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Panel on Home Affairs

Background brief prepared by Legislative Council Secretariat for the meeting on 17 March 2010

Support to building owners and owners' corporations to facilitate building management and maintenance

Purpose

This paper gives an account of support to building owners and owners' corporations (OCs) provided by the Administration and other relevant organisations for better building management and maintenance. It also summarizes the views and concerns of Legislative Council (LegCo) Members on the subject.

Policy on building management and maintenance

2. According to the Administration, the management of private properties is the fundamental responsibility of property owners. It has been the Government's policy to encourage and assist owners to form OCs for effective building management. To this end, the Administration has provided a legislative framework in the Building Management Ordinance (Cap.344) (BMO) for the formation and functioning of OCs, and rendered advisory services to OCs on various aspects of building management work. BMO was last amended in 2007 to assist OCs in performing their duties, rationalize the appointment procedures of a management committee (MC), and safeguard the interests of building owners.

3. Under sections 18(1), 18(2) and 18(2A) of the BMO, an OC has legal obligations to properly manage and maintain the common parts of its building and do all things reasonably necessary for the enforcement of the obligations contained in the Deed of Mutual Covenant of the building for the management of the common parts of the building. OC may decide whether to engage any paid staff member, property management company or other professional trades or person to assist the OC, or to carry out the duties and powers of the OC under the BMO or the DMC of the building on behalf of the OC. In the performance of its duties and the exercise of its powers under the BMO, an OC shall be guided by the "Codes of Practice on Building

Management and Maintenance" issued by the Secretary for Home Affairs (SHA) under section 44(1) of the BMO.

Support for building management

4. The Home Affairs Department (HAD) is responsible for promoting effective building management in private multi-storey buildings, assisting in the formation of OC, and tackling management problems in such buildings. HAD together with its District Offices play an advisory and liaison role in providing assistance to OC at need, both prior to, during and after their formation. To provide outreach services and support for building owners, HAD has set up District Building Management Liaison Teams (DBMLTs) comprising Liaison Officers in the 18 District Offices. The main functions of DBMLTs include -

- (a) visiting owners of private buildings in the district to promote the good practices of building management;
- (b) advising owners on the procedures of the formation of an OC;
- (c) issuing an exemption certificate to the convener of an owners' meeting for obtaining a free copy of record of owners of the building from the Land Registry for the purpose of convening a meeting to form an OC;
- (d) attending owners' meetings and giving advice to owners as and when necessary;
- (e) processing applications made to SHA for an order to convene a meeting of owners under section 3A of the BMO;
- (f) organising training courses, seminars, talks and workshops on building management for members of MC;
- (g) organising educational and publicity activities, e.g. arranging roving exhibitions on building management and producing a series of publicity materials on building management, maintenance and insurance to promote proper and effective building management;
- (h) handling enquiries and complaints relating to building management;
- (i) assisting law enforcement departments in enforcing building maintenance and fire safety improvement; and
- (j) assisting in resolving disputes between owners, OCs and management companies, and arranging the provision of voluntary professional mediation service, if necessary.

5. In addition to HAD, the Hong Kong Housing Society (HKHS) also renders support to building owners and OCs in building management. For example, HKHS provides free guidance and advice on building management and maintenance to the public through its 10 Property Management Advisory Centres (PMACs) set up at various locations over the territory. Under HKHS's "Building Management Incentive Scheme", a subsidy of \$3,000 for the formation of OC and a subsidy of 50% of the insurance premium for third party risks insurance for common areas of building is granted to OCs successfully formed under the Scheme.

Support for building maintenance

6. In the discussion paper on building safety for the meeting of the Panel on Development on 23 February 2010 [LC Paper No. CB(1)1157/09-10(05)], the Administration has set out the financial and technical support measures to building owners provided by the Government and its partner organisations (including the HKHS and the Urban Renewal Authority (URA)) for carrying out the necessary maintenance and repairs works for their properties. Some key measures are highlighted below.

