

**For Discussion
28 May 2013**

**LEGISLATIVE COUNCIL
PANEL ON HOME AFFAIRS**

**Interim Report of the Review Committee
on the Building Management Ordinance
and other Building Management Initiatives**

PURPOSE

This paper briefs Members on the findings of the Interim Report of the Review Committee on the Building Management Ordinance (the Interim Report) and the various building management initiatives implemented by the Home Affairs Department (HAD) in recent years.

BACKGROUND

2. Proper building management will help to provide a safe and quality living environment. The Government has all along been assisting property owners to discharge their building management responsibilities through multi-pronged measures.

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 legislation. In addition to visiting the owners and attending meetings of the OCs upon invitation, HAD has implemented a number of initiatives to enhance the support to the owners and residents, such as the Building Management Professional Advisory Service Scheme (BMPASS), the Resident Liaison Ambassador (RLA) Scheme, the Panel of Advisors on Building Management Disputes, and the subsidy scheme for OCs of old buildings.

4. The BMO was last amended in 2007. In order to keep pace with changing circumstances and to address public concerns, the Secretary for Home Affairs appointed the Review Committee on the Building Management Ordinance (the Review Committee) in January 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 to protect the interests of individual owners.

5. The Review Committee comprises members from the relevant professions such as the legal, accounting and engineering fields, and Legislative Council 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 the Annex.

INTERIM REPORT OF THE REVIEW COMMITTEE

6. The Review Committee has examined various common building management problems at its first stage of work with a view to identifying measures to alleviate them. On those 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. As regards those issues which are more controversial or involve more complicated legal and property ownership issues, the Review Committee has set out its preliminary findings in its Interim Report for further deliberation.

7. Some of the major recommendations of the Interim Report are highlighted in the ensuing paragraphs.

(a) Facilitate Better Understanding of the Requirements of the BMO

8. In the course of daily building management and maintenance, it is inevitable that the owners, the OCs and the property management companies may hold different views on certain matters. Disputes may arise due to different interpretations of the legislative provisions by different parties, or because of insufficient understanding of the requirements of the BMO.

9. The Review Committee notes that the appointment of proxy for an OC's general meeting and the holding of an OC's general meeting at the request of not less than 5% of the owners are two areas where disputes often arise. Based on the recommendation of the Review Committee, HAD has published two sets of guidelines targeting at these two areas. In addition to highlighting the respective statutory responsibilities of the MC chairman, the MC secretary and the owners, the new guidelines provide guidance on the best practices with the aim of facilitating compliance with the statutory requirements.

10. For example, on the proxy arrangement, while the BMO requires the MC secretary to display information of those flats the owners of which have appointed proxy in a prominent place of the meeting venue before the meeting is held until the conclusion of the meeting, the newly published guidelines advise MC Secretary to, as a matter of best practice, display an additional copy of such information in a prominent place of the building at least 24 hours before the meeting is held and until seven days after the meeting to facilitate verification by owners.

11. Furthermore, in accordance with the guidelines on "To Convene a General Meeting of an Owners' Corporation at the Request of Not Less Than 5% of the Owners", the MC Chairman is advised to, as a matter of best practice, arrange the discussion items suggested by the owners who request the holding of the meeting as priority items on the agenda.

12. The publication of the guidelines on best practices has been very well received by stakeholders of building management in the community, and the Review Committee considers it a good short term measure to address the issues. The Review Committee will continue to

explore any further improvements which may involve amendments to the BMO at its next stage of work.

(b) Possible Improvements to the BMO

13. Having reviewed various common building management problems, the Review Committee notes that many of them involve complex legal and operational implications which require in-depth study in its next stage of work. For the relatively less complex issues, the Review Committee has preliminarily identified some possible legislative amendments to the BMO for improving the existing arrangements. These include –

- (i) requiring MC members to only make a written statement on his eligibility upon appointment instead of taking an oath before the Commissioner for Oaths;
- (ii) excluding those shares with no voting right at owners' meetings for the calculation of the total undivided shares for the appointment of MC; and
- (iii) stipulating in the BMO that owners should be given priority to take up the posts of MC secretary and treasurer.

(c) Issues Requiring Further Consideration of their Legal and Operational Implications

14. Regarding those building management problems which involve complicated financial, legal or ownership implications, the Review Committee has conducted an initial analysis of the issues concerned and set out its initial findings in the Interim Report. The following paragraphs highlight some of the major findings under this category of issues¹.

¹ Other issues covered under this category in the Interim Report include mandatory building management, winding-up of OCs due to re-grant of land lease by the Government, dissolution of defunct MCs and removal of records from the Land Registry, matters relating to DMCs and other technical amendments.

