

立法會 *Legislative Council*

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Panel on Home Affairs

Summary of complaint cases received by the LegCo Secretariat in connection with the Building Management Ordinance and related issues

Purpose

At its meeting on 9 May 2003, the Panel on Home Affairs (HA) discussed the support of the Home Affairs Department (HAD) in resolving disputes arising from the formation of owners' corporations (OCs). The Secretariat was requested at the meeting to prepare a list of issues relating to the operation of OCs and other building management problems identified in the complaint cases handled by the Complaints Division as well as relevant problems conveyed to the Panel by complainant bodies or individuals. This paper outlines the issues identified in those complaint cases as well as the problems conveyed by complainant bodies or individuals, together with the details of individual cases set out in the form of a table.

Summary

During the period between January 2000 and July 2003, the Secretariat has received a total of 17 cases in connection with the Building Management Ordinance (BMO) and related issues. Twelve of these cases were handled by the Complaint Division while the remaining five were received by the Subcommittee on review of the Building Management Ordinance.

2. The issues raised by complainant bodies or individuals mainly include the following -

- (a) the owners' meetings, appointment of management committees (MCs) and the election arrangements for members of MCs were not conducted in compliance with the procedures stipulated in the law but were in disorder;

- (b) each proxy should only accept one owner's authorization for the purpose of attending and voting at OC meetings on behalf of the owner concerned;
- (c) mishandling of instruments for the appointment of proxy to attend and vote at OC meetings by MCs or building managers;
- (d) accounts of OCs not in order and MCs failed to disclose accounts in accordance with relevant statutory requirements;
- (e) problems occurred in the succession of MCs;
- (f) the requirement that all contracts for building management and maintenance be awarded through tendering on a yearly basis hinders the operation of OCs;
- (g) MC chairmen failed to convene general meetings in accordance with the statutory requirements upon receiving requests from not less than 5% of the owners for the purposes specified by such owners;
- (h) the BMO does not prescribe any standard meeting procedures;
- (i) owners' liability to pay management fees is disproportionate to the percentage of shares they hold;
- (j) building managers' poor performance and the lack of proper control over their work by the law;
- (k) the threshold for passing a resolution to terminate the appointment of building managers should be lowered to 30% of the shares;
- (l) the law should exempt members of OCs from legal liabilities;
- (m) lack of complaint channels for MCs and individual owners to address and resolve issues relating to maintenance and management of buildings; and
- (n) representatives of District Offices have not proactively rendered any effective support to MCs and owners to improve building management, or provided professional advice on procedural arrangements at OC meetings.

3. The HA Panel and its Subcommittee on review of the Building Management Ordinance have discussed most of the above issues. As a result of the discussions at previous meetings of the Subcommittee, the Administration agreed to introduce the following legislative proposals to amend the provisions of the BMO relating to personal liabilities of members of a MC for the decisions of an OC, termination of appointment of the Deeds of Mutual Covenant (DMC) manager by an OC, and appointment procedures of a MC and its members -

- (a) to add an express provision so that MC members of an OC would not be held personally liable for any collective decision of the OC, which is neither ultra vires nor tortious, solely on the ground that they are members of the MC;
- (b) to specify that only the DMC manager's appointment can be terminated under the BMO and to remove the provision that not more than one manager can be terminated within any three consecutive years;
- (c) to provide an alternative mechanism whereby an OC can terminate appointment of the DMC manager upon a resolution passed by a majority of the votes of the owners present (or by proxy) at a general meeting, provided that a quorum of 20% of owners has been met at that meeting and a new manager has been effectively appointed upon termination of the DMC managers appointment;
- (d) to specify that the first MC may be appointed by a resolution of the owners of not less than 30% of the shares, and the resolution must also be passed by a majority of the votes of the owners voting either personally or by proxy at the same owner's meeting;
- (e) to specify that members and holders of office of the MC have to be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy at the same owner's meeting in which the first MC has been successfully appointed, provided that there is a quorum of 10% of owners at that meeting;
- (f) to specify that an OC shall, by a resolution passed by owners at an annual general meeting of the OC at which the existing MC retires, appoint a new MC, its members and holders of office;
- (g) to delete the provisions on tendering requirement from the Code of Practice, so that any procurement with a value exceeding the prescribed threshold has to be done through tendering in accordance with the BMO;

