

立法會

Legislative Council

LC Paper No. CB(2)1540/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/HA

Panel on Home Affairs

Minutes of meeting
held on Tuesday, 28 May 2013, at 10:45 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon MA Fung-kwok, SBS, JP (Chairman)
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, SBS, JP
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon Claudia MO
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen

Members attending : Hon James TO Kun-sun
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon KWOK Wai-keung

Members absent : Hon WONG Kwok-hing, MH
Hon Starry LEE Wai-king, JP
Hon Steven HO Chun-yin
Hon WU Chi-wai, MH

**Public Officers : Item IV
attending**

The Administration

Ms Florence HUI Hiu-fai, SBS, JP
Secretary for Home Affairs (Acting)

Miss WONG Yuet-wah
Principal Assistant Secretary for Home Affairs (Culture) 2

Dr Louis NG
Assistant Director (Heritage and Museums)
Leisure and Cultural Services Department

Miss Eve TAM
Chief Curator (Art)
Leisure and Cultural Services Department

Item V

The Administration

Ms Florence HUI Hiu-fai, SBS, JP
Secretary for Home Affairs (Acting)

Mrs Pamela TAN KAM Mi-wah, JP
Director of Home Affairs

Mr Jack CHAN Jick-chi, JP
Deputy Director of Home Affairs (2)

Review Committee on the Building Management Ordinance

Mr CHUNG Pui-lam, GBS, JP
Chairman

**Clerk in : Ms Alice LEUNG
attendance Chief Council Secretary (2) 2**

**Staff in : Mr Bonny LOO
attendance Assistant Legal Adviser 3**

Miss Josephine SO
Senior Council Secretary (2) 2

Miss Emma CHEUNG
Legislative Assistant (2) 2

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I. Confirmation of minutes

(LC Paper Nos. CB(2)1071/12-13 and CB(2)1193/12-13)

The minutes of the meetings held on 22 March 2013 and 15 April 2013 were confirmed.

II. Information papers issued since the last meeting

(LC Paper Nos. CB(2)974/12-13(01) & (02), CB(2)1010/12-13(01), CB(2)1060/12-13(01), CB(2)1126/12-13(01), CB(2)1140/12-13(01) and CB(2)1219/12-13(01))

2. Members noted that the following papers had been issued since the last meeting -

- (a) Letter dated 22 March 2013 from Hon Christopher CHUNG expressing concern about the progress of the construction works of the Victoria Park Swimming Pool Complex Project;
- (b) Administration's response to the issues raised in the letter of Hon Christopher CHUNG regarding the construction works of the Victoria Park Swimming Pool Complex Project;
- (c) Letter dated 17 April 2013 from Hon Claudia MO expressing concerns about the provision of community facilities and centralized public services in districts for the convenience of the public;
- (d) Administration's information paper on issues relating to the review and enhancement of the Tin Sau Bazaar in Tin Shui Wai;
- (e) Referral memorandum from the Public Complaints Office of the Legislative Council ("LegCo") Secretariat concerning a request from the Chevalier Garden Concern Group for review of the Building Management Ordinance (Cap. 344) ("BMO");

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- (f) Administration's response to Hon Claudia MO's letter dated 17 April 2013 concerning the provision of community facilities and centralized public services in districts; and
- (g) Referral memorandum from the Public Complaints Office of the LegCo Secretariat relating to support for street sleepers who are not on Comprehensive Social Security Assistance.

3. In respect of the issue referred to in paragraph 2(g) above, the Chairman advised that the item "Support for street sleepers who are not on Comprehensive Social Security Assistance" had been included in the agenda of the meeting of the Panel on Welfare Services to be held on 10 June 2013 and members of this Panel had also been invited to join the discussion of the item.

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)1076/12-13(01), CB(2)1076/12-13(02) and CB(2)1192/12-13(01))

Regular meeting in June 2013

4. Members noted that the Administration proposed to discuss two items, namely "First Territory-wide survey on Intangible Cultural Heritage" and "Support and assistance for ethnic minority groups", at the next meeting to be held on Friday, 14 June 2013, at 8:30 am.

5. Noting the progress report provided by the Administration on the operation of Tin Sau Bazaar as referred to in paragraph 2(d) above and the recent submission from Tin Sau Market Stall Keepers Union on the same subject matter, Mr CHEUNG Kwok-che considered the matter time critical and suggested the Panel to discuss the operation of Tin Sau Bazaar at the meeting in June 2013.

