

Submission on The Review of The Building Management Ordinance, (Cap 344)

I thank the Legislative Councillors for this opportunity to comment on the Review of the Building Management Ordinance, (Cap 344).

As the District Council Member for Discovery Bay, I wish to record my overall support for this consultation paper. I especially appreciate the Home Affairs Department's emphasis on the importance of forming the Owners' Corporation giving the owners the rights and responsibilities in managing their properties.

I would also like to comment on the following points:

1. **Formation of Owners' Corporation (OC)**

The BMO aims to help owners to form OCs, enabling owners to manage their buildings according to the provisions of the Ordinance. However, it is difficult, if not impossible, for Discovery Bay owners to form an OC. Our Principal Deed of Mutual Covenant (PDMC), which was signed in 1982, contains unfair terms that allocate more than 70% of the undivided shares in the Lot to Hong Kong Resort Co. Ltd. (HKR) and its subsidiaries, even though they pay less than 10% of the total management fees. As such, HKR can block any effort to form an OC.

My recommendation is to limit voting rights for formation of an OC to those undivided shares that are liable to pay management fees.

2. **Termination of the Appointment of Deed of Mutual Covenant (DMC) Manager**

Due to the disproportionate allocation of undivided shares as mentioned above, it is also very difficult for the residential owners to introduce competition to the appointment of the building manager, both in quality and price.

In this respect, I agree with the proposal in the Consultation Paper to limit the term of appointment of a DMC Manager to 5 years. I also support the application of this limit to all existing as well as new developments in Hong Kong as the proposal will ensure that owners are able to appoint a building manager that is independent of the developer through competitive tender, and that the appointment of the manager is in compliance with the new Competition Ordinance.

3. **Disputes Relating to Large-scale Maintenance Projects**

According to the PDMC of DB, a building survey must be conducted every 7 years, and a record of the survey kept at the building manager's office for inspection by any owner or tenant. In order to maintain the safety of the buildings and the property values, regular maintenance work is recommended. However, there have been disputes over the amount and quality of large-scale maintenance projects in various villages in DB in the past.

I agree with the proposal in the Consultation Paper that the quorum for a meeting to approve any large-scale maintenance projects be maintained at 20% of the total number of owners affected. However, I disagree with Government's suggestion that the required percentage of votes for passage of a resolution be raised from 50% to 75%, as the 75% threshold is very high and is not easily achievable.

4. **Counterfeit Proxy Instruments and Improper Practices**

To minimize improper or abusive use of proxies at owners' meetings, I concur with the Government's recommendations to improve the practices governing notice of meetings, proxy collection and custody, and transparency in proxy verification.

A transparent process will ensure that proxies are vetted to prevent forgery of proxy documents.

5. **Application of the BMO Provisions in Sub-DMCs**

The BMO includes two schedules that are of particular relevance to finances and elections, Schedules 7 and 8. Since 1993, these have been incorporated into all DMCs in Hong Kong. The Government took the unusual decision to make application of these schedules retrospective in order to guard against misappropriation of owners' funds by management companies, clarify the procedures for elections and specify the conduct of owners' meetings.

Unfortunately, the Government has decided that Schedules 7 and 8 of the BMO apply to a DMC only, and not to sub-DMCs. As all residential areas in DB are

governed by sub-DMCs, DB owners do not enjoy the protection of Schedules 7 and 8.

However, from 2000, Government itself recognized that the two schedules should apply to DB residential properties. All sub-DMCs executed since 2000 explicitly incorporate the schedules.

Significantly, if Schedules 7 and 8 are incorporated into all sub-DMCs, individual owners will enjoy the same rights to access of financial information and appoint a proxy as corporate owners. They or their family member will no longer be required to attend village meetings in person.

I recommend that the Government add a clause to the BMO stating that, **if Schedules 7 and 8 have been incorporated into any sub-DMC in a Building (as defined in the BMO), they shall be incorporated into all sub-DMCs in that Building.**

Once again, thank you for this opportunity to comment on the Consultation Paper.

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19 January 2015