

**Progress Report on the Motion on
“Improving Property Management and Operation of Owners’
Corporations”
At the Legislative Council Meeting on 27 March 2013**

At the meeting of the Legislative Council (LegCo) on 27 March 2013, the motion on “Improving Property Management and Operation of Owners’ Corporations” moved by Dr Hon Priscilla LEUNG, as amended by Hon Claudia MO, Hon Christopher CHUNG and Hon WU Chi-wai, was passed.

2. The full text of the motion is at **Annex A**. This report provides Members with a consolidated account of the position of and follow-up actions taken by the Administration regarding the motion.

**REVIEW OF THE BUILDING MANAGEMENT ORDINANCE
(CAP. 344)**

The Review Committee on the Building Management Ordinance

3. The Building Management Ordinance (Cap. 344) (BMO) provides a legal framework for owners to form owners’ corporations (OCs) and to manage their buildings properly in accordance with the requirements of the BMO. In order to keep pace with changing circumstances and to address public concerns, the Secretary for Home Affairs (SHA) appointed the Review Committee on the Building Management Ordinance (the Review Committee) in 2011 to identify common building management problems, deliberate how they may be resolved or alleviated through amending the BMO, and make recommendations to the Government on how to take forward proposals to enhance the operation of OCs and protect the interest of individual owners.

4. The Review Committee comprises members from the relevant professions such as the legal, accounting and engineering fields, and LegCo Members with rich knowledge in building management. Some experienced management committee (MC) members have also been invited to attend meetings of the Review Committee on a need basis in the capacity of co-opted members. The membership list and terms of reference of the Review Committee are at **Annex B**.

5. The Review Committee has examined various common building management problems in its first stage of work and published its Interim Report on 25 March 2013. On issues where disputes arise due to difference in interpretation of the requirements under the BMO by different stakeholders, the Review Committee recommends that guidelines on best practices may be provided to facilitate better understanding of the requirements under the BMO. Two guidelines, namely “Proxy for the General Meeting of and OC” and “To Convene a General Meeting of an OC at the Request of Not Less than 5% of the Owners”, have been published. We have received positive comments from many stakeholders. For the relatively less complex issues, the Review Committee has preliminarily identified some possible legislative amendments to the BMO for improving the existing arrangements.

6. Regarding those building management problems which involve complicated financial, legal or ownership implications, for example, the termination of appointment of deeds of mutual covenant (DMC) managers, matters relating to DMC, the establishment of building affairs tribunal (BAT) as an alternative dispute resolution mechanism, etc., the Review Committee has conducted an initial analysis of the issues concerned and set out its initial findings in the Interim Report. The Review Committee will further analyse the implications of the various options identified in the Interim Report at its next stage of work before finalising its recommendations.

Termination of the Appointment of Deeds of Mutual Covenant Managers

7. The BMO requires the passing of a resolution at an owners’ meeting with not less than 50% of all undivided shares to terminate the appointment of a DMC manager. Some owners have expressed difficulty in obtaining sufficient votes to terminate the appointment of the DMC managers.

8. The Review Committee has identified a number of possible options. These include lowering the “50% threshold” to 30%; introducing a time limit for the appointment of DMC managers and requiring open tender for the selection of subsequent property management service providers; and counting the shares of the owners of the residential part and that of the commercial part separately when voting on the termination of DMC managers.

9. The Review Committee considers that each of the options has its own merits and demerits, and more in-depth analysis will be required at its next stage of work. For example, while lowering the “50% threshold” to 30% will make it easier for owners to obtain the required number of shares to pass a resolution to terminate the appointment of the DMC managers, it may lead to instability in the management of the building when different owners have different views on the performance of the DMC managers, in that it is possible that after the appointment of a DMC manager is terminated by resolution of not less than 30% of the owners’ shares, another 30% of the owners’ shares may, within a short period of time, pass another resolution to terminate the appointment of that newly-appointed manager with a view to re-appointing the original manager.

