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Panel on Home Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 May 2016**

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. In the light of the Review Committee's recommendations, the consultation document had set out a number of legislative and administrative proposals¹. According to the Administration, the proposals 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, as well as appointment and remuneration of deed of mutual covenant ("DMC") managers. A 12-week public consultation was launched from 11 November 2014 to 2 February 2015.

¹ For the major proposals in the consultation document, please refer to the Administration's paper for the Panel meeting on 17 November 2014 [LC Paper No. CB(2)238/14-15(03)].

Members' main concerns

3. The Panel was briefed by the Administration on the consultation document at its meeting on 17 November 2014. The Panel also held a special meeting on 24 January 2015 to receive views from deputations. Members' main views and concerns are summarized in the ensuing paragraphs.

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

Prevention of bid-rigging

4. Some members considered that the crux of the problem of bid-rigging in building maintenance projects laid 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 ("OBB") of the Hong Kong Housing Society ("HKHS") and the Urban Renewal Authority ("URA").

5. 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, the second phase of the Building Management Professional Advisory Service Scheme and the Free Legal Advice Service on Building Management etc. The Independent Commission Against Corruption ("ICAC"), the Hong Kong Police Force ("HKPF"), HAD, URA and HKHS had been making concerted effort to provide OCs and property owners with guidance on corruption prevention and guidelines on the tendering of building maintenance works. Besides, there was a dedicated division in the HAD Headquarters and the District Building Management Liaison Teams in 18 District Offices to provide support and outreach services to OCs and property owners. On the law enforcement front, HKPF and ICAC would continue with their investigation and enforcement work, as appropriate, to combat illegal activities relating to large-scale maintenance projects.

6. To enhance the transparency of the tender process for large-scale maintenance projects, some members suggested that a "central database" capturing information on market prices for various maintenance items and past

performance of consultants/contractors in the market should be established for reference by owners or OCs in planning building maintenance works and assessing the cost of maintenance. The Administration advised that ICAC had commissioned an independent academic institution to analyze the costs of maintenance projects completed under OBB and to explore the feasibility of setting up a renovation cost database for public reference. The findings were expected to be available in early 2015.

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. Some members considered 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, particularly when the developers had control of a large percentage of shares due to their ownership of the common parts and facilities of the building developments. 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 both options were considered feasible for encouraging wide participation of owners before reaching a decision on large-scale maintenance projects. The decision on which option to be adopted would be made in the light of the views collected during the consultation period. However, they were not intended to be implemented at the same time.

Enforcement and criminal sanctions

9. Some members considered that the mere provision of mediation and advisory services under various schemes launched by HAD could hardly address the issue of bid-rigging as well as the problems faced by property owners in the event that management committees ("MCs") of OCs failed to perform the duties under BMO or their 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. There were penalty provisions in BMO with respect to OCs' non-compliance with the registration requirements (i.e. sections 10, 11 and 12), the making of false statement and furnishing of false information (i.e. section 36), the failure of an OC in maintaining proper books or records of account etc. (i.e. section 27) and OCs' non-compliance with the requirement to procure third party risks insurance for the common parts of the building and the property of OC (i.e. section 28). Law enforcement agencies would investigate into cases of suspected non-compliance and take appropriate follow-up actions, depending on the circumstances of each case. 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. According to the Administration, 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. However, they 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 varied needs of property owners.

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.

Collection and verification of proxy instruments

13. As provided in BMO, proxy instruments should be lodged with the secretary of MC at least 48 hours before the meeting. To allow more time for the relevant owners to check the list of flats with proxy instruments lodged, some members proposed that the 48-hour time limit should be extended. The Administration advised that it would consider this suggestion having regard to the impact of this proposed time adjustment on the operation of OCs.

Matters relating to DMCs

14. 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 by imposing a mandatory requirement on separation of accounts and budgets for the residential and commercial parts in composite developments. Some other members also suggested that the Administration should consider providing standard provisions of DMC for estate developers to follow.

15. According to the Administration, there might be practical difficulties to have separate accounts and budgets for residential and commercial parts of composite developments under certain circumstances, as in the cases where restaurants and shops were located on the first few floors while residential units were located on the upper floors sharing common facilities such as water tanks, sewers and drains. Owners should have the joint responsibility for managing and maintaining these common and inseparable facilities. DMCs had to be approved by the Lands Department ("LandsD") and drawn up in line with the "Guidelines for Deeds of Mutual Covenant" which regulated the remit of developers, owners and managers. With regard to the suggestion of standardizing the DMC provisions, the Administration would refer members' concern to LandsD for its consideration. It was also pointed out that DMC was a private deed among the parties who entered into it and no party to a DMC should unilaterally modify any provisions in DMC without the consent of all other parties.

Termination of DMC managers

16. 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.

Manpower situation of Liaison Officers engaged in building management duties

17. In response to members' enquiry on the manpower situation of the Liaison Officers engaged in building management duties in HAD and trainings provided to them, the Administration advised that there were currently around 120 Liaison Officers engaged in building management duties in HAD Headquarters and the District Building Management Liaison Teams in 18 District Offices to provide dedicated support and outreach services to OCs and property owners. Apart from on-the-job training, HAD organized regular training courses for staff members performing building management duties to enhance their knowledge in building management and capabilities in handling disputes among owners. The areas of training included the legal aspect of management of multi-storey buildings, study of court cases relating to building management and study of the provisions of BMO. Some members were of the view that both the role and the manpower of Liaison Officers should be strengthened in order to provide more dedicated and focused support to owners in discharging their management responsibilities.

Latest development

18. The Administration will brief the Panel on the result of the consultation and the administrative measures to be taken for enhancing building management at the next meeting on 17 May 2016.

Relevant papers

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

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

Committee	Date of meeting	Paper
Legislative Council	27.3.2013	Motion on "Improving property management and operation of owners' corporations" Progress report on the motion
Panel on Home Affairs ("HA Panel")	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 97 to 103
	29.10.2014	Official Records of Proceedings Pages 93 to 98
HA Panel	17.11.2014 (Item IV)	Agenda Minutes
	24.1.2015 (Item I)	Agenda Minutes
Legislative Council	10.6.2015	Motion on "Stepping up regulation on the repair and maintenance works of private buildings" Progress report on the motion
	2.3.2016	Official Records of Proceedings Pages 123 to 130