Operation Building Bright

7. The Administration, in collaboration with the HKHS and URA, launched in May 2009 the \$2-billion "Operation Building Bright" (OBB) to provide subsidies and one-stop technical assistance to help owners of old and dilapidated buildings to carry out repair and maintenance works. To cater for the needs of buildings and owners under different situations, the OBB has been tailored to cover two categories of buildings -

- (a) Category 1 target buildings cover buildings with OCs established. The OCs may apply for joining the OBB to carry out repair works on a voluntary basis; and
- (b) Category 2 target buildings cover buildings having difficulties in co-ordinating repair works, such as buildings without OCs. If the owners of the buildings are unwilling or unable to conduct repair works by themselves, the Buildings Department (BD) will carry out the repair works on behalf of the owners. After deducting the amount of subsidies available under the OBB, the BD will take action to recover the remaining repair costs from the owners.

8. According to the Administration, after completion of the works in respect of all the eligible buildings (i.e. 1 016 Category 1 and 615 Category 2 target buildings as at 2 February 2010), there will still be some uncommitted funds available for further deployment. Part of these funds will be used on those of the 4 000 buildings aged 50 or above covered in the BD's current special inspection exercise as necessary.

Building Maintenance Grant Scheme for Elderly Owners

9. As a major means to assist elderly owner-occupiers in need to maintain and repairs their buildings, in particular in compliance with the proposed Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS)^{note}, the Administration has established the \$1-billion Building Maintenance Grant Scheme for Elderly Owners to enhance financial assistance to elderly owner-occupiers to repair and maintain their self-occupied properties. The Scheme caters for elderly owner-occupiers (aged 60 or above) who have a low income and modest assets. Each elderly owner-occupier will be eligible for a maximum grant of \$40,000 within a period of five years. Apart from the general repair works in the common areas, the grant also covers works in individual premises, including repair of spalled concrete, fixing of water pipes, repair and replacement of windows, etc. The Scheme also allows eligible elderly owner-occupiers who have default repayments, or who are still making regular repayments, to repay their outstanding or default loans administered by the BD, HKHS or URA.

Other financial assistance schemes

10. Other financial assistance schemes administered by the Government, HKHS and URA are also available to help building owners in need. They include the BD's Comprehensive Building Safety Improvement Loan Scheme (which may provide interest-free loans to eligible owners), HKHS' Building Management and Maintenance Scheme, as well as URA's Building Rehabilitation Materials Incentive Scheme and Building Rehabilitation Loan Scheme. They are tailor-made to cover the different needs of owners and buildings for various types of maintenance and repair works.

Technical Assistance

11. Technical assistance, such as the promulgation of maintenance guidelines and provision of one-stop technical support, is provided by the Development Bureau in collaboration with the Home Affairs Bureau, HKHS and URA. To facilitate interested building owners and occupants as well as building professionals and contractors to access and inspect approved building plans more easily, the BD launched in September 2009 the Building Records Access & Viewing Online System, which offers round-the-clock service for users to view building records through the Internet anytime and anywhere.

Note: The proposed MBIS will cover private buildings aged 30 years or above, except domestic buildings not exceeding three storeys. The Building Authority (BA) will require building owners to carry out inspection (and repair works if necessary) in relation to the common parts, external walls and projections of the buildings once every 10 years. The proposed MWIS will cover private buildings aged 10 years or above, except domestic buildings not exceeding three storeys. The BA will require building owners to carry out inspection (and repairs works if necessary) in relation to windows in both common parts and individual premises of the buildings once every five years. The Buildings (Amendment) Bill 2010, which stipulates the statutory framework for the MBIS and MWIS, has been introduced into LegCo on 3 February 2010. A Bills Committee has been established to scrutinize the Bill.

Members' views and concerns

12. Issues relating to support to owners and OCs to facilitate better building management and maintenance were deliberated widely by LegCo Members in different forums, including the meetings of the LegCo, Panel on Home Affairs (the Panel), Panel on Development and the Bills Committee on Building Management (Amendment) Bill 2005. Building management issues were also raised from time to time at meetings between LegCo Members and District Council members. Key views and concerns as expressed by Members in recent years, are summarised in the ensuing paragraphs.

