

# 立法會

## *Legislative Council*

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### **Panel on Home Affairs**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 9 July 2010**

**Role of Home Affairs Department in dealing with disputes under  
Building Management Ordinance (Cap. 344) and  
the regulation of property management companies**

### **Purpose**

This paper gives an account of the role of the Home Affairs Department ("HAD") in dealing with disputes under the Building Management Ordinance ("BMO") (Cap. 344) and provides background information regarding the regulation of property management companies ("PMCs"). It also summarises the relevant views and concerns of Legislative Council ("LegCo") Members on the subjects.

### **Role of HAD in dealing with building management disputes**

#### District Building Management Liaison Teams

2. HAD is responsible for promoting effective building management in private multi-storey buildings, assisting in the formation of Owners' Corporations ("OCs"), and tackling management problems in such buildings. HAD together with its District Offices play an advisory and liaison role in providing assistance to building owners and OCs. To provide outreach services and support for owners, HAD has set up District Building Management Liaison Teams ("DBMLTs") comprising Liaison Officers in the 18 District Offices. One of the responsibilities of DBMLTs is to help resolve disputes between owners, OCs and PMCs, and arrange for the provision of voluntary professional mediation service, if necessary.

#### Past discussions

3. Members discussed the role of HAD in dealing with building management disputes and the setting up of a building affairs tribunal for resolving these disputes in various LegCo forums, including the meetings of the LegCo, the Panel on Home Affairs ("the Panel"), and meetings between LegCo Members and District Council members. Key views and concerns expressed by Members are summarised in the ensuing paragraphs.

*Role of HAD in resolving building management disputes*

4. At the Panel meetings on 9 May 2003, 28 November 2003 and 13 July 2007, members expressed concern about the support provided by HAD in assisting owners and OCs in resolving building management disputes. 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. A member suggested that HAD staff should attend meetings of OCs at least once a month. Members 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. LegCo Members expressed similar concerns at the meeting with the Eastern District Council on 12 March 2009.

5. The Administration explained that conflicts in building management were often caused by a lack of communication among stakeholders (such as owners, tenants, OCs or other forms of residents' associations, and PMCs), inadequate professional knowledge, limited organizing skills, or lack of resources. Therefore, the Government policy had always been to give impetus to owners and residents' associations so that they could promote and foster the spirit of neighbours helping out one another. District Offices ("DOs") under the HAD assisted owners to manage their buildings properly by providing them with advice and assistance on building management matters. DOs' work included advising and assisting owners on the procedures of the formation of an OC and, after its formation, attending OC meetings upon invitation to provide advice and support on the operation of an OC. Besides, DOs also handled enquiries and complaints relating to building management and acted as mediator to help resolve disputes among owners, OCs and management companies.

6. To improve the service of HAD, regular surveys in the form of questionnaire were conducted with the OCs, training for staff of DOs 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 Property Management Advisory Centres under the Hong Kong Housing Society had been providing free guidance and advice including legal consultation service on building management matters to the public.

*Setting up of a Building Affairs Tribunal*

7. 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. Members raised similar concern at the Council meeting on 11 February 2009 and the meeting of the Panel on 17 March 2010. The motion on "Implementing a licensing regime for PMCs and establishing a Building Affairs Tribunal" was carried at the Council meeting on 8 November 2006.

8. The Administration advised 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 Mandatory Building Inspection Scheme and Mandatory Window Inspection Scheme, there were views that there might be duplication of efforts between a new adjudicating mechanism and the existing mechanism.

9. The Administration further explained that in comparison with the mediator role played by Liaison Officers, a court-based mediation mechanism had proven to be more effective in resolving building management disputes. The mechanism, which had been adopted by the Judiciary as a standard practice since 1 July 2009 pursuant to the review on the Lands Tribunal Pilot Scheme for Building Management Cases, encouraged the use of mediation as an alternative dispute resolution before the case was further processed by the Lands Tribunal. Under the mechanism, members of the public who encountered building management disputes, such as water leakage, contribution of management fees and maintenance charges, or appointment of management committee, might use mediation to resolve their differences in a more efficient, cost-effective and amicable manner rather than to adopt a confrontational approach in litigation.