10. On the option of introducing a time limit for the appointment of DMC managers, the Review Committee considers that although it serves as an incentive for the original DMC manager to perform better, there would be practical difficulties associated with the implementation of the proposal and hence further consideration is required. For example, if the original DMC manager fails to assist the owners in forming an OC within the stipulated timeframe or the owners themselves simply have no intention to form an OC, the absence of an OC would render it difficult to identify a legal entity with recognised legal status to sign the contract with a new manager on behalf of all owners.

11. The Review Committee will further consider the legal and operational implications of the above proposals before making recommendations on the way forward.

Matters Relating to Deeds of Mutual Covenant

12. DMC is a deed and a private contract signed among the developer, the manager and the first purchaser of a unit in the building. It sets out the rights and responsibilities of the various parties. The Government has introduced a clause requiring DMCs in all non-industrial land grants since 1985. The Legal Advisory and Conveyancing Office (LACO) of the Lands Department is the approving authority of DMCs submitted by developers if the land grant contains a DMC clause. LACO issued Guidelines for DMCs and revised Guidelines for DMCs in 1987, 1999, 2006 and 2011. In approving DMCs, LACO will ensure that the current Guidelines for DMCs are complied with.

13. There have been suggestions that the Government should introduce provisions in the BMO to allow mechanisms for owners to amend the DMCs and sub-DMCs, in particular those provisions which are considered unfair and unreasonable to owners. Some suggest introducing a mechanism under which applications can be made to the court to amend provisions of a DMC (or sub-DMC) if not less than 80% or 90% of the owners concerned agree to the amendment. There is also a suggestion of introducing the concept of “user-pays” principle to the BMO to resolve the problem of unfair allocation of management shares and undivided shares.

14. In examining the feasibility of the aforementioned proposals, the Review Committee considers that the following considerations are relevant –

- (a) For “one building with multiple OCs”, while an OC is formed on the basis of each DMC and practical difficulties will arise if two blocks in the same building come under two DMCs which contain provisions inconsistent with each other, several DMCs could indeed be rewritten and combined into one with the consent of all owners. The practical difficulty is that there would be significant impact on property rights, and that it would be important to ensure proper protection for those owners who are affected by such changes. Alternatively, the Government may encourage respective OCs to appoint representative(s) to form a joint management committee to resolve the problem.
- (b) For “multiple buildings with one OC”, while owners of certain buildings may not be willing to pay the maintenance fees for the works of another building under the same OC, it may not be realistic or in line with the present modes of building management to stipulate that an OC can only manage one building.
- (c) For “unreasonable terms and conditions in DMCs”, it should be noted that DMC is a private deed among the developer, the manager and the owners of the building. As in the case of any other private contracts, no party to a DMC shall unilaterally modify any provisions of the DMC without the consent of all other parties. This is a contractual principle. It may not be appropriate for the Government, which is not a party to the deed, to attempt to override provisions set out in

the DMC which are regarded as outdated or inconvenient by only one party. Moreover, DMC sets out the rights and obligations of all owners of a building. It is questionable whether it is appropriate for the Government to introduce changes through statutory means in circumstances where the rights and duties of different parties may be affected.

- (d) Some also consider that the Government should not arbitrarily set a percentage of majority, say 70% or 80%, as a threshold. Moreover, no matter how large the percentage, there might still be owners object to the amendments proposed to be made to their DMC. Consideration should also be given to whether such an approach would be in breach of the spirit of private contracts.
- (e) The re-distribution of undivided or management shares will likely benefit one group of owners at the expense of another group. This can be regarded as having an impact on the property rights of owners, which might provoke strong objections on the ground of property rights protection under Articles 6 and 105 of the Basic Law.

15. The Review Committee will further study the issues concerned at its next stage of work with a view of making recommendations to the Government on the proposed way forward.

Establishment of Building Affairs Tribunal as an Alternative Dispute Resolution Mechanism

16. Currently, the parties in dispute can settle their building management cases in the Small Claims Tribunal, the Lands Tribunal, the District Court and the Court of First Instance of the High Court as appropriate. However, there are views that settling disputes through the existing mechanism is unsatisfactory because it involves high legal costs and lengthy litigation processes. Thus, some have suggested that a tribunal not involving legal representation like the Small Claims Tribunal and dedicated to handling building management matters should be established with a view to resolving the disputes in a more efficient and less costly manner.