Assistance to owners and OCs in building management

13. At the meeting between LegCo Members and Eastern District Council members on 12 March 2009, some Members expressed concern that the support provided by HAD to OCs and owners of private buildings was far from adequate. A case in point was that HAD often arranged for Liaison Officers who were not well versed with BMO to attend owners' meetings. These members suggested that a dedicated office should be set up under HAD for providing assistance, including legal service, to OCs and owners of private buildings; HAD staff assigned to assist owners and OCs in building management should be provided with adequate training on the understanding of BMO provisions; and in the long run, consideration could be given to requiring developers of private buildings to set aside a fund for use by future OCs to cover legal costs pertaining to building management issues before they sold off their properties and/or requiring property management companies to set aside a sum for the same by way of legislation.

14. At the Panel meetings when discussing the subject, some members opined that HAD should assume a more proactive role in rendering support to OCs, particularly when a new OC was set up or when there was a change of term of an OC. Other members expressed concern about the support provided by HAD in assisting owners and OCs in resolving building management disputes. These members considered that HAD should approach OCs regularly to identify potential problems and conflicts in their daily operation and offer them the required assistance instead of passively providing mediation service after the disputes arose. They further enquired about the legal assistance rendered by the Administration for handling such disputes, and its position on the introduction of a mediation mechanism for dealing with building management cases. Members also considered that the Administration should explore administrative measures to assist MC members to observe the statutory declaration requirement.

15. In response to members' concerns, the Administration advised that -

- (a) to assist owners in properly discharging their management responsibilities, DBMLTs were set up as part and parcel of HAD's establishment to provide assistance to owners on building management

matters. Through the DBMLTs, HAD had been providing support for owners in the formation of OCs (as detailed in paragraph 4). In addition, HAD maintained a dedicated website on building management which contained useful materials on the formation of OC, such as the relevant legislation, forms and publication. HAD also partnered with the HKHS to provide financial assistance and free legal advice to owners to facilitate formation of OCs;

- (b) to improve the service of HAD, regular surveys in the form of questionnaire were conducted with the OCs, training for staff of District Offices had been strengthened to enhance their understanding of the provisions of the BMO, and tailor-made workshops covering topics such as the operation of OCs and procurement of goods and services were arranged for members of MCs. The Administration had also placed emphasis on training Liaison Officers on mediation skills. Since 2003, HAD had engaged a tertiary institution to provide mediation course for all Liaison Officers involved in building management work. With the assistance of the Hong Kong Mediation Council and the Hong Kong Mediation Centre, HAD had launched a pilot scheme on mediation. The effectiveness of mediation on building management disputes would be further assessed. Moreover, the PMACs under the HKHS had been providing free guidance and advice including free legal consultation service on building management matters to the public; and
- (c) to facilitate MC members in observing the statutory declaration requirement, the Administration had enlisted the support of the HKHS in providing declaration services at four PMACs (two in Hong Kong Island and one each in Kowloon and the New Territories). Starting from February 2009, these Centres had provided declaration services by prior appointment on Saturdays. This new service was on top of the declaration services provided at the Public Enquiry Service Centres of District Offices and Land Registry offices during office hours.

Assistance to owners and OCs in building maintenance

16. When the Administration briefed the Panel on Development on the arrangements for the regulation of service providers under the proposed MBIS and MWIS in February 2009, some members pointed out that many residents, especially those who were less well-off and living in old districts, were worried about the costs required for the repair works. These members urged the Administration to ensure that it would provide clear information and a comprehensive range of assistance to owners concerned. They also suggested that the Administration should consider bearing the first-time inspection costs, and providing one-stop service to facilitate owners to apply for assistance under various building maintenance schemes.

