

立法會

Legislative Council

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(These minutes have been
cleared with the Convenor)

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**Minutes of Legislative Council Members' meeting with
Wong Tai Sin District Council members
on Thursday, 10 November 2005 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present: Hon CHAN Yuen-han, JP (Convenor)
Hon Fred LI Wah-ming, JP
Hon CHAN Kam-lam, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Hon TAM Heung-man

Attendance by invitation : Wong Tai Sin District Council

Mr WONG Kam-chi, MH (Chairman)
Mr CHAN On-tai
Mr CHOW Ching-lam, MH
Mr FUNG Kwong-chung, JP
Mr HO Yin-fai
Ms KWOK Sau-ying
Mr Joe LAI Wing-ho
Dr LAU Chi-wang, JP
Ms Mavis LEE Ming-pui
Mr LEE Tat-yan, MH
Dr Albert LI Sze-bay, BBS, JP
Mr NG Yiu-man
Mr SO Sik-kin
Mr WONG Yat-yuk

**Staff in attendance : Ms Miranda HON
Chief Council Secretary (3)2**

Ms Dora WAI
Senior Council Secretary (3)3

II. Amendment to the Building Management Ordinance (“BMO”) (Cap. 344)

6. WTSDC members considered that a number of provisions in the BMO were outdated, and hoped that the Government would amend the BMO as soon as possible in order to improve the property management of private buildings. They pointed out that although many private buildings had formed owners’ corporations (“OCs”), a lot of office-bearers of OCs served on a voluntary basis, who lacked the professional knowledge and expertise in building management. As such, many private buildings were still poorly managed. The views and suggestions put forward by WTSDC members on this issue were summarized as follows:

- (a) the Government should, as far as possible, assist owners in forming OCs and provide comprehensive training courses on building management/maintenance for office-bearers of OCs in order to equip them with building management knowledge and expertise, so that they could implement good building management practices. Furthermore, the Government should also explain to them in detail the responsibilities, powers and operation of OCs (including the conduct of OC meetings and the voting procedures, etc);
- (b) the Government should clearly stipulate in the BMO the procedures of using proxies and the relevant arrangements;
- (c) the Government should strengthen the role of the Home Affairs Department (“HAD”) in assisting owners/OCs to undertake building management/maintenance, and the Liaison Officers of the District Building Management Liaison Teams in each of the 18 District Offices should also advise and assist owners in a more proactive manner;
- (d) it was difficult for OCs to raise sufficient funds to carry out urgent repairs and maintenance in certain circumstances, especially for old buildings with more vacant flats. The Government should set up an emergency repairs and maintenance fund to help owners carry out the necessary repairs and maintenance works in such buildings;
- (e) given the difficulties for owners of many buildings to take out third party risks insurance for their buildings owing to the lack of proper maintenance or the existence of unauthorized building works (“UBWs”) and in view of the increasing insurance premium, the Government should render assistance to owners who had difficulties in taking out third party risks insurance for their buildings;
- (f) the Government should introduce a licensing system to regulate property management companies, so as to enhance their level of professionalism;

- (g) the management/maintenance problems of many Home Ownership Scheme estates and public housing estates that had been sold to the public stemmed from their construction works. For instance, defective construction processes might lead to peeling walls/floor tiles. The Government should define clearly the types of repairs and maintenance works that fell under its purview and those that fell under the owners' purview. Moreover, legislation should be introduced to authorize OCs and property management companies to negotiate with the Government on the details of repairs and maintenance works that fell under the Government's purview;
- (h) some OCs had paid large amounts of honorarium to their managers and incurred high building maintenance costs. However, despite owners' request, the property management companies were unwilling to disclose the financial position of OCs and the related information. In view of this, the Government should require OCs/property management companies to enhance their transparency in disclosing to owners the financial information of OCs and their procedures of selecting works contractors;
- (i) the Government should step up publicity to make the public aware, before they purchased the flats, that it was the responsibility of private property owners to manage their own buildings; and
- (j) the major owners or property management companies of some commercial-cum-residential buildings might, at the expense of the interests of small owners, change the names of the buildings in order to seek private gains. HAD was, however, unable to provide assistance in this regard. The Government should study how it could assist small owners in solving this problem.

7. The Convenor informed WTSDC members that the Administration had introduced the Building Management (Amendment) Bill 2005 into LegCo in April 2005. The Bill sought to amend the BMO to further provide for the appointment of a management committee and the better operation of an OC. A Bills Committee had been set up to study the Bill in detail.

8. Hon CHAN Kam-lam supported WTSDC members' proposal that the Government should render more assistance to owners/OCs in a more proactive manner. In his view, apart from strengthening the support services currently provided by HAD, the Government should take the initiative to assist owners in carrying out repairs and maintenance works to their buildings, in particular those buildings without OCs, so as to expeditiously achieve the policy objective of improving the management of private buildings, thereby enabling the public to live and work in a good environment.

9. Hon TAM Heung-man said that she was a member of the Bills Committee on the Building Management (Amendment) Bill 2005. The Administration had informed the Bills Committee that the introduction of a licensing system for the regulation of property management companies was outside the scope of the Bill. However, the Administration undertook to consider the proposal after completing the scrutiny of the Bill. By then, LegCo would follow up the matter with the Administration. Furthermore, the Hong Kong Institute of Certified Public Accountants also supported that the transparency in disclosing the financial information of OCs should be enhanced, and it had made a written submission to the Bills Committee on related issues. As regards the payment of large amounts of honorarium to managers by OCs, she suggested that WTSDC members might seek assistance from the Complaints Division of the LegCo Secretariat.

