

立法會 *Legislative Council*

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Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 28 May 2013

Review of the Building Management Ordinance and related building management issues

Purpose

This paper provides background information on the Administration's review of the Building Management Ordinance (Cap. 344) ("BMO") after the enactment of the Building Management (Amendment) Ordinance 2007 ("the 2007 Amendment Ordinance") and summarizes the relevant discussions held by the Panel of Home Affairs ("the Panel") since the Fourth Legislative Council ("LegCo") on the subject and related building management issues.

Background

Review of BMO

2. BMO provides a legal framework for the formation and operation of owners' corporations ("OCs") to facilitate owners' effective management of their buildings. The last review of BMO was conducted in 2005-2007. Subsequent to the completion of the last review, the 2007 Amendment Ordinance was enacted on 25 April 2007 to provide for a number of amendments to BMO for the purpose of rationalizing the appointment procedures of management committees ("MCs"), setting more specific requirements on the use of proxy instruments, as well as setting out the implementation details of the mandatory procurement of third party risks insurance by OCs, etc. In order to keep pace with changing circumstances since then and to address public concerns about some contentious issues, the Administration established in January 2011 the Review Committee on the Building Management Ordinance ("the Review Committee") comprising LegCo Members, relevant professionals from the legal, accounting and engineering fields as well as experienced members of the MCs

of OCs to further review BMO. The terms of reference of the Review Committee are -

- (a) to identify common building management problems and deliberate how they may be resolved or alleviated through amending BMO;
- (b) 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
- (c) to 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.

The Government's role in building management issues

3. The Home Affairs Department ("HAD") is responsible for promoting effective building management in private multi-storey buildings, assisting in the formation of OCs and tackling management problems in such buildings. District Offices ("DOs") under HAD render advice to owners on building management matters, including the formation and operation of OCs under BMO, as well as guidance on financial management, procurement of supplies, goods and services, etc.

4. DOs also handle enquiries and complaints relating to building management and help owners to resolve disputes among themselves in a constructive spirit. To provide outreach services and support for owners, HAD has set up District Building Management Liaison Teams comprising Liaison Officers in the 18 DOs. DOs help refer owners in need to the Property Management Advisory Centres ("PMACs") of the Hong Kong Housing Society ("HKHS") for free appointments with professionals such as lawyers, surveyors and housing managers. The Lands Tribunal ("LT") provides professional mediation services for building management cases.

5. In April 2010, the Home Affairs Bureau and HAD, in collaboration with HKHS and professional associations of the property management industry, launched the pilot Building Management Professional Service Scheme ("BMPSS") and commissioned two property management companies to provide one-stop services to owners of old buildings with free professional advice and follow-up services in respect of building management and maintenance. The Scheme was intended to set an example for owners of old buildings to better understand the positive effects of continuous management and regular maintenance of their buildings, and their responsibility in managing their buildings.

Relevant discussions held by the Panel

6. Building management related issues had been discussed by the Panel at six of its meetings between July 2007 and November 2011. The major views and concerns expressed by members at these meetings are summarized below.

Assistance to OCs and owners

7. Some members were of the view that some major inadequacies with BMO needed to be addressed, e.g. the lack of penalty clauses to address the non-compliance with certain statutory requirements. They pointed out that, as OCs would not be granted legal aid, this had often deterred them from taking legal action against other parties concerned, e.g. large property management companies ("PMCs"), in case of building management disputes. There was a suggestion that the Administration should consider setting up a trust fund to provide financial assistance to eligible OCs and owners in this regard. The Administration responded that it stood ready to provide assistance in arranging meetings with relevant stakeholders, such as PMCs, to discuss further improvements to building management services.

8. Following the tragic building collapse incident at Ma Tau Wai Road in January 2010, which had triggered wide public concern on the safety of old tenement buildings, the Panel followed up with the Administration on measures for enhancing the support to owners of old buildings and OCs to achieve more effective building management and maintenance. Members urged the Administration to enhance its support for owners of old single tenement buildings, who had difficulties in forming OCs or who lacked the knowledge and resources for maintaining their buildings. Some members criticized the Administration for inadequate follow-up support to OCs after their formation, and HKHS for failing to make suitable adjustment to the opening hours of its PMACs to cater for the strong demand from OCs for meeting venues in the evening.

9. The Administration advised that as an initiative to assist owners of old buildings in enhancing the management and maintenance of their buildings, BMPSS was introduced in April 2010 for a one-year trial period to give professional advice to owners of target buildings for enhancing the management and conditions of their buildings. The Administration further explained that while there was a general community consensus for owners to assume the responsibility to properly manage and maintain their properties, the Government was mindful of the fact that some owners might not possess adequate knowledge and financial capability to do so. BMPSS would hence be implemented on a time-limited basis, to be followed by a review to identify owners with genuine

needs for further assistance in improving the safety of buildings and environmental hygiene. At the request of members, HKHS undertook to cater for requests to extend flexibly the opening hours of individual PMACs in the evening.

Role of HAD in dealing with building management disputes

10. Concern was expressed on the support provided by HAD in assisting owners and OCs in resolving building management disputes. Members considered that HAD should approach OCs regularly to identify potential problems and conflicts in their daily operation and offer them the required assistance instead of passively providing mediation service after the disputes arose. There was a suggestion that HAD staff should attend meetings of OCs at least once a month. Enquiries were raised about the legal assistance rendered by the Administration for handling such disputes, and its position on the introduction of a mediation mechanism for dealing with building management cases.