(Post-meeting note: The submission dated 27 May 2013 from Tin Sau Market Stall Keepers Union was issued to members vide LC Paper No. CB(2)1244/12-13(01) on 30 May 2013.)

6. The Chairman said that the Panel might request the Administration to provide a written response to the issues raised in Tin Sau Market Stall Keepers Union's submission, before deciding the need to discuss the matter at the June meeting. Supporting the view of the Chairman, Mr Tony TSE pointed out that sufficient time should be given to the Administration and the Tung Wah Group of Hospitals to work out and implement measures to enhance the operation and competitiveness of Tin Sau Bazaar.

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7. Mr CHEUNG Kwok-che considered the enhancement measures set out in the Administration's progress report (LC Paper No. CB(2)1060/12-13(01)) ineffective and stressed the need to resolve the many deep-rooted problems related to the development and operation of Tin Sau Bazaar. In his view, an early discussion by the Panel on the subject with the Administration, the parties concerned and the stall operators in Tin Sau Bazaar could help resolve the problems. His view was echoed by Mr LEUNG Che-cheung, Mr YIU Si-wing and Ms Cyd HO.

8. Ms Cyd HO further suggested that the subject "Monitoring of Private Recreational Leases ("PRLs") be discussed in June 2013, in the light of the recent renewal of PRLs by the Administration. If necessary, the Panel should hold a special meeting to discuss the two items, namely "The operation of Tin Sau Bazaar in Tin Shui Wai" and "Monitoring of Private Recreational Leases". The Deputy Chairman and Mr CHEUNG Kwok-che expressed support for Ms HO's proposal. Mr CHEUNG also suggested that deputations be invited to give views on the item relating to Tin Sau Bazaar.

9. In the light of members' suggestions, the Chairman suggested that the Administration be consulted on the appropriate timing for discussion of the two items proposed by members. Members agreed. The Clerk was requested to liaise with the Administration and further consult the Chairman after the meeting.

Clerk

(Post-meeting note: The Administration had, after this Panel meeting, suggested that the two items proposed by members, as referred to in paragraph 8 above, be discussed at the next regular meeting on 14 June 2013 in addition to another item which the Administration originally proposed for discussion in June 2013, namely "First Territory-wide survey on Intangible Cultural Heritage". As for the item "Support and assistance for ethnic minority groups", the Administration proposed that it be deferred to the Panel meeting in July 2013. Members were informed of the above meeting arrangements vide LC Paper No. CB(2)1234/12-13 dated 30 May 2013.)

Review of District Councils

10. Referring members to the Deputy Chairman's letter dated 20 May 2013 (LC Paper No. CB(2)1192/12-13(01)) suggesting the discussion of issues relating to the review of District Councils ("DCs"), including, inter alia, the roles and functions of DCs and resources allocation, the Chairman informed the meeting that the Panel on Constitutional Affairs had discussed the review of the number of elected seats for the fifth-term DCs at its meeting on 20 May 2013. Regarding the other issues raised by the Deputy Chairman which fell under the purview of this Panel, the Chairman suggested and

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members agreed to include the subject into the Panel's list of outstanding items for discussion.

11. While agreeing with the above arrangement, the Deputy Chairman hoped that the Panel would schedule the discussion as early as possible before the next DC election in 2015.

IV. Provision of funding for acquisition of artworks

(LC Paper Nos. CB(2)1076/12-13(03) and (04))

12. At the invitation of the Chairman, Secretary for Home Affairs (Acting) ("SHA(Atg)") briefed Members on the Administration's proposal to provide \$50 million to the Leisure and Cultural Services Department ("LCSD") for acquiring and commissioning artworks by local artists, as detailed in the Administration's paper.

The Administration's proposed provision

13. The Chairman, the Deputy Chairman, Dr LAM Tai-fai, Dr CHIANG Lai-wan and Mr Tony TSE said that they were supportive of the Administration's proposal to allocate \$50 million to LCSD for acquiring and commissioning artworks by local artists.

14. In response to Mr YIU Si-wing's enquiry about the Administration's plan and timeline for the use of the additional funding of \$50 million, SHA(Atg) advised that the \$50 million funding was a dedicated funding to be used for the acquisition and commissioning of local artworks for exhibition and public display. As each piece of artwork was unique and the price varied depending on its nature, scale and artistic merit, the number of artworks to be acquired with the proposed amount of money could not be estimated. To allow flexibility, the Administration would not set any time limit for the use of this funding.