17. The Administration advised that various financial assistance schemes were available, such as the Building Maintenance Grant Scheme for Elderly Owners operated by the HKHS and the Building Safety Loan Scheme administered by the BD. Such schemes would be applicable to the MBIS and could cater for the needs of elderly owners. The Administration assured members that it would coordinate these assistance schemes and ensure that the necessary ancillary facilities and measures would be in place to address the concern of the public.

18. Some members considered that the Administration should have a mechanism to ensure that the service providers performed their duties diligently. The Administration assured members that the BD would conduct audit checks to ensure that inspections and maintenance works had been carried out properly by professionals and inspectors. The department would also step up the auditing inspections during the initial stages of implementing the two schemes. These members also emphasized the need for a convenient information dissemination system which would provide owners with information such as inspection and repair items, benchmark fee levels and lists of service providers.

19. The Administration advised that such information would be disseminated through electronic means or through the PMACs of the HKHS. The Hong Kong Institute of Surveyors and HKHS would prepare benchmark fee levels for various works items, so that owners could assess whether the fees offered by service providers were reasonable.

20. During the discussion on OBB by the Panel on Development in March and June 2009, members urged the Administration to make available the names of approved contractors to OCs for easy reference, effectively monitor the tendering procedures of OCs to prevent malpractices, and provide comprehensive advice to OCs in respect of various building maintenance subsidy schemes.

21. The Administration advised that a list of authorized persons and approved general contractors had been prepared for OCs' reference. Eligible OCs had to choose at least four contractors from the list when inviting tenders to minimize the possibility of corruption. The authorized persons engaged by OCs had to certify relevant documents such as inspection reports, tender analyses, works contracts, certificates for disbursement of funds and certificates of completion to ensure the quality of the repair works. Consultants of HKHS and URA would monitor the repair works from their commencement to completion and vet those documents during the whole process before releasing the grants under the OBB.

Other related issues

Assistance for OCs in procuring third party risks insurance

22. To protect the interests of owners and the third party in the event of accidents, the mandatory requirement for OCs to procure third party risks insurance in relation to

the common parts of the building and the property of the OCs would take effect on 1 January 2011. When the Administration consulted the Panel on the commencement date of the mandatory requirement on 12 December 2008, some members enquired about measures to be taken by the Administration to help those OCs that had yet to secure insurance coverage, and how the Administration would assist owners/OCs in tackling the problem of unauthorized building works (UBWs), the main hindrance for OCs in the procurement of the required insurance. Other members found it unacceptable for the mandatory insurance requirement not to cover UBWs, which was the root of various building management and public safety problems. They also expressed dissatisfaction that only buildings with OCs were subject to the mandatory requirement, as this arrangement would discourage building owners to form OCs.

23. The Administration advised that the mandatory requirement would first target at buildings with OCs, which accounted for about 40% of all private buildings in Hong Kong in 2008. The Administration might explore the feasibility and desirability of extending the mandatory requirement to other buildings. On measures to assist OCs that had yet to secure the insurance, the Administration advised that it would adopt a targeted approach in this regard. HAD would contact individual OCs to understand their specific circumstances, and provide them with a full range of assistance which best suit their needs, such as assisting OCs to convene MC or OC meetings, or introducing to owners the various building maintenance grants and loan schemes. Regarding assistance to OCs in tackling the problem of UBWs, the Administration advised that BD, HKHS and URA offered various loans and subsidy packages, and provided financial and technical support to help those OCs in need of assistance to maintain their buildings, including the removal of UBWs. On whether UBWs should be covered in the insurance, the Administration took the view that the arrangement would condone the existence of UBWs and provide less incentive for owners to have them removed, and hence slow down their removal.

24. A member suggested that the Administration should consider the feasibility of the proposal to group together certain old single-block buildings in close proximity with comparatively small number of flats for carrying out building maintenance works and procuring third party risks insurance. The Administration responded that the BMO provided for the procedural requirements for a building to carry out maintenance work, such as invitation to tender and convening owners' meetings. The Administration would endeavour to assist OCs to carry out maintenance works and procure the insurance in a cost-effective manner, provided that the policy met the requirements set out in the Building Management (Third Party Risks Insurance) Regulation.

