

**For discussion
on 8 April 2005**

Legislative Council Panel on Home Affairs

Regulation of Property Management Companies by Legislation

PURPOSE

1. This paper informs Members of the Administration's views on regulating property management companies by statutory means.

BACKGROUND

2. Management of private buildings is the responsibility of property owners. The Government's policy is to actively encourage and assist owners to form owners' corporations (OC) to facilitate the effective management of their buildings. In this regard, the Administration plays the role of a "facilitator", adopting various means to help owners discharge their building management responsibilities. One of the most crucial means adopted is the provision of a legal framework for compliance by owners. The enactment of the Building Management Ordinance (BMO) was to provide such a framework to facilitate the incorporation of owners and prescribe the rules for property management.

THE PROPERTY MANAGEMENT INDUSTRY

3. Of the 40 000 buildings in Hong Kong, some 23 000 have engaged a property management company to act as the manager of the building. Some of these building managers are stipulated in the deed of mutual covenant (DMC) of the building to manage the building.

4. At present, the property management industry in Hong Kong is represented by the Hong Kong Association of Property Management Companies Limited (HKAPMC). HKAPMC is composed of some 80 member companies, and they enjoy 85% of the market share. In order to ensure professionalism, the Association has stipulated a Code of Conduct for the compliance of all its member companies.

5. In addition to the 80 companies under the membership of HKAPMC, there are some 900 small to medium-sized companies in the property management industry.

STATUTORY REGULATION OF PROPERTY MANAGEMENT COMPANIES

6. The public has divergent views on whether there should be a formalized regulatory system over property management companies. Those in favour of having a statutory regulatory framework consider that it would help improve the quality of services provided by property management companies, while those against generally believe that the operation of small to medium-sized property management companies would be adversely affected. In turn, owners of old private tenement buildings, who are generally less affluent, would find it unaffordable to employ a manager to assist with the management and maintenance of their buildings.

7. The Administration has an open mind on the introduction of a regulatory system for property management companies. We hope that private property owners, OCs, the property management industry, professional bodies and the public will thoroughly discuss the subject and continue to express their views to us.

8. It must, however, be noted that even with a regulatory system (in whatever mode), we will not be able to stamp out the possibility of poorly-managed property management companies from closing or conducting illegal activities such as theft and bribery.

PROTECTION OF THE FINANCIAL INTERESTS OF PROPERTY OWNERS UNDER THE PRESENT REGIME

EXISTING PROVISIONS

9. The purpose of regulating property management companies is to protect the interests of owners. In fact, there are already existing provisions in the BMO to protect their pecuniary interests and guard

against the misuse of owners' money.

10. Part VIA of and the Seventh Schedule to the BMO are mandatory terms incorporated into all DMCs and are applicable to all DMCs. These provisions require that the building manager, i.e. the property management company, shall handle their clients' monies in an appropriate manner in accordance with the DMC.

11. Hence, whether an OC or an owners' association has been formed in a building, the building manager must, in accordance with the Seventh Schedule to the BMO, maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building. On receipt of the management and maintenance fees, the property management company shall, except for a reasonable amount to cover expenditure of a minor nature, deposit all money into that account without delay.

PROPOSED AMENDMENTS TO THE BMO

12. Management fees deposited by owners with the manager, less the remuneration of the manager as stipulated in the DMC or the management contract, are the owners' money and not the manager's money.

13. To safeguard the interests of property owners, we propose adding in the BMO stipulations that the manager shall establish and maintain one or more segregated trust/client accounts for holding money received in respect of the management of the building with the OC as the client. The manager is also required to display in a prominent place in the building a copy of the document showing evidence of such segregated accounts.

14. Under the new requirements, the manager will have to keep the management fees received for an OC in a bank account separate from his own monies. Furthermore, the manager will not be allowed to merge the management fees received from different buildings into one single bank account.

15. The above proposal has now been included in the Building Management (Amendment) Bill 2005 that will be introduced into the Legislative Council on 27 April 2005. The details of the proposal are set out in the Brief for Legislative Council on the Building Management (Amendment) Bill 2005 which was issued on 31 March 2005.

16. In addition to the above, the Building Management (Amendment) Bill 2005 also includes proposals to rationalize the requirements for procurement of supplies, goods and services by OCs and building managers. In short, we propose to amend the provisions in the BMO so that any procurement of goods, supplies and services with a value exceeding \$200,000 or 20% of the annual budget of an OC (whichever is the lesser) shall be done through tendering, and that any tender of a value exceeding 20% of the annual budget of an OC shall be accepted or rejected upon the passage of a resolution of the owners at a general meeting. Both OCs and building managers have to comply with the revised procurement requirements.

CONCLUSION

17. Full participation of owners is essential to effective building management. We will continue to strive to improve the existing legislative system, and will strengthen our publicity efforts in enhancing owners' understanding of the requirements of the BMO so that they could have a clearer and better idea of their rights and responsibilities.

Home Affairs Department
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