15. Mr Frankie YICK enquired about the expected number of artworks that could be acquired with the proposed allocation of \$50 million, and whether the Administration would consider setting aside fund on a recurrent basis for acquisition of artworks for museums.

16. SHA(Atg) advised that the proposed non time-limited and dedicated funding of \$50 million would provide LCSD with greater flexibility in the acquisition of artworks, given the uniqueness of each piece of artwork and the difficulty in accurately predicting their availability and price. It was noteworthy that in addition to the proposed funding, LCSD museums used to receive significant and substantial number of artworks through donations.

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17. Noting that LCSD had spent over \$20 million on the acquisition of local artists' artworks in the past five years (2008-2009 to 2012-2013), Mr YIU Si-wing asked whether the Administration had assessed the present-day value of artworks acquired during that period and, if yes, the amount of appreciation or otherwise in value of these artworks. He also asked to what extent the profile of local artists had been raised and whether the artworks acquired helped boost the attendance of visitors to LCSD museums.

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18. Assistant Director (Heritage and Museums) ("AD/LCSD") responded that the Administration had not undertaken any evaluation on the present-day value of artworks acquired in the past. It was however noted that as a general observation, local artists had attracted more attention to their works and had become more active in the arts market. SHA(Atg) said that the Administration could provide the Panel with information on the prevailing arts market situation for Members' reference. As regards the number of visitors to public museums, AD/LCSD advised that there had been a significant increase in the total number of visitors to public museums during the past 10 years, with a record-breaking attendance of 5.8 million visitors in 2012.

19. The Chairman noted from the Administration's reply to his written question raised during the examination of the 2013-2014 Estimates of Expenditure that apart from the additional funding of \$50 million, the estimated expenditure of LCSD on the acquisition of artworks in the 2013-2014 financial year was about \$0.8 million. He asked whether this amount of \$0.8 million would be used for acquiring works by local or non-local artists and sought detailed information on the Administration's plan for the use of the \$50 million funding.

20. AD/LCSD responded that while LCSD museums did not set a ratio for the local and overseas artworks to be acquired, it had been the Government's policy to focus on the acquisition of artworks by local artists. For the additional funding of \$50 million, it would be used for the acquisition and commissioning of artworks by local artists for exhibition, public display and education/research purposes. As regards the provision of \$0.8 million, it would be used to acquire collections for other LCSD museums such as the Hong Kong Heritage Museum and the Hong Kong Museum of History. SHA(Atg) added that as Hong Kong owed its cultural roots to the "Lingnan" (i.e. South China particularly the Guangdong region) traditions, procurement of artworks of such themes would be covered by the \$50 million funding.

21. Noting that LCSD would conduct a series of research on Hong Kong's art history with a view to identifying representative artists of the different historical periods up to the present time, Dr Helena WONG was dissatisfied that the Administration put forward the funding proposal for consideration by

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the Panel in the absence of information on the research results, prior to the completion of researches. She expressed objection to the Administration's submission of the funding proposal to the Finance Committee ("FC").

Procurement procedures and assessment criteria

22. Dr LAM Tai-fai was concerned about the assessment criteria to be adopted for acquisition of artworks to ensure that the artworks procured were value for money, given that different people might have different art appreciation tastes. Noting that the Administration would display artworks created by local artists in public spaces, such as parks and government buildings, so as to promote public appreciation of art and the works of Hong Kong artists, he enquired about the preventive measures against inadvertent damage by citizens to artworks displayed at various locations.

23. SHA(Atg) responded that having regard to the advice given by the Corruption Prevention Department of the Independent Commission Against Corruption ("ICAC"), LCSD had devised a set of procedures and assessment criteria for acquisition of artworks for museums. The Art Promotion Office ("APO") of LCSD had been in close liaison with and regularly commissioned local artists to create artworks for public arts projects, such as the *Park Déco* and *ArtAlive@Park* which beautified parks with furniture and artworks designed by local artists. On the question of preventing inadvertent damage to artworks displayed at public spaces, the Administration would step up civic education in this regard.

