

Bills Committee on Building Management (Amendment) Bill 2005

Incorporation of Owners of House Developments

Purpose

1. At the Bills Committee meeting on 17 May 2005, Members discussed the incorporation of owners of house developments vis-à-vis the Building Management Ordinance (BMO). This paper sets out the Administration's views on the matter.

Ambit of the Building Management Ordinance

2. The aim of the BMO is to facilitate the management of multi-storey buildings by providing a mechanism for owners, who own undivided shares, to form an owners' corporation (OC). This could be reflected in the definition of the term "owner" in section 2 of the BMO as "a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building".

3. In accordance with this statutory definition, an OC could generally be formed in any of the following three ways:

(a) under section 3 of the BMO, a management committee (MC) could be appointed in accordance with the provisions in the deed of mutual covenant (DMC), or if there is no DMC, by a resolution of owners of not less than 30% of shares;

(b) under section 3A, the Secretary for Home Affairs (SHA) may, upon application by not less than 20% of the shares of owners, order that a meeting of owners be convened to appoint an MC; and

(c) under section 4, the Lands Tribunal may, upon application by owners of not less than 10% of the shares or by SHA, order that a meeting of owners be convened to appoint an MC.

House Developments

4. The Administration is aware that owners of some house developments want to form an OC to better manage their properties. The ownership structure and nature of house developments, however, does not fall within the ambit of the BMO.

5. The legal difficulty for the incorporation of owners in house developments under the BMO stems from the fact that the DMC of these house developments usually does not allocate any undivided share to the owners. In other words, owners of the house developments are sole owners of the respective subsections but not co-owners of the whole development. Therefore, it is impossible for owners of house developments to incorporate themselves under the present regime of the BMO.

6. There is a fundamental difference between the ownership structure, nature of the title and management of flats in multi-storey buildings and those of house developments, i.e. independent houses built on individual land lots. As the problem with the DMC of house developments is that the owners do not possess any undivided share, a mere amendment to the provisions relating to determination of owners' shares in the BMO by providing alternative way to determine shares will not be sufficient to make the BMO applicable to house development. As advised by the Department of Justice, the shares to be allocated on any other basis (be it by the number of divided shares of each owner, or by the gross floor area of each owner's house, or by the management fees paid by each owner) would not be considered undivided shares and such allocation of shares would not enable owners of house developments to come within the definition of "owner" under the BMO.

7. The following examples illustrate further the difficulties in applying BMO to house developments –

- (a) "Flat" is defined in the BMO to mean any premises in a building which are referred to in a DMC whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as

between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession. For house developments, owners own land lots with their individual houses erected thereon. It is unlikely that those individual houses would fall within the definition of “flat” and it follows that all provisions in the BMO which have reference to “flat” will not be applicable to house developments; and

- (b) “Common parts” in the BMO means the whole of a building, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner. It appears that “common parts” so defined refers to the common areas and facilities shared among the owners of a multi-storey building. It is difficult to ascertain the “common parts” in house developments as there is no building with common parts shared among the owners. This may hamper an OC from discharging its duty under section 18 of the BMO, which stipulates that an OC shall maintain the common parts in a state of good and serviceable repair and clean condition.

8. As shown above, incorporation of owners of house developments involves very complicated legal issues. The matter had been discussed extensively and thoroughly at the Subcommittee on Review of the BMO formed under the Panel on Home Affairs. The Subcommittee noted that since the provisions and fundamental concepts in the BMO were construed specifically to cater for the management of flats in multi-storey buildings, if the BMO were to be amended to enable the incorporation of owners in house developments, substantial revisions to and adaptation of the provisions in the BMO would be necessary. In view of the fundamental difference in the nature of title, management concerns and requirements for multi-storey buildings and house developments, a new piece of legislation may need to be drawn up for the purpose.

Building Management (Amendment) Bill 2005

9. The Administration has on 27 April 2005 introduced into the Legislative Council the Building Management (Amendment) Bill 2005.

A Bills Committee has been formed to scrutinize the Bill. The Bill includes various proposals which are aimed at facilitating the operation of OCs, rationalising the appointment procedures of an MC, and safeguarding the interests of property owners. These amendment proposals have been thoroughly discussed at the Subcommittee on the Review of the BMO for over two years and have also gone through an extensive public consultation in mid-2003.

10. The Administration's priority in the immediate future would be on the Amendment Bill, which is for the interests of the majority of the public. Whilst the Amendment Bill already contains a large number of amendment proposals, there is certainly no wishful thinking that this Bill alone could perfect the legislation or resolve all the problems related to building management. We will continue to seek the views of the public and introduce further amendments to the legislation where appropriate in future.

11. Another reason why we could not start the preparation of a new piece of legislation for the incorporation of owners with divided shares is that even the BMO, which has been enacted in 1993 for the incorporation of owners with undivided shares, has problems with the appointment procedures of an MC. That is why we are proposing fundamental changes to section 3 of and Schedule 2 to the BMO concerning the appointment of MCs. Only when such proposed amendments are approved by the Legislative Council could we clear the ambiguity in the existing BMO provisions regarding the procedures for OC formation. And only with such improvements in place could we consider further the preparation of a new piece of legislation for the incorporation of owners with divided shares.

Good Building Management

12. There are at present some 38 000 private multi-storey buildings in Hong Kong, of which some 14 500 have formed an OC. No doubt the Government's policy intention is to encourage and assist property owners in the formation of OCs for the management of private buildings. However, incorporation of owners is only one of the many tools to achieve effective building management. The key has always been active

participation of owners and close liaison with the property management company. In fact, owners of some 13 000 buildings have decided to form a non-statutory organisation like an owners' committee or mutual aid committees instead. Some of these owners have deliberately decided that an OC may not be needed, some could not secure the sufficient number of owners' support to meet the requirements under the BMO, and some could not form an OC because of the restrictions under the DMCs (e.g. house developments). We should never undermine the benefits that could be brought about by these owners' or residents' associations. Fundamentally, as long as there are frank and uninhibited communications among owners, between owners and the management company, together with the necessary assistance and support provided by the Government departments concerned, we believe that a favourable living environment could have already been provided.

Home Affairs Department
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