10. At the Council meeting on 28 April 2010, a Member raised a written question on building management cases handled by the Lands Tribunal in recent years. The statistics provided by the Administration on the number of these cases and the respective numbers of cases where mediation was completed and those where agreement was reached are set out in **Appendix I**.

## **Regulation of PMCs**

### Consultancy study on regulation of PMCs

11. LegCo Members have urged the Administration to actively consider the regulation of PMCs at various LegCo forums since 2005. In response to members'

concern, the Administration had undertaken a two-phase study on the feasibility of introducing a regulatory regime 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 PMCs, and the regulatory regime for other comparable industries/professionals in Hong Kong.

12. The Administration reverted to the Panel on the findings of the first phase of the consultancy study in July 2008. Key findings relating to the property management industry and regulation of other industries in Hong Kong are set out as follows -

*Findings relating to the property management industry in Hong Kong*

- (a) in 2008, around 23 400 out of 39 300 private buildings were managed by property management companies. There were around 760 PMCs in Hong Kong. About 8% of the PMCs managed more than 50 buildings each, providing relatively sophisticated and comprehensive property management services. On the other hand, around 40% of the PMCs managed only one building each, rendering basic services such as cleaning and security services to single-tenement buildings at competitive prices;
- (b) the industry was self-regulated by professional bodies (viz. the Hong Kong Association of Property Management Companies ("HKAPMC")). To become a member of the HKAPMC, a property management company was required to have over two years' experience in managing properties in Hong Kong, meet the minimum size of management portfolio, and submit two years' audit reports. Members of the HKAPMC had to comply with a set of code of conduct on professional standards and ethical business practices. Non-compliance with the code might lead to suspension or termination of membership;
- (c) individual property managers might obtain professional qualifications from various professional bodies such as the Chartered Institute of Housing – Asian Pacific Branch, the Hong Kong Institute of Housing, the Hong Kong Institute of Real Estate Administration and the Hong Kong Institute of Surveyors. Qualified professionals could register at the Housing Managers Registration Board, the statutory body in Hong Kong responsible for registration and disciplinary control of the professional activities of professional property/housing managers;

*Findings relating to the regulation of other industries*

- (d) the estate agency industry practised a licensing system at both corporate and individual levels. The Estate Agents Authority was a self-financing statutory body responsible for licensing, regulating and handling complaints and was independent of the government and the industry. All practitioners had to obtain licences to practise in the

industry. Through the licensing system, entry requirements to the industry were established and professional competence and proper conduct of practitioners were ensured; and

- (e) the licensing and regulatory system of the travel agents industry was a two-tier system incorporating a self-regulatory mechanism. Under the system, the Travel Industry Council of Hong Kong ("TIC") was responsible for the trade's self-regulation whereas the Government's Travel Agents Registry was responsible for the licensing of travel agents. Under the Travel Agents Ordinance, TIC membership was one of the requirements for granting of travel agents licence by the Registrar of Travel Agents.

13. In the light of the findings of the first phase of study, the Administration has launched the second phase study to examine in detail the pros and cons of three possible models for regulation of PMCs, namely, an industry self-regulation system (which is currently practiced in Hong Kong), a voluntary accreditation system (which allows property management companies and professionals to gain accreditation and be subject to the control therein), and a mandatory licensing system (which requires all PMCs to obtain a licence before they can provide services), before recommending the way forward regarding the regulation of PMCs.

#### Past discussions

14. During the deliberation of the Building Management (Amendment) Bill 2005, some members of the former Bills Committee were of the view that a regulatory scheme should be introduced for the property management industry in order to better protect owners' interest. Members made the following suggestions for the Administration's consideration -

- (a) different levels of regulation should be imposed under the scheme according to the sizes of PMCs;
- (b) the proposed regulatory scheme, if introduced, should be combined with the existing regulatory scheme for the security and guarding services industry in order to avoid requiring the PMCs which provided security as well as property management services to apply for two licenses; and
- (c) PMCs should be required to procure liability insurance for the protection of owners in case of winding up of these companies.