24. Ms Cyd HO, Mr James TO, Dr Helena WONG and Mr IP Kin-yuen were concerned about the assessment procedures and criteria adopted by the Museum Expert Advisers ("Expert Advisers") for acquisition of artworks. Ms HO, Mr TO and Mr IP were of the view that the credibility of the Expert Advisers and openness of the selection process were critical to the acquisition and commissioning of local artworks. Ms HO considered that apart from compliance with the relevant principles and procedures recommended by ICAC, it was necessary for LCSD to make public the reasons and justifications of the Expert Advisers for each acquisition. Referring to paragraph 8 of the Administration's paper, she sought detailed information about the procurement procedures and assessment criteria for acquisition of artworks for museums.

25. SHA(Atg) and AD/LCSD advised that as an integral component of the procurement procedures, LCSD would invite its Expert Advisers from the relevant museum advisory panel to give independent advice on the proposed acquisition, including the price to be offered, in accordance with the established procedures and criteria. At present, over 170 Advisers had been appointed to different museum advisory panels according to their areas of expertise such as Hong Kong art, design, photography, Chinese antiquities,

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historical pictures, etc. While the number of Expert Advisers to be engaged for each acquisition would depend on the value of the artworks, at least three Expert Advisers would be engaged if the estimated value of the artwork was over \$50,000. To avoid conflict of interest, the Expert Advisers concerned were required to declare interest when conducting assessment and no remuneration or honorarium would be offered to them. Besides, only items unanimously supported by the Expert Advisers involved in the proposed acquisition, including the price to be offered, would be purchased.

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26. Reiterating her concern about the transparency of the acquisition process, Ms Cyd HO requested the Administration to provide the Panel with more details of the procurement procedures and assessment criteria governing LCSD's acquisition of museums collections, in particular the consultation with and engagement of Advisers in the acquisition of artworks.

27. Responding to Mr YIU Si-wing's enquiry, AD/LCSD said that the list of all the Expert Advisers engaged by LCSD museums was available on the Government website.

28. Mr LEUNG Che-cheung was deeply concerned about the criteria used by LCSD for acquiring artworks of local artists. In his view, it was important to ensure that the Expert Advisers would make an objective valuation of the artworks to be acquired or commissioned for exhibition and public display. In order to achieve this aim, Mr YIU Si-wing and Mr Frankie YICK suggested that the number of Expert Advisers to be engaged in the evaluation process for each proposed acquisition should be increased to, say, five Expert Advisers. Considering that it might be difficult to have a unanimous support of the Expert Advisers involved in the proposed acquisition, decisions on acquisition or otherwise could be based on majority vote. SHA(Atg) responded that the Administration would take note of Members' suggestion.

29. The Deputy Chairman and Mr Tony TSE suggested that to enhance the transparency of the process of commissioning local artists to create artworks, the Administration should engage the public in the process by arranging the display of artworks planned to be procured by LCSD in public places and collecting public opinions on those artworks so that the Expert Advisers concerned could take into account the views expressed by members of the public as part of their evaluation process.

30. In response, SHA(Atg) explained that -

- (a) it was the Government's cultural policy to develop Hong Kong into an international cultural metropolis. To achieve this policy objective, one of its initiatives was to nurture artistic talents. To groom artists in the area of visual arts, it was important to provide them with opportunities to showcase their artworks on a

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frequent and continuous basis. This could help promote their profile and build their audience, providing a solid basis for their development in the arts sector;

- (b) to promote the profile of local artists, one of the most effective means was to acquire their artworks and display them in public museums;
- (c) the artworks to be acquired would become museum collections and would be selected and displayed on a rotational basis in the museums' permanent and thematic exhibitions and other venues including the new Oil Street Art Space to be opened in May 2013, as well as in outbound exhibitions presented overseas and in the Mainland to promote the works of Hong Kong artists;
- (d) LCSD would adopt a number of acquisition/collection strategies in respect of artworks of local artists, including collecting the award-winning entries as well as the best selected works of the Hong Kong Contemporary Art (Biennial) Award and acquiring selected artworks commissioned by APO for various public art projects; and
- (e) for commissioning works, artists or teams would be selected through open competition and collaboration with art related non-government organizations ("NGOs"). For open competition, an adjudication panel would be set up to select and recommend the appropriate artwork proposals for commissioning. For collaboration projects, the NGO partner appointed must be art-related, non-profit making and had a good track record in executing similar commissioning projects. The NGO partner would first work out the details of the proposed project for LCSD's consideration. LCSD would take into account public views on the proposed project before a further decision would be made to commission artworks.

