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**Panel on Home Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 November 2014**

Review of the Building Management Ordinance

Purpose

This paper provides background information on the review of the Building Management Ordinance (Cap. 344) ("BMO"), and highlights major concerns of members of the Panel on Home Affairs ("the Panel") on issues relating to building management.

Background

Review of BMO

2. 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. BMO was last amended in 2007. 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 January 2011 to identify common building management problems, deliberate how these problems might be resolved or alleviated through amending 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.

3. When the Panel discussed the Interim Report of the Review Committee and other building management initiatives provided by Home Affairs Department ("HAD") at the meeting on 28 May 2013, members noted that the Review Committee put common building management issues relating to BMO into three categories as follows -

- (a) for issues where disputes arose due to differences in interpretation of BMO's requirements by different parties, the Review Committee recommended that guidelines on best practices be provided. As such, two guidelines, namely "Proxy for the General Meeting of an OC" and "To Convene a General Meeting of an OC at the Request of Not Less Than 5% of the Owners", had been published;
- (b) for the relatively less complex issues, the Review Committee had identified some possible legislative amendments to BMO for improving the existing arrangements, including - (i) requiring management committee ("MC") members to only make a written statement on their 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 BMO that owners should be given priority to take up the posts of MC secretary and treasurer; and
- (c) for issues involving complicated financial, legal or ownership implications, the Review Committee had set out its preliminary findings in the Interim Report for further consideration at its next stage of work. Such issues included the termination of appointment of deeds of mutual covenant ("DMC") managers, remuneration of DMC managers, incorporation of owners of house developments, matters relating to DMC and so on.

4. Members noted that in addition to issues in the above three categories, the Review Committee had studied a number of other building management issues, including the quorum of OC's meeting, establishment of the building affairs tribunal ("BAT") as an alternative dispute resolution mechanism, and recovery of management and maintenance fees.

Other building management initiatives

5. Members noted that in addition to reviewing BMO, the Administration was working on a licensing regime to regulate the property management industry¹ and implementing a number of initiatives to support owners and residents, in particular those living in the so-called "three nil buildings"².

¹ The Property Management Services Bill, introduced into the Legislative Council on 7 May 2014, is being scrutinized by the Bills Committee on Property Management Services Bill.

² "Three nil buildings" refer to those buildings that do not have an OC nor any form of owners/residents organizations nor engage a property management company.

These initiatives included the Building Management Professional Advisory Service Scheme³ ("BMPASS"), the Resident Liaison Ambassador ("RLA") Scheme⁴, the Panel of Advisors on Building Management Disputes⁵, and the Subsidy for Owners' Corporations of Old Buildings⁶.

6. At the policy briefing given by SHA on 24 January 2014, members noted that HAD would launch two new initiatives relating to building management, namely AP Easy⁷ and BMPASS (Phase 2)⁸.

Members' concerns

7. Major concerns of members on the subject expressed at the two Panel meetings in May 2013 and January 2014 are summarized below.

Review of BMO

Termination of the appointment of DMC managers

8. Members expressed grave concern about the difficulties encountered by owners in terminating the appointment of DMC managers when they were not

³ Under the Scheme, 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" aged 30 years or above.

⁴ Launched in November 2011, the RLA Scheme recruited owners/tenants from "three-nil buildings" to assist government departments in contacting residents living in the same building and liaise with them on matters relating to daily building management, security, and fire safety, etc

⁵ 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.

⁶ Funded by the Community Care Fund, HAD launched this subsidy scheme for a period of three years from October 2012. Under the scheme, an estimated 4 300 old buildings would be eligible to 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 buildings; regular inspection of fire services and electrical equipment; and annual clearance of fire escapes.

⁷ AP Easy was a pilot scheme on building maintenance advisory service that, in collaboration with three professional institutes (namely the Hong Kong Institute of Surveyors, the Hong Kong Institution of Engineers and the Hong Kong Institute of Architects) provided OCs in need with professional and tailor-made advice and support to assist them in engaging consultants/authorized persons to launch building maintenance.

⁸ Under the Scheme, professional property management companies ("PMCs") would be engaged to provide owners of 1 200 "three-nil buildings" aged 30 years or above and with a low rateable value with one-stop and customized advice and support and to assist them in forming OCs, improving building management, launching building maintenance and applying for relevant subsidies. PMCs commissioned would also assist in recruiting RLAs in these buildings to contact households in the buildings and engage them in discussing matters such as building management, security and fire safety as well as to maintain close liaison with relevant government departments regarding building management issues.

satisfied with their performance and wished to select a new service provider. According to the Administration, the termination of the appointment of DMC managers was one of the several issues on which the Review Committee had conducted an initial analysis. Various options had been examined, including lowering the threshold of terminating the appointment of DMC managers from 50% to 30% of the owners' shares, introducing a time limit on the term of appointment of DMC managers, and requiring open tender of subsequent property management service providers. The Review Committee would further consider the legal and operational implications of different proposals before making recommendations on the way forward.