- (h) to lower the minimum percentage of an OC's annual budget for the purpose of tendering from the existing 20% to 10%, and to include a requirement that any tender of a value exceeding a sum equivalent to 10% of the annual budget of an OC has to be accepted or rejected by a resolution passed at a general meeting of the OC;
- (i) to add a punitive clause for non-compliance with the requirements specified in (g) and (h) above; and
- (j) to provide for the owners' right to obtain copies of minutes of meetings of both OCs and MCs upon payment of reasonable copying charges.

4. The Administration also advised that it would draw up rules of standard meeting procedures for OCs' reference. A paper on the proposed amendments to the BMO was also issued in May 2003 for public consultation and the consultation period has ended in 31 July 2003 already. The Administration advised that it would introduce relevant legislative proposals to the Council within the 2003/2004 Legislative session.

5. The complaint items of individual cases or the problems reflected by such cases as well as the related follow-up actions are set out in the **Appendix**.

Legislative Council Secretariat
25 August 2003

**A summary of complaint cases
received by LegCo Secretariat in connection with
the Building Management Ordinance and related issues
(January 2000 to July 2003)**

Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
<p>Section 5 Notice of and voting at meetings</p> <p>Section 6 Composition and procedure of management committee</p> <p>Section 8 Incorporation</p> <p>Schedule 2 Composition and procedure of management committee</p> <p>Schedule 3 Meetings and procedure of corporation</p>	*1.	<p>The complainant body comprises owners of an estate under the Tenants Purchase Scheme (TPS). The complainant body pointed out a number of election procedures of the MC with which they were not satisfied. These included the issuing time of the notice of meeting, the arrangement for collecting letters of authorization, the precedence of candidates, the design of election forms, not allowing owners to raise questions at election meetings, failure to explain the reasons for void ballot papers, as well as the procedural arrangements for the election of secretary and treasurer etc. As such, the complainant body questioned the legitimacy of the OC.</p>	<p>Members attending the case conference considered that some of the procedures of that particular MC election were indeed confusing, and they asked the Housing Department (HD) and the estate management company concerned to make improvements. Moreover, the posts of secretary and treasurer were not elected by the meeting but among the MC members in contravention of the statutory requirements. The matter was referred to the Land Registrar for attention so that the Land Registry (LR) could take that into account when considering the OC's application for registration. The Land Registrar subsequently replied that the duty of LR in the formation of corporations under BMO was to ensure that an OC's application for registration complied with relevant requirements and consideration was made on that basis. The Land Registrar would not make judgment on procedural matters. The OC's application for registration was later approved by the LR.</p> <p>The Subcommittee on review of the Building Management Ordinance has discussed the issues relating to the appointment of MCs and the procedures of OC meetings. The Administration advised that it would draw up rules of standard meeting procedures for OCs' reference.</p>