31. In response to Mr James TO's enquiry, SHA(Atg) advised that for commissioning works, the selection criteria would include artistic merits and creativity, technical competence of the artist/team, feasibility and safety of the proposal, as well as the costs of implementation, management, maintenance and repair. Stressing the importance of promoting diversity in art and cultural development, she said that artworks involved socially or politically controversial or sensitive themes would also be considered.

32. Mr IP Kin-yuen held the view that the Administration should continue to display artworks at Government premises and launch more public arts

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projects, so as to make artworks of local budding artists visible and accessible for appreciation by the public. The Administration noted the suggestion.

Collection policy of LCSD museums

33. Dr Helena WONG pointed out that the vision of M+ museum of the West Kowloon Cultural District ("WKCD") was to build a world-class collection representative of the 20th and 21st century visual culture, encompassing the disciplines of visual art, design, architecture and moving image from Hong Kong, China and expanding to other regions of Asia and the rest of the world. The collection policy of LCSD museums focused mainly on Hong Kong so as to reflect the development and cultural identity of Hong Kong art as well as the accomplishments of local artists, and to extend to cover the artistic and cultural heritage of South China particularly the Guangdong region which had a strong connection with the development of Hong Kong art. Dr WONG was gravely concerned whether there would be any competition between LCSD museums and the M+ museum in the acquisition of artworks. She sought details about the scope of museum collections of as well as the mission and vision to be achieved respectively by M+ and LCSD museums.

Admin

34. SHA(Atg) explained that to avoid duplication in acquiring artworks, LCSD would strengthen communication with the WKCD Authority on each other's scope of collection. The collections of LCSD museums and M+ should in fact complement with each other. LCSD and the WKCD Authority would pursue loaning appropriate exhibits to each other in order to make good use of the resources. As time was running short, the Chairman requested the Administration to provide a written response after the meeting.

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35. Mr Christopher CHUNG cautioned that the Administration's acquisition/collection strategies would have great impact on the market demand for artworks created by local artists. In his view, it was of utmost importance for the Government to put in place a set of open and fair procurement procedures and assessment criteria for acquisition of local artworks for museums. He requested the Administration to provide details of LCSD's acquisition/collection strategies in respect of artworks for its museums.

Conclusion

36. Summing up, the Chairman said that most of the Panel members supported the proposed provision of \$50 million to LCSD for acquiring and commissioning artworks by local artists and did not raise objection to the Administration's submission of the proposal to FC for consideration and approval at its meeting in June 2013. The Chairman also called on the

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Administration to take note of the views and concerns expressed by Members at the meeting.

V. Interim Report of the Review Committee on the Building Management Ordinance and other building management initiatives

(LC Paper Nos. CB(2)1076/12-13(05) & (06) and "Interim Report of the Review Committee on the Building Management Ordinance" issued by the Administration in March 2013)

37. At the invitation of the Chairman, SHA(Atg) briefed Members on the findings of the Interim Report of the Review Committee on the Building Management Ordinance ("the Review Committee") and the various building management initiatives implemented by the Home Affairs Department ("HAD") in recent years, details of which were set out in the Administration's paper.

Proposed improvements to BMO

38. Mr KWOK Wai-keung said that he welcomed the recommendation of the Review Committee to obviate the need for taking an oath before a third party like a Commissioner for Oaths, solicitor or Justice of the Peace and adopt an alternative arrangement of requiring members of the management committee ("MC") of owners corporations ("OCs") to make a written statement on their eligibility upon appointment. He also considered the proposal of lowering the threshold of terminating the appointment of Deeds of Mutual Covenant ("DMC") managers from 50% to 30% worth pursuing. Expressing concern that many DMCs contained unfair provisions against the owners of buildings (e.g. unfair allocation of management shares and undivided shares between owners and developers), he asked whether the Administration would consider introducing a mechanism to address the problem. Having regard that HAD was responsible for promoting effective building management in private multi-storey buildings and assisting in the formation of OCs, he considered that HAD should have a role to play in the approval of DMCs which was now under the ambit of the Legal Advisory and Conveyancing Office ("LACO") of the Lands Department ("LandsD").

39. Ms Cyd HO said that she had received complaints from members of new MCs that they had difficulties in getting back documents and records in the custody of members of the old MCs, thus hindering the former in discharging their building management responsibilities. She suggested that the Administration should amend BMO to make it a statutory requirement for an old MC to transfer to the new MC upon the changeover of MCs all documents or records kept by the old MC in relation to the management of their building.