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

12. The Administration further advised that it had also placed emphasis on training Liaison Officers on mediation skills. Since 2003, HAD had engaged a tertiary institution to provide mediation course for all Liaison Officers involved in building management work. With the assistance of the Hong Kong Mediation Council and the Hong Kong Mediation Centre, HAD had launched a pilot scheme on mediation. The effectiveness of mediation on building management disputes would be further assessed. Furthermore, the 10 PMACs under HKHS had been providing free guidance and advice including legal consultation service on building management matters to the public.

Setting up of a building affairs tribunal

13. Some members suggested that the Administration should consider introducing a mandatory mechanism of mediation (say, a building affairs tribunal) for expeditious handling of certain types of building management disputes e.g. those involving only individual owners, or a small amount of money or of certain nature such as water seepage, nuisance or trespassing cases.

14. According to the Administration, it had been encouraging owners to resolve disputes on building management by means other than litigation, such as communication or mediation. In the event that any disputes had to be resolved by litigation, they might be dealt with by LT. For cases involving a relatively small amount of money, i.e. \$50,000 or below, they might be taken to the Small Claims Tribunal as small claim disputes. The proposal to establish a building affairs tribunal involved a number of complicated policy and legal issues, such as the legal status of the tribunal, its institutional arrangements and its interface with LT. Besides, during the public consultation on the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme, there were views that there might be duplication of efforts between a new adjudicating mechanism and the existing mechanism.

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

Mandatory procurement of third party risks insurance

16. Members were concerned about the problems encountered by OCs in compliance with the Building Management (Third Party Risks Insurance) Regulation (Cap. 344B) ("the Regulation"), which took effect on 1 January 2011 requiring the mandatory procurement of third party risks insurance by OCs. Some members criticized HAD for failing to provide sufficient assistance to OCs in understanding the mandatory requirement. Expressing concern that many OCs might have to be dissolved should they fail to procure insurance, these members called on the Administration to identify OCs of old buildings which were unable to procure insurance and assist them in convincing the court that

they had already made their best endeavor to procure insurance.

17. According to the Administration, the Hong Kong Federation of Insurers ("HKFI") had issued a circular to its members on the implementation of the mandatory requirement. HAD had all along maintained contact with OCs, and would liaise with HKFI once questions were received from owners and OCs over the operation of the mandatory requirement. In response to members' request for the Administration's undertaking not to prosecute OCs without insurance coverage in the first year of the implementation of the mandatory requirement, the Administration assured members that the spirit of the Regulation was not to penalize owners but to enhance their awareness in building safety and to assist them in procuring insurance. In case an OC was required to carry out building maintenance works, which might take more than one year, before being qualified to procure insurance, it would not be prosecuted.

Motion passed by the Council

18. On 27 March 2013, LegCo passed a motion moved by Dr Hon Priscilla LEUNG, and amended by Hon Claudia MO, Hon Christopher CHUNG and Hon WU Chi-wai, on "Improving property management and operation of owners' corporations". The wording of the motion is in **Appendix I**.

Latest developments

19. According to the Administration, the pilot BMPSS launched in 2010 was well-received and recognized by the owners and residents. In November 2011, HAD has launched Building Management Professional Advisory Service Scheme to further enhance the support to buildings which do not have an OC nor any form of owners/residents organizations nor engage a PMC (i.e. the so-called "three nil" buildings). HAD will conduct a comprehensive review on the effectiveness of BMPASS before its completion in March 2014.

20. The Review Committee, which was set up in 2011, has examined various common building management problems in its first stage of work with a view to identifying measures to alleviate them. On 25 March 2013, it submitted an interim report to the Administration. The Administration will brief the Panel on the findings and recommendations of the Review Committee at the meeting on 28 May 2013.

Relevant papers

21. A list of the relevant papers on the LegCo's website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
6 May 2013

(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

That 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 Government should allocate additional resources for establishing a one-stop platform to assist small property owners and tenants in obtaining support from different departments; the Government 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 properly 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.

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and related building management issues**

Committee	Date of meeting	Paper
Panel on Home Affairs	13.7.2007 (Item III)	Agenda Minutes
Panel on Home Affairs	12.12.2008 (Item IV)	Agenda Minutes
Council meeting	25.11.2009	Question No. 9 Official Record of Proceedings Pages 2196 - 2198 in Hansard
Panel on Home Affairs	17.3.2010 (Item V)	Agenda Minutes
Council meeting	28.4.2010	Question No. 7 Official Record of Proceedings Pages 7563 - 7564 in Hansard
Panel on Home Affairs	9.7.2010 (Item IV)	Agenda Minutes
Council meeting	3.11.2010	Question No. 4 Official Record of Proceedings Pages 1446 - 1455 in Hansard
Council meeting	17.11.2010	Question Nos. 2 and 14 Official Record of Proceedings Pages 2049 - 2059 and 2125 - 2128 in Hansard
Panel on Home Affairs	10.12.2010 (Item IV)	Agenda Minutes
Council meeting	6.7.2011	Question No. 12 Official Record of Proceedings Pages 13581 - 13587 in Hansard

Committee	Date of meeting	Paper
Panel on Home Affairs	15.11.2011 (Item III)	Agenda Minutes
Council meeting	7.12.2011	Question No. 1 Official Record of Proceedings Pages 2941 - 2947 in Hansard
Council meeting	14.12.2011	Question No. 8 Official Record of Proceedings Pages 3491 - 3496 in Hansard
Council meeting	18.4.2012	Question No. 13 Official Record of Proceedings Pages 8040 - 8046 in Hansard
Panel on Home Affairs	---	Administration's paper entitled "Building Management Professional Advisory Service Scheme" (LC Paper No.: CB(2)398/12-13(01))
Council meeting	14.11.2012	Question No. 5 Official Record of Proceedings Pages 1837 - 1848 in Hansard
Council meeting	27.3.2013	Wording of the motion on "Improving property management and operation of owners' corporations"