* The case concerned was handled by the Complaints Division

Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
	*2.	<p>The complainant body comprises a group of owners of a TPS estate. The complainant body complained about the messy election procedures of the MC which involved the following problems-</p> <p>(i) some candidates running for membership of the MC only had their candidate numbers but not their names shown on the ballot papers; and</p> <p>(ii) No nominations were made during the election procedures of the chairman, the secretary and the treasurer of the MC.</p>	<p>On the instruction of the Members attending the case conference, the Secretariat has circulated the views of the complainant body to the Subcommittee on review of the Building Management Ordinance for discussion. The relevant paper has also been forwarded to members of the Subcommittee vide LC Paper No. CB(2)1402/01-02 on 20 March 2002.</p> <p>The Subcommittee has discussed the matter and the Administration advised that it would draw up rules of standard meeting procedures for OCs' reference.</p>
	#3.	<p>The complainant is an owner of a private building. The complainant suggested that each proxy should only accept one owner's authorization for the purpose of attending and voting at OC meetings on behalf of the owner concerned.</p>	<p>With the concurrence of the Panel Chairman, the complainant's proposal was forwarded to members of the HA Panel (including members of the Subcommittee on review of the Building Management Ordinance) vide LC Paper No. CB(2)1925/02-03 on 30 April 2003.</p> <p>The Subcommittee on review of the Building Management Ordinance has discussed matters relating to the appointment of proxy and some members suggested that the applicable area and limitations of the practice of appointing proxies at MC meetings should be specified. For instance, it should be specified that no proxy should be appointed if the owner concerned was not in Hong Kong. Some members of the complainant body also commented on the system of appointing proxy when presenting their views to the Subcommittee. They considered the system of appointing proxy useful because not every owner would be able to attend OC meetings. To avoid abuse of the system, the best approach should be to ensure the</p>

* The case concerned was handled by the Complaints Division

The case concerned was received by the Panel on Home Affairs or its Subcommittee on review of the Building Management Ordinance

Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
			authenticity of the instrument for appointing proxy. The sample proxy form would be included in the rules of standard meeting procedures for OCs' reference.
<p>Section 6 Composition and procedure of management committee</p> <p>Section 14 Powers of corporation generally</p> <p>Schedule 2 Composition and procedure of management committee</p>	*4.	<p>The complainant body is a newly-elected MC of a private building. The complainant body complained that, even though a new MC had been re-elected, the majority members of the existing MC refused to hand over their duties nor even their powers. As such, the newly-elected MC was unable to take over the OC's functions.</p>	<p>Members attending the case conference explained to the complainant body that problems relating to succession of OCs had to be resolved by legal means. The newly-elected MC subsequently filed its case with the Lands Tribunal which ruled that the newly-elected MC was legitimate and could replace the existing MC.</p>
<p>Section 6 Composition and procedure of management committee</p> <p>Section 18 Duties and powers of corporation</p> <p>Section 27 Accounts of corporation</p> <p>Schedule 2 Composition and procedure of management committee</p> <p>Schedule 6 Accounts</p>	#5.	<p>The complainant is an owner of a private building. The complainant complained that the MC failed to lay the corporation's accounts before the corporation at the annual general meeting (AGM) of the OC in accordance with section 27(1) of the BMO. The complainant also proposed that-</p> <ul style="list-style-type: none"> (i) each owner should only serve as a MC member for two consecutive terms; (ii) the chairman of a MC should be liable to a certain extent for the work performed by the MC; (iii) A MC should not use the management fees or maintenance funds to employ lawyers to defend itself in legal proceedings instituted by the owners against that MC; 	<p>The complainant has also complained to the Administration. The Administration responded that it had repeatedly asked the MC concerned to allow the owners to inspect the books of account as required under section 27(2) and to display the account of income and expenditure in a prominent place in the building in accordance with paragraph 2 of Schedule 6, and suggested the complainant to take the following actions-</p> <ul style="list-style-type: none"> (i) request for convening a general meeting in accordance with paragraph 1(2) of Schedule 3 to find out a solution together; (ii) apply for hearing in the Lands Tribunal in accordance with section 45 and Schedule 10; and (iii) consider requesting the necessary information from the MC by civil proceedings.

