

立法會 *Legislative Council*

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Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the special meeting on 24 January 2014

Public consultation on "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 the main concerns of members of the Panel on Home Affairs ("the Panel") on the public consultation document entitled "Review of the Building Management Ordinance" ("the consultation document").

Background

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 appointed the Review Committee on the Building Management Ordinance ("the Review Committee") in January 2011 to conduct a comprehensive review of BMO. The Panel was briefed by the Administration on the Interim Report of the Review Committee at the meeting on 28 May 2013.

3. When the Panel was briefed by the Administration on the consultation document at its meeting on 17 November 2014, members were advised that in the light of the Review Committee's recommendations, the consultation document had set out a number of legislative and administrative proposals which might help address the main concerns raised by the public in recent years, including the disputes arising from large-scale maintenance projects, use of

proxies at OC meetings, and appointment and remuneration of deed of mutual covenant ("DMC") managers. The public consultation period will last for 12 weeks from 11 November 2014 to 2 February 2015.

Members' concerns

4. Major concerns of members on the consultation document are summarized below.

Bid-rigging and disputes relating to large-scale maintenance projects

Prevention of bid-rigging

5. Members were of the view that the crux of the problem of bid-rigging in building maintenance lay in OCs' and owners' lack of expertise in planning building maintenance works, and queried whether the Administration's existing measures could adequately assist owners/OCs in the prevention of bid-rigging. There was a view that these measures had to be complemented by corresponding amendments to BMO. The Administration was urged to address the problem of bid-rigging and where appropriate, draw reference from the Operation Building Bright of the Hong Kong Housing Society and the Urban Renewal Authority. There was a suggestion that the Administration should establish a "central database" capturing information on market prices for various maintenance items and past performance of consultants/contractors in the market for reference of owners or OCs in planning building maintenance works.

6. The Administration advised that it would continue to adopt a multi-pronged approach, covering legislation, enforcement, support and assistance to property owners to prevent bid-rigging. To meet the specific needs of owners in carrying out building maintenance works, the Home Affairs Department ("HAD") had implemented a number of building management initiatives including the "AP Easy" Building Maintenance Advisory Service Scheme and the second phase of the Building Management Professional Advisory Service Scheme, in addition to having a dedicated division in the HAD Headquarters and the District Building Management Liaison Teams in 18 District Offices. On the law enforcement front, the Police and the Independent Commission Against Corruption would continue with their investigation and enforcement work, as appropriate, to combat illegal activities relating to large-scale maintenance projects.

Encouraging greater participation by owners in implementing large-scale maintenance projects

7. Members noted that the consultation document had proposed two options to encourage greater participation by owners in implementing large-scale maintenance projects, namely (a) to raise the quorum of the OC meeting at which the voting of the resolution took place; or (b) to raise the percentage of shares of votes required for the passage of the resolution. There were worries that if the required percentage of shares of votes for the passage of the resolution was raised from 50% to 75% of the shares of votes at the meeting, it would be extremely difficult for OCs to commence building maintenance works. However, there was another view that both proposed options had the merit of forging consensus among owners on the initiative to carry out building maintenance works. Concern was also raised as to how "large-scale maintenance projects" would be defined in BMO.

8. The Administration advised that the two proposed options were considered feasible options for encouraging wide participation of owners before reaching a decision on large-scale maintenance projects. The two options were put forth for consideration by members of the public, and the decision on which option to be adopted would be made in the light of the views collected during the consultation period.

Enforcement

9. Some members considered that the mere provision of advisory services under various schemes launched by HAD could hardly address the problems faced by property owners in the event that management committees ("MC") failed to perform the duties under BMO or its members acted with wilful negligence/made unreasonable decisions, causing loss to individual owners. In these members' view, criminal sanctions should be provided in BMO to deter people, including MC members, from breaching the requirements of BMO.

10. The Administration advised that BMO sought to provide a legal framework for owners to organize themselves to discharge their building management responsibilities. Under BMO, the Lands Tribunal had the jurisdiction to hear and determine any proceedings relating to the interpretation and enforcement of the provisions of BMO. While there were at present around 10 000 OCs in Hong Kong, the number of reported cases involving a breach of provisions in BMO was small. As owners served as MC members on a voluntary basis, many of them considered it unfair to subject them to criminal liability.

Formation of OCs

11. Members expressed support for the proposal that the threshold for the formation of OCs under section 3 of BMO be lowered from 30% to 20% of shares in aggregate as it would ameliorate the difficulty in gathering sufficient percentage of shares in aggregate to form an OC. Members, however, stressed that OC formation should not be a mandatory requirement, given the difference in the number of property units involved in different buildings/estates and the needs of property owners in different buildings/estates.

12. The Administration advised that formation of OCs was one of the tools for effective building management. Owners might also opt to form other types of owners' organizations including owners' committees, mutual aid committees or other residents' associations, having regard to their specific needs and preferences and the actual circumstances of the buildings.

Matters relating to DMCs and DMC managers

13. Concern was raised about the difficulties encountered by owners in forming OCs and owners' committees due to unfair terms and conditions in some old DMCs drawn up by property developers. An example of such problem was the unfair allocation of undivided shares and management shares between owners and developers, where the developers might have a large number of undivided shares but only needed to pay a small amount of management expenses. The Administration was urged to consider introducing the concept of "user-pays" principle to BMO such that there would be separate accounts and budgets for the residential and commercial parts in composite developments.

14. According to the Administration, it was not uncommon that the first few floors of a building were restaurants or shops with the residential units located on the upper floors. In such cases, owners should have joint responsibility for managing and maintaining the common and inseparable facilities such as water tanks, sewers and drains.

15. Members expressed grave concern about the difficulties encountered by owners in terminating the appointment of DMC managers. Some members expressed support for the proposal of lowering the threshold for terminating the appointment of DMC managers from 50% to 30% of shares in aggregate, as well as the proposal of limiting the term of appointment of DMC managers to five years. However, concern was raised that lowering the threshold for terminating the appointment of DMC managers to 30% of shares in aggregate might result in a paradox that the decision of appointing the DMC manager

previously supported by owners of not less than 50% of the shares in aggregate was overruled by a resolution with 30% of shares in aggregate.

Latest development

16. The Panel will receive deputations' views on the consultation document at its special meeting on 24 January 2015.

Relevant papers

17. A list of relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on
Public consultation 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))
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	Official Records of Proceedings Pages 935 to 940 (written question raised by Hon WU Chi-Wai on "measures to enhance building management")
Panel on Home Affairs	17.11.2014 (Item IV)	Agenda Minutes