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40. Chairman of the Review Committee ("Chairman/RC") said that the Review Committee also noted that building management disputes might arise among the new and old MCs as well as the property management companies ("PMCs") during the changeover of MCs, particularly when PMCs were tasked to manage and oversee record keeping of OCs of the buildings concerned. He advised that the issue raised by Ms Cyd HO would be further studied with a view to identifying how improvements should be made at the next stage of work of the Review Committee. Director of Home Affairs ("DHA") said that while the Review Committee would further study the issue at its next stage of work, HAD would encourage owners to actively participate in the work of building management, including the day-to-day operational matters.

41. Citing the Whampoa Garden as an example, Dr Helena WONG pointed out the difficulties of the owners living in large private housing estates in forming OCs and owners' committees for management of their properties, due to unfair terms and conditions in the respective DMCs drawn up by property developers. This had resulted in a number of building management disputes between property owners and property developers. She urged the Review Committee to look into issues related to unfair and unreasonable provisions in DMC at its next stage of work.

42. Chairman/RC responded that the disputes in Whampoa Garden were mainly related to the termination of the appointment of a DMC manager, which was one of the several issues on which the Review Committee had conducted an initial analysis and would proceed to conduct an in-depth study at its next stage of work before making final recommendations to the Government. Chairman/RC further said that the Review Committee noted some owners' concerns about the difficulties in terminating the appointment of their DMC managers even though they were not satisfied with the performance of their existing DMC managers and wished to select a new service provider. The Review Committee had reviewed the issue in detail with a view to exploring whether there was room for improvement. Various options, such as lowering the threshold of terminating the appointment of DMC managers from 50% to 30%, had been examined. The Review Committee would further consider the legal and operational implications of different proposals before making recommendations on the way forward.

43. Sharing a similar concern that some old DMCs were unfair to the individual owners, Ms Claudia MO asked whether the Administration would seek to address the problem. In response, SHA(Atg) advised that DMC was a private deed among the developer, DMC manager and the owners of the building. As in the case of any other private contracts, no party to a DMC should unilaterally modify any provisions in DMC without the consent of all other parties. This was an important contractual principle. In view of the concerns expressed by some owners about the difficulties in terminating the

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appointment of DMC managers, the Review Committee had studied and would continue to explore the feasibility of various proposals including lowering the threshold of terminating the appointment of DMC managers from 50% to 30%, introducing a time limit on the term of appointment of DMC managers and requiring open tender of subsequent property management service providers.

44. Chairman/RC added that the "Guidelines for Deeds of Mutual Covenant" issued by LandsD required that in the allocation of undivided shares and management shares, LACO would have to be satisfied that the use of any basis other than gross floor area would not result in the prevention or hindrance of incorporation of an OC. The case of Whampoa Garden as referred to by Dr Helena WONG and Ms Claudia MO was thus an isolated incident, not related to the drafting of DMC.

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45. In response to Dr Helena WONG's enquiry, Chairman/RC said that when BMO was amended in 1993, new provisions were added to amend or annul certain provisions in DMCs and sub-DMCs which were considered unfair and unreasonable to owners and BMO would prevail over any other provisions in a DMC where there was an inconsistency. Dr WONG requested the Administration to provide a written response identifying which existing provisions in BMO were made as overriding provisions, when the Ordinance was amended in the past, to amend or annul provisions in DMCs and sub-DMCs which were considered unfair and unreasonable to owners, or inconsistent with the provisions of BMO.

46. Given the difficulties faced by small owners of large private housing estates in forming OCs and owners' committees for the management of their properties, Dr Priscilla LEUNG considered that the Administration should encourage the making of "House Rules" by property managers in accordance with DMCs before the formation of an OC, thereby enabling owners to participate in the building management matters.

47. In response to Mr IP Kin-yuen's enquiry about the Review Committee's timetable for completing its final report, SHA(Atg) advised that the Review Committee aimed to complete its next stage of the review and finalize its recommendations by the end of 2013.

Assistance to OCs and owners

48. Dr CHIANG Lai-wan expressed grave concern about the support provided by HAD to owners and residents living in the so-called "three-nil buildings" (i.e. those buildings which did not have an OC, any form of owners/residents organizations, or a PMC). She asked whether and how HAD would assist owners of "three-nil buildings" in their daily building management and maintenance.