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Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
		<p>(iv) the law should be amended to provide that no person should receive commissions on any projects of a building. The details and expenditure on each project should be displayed in a prominent place in the building; and</p> <p>(v) all documents that required to be endorsed and approved by a general meeting of an OC, including financial reports, the appointment of project contractors etc., should be forwarded to all owners one week before the meeting or displayed in a prominent place in the building.</p>	<p>With the concurrence of the Panel Chairman, the Secretariat forwarded the submissions to members of the HA Panel (including members of the Subcommittee on review of the Building Management Ordinance) vide LC papers No. CB(2)1398/02-03(01), CB(2)1925/02-03 and CB(2)2085/02-03(01) on 6 March, 30 April and 14 May 2003 respectively.</p>
<p>Section 6 Composition and procedure of management committee</p> <p>Section 19 Corporation may sell or register charges against flat in certain circumstances</p> <p>Section 20A Supplies, goods and services</p> <p>Schedule 2 Composition and procedure of management committee</p>	#6.	<p>The complainant is an owner of a private building, the details of the complaint are as follows-</p> <p>(i) the OC employed an architect to co-ordinate the maintenance projects of the building. However, a number of problems emerged in the projects and the owners of the building considered the architect not doing a good job of monitoring the contractors and might have misled the OC. To avoid recurrence of the same, the complainant proposed that the law be amended to specify that an OC shall employ an architect from independent agents of the Government to help monitoring the contractors;</p>	<p>With the concurrence of the Chairman of the Subcommittee on review of the Building Management Ordinance, the relevant submission was forwarded to members of the Subcommittee vide LC Paper No. CB(2)2018/00-01(04) on 4 July 2001.</p> <p>The Subcommittee has discussed in its meetings the procedural requirements regarding procurement of supplies, goods and services. To safeguard the interest of owners of buildings, the Administration has proposed to amend the provisions relating to the procurement of supplies, goods and services. According to the proposal, any goods or services the value of which exceeds \$100,000 or a sum equivalent to 10% of the annual budget of the corporation has to be procured through tendering. Members suggested that, if the renewed contract was modeled on the existing one, the new contract should only require the approval of the OC and there should be no need for invitation of tenders.</p>

The case concerned was received by the Panel on Home Affairs or its Subcommittee on review of the Building Management Ordinance

Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
		<p>(ii) according to the information provided by the complainant, a member of the MC had lodged complaints to the relevant District Office as well as the Independent Commission Against Corruption, complaining that the contracts for the building's management, cleaning service and lift maintenance were not awarded yearly as required under the Ordinance's tendering procedures. The complainant considered the Ordinance outdated and hindering the operation of OCs, and that if the service providers performed well, then it was not necessary to adhere to the requirement of changing the providers every year in order not to affect the quality of service.</p> <p>(iii) the complainant supported section 19(1) of BMO which provided that, if an owner failed to pay any sum which was payable under DMC, an OC might register a charge against the owner's interest in the land in the LR. However, the complainant expressed reservations about the provision that an OC might sell that owner's interest in the land; and</p> <p>(iv) the complainant proposed that MC members should take turn to serve as MC chairman for a maximum term of 4 years. MC members frequently absent from the meetings should retire automatically.</p>	<p>However, the Administration considered that contract renewal should follow the proposed procurement procedures. It is currently conducting public consultation on the proposed amendments.</p>

Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
<p>Section 8 Incorporation</p> <p>Schedule 3 Meetings and procedure of corporation</p>	<p>*7.</p>	<p>The complainant is an owner of a TPS estate. The complainant complained that the OC had not convened a general meeting at the request of not less than 5% of the owners for the purposes specified by such owners as required under paragraph 1(2) in Schedule 3 to the BMO. As a member of the MC, the HD has also failed to comply with the requirement to cast a vote in support of the call for a general meeting.</p>	<p>Duty Roster Members (DRM) informed the complainant that issues relating to calling for general meetings had to be adjudicated by the Lands Tribunal. One of the minority owners had filed the case with the Lands Tribunal and listing of the case had been accepted. Members have also asked the HAD to seek legal advice and requested that District Office representatives be present at AGM of OCs not only to notify the OC chairman or MC members on the spot once possible non-compliance with the legislation was detected but also issue letters to the relevant OCs after the meeting to remind them of the non-compliance that had been observed.</p> <p>On the instruction of the DRM, the Secretariat has requested the HD to conduct a review and to fully comply with the BMO requirements in future.</p>