One-stop building management advisory services

25. At the Council meeting on 11 February 2009, a Member enquired whether the Administration would consider establishing a dedicated department to provide one-stop building management advisory service to replace the current practice of

support services to OCs being provided through various government departments and relevant organisations.

26. The Administration advised that building management and maintenance involved different professions. Government departments had been working closely in taking enforcement actions and providing support under their respective portfolio. It was unrealistic to provide "one-stop" service by pooling different professional services under one roof.

Setting up of a Building Affairs Tribunal

27. During the deliberation of the Building Management (Amendment) Bill 2005, members in general considered there to be a need for setting up a Building Affairs Tribunal to resolve building management disputes professionally and expeditiously. They suggested that the Administration should consider introducing a mandatory mechanism of mediation for dealing with certain types of building management disputes e.g. those involving only individual owners, or a small amount of money or of certain nature such as water seepage, nuisance or trespassing cases. A Member raised a similar question at the Council meeting on 11 February 2009.

28. The Administration explained that the Government had been encouraging owners to resolve disputes on building management by means other than litigation, such as communication or mediation. If the disputes had to be resolved by litigation, they might be dealt with by the Lands Tribunal. For cases involving a relatively small amount of money, i.e. \$50,000 or below, they might be taken to the Small Claims Tribunal as small claim disputes. The proposal to establish a building affairs tribunal involved a number of complicated policy and legal issues, such as the legal status of the tribunal, its institutional arrangements and its interface with the Lands Tribunal. Moreover, during the public consultation on the MBIS and the MWIS, there were views that there might be duplication of efforts between a new adjudicating mechanism and the existing mechanism. The Administration would carefully consider these views in deciding the way forward. The Administration further advised that the Judiciary had launched the Pilot Scheme on Building Management Cases in the Lands Tribunal in early 2008, with a view to facilitating the parties involved to seek mediation and enhance the efficiency of the Lands Tribunal in processing such cases. A review of the pilot scheme was carried out in 2009.

Regulation of property management companies

29. At the Panel meetings on 8 April 2005 and 4 July 2008, members considered that in the absence of a licensing regime for property management companies or any penalties to be imposed on these companies, there were no effective ways to protect owners' interests against their improper operations. They urged the Administration to introduce a regulatory scheme for property management industry in order to better protect owners' interests, and suggested, among others, that different levels of regulations should be imposed under the scheme according to the sizes of property management companies.

30. The Administration advised that the Government had an open stance on the implementation of a licensing regime for property management companies. In order to have a more informed deliberation of the matter, the government had launched a two-phase study on the feasibility of introducing a regulatory scheme for the property management industry. The focus of the first-phase study was on the present situation of the property management industry in Hong Kong, the overseas practices in regulating property management companies, and the regulatory regime for other comparable industries/professionals in Hong Kong. The Administration had briefed the Panel on the findings of the first phase of the consultancy study on 4 July 2008, and would update members of the progress of the second phase consultancy study, which aimed to examine the detailed arrangements and the pros and cons of possible models for the regulation of property management companies, in the third quarter of 2010.

Latest Development

31. In view of the wide public concern on the safety of old tenement buildings following the tragic building collapse incident at 45J, Ma Tau Wai Road on 29 January 2010, the Panel on Development had met with the Administration on 23 February 2010 to discuss measures for enhancing building safety. The Panel on Home Affairs will discuss with the Administration measures for enhancing the support to building owners and OCs to facilitate more effective building management and maintenance at its meeting on 17 March 2010.