17. The Review Committee has thoroughly considered the proposal from the angle of building management. If the BAT is to be established within the judicial system, it may unnecessarily complicate

the structure of the existing court system. Furthermore, to ensure fairness, the BAT must give parties a proper opportunity to present their evidence and cases. As such, the processing time by the BAT may not be shorter than the existing arrangements in the Lands Tribunal.

18. Another option which has been examined by the Review Committee is to establish the BAT outside the judicial system with its mode of operation similar to that of the Minor Employment Claims Adjudication Board under the Labour Department. However, as compared with employment disputes, building management cases are often much more complex as they involve complicated ownership and legal issues in addition to financial disputes. Thus, it will be very difficult to identify simple cases to be resolved by the BAT. Even cases involving only a small amount of money can be complicated in nature if ownership of common parts is involved, and may have read-across implications to future cases. In addition, persons who are not satisfied with the adjudication result may still appeal to the higher courts, and this will defeat the purpose of shortening the processing time of the case.

19. On the whole, the Review Committee considers that establishing a dedicated BAT to resolve building management disputes may not be able to bring about the benefits that some intend to achieve. The most effective way to address the problem of building management disputes is to tackle the problem at its root.

20. In this connection, the Review Committee notes that the Home Affairs Department (HAD) has been implementing various measures to strengthen the owners' and OCs' ability in building management with a view to minimising disputes among relevant parties. For instance, the Panel of Advisors on Building Management Disputes has been set up to provide authoritative and impartial professional advice for owners on complicated building management cases and disputes. Panel members are experienced professionals in building management affairs, including lawyers, accountants, surveyors, etc. All participating owners found the advice of the Panel very useful, and very often they adopted the advice of the Panel without having to resort to the Lands Tribunal.

BUILDING MANAGEMENT INITIATIVES BY THE HOME AFFAIRS DEPARTMENT

The Role, Manpower and Workload of the District Building Management Liaison Team

21. Building management is the responsibility of the owners. It is the Government's policy to play the role of a facilitator to, through multi-pronged measures, encourage and assist owners to form OCs and provide appropriate support to assist owners in discharging their building management responsibilities.

22. Liaison Officers of the District Building Management Liaison Teams in District Offices make regular visits to all private buildings in Hong Kong, encourage owners of buildings that have not yet formed OCs to form OCs, and attend meetings upon invitation to advise owners on the procedures on OC formation. We review their establishment and scope of work from time to time to keep pace with actual circumstances.

Proper Discharge of the Powers Conferred by the Building Management Ordinance

23. From 2008 to 2012, HAD has handled a total of 15 cases of suspected non-compliance with the BMO. HAD thoroughly examined each and every case and conducted thorough investigation. Due to insufficient evidence, inapplicability of the BMO, or the fact that active remedial action have already been taken by the OCs to rectify the irregularities, etc., no prosecution has been instituted or need to be instituted under the BMO so far.

Other Building Management Initiatives

24. HAD has spared no effort to foster a culture of good building management. In addition to the review of the BMO and assisting owners to form OCs, HAD has implemented a number of initiatives in recent years to enhance the support to owners and residents, in particular those living in the so-called “three nil buildings”¹. These include –

¹ “Three nil buildings” refer to those buildings that do not have an OC nor any form of owners/residents organisations nor engage a property management company.

- (a) The Building Management Professional Advisory Service Scheme to provide tailor-made and one-stop professional advisory and support to owners of “three-nil buildings”. HAD commissioned two property management companies to prepare management audit reports for the common areas of these buildings as well as fire services and electrical facilities of the buildings, contact the owners through household visits and assist them in forming OCs, applying for various subsidies or loan schemes for building maintenance, as well as following up on the maintenance works and matters relating to tenders, etc.
- (b) The Resident Liaison Ambassador (RLA) Scheme to assist government departments in contacting residents in “three-nil buildings” and communicate with them on matters relating to daily building management, security, and fire safety, etc. In the long run, the RLA Scheme will be a very effective mechanism in assisting old tenement buildings in the formation of OCs to further enhance their building management.
- (c) Subsidy for OCs of Old Buildings in respect of the procurement of third party risks insurance for the common parts of the buildings, regular inspection of fire services and electrical equipment and annual clearance of fire escapes. The Subsidy is funded by the Community Care Fund for a period of three years.