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49. SHA(Atg) and DHA responded that HAD had spared no effort in fostering a culture of good building management. To strengthen the support to owners and residents, in particular those living in the "three-nil buildings", HAD had in recent years implemented a number of initiatives, including the following -

- (a) the Building Management Professional Advisory Service Scheme ("BMPASS") to provide tailor-made and one-stop professional advisory and support to owners of "three-nil buildings". Under BMPASS, HAD commissioned two PMCs to (i) prepare management audit reports for the common areas of these buildings as well as fire services and electrical facilities of the buildings, (ii) contact the owners through household visits and (iii) 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. BMPASS was well-received by the owners and the community and had begun to bear fruit. So far, the two PMCs had conducted more than 6 800 household visits, completed the management audit reports for all 1 200 target buildings, and helped form or re-activate over 100 new or dormant OCs; and
- (b) the Resident Liaison Ambassador ("RLA") Scheme to assist government departments in contacting residents in "three-nil buildings" to communicate with them on matters relating to daily building management, security, and fire safety, etc. In the long run, the RLA Scheme would be a very effective mechanism in assisting old tenement buildings in the formation of OCs to further enhance their building management.

50. Mr YIU Si-wing said that based on the figures above provided by the Administration, BMPASS was far from effective in encouraging owners of "three-nil buildings" to form OCs. He considered that the Administration should come up with more incentives and other initiatives, with a view to encouraging owners to form OCs and promoting sustained building management and maintenance. Mr YIU was also concerned about the legal difficulty faced by some owners of house developments who wished to form OCs to better manage their properties but failed to do so for the reason that the ownership structure and nature of house developments did not fall within the ambit of BMO.

51. SHA(Atg) advised that incorporation of owners was only one of the many tools to achieve effective building management. The key had always been active participation of owners and close liaison with PMCs. Many owners of house developments had already formed non-statutory organizations like owners' committees for the better management of their

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properties. The Administration was working on the proposed licensing regime of the property management industry, which aimed at ensuring the service quality of PMCs and practitioners. As the incorporation of owners of house developments involved complicated legal issues, the Review Committee would further study the issue at its next stage of work.

52. Mr Tony TSE said that with the implementation of the Mandatory Building Inspection Scheme ("MBIS") and Mandatory Window Inspection Scheme ("MWIS"), he anticipated that owners and residents living in dilapidated private buildings might find it difficult to understand their liabilities and comply with the relevant legal and regulatory requirements. He expressed concern about the support provided for owners and residents in this regard.

53. SHA(Atg) responded that the Government had been providing subsidies and one-stop technical support to owners of old and dilapidated buildings through "Operation Building Bright" launched by the Urban Renewal Authority ("URA") and the Hong Kong Housing Society ("HKHS") to carry out repair and maintenance works. Regarding MBIS and MWIS, the Buildings Department had issued a Practice Note providing advice on the best practices on tendering procedures for the appointment of Registered Inspectors, Qualified Persons and Registered Contractors under the two schemes. URA and HKHS would also provide support to owners taking part in the schemes including guidance on anti-bribery and anti-rigging practices in tendering.

54. Mr KWOK Wai-keung considered that there was room for improvement with regard to the Administration's support to owners of private buildings and OCs on building management matters. He observed that HAD's Free Legal Advice Scheme implemented by the Duty Lawyer Service was not operated to the convenience of owners. A person wishing to seek free legal advice from the scheme had to make an appointment to see volunteer lawyers through the branches of the referral agencies including the Public Enquiry Service Centres in the 18 District Offices ("DOs"), and volunteer lawyers only provided services at HAD's Legal Advice Centres located in specified DOs.

55. In response to Mr Christopher CHUNG's concern about the support to OCs in respect of undertaking building maintenance projects, Chairman/RC advised that section 20A of BMO had provided the procurement procedures of an OC, which stipulated that any supplies, goods or services the value of which exceeded or was likely to exceed the sum of \$200,000 or a sum which was equivalent to 20% of the annual budget of the OC should be procured by invitation to tender. Whether a tender submitted for the purpose was accepted or not should be decided by a resolution of the owners passed at a general meeting of the corporation. Chairman/RC further said that sections

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40B and 40C of BMO empowered SHA or the Lands Tribunal to order an MC (or the owners if no MC had been formed) to appoint building management agents under certain specified circumstances so as to ensure proper building maintenance. According to his understanding, URA and HKHS each had their own dedicated teams providing follow-up services to owners and OCs in respect of building management and maintenance.