(i) Termination of the Appointment of Deed of Mutual Covenant (DMC) Manager

15. 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 manager.

16. 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 manager and requiring open tender for the selection of subsequent property management service provider; 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 manager.

17. 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 manager, it may lead to instability in the management of the building when different owners have different views on the performance of the DMC manager, in that it is possible that after the appointment of the 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 the newly-appointed manager with a view to re-appointing the original manager.

18. On the option of introducing a time limit for the appointment of DMC manager, 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.

(ii) Remuneration of DMC Managers

19. There are suggestions that the basis for setting the remuneration level of DMC managers as specified in the DMC Guidelines issued by Lands Department should be reviewed. At present, according to the DMC Guidelines, the remuneration of the DMC manager is capped at a certain percentage of the total expenses, costs and charges necessarily and reasonably incurred in the management of the development.

20. Some owners suggest that the current guidelines induce the DMC managers to spend more so as to increase their remuneration. Other owners are of the view that the problem will be solved if they can exercise their right in terminating the appointment of the DMC managers more easily, and there is more transparency on the charges of the property management companies.

21. As the Review Committee will study in detail the mechanism for termination of the appointment of DMC managers at its next stage of work, and the Government's proposed regulatory regime of the property management industry will help enhance the transparency of the operation of the property management companies, the Review Committee will take these factors into consideration with a view to making a recommendation on the proposed way forward regarding the remuneration of the DMC managers at its next stage of work.

(iii) Incorporation of Owners of House Developments

22. The Review Committee notes that some owners of house developments would like to form OCs to better manage their properties. However, there is legal difficulty in the incorporation of owners of house developments under the BMO because the ownership structure and nature of house developments do not fall within the ambit of the BMO.

23. The Review Committee considers that incorporation of owners is only one of the many tools to achieve effective building management. The key has always been active participation of owners and close liaison with the property management companies. Many owners of house developments have already formed non-statutory organisations like owners' committees for the better management of their properties. The Government is also working on the proposed licensing regime of the property management industry, which aims to ensure the service quality of property management companies and practitioners. As the incorporation of owners of house developments involves complicated legal issues, the Review Committee will further study the issue at its next stage of work.

(d) Other Issues

24. In addition to the three categories of issues in (a)-(c) above, the Review Committee has studied a number of other building management issues and considered various options with a view to examining whether the existing arrangements can be further improved. The ensuing paragraphs highlight the deliberations of the Review Committee on some of the issues under this category².

(i) *Quorum of OC's Meeting*

25. Paragraph 5(1) of Schedule 3 to the BMO stipulates, amongst others, that the quorum of an OC's meeting shall be 10% of the owners. The actual number of owners required to meet the quorum for each building or housing estate varies depending on the scale of the building or housing estate. For large estates with several hundreds of units, it is often difficult to find a mutually convenient time and a suitable venue to hold the OC's meeting in view of the large number of owners involved. On the other hand, in respect of single tenement buildings, as the minimum number of owners required to form the quorum is much smaller, decisions made at the OC's meeting may be dominated by a small number

² Other issues covered under this category in the Interim Report include recovery of management and maintenance fees, allowances to MC members, appointment of MCs, control over the financial matters of OCs and property management companies, liability of OCs, allowing owners to set out their voting instruction on the proxy instruments and communication among owners.

of owners.

26. The Review Committee has examined the feasibility of introducing a tiered quorum system whereby a lower quorum is to be imposed on large housing estates while a higher quorum will apply to single tenement buildings. It has also considered the option of raising the quorum or the percentage of votes required for passing resolutions on large-scale maintenance projects. The Review Committee is however concerned that raising the quorum or changing the “simple majority” requirement for voting of resolutions relating to large-scale maintenance projects may render most maintenance projects “non-startable”, which will in turn lower the quality of the buildings. The Review Committee recommends that the present arrangement be maintained given its simplicity and clarity.

(ii) The Establishment of an Alternative Dispute Resolution Mechanism

27. Currently, the parties in dispute can settle their building management cases in the Small Claims Tribunal, the Lands Tribunal, the District Court or the Court of First Instance of the High Court as appropriate. However, there are views that the existing mechanism is unsatisfactory as 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.

28. The Review Committee has thoroughly considered the proposal. If the proposed Building Affairs Tribunal (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 proposed BAT must give parties a proper opportunity to present their evidence and cases. As such, the processing time by the proposed BAT may not be shorter than the existing arrangements in the Lands Tribunal.

29. Another option which has been examined by the Review Committee is to establish the BAT outside the judicial system with a 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 issues in addition to financial disputes. Thus, it will be very difficult to identify simple cases to be resolved by the proposed 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.