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Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
	*8.	<p>The complainant is an owner of a TPS estate. The complainant complained that the OC has failed to observe the requirements under paragraph 3(1) in Schedule 3 to the BMO to have its AGM presided by the MC chairman, instead, the AGM was chaired by a staff of the estate's management company serving as the master of ceremony in that meeting.</p>	<p>Members attending the case conference requested the HD to consider amending the relevant guidelines so that HD representatives could step up the assistance and advice offered to OC chairmen when attending OC general meetings and MC meetings.</p> <p>At its meeting on 9 May 2003, the HA Panel discussed the role of HD representatives attending OC meetings of TPS estates. Members were of the view that HD representatives should advise OCs and owners on matters relating to the operation of OCs. The HD advised that its representatives would make sure that the operation of OCs complied with the DMCs of the estates and the BMO, and would advise OC and owners accordingly.</p>
	*9.	<p>The complainant body comprises owners of a TPS estate. The complainant body complained that, the OC of the building has made it a requirement that the instrument for appointing proxy to attend and vote at OC meetings be collected by members of the MC, and that the information on the instrument be filled in by staff of the management office on behalf of MC members upon submission. The complainant body considers paragraph 4(3) in Schedule 3 to the BMO unable to effectively control over MCs' attempts to manipulate or mislead owners' votes.</p>	<p>Members attending the case conference suggested the Subcommittee on review of the Building Management Ordinance take into account the complainant bodies' concerns. The relevant paper was forwarded to members of the Subcommittee vide LC Paper No. CB(2)2781/02-03(01) on 7 July 2003.</p> <p>The Subcommittee has discussed the issues relating to the appointment of proxy. The Administration advised that it would draw up rules of standard meeting procedures for OCs' reference.</p>

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Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
	*10.	<p>The complainants are several owners of an estate under the Home Ownership Scheme (HOS). They have applied to the Lands Tribunal for instituting legal proceedings against the OC on the grounds that the OC had failed to convene general meetings at the request of 5% of the owners. The complainants pointed out in their letter that the Government should draw up proper guidelines to clarify the following ambiguities in the existing legislation -</p> <ul style="list-style-type: none"> (i) District Offices have no function to monitor OCs; (ii) the legislation sets out only rules but not penalties; (iii) the BMO does not specify any standard meeting procedures; and (iv) the Code of Practice should include standard forms relating to building management published by District Offices. 	<p>In response, the Government advised that -</p> <ul style="list-style-type: none"> (i) the law did not empower District Offices to monitor OCs and hence they could only assist in the mediation of disputes; (ii) the Government had proposed to amend the provisions relating to the procurement of supplies, goods and services and to add a punitive clause in the BMO and was currently conducting public consultation on the proposals; (iii) the Administration would draw up rules of standard meeting procedures for OCs' reference; and (iv) the sample forms provided by various District Offices were for reference only, they could be amended as appropriate to meet practical requirements. <p>With the concurrence of the Members who received the complaint, the Secretariat circulated the views to HA Panel members (including members of the Subcommittee on review of the Building Management Ordinance) vide LC Paper No. CB(2)2295/02-03 on 2 June 2003 .</p>