15. At the Panel meetings on 8 April 2005 and 4 July 2008, members considered that in the absence of a licensing regime for PMCs or any penalties to be imposed on these companies, there were no effective ways to protect owners' interests against the improper operations or unethical business practices of PMCs, such as over-charging of management fees by PMCs set up by large property developers. Members urged the Administration to introduce a regulatory scheme for the property management industry to ensure the transparency and accountability in the operation of PMCs.

They also reiterated the need to impose different levels of regulation according to the sizes of PMCs.

16. Some members expressed concern that small-sized PMCs might be driven out of the market under the regulatory framework, and suggested that the Administration should consider introducing a three-tier regulatory framework for PMCs by making reference to the licensing scheme for estate agents, so that small to medium-sized PMCs (such as those providing services for the single-block buildings) would only be required to meet the minimum regulatory requirements. The Panel passed a motion at the meeting on 4 July 2008 urging the Government to expeditiously introduce licensing control of PMCs.

17. At the Panel meeting on 17 March 2010, a member suggested that as a long-term solution to building management issues, the Administration should make it a mandatory requirement for owners of new buildings to form OCs or appoint a PMC within a prescribed period after the issue of occupation permit in respect of their buildings.

18. The Administration advised that the Government had an open stance on the implementation of a licensing regime for PMCs. 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 Administration further undertook that in working out the recommendations on the future regulatory framework, it would explore ways to address the issue of PMCs colluding with OCs in matters such as elections to the management committees as suggested by members, and to take into consideration members' view regarding the need to prohibit PMCs set up by property developers to manage their housing estates to prevent conflict of interests.

19. The Administration further advised that management fees could only be maintained at a reasonable level with a competitive property management market. The Administration therefore was reluctant to introduce a licensing system which might drive out the existing small and medium-sized PMCs making up about 40% of the PMCs in Hong Kong. To address members' concern about the need to enhance transparency in the financial management of PMCs, the BMO had already required PMCs to provide financial statements, as well as the accountant's audit report, to the owners upon request.

20. As to members' enquiry about the public's response to the three approaches in the regulation of PMCs, the Administration informed members that owners had divided views on these approaches. Some owners would like to see greater regulation of PMCs, but some were concerned that a licensing system would drive out small and medium-sized PMCs which provided the much needed basic property management services to single-tenement buildings.

### **Latest development**

21. The Panel will meet with the Administration to further discuss the role of HAD in dealing with disputes under BMO, and the progress of the second phase consultancy study on the regulation of PMCs at its meeting on 9 July 2010.

### **Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
7 July 2010

LCQ7: Building management cases handled by Lands Tribunal

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Following is a question by the Prof Hon Patrick Lau Sau-shing and a written reply by the Chief Secretary for Administration, Mr Henry Tang, in the Legislative Council today (April 28):

Question:

Will the Government inform this Council of the number of building management cases handled by the Lands Tribunal in each of the past four years, and among them, the respective numbers of those related to disputes between property owners and occupants within the same building on building management issues (such as water seepage and nuisance, etc.), and those which had been resolved by mediation before the formal proceedings conducted by the Lands Tribunal?

Reply:

President,

The Administration has consulted the Judiciary on the question and has received the following information and response:

(a) The number of building management cases handled by the Lands Tribunal in the past four years are as follows -

2006	2007	2008	2009
343	494	329	394

The Judiciary does not have the breakdown of the disputes concerned in respect of the above cases.

(b) Since January 1, 2008, mediation has been introduced in the Lands Tribunal to cover building management cases filed. Among the cases referred to in (a) above, the respective numbers of cases where mediation was completed and cases where agreement was reached in 2008 and 2009 respectively are as follows -

	2008	2009
Completed mediated cases	48	117
(i) Full agreement cases	15	37
(ii) Partial agreement cases	6	15

## Panel on Home Affairs

**Relevant documents on role of Home Affairs Department in dealing with  
disputes under Building Management Ordinance (Cap.344) and  
Regulation of Property Management Companies**