REGULATION OF THE PROPERTY MANAGEMENT INDUSTRY

30. The ongoing review of the BMO aims to improve the legal framework for the formation and operation of OCs. As a further step to protect the interests of owners, we are working on a statutory licensing regime to regulate the property management industry, under which property management companies and practitioners will be required to fulfil certain licensing criteria before they can be granted licences by the future licensing authority for providing services to building owners. The Advisory Committee on the Regulation of the Property Management Industry, comprising representatives from the property management industry and relevant professions, was established in December 2011 to provide advice in formulating the details of the proposed licensing system. We aim to submit the Bill to LegCo within this year.

OTHER BUILDING MANAGEMENT INITIATIVES

31. HAD has spared no effort to foster a culture of good building management. In addition to the review of the BMO and working on a licensing regime of the property management industry, 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”³. Details of the initiatives are elaborated in the following paragraphs.

³ “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.

Building Management Professional Advisory Service Scheme (BMPASS)

32. To strengthen the support to owners of old buildings aged 30 years or above, HAD commissioned two property management companies in November 2011 to provide tailor-made and one-stop professional advisory and support to owners of 1 200 “three-nil buildings” (about 18 000 units). The property management companies prepare management audit reports for the common areas of these buildings as well as fire services and electrical facilities of the buildings. The property management companies also 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.

33. The BMPASS is well-received by the owners and the community and has begun to bear fruit. So far, the property management companies have conducted more than 6 800 household visits, completed the management audit reports for all 1 200 target buildings, and formed or re-activated over 100 OCs. The property management companies are now assisting the OCs to apply for various financial assistance schemes and to appoint Authorized Persons/contractors for the maintenance works.

34. Given the very positive responses and encouraging results of the BMPASS, we have, in consultation with District Councils, identified and served 53 additional buildings under the ambit of the current service contracts with effect from April 2013. We will continue to closely monitor the progress of BMPASS and review its overall effectiveness before its completion in March 2014.

Resident Liaison Ambassador (RLA) Scheme

35. Noting that old buildings often encounter great difficulties in forming OCs and daily building management as the majority of owners are not living in the buildings concerned, HAD launched the RLA Scheme in November 2011 and has successfully recruited over 820 owners or tenants from some 450 “three-nil” buildings as RLAs. These

RLAs assist government departments in contacting residents living in the same building and communicate with them on matters relating to daily building management, security, and fire safety, etc. Not only can RLAs help improve the management of these buildings effectively, they also refer potential safety hazards of the buildings to relevant government departments for immediate follow-up actions.

36. We believe that 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. By end March 2013, HAD has successfully assisted 36 old buildings in forming OCs through the RLA network.

Panel of Advisors on Building Management Disputes

37. To assist owners and OCs in resolving their disputes on building management particularly the most persistent and difficult ones, a panel of advisors comprising professionals of different background, including lawyers, accountants, surveyors and property managers) was set up by HAD in October 2011 to provide impartial and authoritative advice to cases referred by District Offices. So far, the Panel has given advice to 13 cases. Most of the participants found the Panel advice very useful in helping them settle the disputes. We will continue to encourage more disputing parties to seek the Panel's advice.

Subsidy for Owners' Corporations of Old Buildings

38. To support OCs of old buildings in achieving the objective of promoting building management, HAD launched a subsidy scheme, funded by the Community Care Fund, for a period of three years from October 2012. Each eligible OC⁴ can apply for reimbursement of 50% of the actual expenses (up to \$20,000) in respect of fees/expenses paid by OCs for registration or filing of any document with the Land Registry; the procurement of third party risks insurance for the common parts of the

⁴ Eligible OCs refer to the OCs of those residential or composite buildings aged 30 years or above and with average rateable value of the residential units per annum not exceeding \$120,000 (urban area including Sha Tin, Kwai Tsing and Tsuen Wan) or \$92,000 (New Territories).

buildings; regular inspection of fire services and electrical equipment; and annual clearance of fire escapes.

39. It is estimated that 4 300 old buildings are eligible. The response to the scheme has been very encouraging. Since its implementation, about 2 500 OCs have indicated their interest to apply and about 100 applications have already been approved. We expect that more formal applications will be received after the eligible OCs have completed the relevant works.

THE NEXT STEPS

40. The Administration welcomes and will study the Interim Report. For those building management issues which are controversial involving complicated legal and ownership issues, 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. Upon receiving the final report from the Review Committee, the Administration will carefully consider the recommendations therein in mapping out the way forward.

41. Meanwhile, HAD will continue to assist owners in discharging their building management responsibilities through multi-pronged measures and various building management initiatives.

Home Affairs Department
May 2013

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