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Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
	*11.	<p>The complainant body comprises owners of a TPS estate. The complainant body complained about the election and meeting arrangements of the MC, the details of which are as follows-</p> <p>(i) the estate management office opened the collection box for owners' letters of authorization prior to the election of the MC without the necessary approval. The complainants also queried the authenticity of the letters of authorization collected by the estate management office; and</p> <p>(ii) the AGM of the estate was delayed by one hour and 45 minutes. Despite the loud dissatisfaction voiced by owners and their demand for aborting meeting, the MC refused to accede. Thereafter, the owners left one after another but the chairman still insisted on commencing the meeting formally. As such, the complainants questioned the rationale for not including provisions for aborting meetings in the BMO.</p>	<p>Members attending the case conference put forth the following suggestions to the Administration -</p> <p>(i) District Offices should strengthen their control over the meeting arrangements and procedures of AGM;</p> <p>(ii) to address the owners' concerns, consideration should be given to requiring relevant persons to display in the common area of the estate the information on the flats that have signed the letter of authorization; and</p> <p>(iii) when amending the BMO, it should set out the time frame beyond which the meetings concerned should be aborted or draw up relevant guidelines to save time and effort.</p>
<p>Section 18 Duties and powers of corporation</p> <p>Section 45 Jurisdiction of tribunal in relation to building management</p>	*12.	<p>The complainant body comprises owners of a TPS estate. Basing on the observations and personal experience in the operation of individual OCs, the complainant body reflected to Members the difficulties encountered in implementing the BMO. They hoped the authority concerned would pay attention to the problems and make improvements accordingly. The complaint items raised by the complainant body are as follows -</p>	<p>The rules of standard meeting procedures to be drawn up by the Administration will specify the duty of convenors of OC meetings convened for the appointment of MCs, including the circumstances under which a meeting should be declared cancelled or postponed.</p> <p>As instructed by the Members attending the case conference, the Secretariat circulated the relevant views to members of the Subcommittee on review of the</p>

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Relevant provisions in the Ordinance	Case	Complaint items and views	Follow-up actions
<p>Schedule 10 Hearing and determination of specified proceedings by tribunal</p>		<ul style="list-style-type: none"> (i) the Ordinance has failed to sufficiently monitor the performance of estate management companies. As the majority of owners had no professional knowledge on the maintenance and management of buildings, they would be easily misled by management companies; (ii) without any effective complaint channels, individual owners with different views cannot reflect and follow up the matters they are not satisfied with; (iii) although the Administration keeps encouraging buildings to establish OCs, it has failed to provide effective support for the MCs of OCs and owners to deal with and resolve disputes relating to building maintenance and management; (iv) although the Lands Tribunal is an important channel for resolving building management disputes, small owners have practical difficulties in resolving such disputes through this channel because of the legal costs involved; and (v) the complainant body requests the Administration to provide owners with effective complaint channels and that government departments should handle and investigate building management complaints and make recommendations properly so as to strengthen the regulation of building management agents and protect the interests of small owners. 	<p>Building Management Ordinance vide LC Paper No. CB(2)2781/02-03(01) on 7 July 2003.</p> <p>The Subcommittee on review of the Building Management Ordinance has discussed the proposal for the establishment of a statutory mediation mechanism to resolve building management disputes. The Administration is currently conducting a building management disputes mediation pilot scheme in respect of the establishment of a non-statutory mechanism, and the scheme is expected to complete by end of September 2003.</p>