Relevant papers

32. A list of relevant papers with their hyperlinks at the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
12 March 2010

Panel on Home Affairs

Relevant documents on support to building owners and owners' corporations to facilitate building management and maintenance

Committee	Date of Meeting	Minutes/Paper/ Council question or motion	LC Paper No.
Panel on Home Affairs	8.4.2005	Administration's paper on regulation of property management companies by legislation	CB(2)1179/04-05(01) http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/ha0408cb2-1179-1-e.pdf
		Administration's paper on formation of owners' corporations in buildings with more than one Deed of Mutual Covenant	CB(2)1179/04-05(02) http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/ha0408cb2-1179-2-e.pdf
		Minutes of meeting	CB(2)1489/04-05 http://www.legco.gov.hk/yr04-05/english/panels/ha/minutes/ha050408.pdf
Council	25.4.2007	Report of the Bills Committee on Building Management (Amendment) Bill 2005	CB(2)1603/06-07 http://www.legco.gov.hk/yr04-05/english/bc/bc58/reports/bc580425cb2-1603-e.pdf
		Official record of proceedings	http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0425-translate-e.pdf (page 202)
Panel on Home Affairs	4.7.2008	Administration's paper on regulation of property management companies	CB(2)2454/07-08(02) http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0704cb2-2454-2-e.pdf

Committee	Date of Meeting	Minutes/Paper/ Council question or motion	LC Paper No.
		Minutes of meeting	CB(2)2850/07-08 http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080704.pdf
Panel on Home Affairs	12.12.2008	Administration's paper on the procurement of third party risks insurance by owners' corporations and issues related to building management	CB(2)427/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/ha1212cb2-427-1-e.pdf
		Background brief on the procurement of third party risks insurance by owners' corporations	CB(2)427/08-09(02) http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/ha1212cb2-427-2-e.pdf
		Background brief on self-declaration requirement for management committee members	CB(2)427/08-09(03) http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/ha1212cb2-427-3-e.pdf
		Minutes of meeting	CB(2)817/08-09 http://www.legco.gov.hk/yr08-09/english/panels/ha/minutes/ha20081212.pdf
Council	11.2.2009	Oral question raised by Hon Starry LEE on services for building management	http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm0211-translate-e.pdf (Page 57)
—	Meeting between Legislative Council Members and Eastern District Council Members on 12.3.2009	Extract from minutes of the Meeting on role of the Home Affairs Department in building management	CB(2)2539/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/hacb2-2539-1-e.pdf

Committee	Date of Meeting	Minutes/Paper/ Council question or motion	LC Paper No.
Panel on Development	16.2.2009	Administration's paper on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme - regulation of service providers	CB(1)570/08-09(06) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-6-e.pdf
		Background brief on Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme	CB(1)570/08-09(07) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0120cb1-570-7-e.pdf
		Minutes of meeting	CB(1)1374/08-09 http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090216.pdf
	31.3.2009	Administration's paper on Operation Building Bright	CB(1)1125/08-09(03) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0331cb1-1125-3-e.pdf
		Minutes of meeting	CB(1)1964/08-09 http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090331.pdf
	23.6.2009	Administration's paper on Operation Building Bright - progress and update	CB(1)1947/08-09(07) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0623cb1-1947-7-e.pdf
		Background brief on Operation Building Bright	CB(1)1947/08-09(08) (Revised) http://www.legco.gov.hk/yr08-09/english/panels/dev/papers/dev0623cb1-1947-8-e.pdf

Committee	Date of Meeting	Minutes/Paper/ Council question or motion	LC Paper No.
		Minutes of meeting	CB(1)2515/08-09 http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090623.pdf
Bills Committee on Buildings (Amendment) Bill 2010	19.2.2010	Legislative Council Brief	DEVB(PL-CR) 2-15/08 http://www.legco.gov.hk/yr09-10/english/bills/brief/b21_brf.pdf
		Background brief on Buildings (Amendment) Bill 2010	CB(1)1168/09-10(02) http://www.legco.gov.hk/yr09-10/english/bc/bc04/papers/bc040219cb1-1168-2-e.pdf
Panel on Development	23.2.2010	Administration's paper on building safety	CB(1)1157/09-10(05) http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0223cb1-1157-5-e.pdf

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