

For Discussion
14 April 2011

**Panel on Administration of Justice and Legal Services
Mediation Service for Building Management Cases**

Introduction

This paper briefs Members on the measures and mediation services available to owners and Owners' Corporations (OCs) in resolving building management disputes and Government's efforts in encouraging the use of these services.

Background

2. It is the joint responsibility of all owners of multi-storey buildings to maintain the common parts and facilities of their buildings and ensure that they are in safe and good conditions. The Government's policy is to assist owners in discharging their responsibilities through a statutory framework, providing guidelines and advice on common issues as well as financial assistance schemes for eligible owners.

3. Building management issues involve various stakeholders, including owners, OCs (or other residents' associations), tenants and property management companies. Disputes among stakeholders could arise from time to time.

Government's Assistance to Owners in Resolving Building Management Disputes

4. Resolving disputes by litigation is often a costly and time-consuming process. The Government therefore encourages the relevant parties to resolve disputes through communication and by mediation with the view to finding a win-win solution and reducing the

financial burden on them.

5. District Offices (DOs) under the Home Affairs Department (HAD) have been actively providing assistance and support to OCs on building management matters, which include their staff attending OC meetings, handling enquiries on building management and giving advice to OCs on procedures on meetings, procurement, financial management etc. For building management disputes which are caused by different understanding or interpretation of the provisions in the Building Management Ordinance, DOs' staff will give general advice to the OCs on the relevant provisions and precedent court cases, if any. Subject to the nature of the disputes, DOs' staff may refer owners to any of the ten Property Management Advisory Centres operated by the Hong Kong Housing Society for free consultations with lawyers. With the active coordination of the DOs, most of the cases can be settled through enhanced communication among the parties concerned.

Mediation for Building Management Cases

Referrals by HAD

6. If the disputes persist and the parties concerned are willing to resolve their disputes through mediation service, HAD will refer them to the free mediation scheme operated in collaboration with the Hong Kong Mediation Council and the Hong Kong Mediation Centre. So far, 19 cases have been handled under this scheme, mostly involving disputes over maintenance and management fees. For three of these cases, settlement agreements were signed after mediation.

Mediation Scheme Operated by the Judiciary

7. The Judiciary introduced a pilot scheme to streamline the processing of building management cases in the Lands Tribunal ("the Tribunal") from January 2008 to June 2009, aiming to facilitate a more efficient, expeditious and fair disposal of building management cases filed with the Tribunal. In the light of the positive experience gained, the Tribunal decided to turn the pilot scheme into standard arrangement

with effect from July 2009. Parties in a dispute are advised to use mediation as an efficient and cost-effective means to resolve their differences.

8. In support of the scheme, the Judiciary has set up a Building Management Mediation Co-ordinator's Office ("BMMCO") in the Tribunal in January 2008 to facilitate the parties in seeking mediation services. The BMMCO holds information sessions on mediation and help the litigants seek mediation to resolve their disputes. Information sessions and pre-mediation consultations are provided free of charge in BMMCO. However, professional mediation service is provided by private mediators outside the Judiciary. The parties would pay the mediation fee as charged by the mediator they have selected through mutual agreement.

9. According to the Judiciary, since the formalization of the scheme in July 2009, BMMCO has organized 225 information sessions for 768 participants, conducted 499 pre-mediation consultations and referred 222 cases to mediators in the private sector for mediation service.

Community Venues for Mediation

10. To address concern about difficulty in finding suitable places for conducting mediations especially by mediators who provide their services to resolve community disputes including building management disputes on a pro bono basis, HAD has assisted the Department of Justice (DoJ) in implementing a Pilot Scheme on Community Venues for Mediation (the Pilot Scheme). Pursuant to the Pilot Scheme, the District Facilities Management Committees of the Yau Tsim Mong District Council and the Wan Chai District Council have approved the use of venues and facilities at the Henry G Leong Yaumatei Community Centre and Leighton Hill Community Hall respectively as community venues for mediation. Suitable time slots at these venues have been reserved for such use. If mediation is conducted in these two community venues on a pro bono basis, fees for using the venues and facilities would be waived.

11. To support the policy initiative to promote the wider use of mediation to resolve community disputes including building management disputes, HAD will continue to render support to the DoJ in the publicity of mediation services and, in consultation with relevant District Councils, consider providing more suitable venues for community mediation.

New Initiatives on Disputes Prevention

12. In order to reduce the number of unnecessary disputes, we are mindful that the source of disputes should be addressed. On the public education front, HAD has over the years been actively implementing various measures to enhance public understanding, in particular the OCs, on the BMO. These include organizing a series of public education and publicity programmes (e.g. training courses, workshops and seminars) on effective building management, and publishing a number of publications to enable the public to easily understand building management matters, etc.

13. We have plans to further enhance owners' and OC's understanding of their respective rights and responsibilities. We are organizing structured training courses in collaboration with a local university for the key office-bearers of OCs and would set up a platform for owners to share experience and promote mutual help. We will establish a panel of advisors, which comprises community leaders of different background (such as lawyers and accountants) to provide parties involved in building management disputes with impartial and authoritative advice.

14. An effective regulatory framework for the property management industry will help reduce the number of disputes relating to the performance of property management companies. We have just completed a public consultation exercise on the regulation of the property management industry. The proposal to introduce a regulatory regime is generally supported by the owners, OCs, district councils and the industry. We are studying the views received and will come up with the key parameters of the proposed regulatory framework in the middle of the year.

15. In addition, we have established the Review Committee on the Building Management Ordinance to review the Ordinance. The Committee is studying problems commonly found in respect of building management, and will examine how these problems might be dealt with. The Committee will also make recommendations to the Government on administrative measures to enhance the operation of the OCs and to protect the interests of individual owners. With clearer and more up-to-date rules, it is expected that disputes could be reduced.

Advice Sought

16. Members are invited to note the above measures and mediation services provided to owners and OCs in resolving building management disputes and the Government's efforts in encouraging the use of these services.

Home Affairs Department
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