Relevant Provisions in the Ordinance	Case	Complaint items and Views	Follow-up Action
<p>Section 34E Mandatory terms in deeds of mutual covenant</p> <p>Schedule 7 Mandatory terms in deeds of mutual covenant</p> <ul style="list-style-type: none"> - Keeping of accounts - Contracts entered into by manager - Termination of manager's appointment by owners' corporation 	*13.	<p>The complainant is an owner of a private housing estate. The complainant complains that the developer and its subsidiary building management company holding a majority of shares in the estate pay relatively less management fees, while owners of less shares pay more. The complainant proposes to amend BMO to protect owners' interests.</p>	<p>On the instruction of the DRM, the Secretariat has referred the matter to the Subcommittee on review of the Building Management Ordinance. The paper concerned was circulated to the Subcommittee vide LC Paper No. CB(2)1234/00-01 on 3 April 2001 for reference.</p> <p>Members have discussed the matter at the meetings of the Subcommittee for many times. The Administration has amended the DMC Guidelines to require that allocation of undivided shares and management shares of a building should base on the gross floor area rather than market value.</p>
	*14.	<p>The complainant is an owner of a private housing estate. The complainant complains about the unfair clauses in the deed of mutual covenant of his estate, and requests that the BMO and the DMC Guidelines be amended. Details of the complaint items are as follows -</p> <ul style="list-style-type: none"> (i) under the DMC concerned, estate owners are required to establish an OC with the major owner of the estate shopping mall. The shopping mall owner holds most of the voting rights but pays relatively less management fees while the estate owners with less votes pay relatively more; (ii) the MC does not have to pay any fees, yet it not only holds an undivided share of the common parts and facilities but also has the power to manage; 	<p>On the instruction of the Members attending the case conference, the Secretariat has referred the views to the Subcommittee on review of the Building Management Ordinance. The paper concerned was circulated to the Subcommittee vide LC Paper No. CB(2)2697/01-02 on 13 August 2002 for reference.</p> <p>Members have repeatedly discussed the matter at the meetings of the Subcommittee. The Administration has amended the DMC Guidelines to require that allocation of undivided shares and management shares in a building should base on the gross floor area rather than market value.</p> <p>In response to the views of the Subcommittee, the Administration has agreed to amend the BMO to the effect that an OC may terminate the appointment of the manager upon a resolution passed by a majority of the votes of the owners present at a general meeting, and is consulting the public on the proposed amendments.</p>

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Relevant Provisions in the Ordinance	Case	Complaint items and Views	Follow-up Action
		<p>(iii) although the estate management company has not yet announced the audited results of the past four years, it has not contravened the BMO as the Ordinance does not require the MC to have the audit work completed within a certain period of time and report to the owners; and</p> <p>(iv) the management company appointed the estate shopping mall owner as a technical adviser and club house adviser without inviting tenders. The complainant body claims that such appointment has contravened the BMO and the DMC, but the Ordinance has not specified any punishment for offenders.</p>	
	*15.	<p>The complainant body is the mutual aid committee (MAC) of one of the blocks in the rental estates/ Flat-for-Sale Scheme estates of the Hong Kong Housing Society (HS). The MAC complained that the block lacked passive amenities and pointed out that when designing estates with both rental and sale flats, the HS has erred in the designation in the DMC by incorporating all recreational facilities in the common parts. As a result, the owners had to bear the major part of the maintenance cost while the tenants were unable to use the recreational facilities.</p>	<p>On the instruction of the DRM, the Secretariat circulated the submission from the complainant body to the Subcommittee on review of the Building Management Ordinance vide LC Paper No. CB(2)932/01-02(02) on 17 January 2002 for reference. All members of the Panel of Housing were also invited to attend the meeting of the Subcommittee on 22 January 2002 to discuss proposals to improve the BMO.</p>

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Relevant Provisions in the Ordinance	Case	Complaint items and Views	Follow-up Action
	#16.	<p>The complainant body is the OC of a private housing estate. The complainant body complained that as the manager of the estate was appointed by the developer, his uncooperative attitude had caused much difficulty to the OC in managing the estate. Details of the complaint are as follows -</p> <p>(i) the manager refused to attend the meetings of the MC, claiming that the existing legislation did not contain such a requirement. When the OC passed a resolution at a general meeting to terminate his appointment, the manager still refused to implement its decision and even took legal action against the MC. The complainant body suggested that the law be amended to the effect that the manager should be required to comply with the resolutions passed at the meetings of the MC and the OC. The law should also exempt the legal liability of MC members.</p>	<p>With the concurrence of the chairman of the Subcommittee on review of the Building Management Ordinance, the Secretariat circulated the submission to the Subcommittee vide LC Paper No. CB(2)1606/00-01(03) on 21 May 2001 for reference.</p> <p>The Subcommittee has discussed the matter with the Administration. The Administration has proposed to amend the Ordinance in respect of the personal liability of members of an MC and the termination of the appointment of the DMC manager, and is conducting public consultation on the proposal. According to the proposal of the Government, MC members shall not be held personally liable for any collective decision of the OC, which is neither ultra vires nor tortious, solely on the ground that they are members of the MC. Moreover, an OC may terminate the appointment of the manager upon a resolution passed by a majority of the votes of the owners present at a general meeting, provided that a quorum of 20% of owners has been met at that meeting, and a new manager has been effectively appointed (supported by a valid resolution of owners) upon termination of the DMC manager's appointment.</p>

