines issued by LACO or introducing in the BMO some mandatory terms that must be impliedly incorporated into all DMCs. <li data-bbox="1350 1010 2069 1090">- Members' suggestions have grave legal implications and also great impact on property rights of owners. <li data-bbox="1350 1153 2069 1329">- That said, we are aware that the problems of many old DMCs have caused difficulties in the owners' efforts in managing and maintaining their buildings (like buildings covered with more than one DMC).

Concerns and Views	Suggestions made by Members	Administration's Response
		<p>The Government generally does not have any objection in principle to the introduction of a mechanism for amendments of provisions in DMC through legislative means for the purpose of facilitating effective building management and maintenance. The fundamental questions are to what extent should we authorize owners (presumably the majority owners) to seek to make changes to a DMC and at the same time, the level of protection to be offered to the minority owners who would be affected by or oppose to any such changes.</p> <p>- Given the complexity of the issue, this subject will not be included in the current legislative amendment exercise.</p>
W. Borrowing Power of OC		
Members expressed concerns over the complexity and implications of the proposal to empower OCs to borrow on behalf of the defaulting owners from the	(a) Members suggested that another round of consultation should be conducted as the proposal had not been included in the Bill.	- We have consulted various professional bodies on the proposal. While they have no strong objections to the proposal, they have raised the following concerns –

Concerns and Views	Suggestions made by Members	Administration's Response
<p>Government to carry out statutory works.</p>	<p>(b) Professional bodies in the building management sector and other organizations/individuals which have made submissions to the Bills Committee should be consulted with regard to the proposal.</p>	<p>(a) The appeal mechanism may be abused by the defaulting owners and serve to delay the whole process.</p> <p>(b) There are doubts on whether the proposal is consistent with the Common Law. It may be an intrusion on human rights for OCs to raise a loan on behalf of the defaulting owners. The registration of a legal charge without the consent of the defaulting owner may also infringe the private property rights.</p> <p>(c) It is doubtful whether OCs, who borrow on behalf of the defaulting owner, are subject to any legal liability.</p> <p>(d) Disputes will likely arise in determining the cost allocation of repair works which are not directly related to the statutory order.</p> <p>(e) The proposal does not address the problem of owners deliberately refusing to repay the loan and the Government may be subject to huge risk of non-repayment.</p> <p>(f) There are already effective mechanisms for OCs to deal with defaulting owners. For</p>

Concerns and Views	Suggestions made by Members	Administration's Response
		<p>example, the OCs may apply to the Small Claims Tribunal/Court for a judgement or register a legal charge against the owners' title in the Land Registry. There is no urgent need in amending the BMO to empower OCs to borrow on behalf of defaulting owners.</p> <p>- We have also consulted a number of associations of OCs. They in general expressed strong reservations against the proposal –</p> <ul style="list-style-type: none"> (a) There will be a lot of disputes with regard to whether a specific repair item is within the scope of the statutory orders. (b) The proposal restricted the scope to works demanded by statutory orders. This will render it economically inefficient for the OCs to tackle the maintenance problems of their buildings as a whole. (c) There are concerns on whether OCs (or MC members in person) will be subject to legal liability in exercising the borrowing power. (d) The appeal mechanism is likely to be abused

Concerns and Views	Suggestions made by Members	Administration's Response
		<p>by the defaulting owners to delay the whole process.</p> <ul style="list-style-type: none"> - Organizations/individuals which have made submissions to the Bills Committee previously were also consulted on the proposal. They in general expressed objections to the proposal – <ul style="list-style-type: none"> (a) OCs may abuse the borrowing power, which will cause more disputes among owners. (b) Empowering OCs to exercise borrowing power without the consent of the defaulting owners may infringe human rights. (c) There are existing mechanisms for OCs to pursue claims against defaulting owners. There is no need to introduce this proposed mechanism. (d) The Government may be subject to huge risk of non-repayment. It is undesirable for the Government to use taxpayers' money to subsidise certain irresponsible owners.

Home Affairs Department
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