WAY FORWARD

25. Upon receiving the final report from the Review Committee, the Administration will carefully consider the recommendations therein in mapping out the way forward. Meanwhile, HAD will continue to assist owners in discharging their building management responsibilities through multi-pronged measures and various building management initiatives.

(Translation)

**Motion on
“Improving Property Management and Operation of Owners’
Corporations”**

**Moved by Dr Hon Priscilla LEUNG
At the Council meeting of 27 March 2013**

**Motion as amended by Hon Claudia MO, Hon Christopher CHUNG
and Hon WU Chi-wai**

For a long time, disputes over property management issues arise in quite a number of residential estates, with some owing to large property developers’ oppression of small property owners through ownership control of estate common areas in their capacity as first-hand owners, which renders small property owners unable to set up owners’ corporations and others the lack of effective regulation over the operation of owners’ corporations, which have led to incessant litigations and even rampant corruption and illegal practices; even though owners’ corporations have been set up in some estates, the residents are unable to replace the management companies owned by large property developers because such developers control the estates’ majority shares in their capacity as first-hand owners; in this connection, this Council urges the authorities to review the existing Building Management Ordinance to improve the mechanism for amending Deeds of Mutual Covenant and in an endeavor to resolve disputes involving property management more reasonably and effectively; to strengthen the protection of the rights and interests of small property owners and tenants, enhance building management efficiency, and resolve building management problems arising from ‘one building with multiple owners’ corporations’ and ‘multiple buildings with one owners’ corporation’, etc., the authorities should allocate additional resources for establishing a one-stop platform to assist small property owners and tenants in obtaining support from different departments; the authorities should also adopt the following measures:

- (1) to set up a building management tribunal, and transfer the cases currently dealt with by the Lands Tribunal and relating to the Building Management Ordinance to the building management tribunal for handling;
- (2) to review the role, manpower and workload of the liaison officers of the District Building Management Liaison Teams under the Home Affairs Department;
- (3) to ensure that the Home Affairs Department property discharges the powers conferred by the Building Management Ordinance;
- (4) to set up a mechanism for amending the unreasonable terms and conditions in Deeds of Mutual Covenant, so as to assist property owners in managing their buildings more effectively; and
- (5) to actively study the setting up of a vetting and approval mechanism to empower small property owners under Sub-deeds of Mutual Covenant to handle building management problems involving Sub-deeds of Mutual Covenant.

Review Committee on the Building Management Ordinance

Terms of Reference and Membership List

Terms of Reference

1. To identify building management problems and deliberate how they may be resolved or alleviated through amending the Building Management Ordinance;
2. To tap the views of the community on building management issues through co-opted members and, if necessary, focus group meetings with other stakeholders; and
3. To make recommendations to the Government on how to take forward proposals to enhance the operation of Owners' Corporations and to protect the interests of individual owners.

Members

Chairman

Mr CHUNG Pui-lam, GBS, JP

Core Members

Hon TO Kun-sun, James

Hon LEE Wai-king, Starry, JP

Mr FONG Chun-kwong, Edwin

Mr KONG Tze-wing, James, MH, JP

Dr LAU Chi-wang, James, BBS, JP

Mr LAU Kam Sing, Dickie

Mr YUEN Ching Bor, Stephen, MH

Co-opted Members

Mr CHEUNG Ching-yeung, Teddy

Ms CHIU Kin-san

Mr FAN Ying-ming

Ms LAM Wai-lung

Mr LAU Chi-wan

Mr LAU Ming-sum, Julius

Ms LEE Ming-ho, Verna

Mr LEE Sau-shing

Mr LEUNG Fuk-pui

Mr LEUNG Hing-choi, Raymond

Prof LEUNG Yee-tak, Andrew

Mr LI Wai-chun

Mr MAN Chi-wah, MH

Mr YIM Kin-ping, JP