The case concerned was received by the Panel on Home Affairs or its Subcommittee on review of the Building Management Ordinance

Relevant Provisions in the Ordinance	Case	Complaint items and Views	Follow-up Action
		<p>(ii) the manager has once reduced the management fee to please some owners, which resulted in a financial deficit and the manager charged the OC interest on the amount he has paid on its behalf. The complainant body pointed out that collection of management fee by the manager is not subject to the regulation of the existing legislation. It therefore proposed that the manager should be required to submit to the OC within 30 days the income and expenditure account and details of relevant expenses of the previous month;</p> <p>(iii) the complaining body proposed to amend the law to confer statutory power on the OC to enforce the relevant legislation, and to require the manager to enter into contract with the OC three months after its establishment. The Administration should provide a specimen contract to protect the interests of both parties; and</p> <p>(iv) Paragraph 7 of Schedule 7 provides that an OC can only terminate the manager's appointment by a resolution of the owners of not less than 50% of the shares. The complainant body proposed to lower the threshold for passing the resolution from 50% to 30% of the shares.</p>	

Relevant Provisions in the Ordinance	Case	Complaint items and Views	Follow-up Action
Other issues	#17.	<p>The complainant body comprises owners of a TPS estate. These owners have expressed the following views on the roles of representatives of the HD and District Offices at an owners' meeting -</p> <p>(i) when attending the AGMs of the OCs of these estates in the capacity of owners and voting on any item at the meetings, HD representatives should remain neutral and respect the decisions of other attending owners to avoid any conflict of roles. Moreover, as the HD was responsible for the management and maintenance work before the sale of the flats in the TPS estates, its representatives should not participate in the resolution of matters involving the maintenance and repair works after the sale of the flats. The complainant body requests that the Administration should review the BMO to ensure that HD representatives will remain neutral when voting at an owners' meeting in the TPS estates to avoid conflict of interests; and</p>	<p>Members of the Panel on Home Affairs discussed the roles of HD and District Offices representatives at its meeting on 9 May 2003. The details are as follows -</p> <p>(i) some members requested that HD representatives should provide for owners' reference clear advice on the policy and stance of the HA/HD over controversial areas in building management at an owners' meeting. However, the Administration considered that decisions on building management matters should be left with the owners themselves. HD representatives would draw the attention of owners to any non-compliance with the DMC of their estate or the BMO and offer their opinion. Some members also supported the Administration's stance; and</p> <p>(ii) some members suggested that the Administration should amend the law to confer power on the HAD to monitor the operation of OCs. The Administration assured members that representatives of District Offices would immediately notify the OCs concerned once possible non-compliance with the relevant legislation was detected when attending owners' meeting.</p>

The case concerned was received by the Panel on Home Affairs or its Subcommittee on review of the Building Management Ordinance

Relevant Provisions in the Ordinance	Case	Complaint items and Views	Follow-up Action
		<p>(ii) when the owners requested to express their views at an AGM of the estate, they were stopped and refused by the OC and the president of the meeting, and District Office representatives present at the meeting did not mediate in the dispute and uphold justice at those owners' request. Moreover, the District Office representatives did not verify the identity of the owners and proxies attending the AGM at the request of some owners. The complainant body considered it necessary to review the BMO to see whether District Offices were sufficiently empowered to enable its staff to provide owners with effective and practical assistance when attending the AGMs of OCs.</p>	<p>The proposal was also circulated to members of the Subcommittee on review of the Building Management Ordinance vide LC Paper No. CB(2)2781/02-03(01) on 7 July 2003 for reference.</p>