<b>Committee</b>	<b>Date of Meeting</b>	<b>Minutes/Paper/ Council Question or Motion</b>	<b>LC Paper No.</b>
Panel on Home Affairs	9.5.2003	Administration's paper on the support from Home Affairs Department in resolving disputes arising from the formation of owners' corporations	CB(2)1957/02-03(01) <a href="http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0509cb2-1957-1e.pdf">http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0509cb2-1957-1e.pdf</a>
		Minutes of meeting	CB(2)2380/02-03 <a href="http://www.legco.gov.hk/yr02-03/english/panels/ha/minutes/ha030509.pdf">http://www.legco.gov.hk/yr02-03/english/panels/ha/minutes/ha030509.pdf</a>
	28.11.2003	Minutes of meeting	CB(2)912/03-04 <a href="http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031128.pdf">http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031128.pdf</a>
Panel on Home Affairs	8.4.2005	Administration's paper on regulation of property management companies by legislation	CB(2)1179/04-05(01) <a href="http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/ha0408cb2-1179-1e.pdf">http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/ha0408cb2-1179-1e.pdf</a>
		Minutes of meeting	CB(2)1489/04-05 <a href="http://www.legco.gov.hk/yr04-05/english/panels/ha/minutes/ha050408.pdf">http://www.legco.gov.hk/yr04-05/english/panels/ha/minutes/ha050408.pdf</a>
Council	8.11.2006	Motion on implementing a licensing regime for property management companies and establishing a building affairs tribunal	<a href="http://www.legco.gov.hk/yr06-07/chinese/counmtg/floor/cm1108-confirm-ec.pdf">http://www.legco.gov.hk/yr06-07/chinese/counmtg/floor/cm1108-confirm-ec.pdf</a> (page 94)

Committee	Date of Meeting	Minutes/Paper/ Council Question or Motion	LC Paper No.
Council	25.4.2007	Report of the Bills Committee on Building Management (Amendment) Bill 2005	CB(2)1603/06-07 <a href="http://www.legco.gov.hk/yr04-05/english/bc/bc58/reports/bc580425cb2-1603-e.pdf">http://www.legco.gov.hk/yr04-05/english/bc/bc58/reports/bc580425cb2-1603-e.pdf</a>
		Official record of proceedings	<a href="http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0425-ttranslate-e.pdf">http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0425-ttranslate-e.pdf</a> (page 202)
Panel on Home Affairs	13.7.2007	Minutes of meeting	CB(2)656/07-08 <a href="http://www.legco.gov.hk/yr06-07/english/panels/ha/minutes/ha070713.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ha/minutes/ha070713.pdf</a>
	4.7.2008	Administration's paper on regulation of property management companies	CB(2)2454/07-08(02) <a href="http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0704cb2-2454-2-e.pdf">http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0704cb2-2454-2-e.pdf</a>
		Minutes of meeting	CB(2)2850/07-08 <a href="http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080704.pdf">http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080704.pdf</a>
Council	11.2.2009	Oral question raised by Hon Starry LEE on services for building management	<a href="http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm0211-ttranslate-e.pdf">http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm0211-ttranslate-e.pdf</a> (Page 57)
—	Meeting between Legislative Council Members	Extract from minutes of the Meeting on role of the Home Affairs Department in building management	CB(2)2539/08-09(01) <a href="http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/hacb2-2539-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/hacb2-2539-1-e.pdf</a>

Committee	Date of Meeting	Minutes/Paper/ Council Question or Motion	LC Paper No.
	and Eastern District Council Members on 12.3.2009		
Panel on Home Affairs	17.3.2010	Administration's paper on support to building owners and owners' corporations to facilitate building management and maintenance	CB(2)1082/09-10(03) <a href="http://www.legco.gov.hk/yr09-10/english/panels/ha/papers/ha0317cb2-1082-3-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ha/papers/ha0317cb2-1082-3-e.pdf</a>
		Minutes of meeting	CB(2)1498/09-10 <a href="http://www.legco.gov.hk/yr09-10/english/panels/ha/minutes/ha20100317.pdf">http://www.legco.gov.hk/yr09-10/english/panels/ha/minutes/ha20100317.pdf</a>
Council	28.4.2010	Written question raised by Prof Hon Patrick LAU on building management cases handled by the Lands Tribunal	<a href="http://www.legco.gov.hk/yr09-10/chinese/counmtg/floor/cm0428-confirm-ec.pdf">http://www.legco.gov.hk/yr09-10/chinese/counmtg/floor/cm0428-confirm-ec.pdf</a> (page 81)