Matters relating to DMCs

9. Members expressed grave concern about the difficulties encountered by owners living in some large private housing estates in forming OCs and owners' committees for management of their properties due to unfair terms and conditions in the respective DMC drawn up by property developers. Concern was also raised that some DMCs contained unfair provisions against individual owners, for example, unfair allocation of management shares and undivided shares between owners and developers.

10. According to the Administration, DMC was a private deed among the developer, DMC manager and the owners of the building, and no party to a DMC should unilaterally modify any provisions in DMC without the consent of all other parties. Nevertheless, upon the enactment of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993, "Part VIA Deeds of Mutual Covenant" ("Part VIA") was added to the then Multi-storey Buildings (Owners Incorporation) Ordinance to provide for a number of requirements that were applicable to buildings in respect of which DMCs were in force. The latter Ordinance was then renamed as BMO in 1993. Section 34C(2) of BMO stipulated that Part VIA should prevail over any DMC or other agreement that was inconsistent with it, ensuring that terms and conditions in any DMC would be fair. In addition, the "Guidelines for Deeds of Mutual Covenant" issued by the Lands Department ("LandsD") required that in the allocation of undivided shares and management shares, the Legal Advisory and Conveyancing Office of LandsD 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.

Establishment of an alternative dispute resolution mechanism

11. Expressing concern about the effectiveness of the existing dispute resolution mechanism, members urged the Administration to seriously explore options that could handle expeditiously building management disputes. There was a view that the Administration should set up a special help desk within HAD to help parties concerned to resolve their disputes. There was another view that the Administration should consider establishing BAT within the judicial system as an alternative dispute resolution mechanism.

12. The Administration advised that the Review Committee had thoroughly considered the proposed establishment of BAT. However, as building management cases often involved complicated ownership issues and financial disputes, it would be very difficult to identify simple cases to be resolved by the proposed BAT. 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. As such, establishing a dedicated BAT might not be able to bring about the intended benefits. The Administration would continue to promote the use of building management mediation service under the Pilot Scheme for Building Management Cases in the Lands Tribunal as an alternative mechanism for settling such disputes.

Assistance to OCs and owners

13. Expressing grave concern that many property owners or tenants, particularly those living in "three-nil buildings", needed assistance in carrying out building management and maintenance works, members urged the Administration to strengthen its existing support to these buildings. Concern was also raised as to whether the Administration allocated adequate manpower of Liaison Officers in building management duties in HAD Headquarters and the District Building Management Liaison Teams in 18 districts.

14. The Administration responded that it fully understood that some property owners or OCs considered it difficult to launch building maintenance works, and spared no effort in fostering a culture of good building management. AP Easy was launched with a view to providing property owners and OCs in need with professional and tailor-made advice/support to assist them in engaging consultants/authorized persons to launch building maintenance.

HAD would bid manpower resources, as and where appropriate, under the annual resource allocation exercise for strengthening the establishment of Liaison Officers to cope with increased workload.

Relevant motion passed at Council meeting

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

Latest development

16. The Administration will brief the Panel on the proposed amendments to BMO at the meeting on 17 November 2014, and issues relating to building management will be also discussed at the same meeting.

Relevant papers

17. A list of relevant papers, the motion passed and questions raised at the Council meetings is in **Appendix II**.

(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.

**Relevant papers on
Review of the Building Management Ordinance**

Committee	Date of meeting	Motion / Question / Paper
Legislative Council	27.3.2013	Wording of the motion on "Improving property management and operation of owners' corporations" Progress report on the motion
Panel on Home Affairs	28.5.2013 (Item V)	Agenda Minutes Administration's follow-up paper on the specific provisions of the Building Management Ordinance (Cap. 344) which prevail over the terms of deeds of mutual covenant in the event of inconsistency between the two (LC Paper No. CB(2)1459/12-13(01))
	24.1.2014 (Item I)	Agenda Minutes
Legislative Council	2.7.2014	Official Records of Proceedings Pages 15821 to 15827 (written question raised by Hon Emily LAU on "Handling of conflicts between flat owners and management committees over building maintenance and repair works")
	29.10.2014	Written question raised by Hon WU Chi-Wai on "measures to enhance building management"