Establishment of an alternative dispute resolution mechanism

56. Mr Christopher CHUNG considered that the Administration should consider setting up a special help desk within HAD or a dedicated building affairs tribunal to help parties concerned to resolve their disputes in an expeditious and cost-effective manner. Mr Tony TSE was of the view that the Administration and the Review Committee should seriously consider options that could handle expeditiously building management disputes which were of simple nature.

57. SHA(Atg) and DHA responded that HAD had been implementing various measures to strengthen owners' and OCs' ability in building management with a view to minimizing disputes among relevant parties. For instance, the Panel of Advisors on Building Management Disputes had been set up to provide authoritative and impartial advice for owners on complicated building management cases and disputes referred by DOs. The panel comprised of over 20 experts in building management affairs, including lawyers, accountants, surveyors, property managers, etc. While efforts would be made to arrange negotiation meetings for the parties in dispute, they would also be advised, if necessary, to meet with experts of the panel. Should both sides agree, DOs would also refer them to a voluntary professional mediation service scheme launched by the Hong Kong Mediation Council and the Hong Kong Mediation Centre for free professional mediation services.

58. In response to Mr IP Kin-yuen's concern about the effectiveness of the Panel of Advisors on Building Management Disputes in addressing the problem of building management disputes, SHA(Atg) said that the Review Committee had thoroughly considered the proposed establishment of a building affairs tribunal. As building management cases were often complex for the reason that they involved complicated ownership issues in addition to financial disputes, it would be very difficult to identify simple cases to be resolved by the proposed building affairs tribunal. Even cases involving only a small amount of money could be complicated in nature if ownership of common parts was involved, and might have read-across implications on future cases. In addition, persons who were not satisfied with the adjudication result might still appeal to the higher courts, defeating the purpose of shortening the processing time of the case. In the light of the above considerations, the Review Committee was of the view that

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establishing a dedicated building affairs tribunal to resolve building management disputes might not be able to bring about the benefits that some intended to achieve. SHA(Atg) stressed that while the most effective way to address the problem of building management disputes was to tackle the problem at root, the Government would continue to promote the use of mediation as an alternative mechanism for settling such disputes.

59. Dr Priscilla LEUNG said that she had moved a motion on "Improving Property Management and Operation of Owners' Corporations" at the Council meeting of 27 March 2013. In her view, the formation of OC was not necessarily a complete solution to all problems related to building management. She also raised doubts about the effectiveness of the mediation mechanism established to resolve building management disputes, particularly under the circumstances where the developers held a large number of undivided shares. She considered that the Administration should seriously consider the feasibility of establishing a building affairs tribunal within the judicial system as an alternative dispute resolution mechanism.

The role and manpower of the District Building Management Liaison Teams

60. The Chairman noted from the Administration's reply to his written question raised during the examination of the 2013-2014 Estimates of Expenditure that there were currently 120 Liaison Officers engaged in building management duties in HAD Headquarters and the District Building Management Liaison Teams ("DBMLTs") in 18 districts. He considered that the Administration should strengthen the role of and allocate more resources to increase the manpower of Liaison Officers, with a view to providing better support to owners in discharging their building management responsibilities.

61. In response, DHA advised that the Government had all along been assisting property owners to discharge their building management responsibilities through multi-pronged measures. Liaison Officers of the DBMLTs in DOs made regular visits to all private buildings in Hong Kong, encouraged owners of buildings that had not yet formed OCs to form OCs, and attended meetings upon invitation to advise owners on the procedures on OC formation. The Administration would review their establishment and scope of work from time to time to keep pace with actual circumstances. At the same time, it would continue to implement other building management initiatives to enhance the support to owners and residents, such as BMPASS, the RLA Scheme, the Panel of Advisors on Building Management Disputes, and the subsidy scheme funded by the Community Care Fund for OCs of old buildings.

62. In reply to the Chairman's enquiry, DHA confirmed that more experienced Liaison Officers who were in a better position to give advice in difficult situations would be deployed to handle complicated cases.

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63. There being no other business, the meeting ended at 12:49 pm.

Council Business Division 2
Legislative Council Secretariat
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