10. Hon Alan LEONG Kah-kit said that he was also a member of the Bills Committee. He pointed out that most of the issues raised by WTSDC members had already been discussed at the Bills Committee meetings, such as the arrangements relating to proxies and the voting mechanism for OC meetings. At the invitation of the Bills Committee, deputations from different sectors (including property management companies, owners, District Councils ("DCs"), etc) had put forward their views on the Bill to the Bills Committee. Since the Bills Committee was still scrutinizing the Bill, he suggested WTSDC members to keep in view the deliberations of the Bills Committee. DC members or other people who had experience in the operation of OCs were welcome to forward their views to the Bills Committee.

11. Hon Alan LEONG Kah-kit added that, as the Bills Committee considered that the existing mechanism under which the Lands Tribunal dealt with the relevant building problems was not the most effective arrangement, the Bills Committee had proposed to the Administration that a simplified mediation mechanism should be set up to handle simpler cases. The Administration undertook to consider the proposal.

WTSDC

12. The Convenor suggested that WTSDC should collect the views from all its members and provide a consolidated written submission to the LegCo Secretariat, so that it could be forwarded to the Bills Committee on Building Management (Amendment) Bill 2005 for follow-up.

Clerk/
Bills
Committee on
Building
Management
(Amendment)
Bill 2005/
Panel on
Home Affairs

13. LegCo Members present at the meeting directed the Clerk to refer the views and suggestions put forward by WTSDC members to the Bills Committee on Building Management (Amendment) Bill 2005 for its consideration. They also suggested that representatives of WTSDC should be invited to express their views when the Bills Committee discussed the issues with the Administration. The Convenor further suggested that the issues which fell outside the scope of the Bill should be referred to the LegCo Panel on Home Affairs for follow-up.

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Establishment of Owners' Corporations
for Private Buildings in the Old Districts

The Lack of Support after the Establishment of the Owners' Corporation

At present, the Home Affairs Department (HAD) always urges the owners of the private buildings to establish the owners' corporations (OC). It also takes the initiative to send the staff to actively assist them in establishing OC and encourage them to take up the duties of the OC. Nevertheless, the owners and the OC members usually take up the duties without knowing the functions of OC and their responsibilities. They have no idea how to manage the buildings and how to carry out maintenance. Nevertheless, when OCs are established, HAD becomes very passive and withdraws its assistance. The owners feel that there is a lack of organization support and assistance. Moreover, the OC members are only volunteers who have no the experience in building management. They have a rather loose organization. As a result, they cannot manage their buildings well.

The Government recommends that OCs employ managers, or other professional organizations or professionals to discharge the duties and exercise the rights on behalf of the OC. However, old tenements or old buildings with few households cannot afford to employ qualified personnel to implement good housekeeping of the buildings. The owners of these buildings are usually the old and weak, the women and children who cannot take up the responsibility of implementing good housekeeping of the buildings. Although the Government has established the building management resources centres for the owners to make enquiries, most of them have no idea how to contact these centres and many OC members are even ignorant of their existence. Some owners have also complained that the centres are advisory in nature and render no substantial assistance.

Buildings with a high proportion of Vacant Flats cannot Raise Funds for Maintenance

At present, there is a high proportion of vacant flats in many old buildings. Whenever there is a need for maintenance, the owners of the vacant flats cannot be contacted as they are living elsewhere or have emigrated overseas. The owners who remain living in the old buildings are unwilling to pay the maintenance charges when those owners not living there do not pay their share. As such, fund raising for maintenance is a non-starter.

On the other hand, even when OCs collect money from the owners direct for maintenance, some owners still decline to pay and do not mind the flats being barred from transaction. Then OCs have no alternatives nor the financial means to take legal actions to sue such owners. This is commonly found in those tenements with a few to ten odds households.

Old Buildings not Eligible to Take Out the Third Party Insurance

Legislation was enacted on 1 August 2000 (with no implementation date)

OCs are required to take out the third party insurance according to the legislation. Yet the banks are reluctant to offer insurance coverage for those buildings which are far too old. In this regard, what kind of assistance can the Government offer?

Recommendations:

1. Full amendment of Chapter 344
2. Strengthen the promotion and education for building management
3. Speed up urban renewal and draw up a new DMC
4. Set up a building maintenance fund

1. The Government has decided to propose amending "Building Management Ordinance" in April 2005 to require the 27 000 buildings with Owners' Corporations (OC) in Hong Kong to take out third party insurance policy of no less than 10 million dollars.

If OCs do not take out insurance policy or if they do not take out insurance policy as they cannot meet the requirement as stated in the policy owing to the old age of the buildings, or if there are illegal structures in the building which cannot be demolished immediately, what should OCs do? Apart from suing the OCs, which may lead to their bankruptcy, are there other positive ways to help the owners go through the difficulties?

- 2 Can the Government consider establishing the Emergency Supportive Services Fund and request the owners of the private buildings to pay an additional 2% to 3% for the rate to set up the said fund, so that the fund can be used to settle the payment:
 - (I) in case of emergency or when there is a need for maintenance and if the owners cannot be located.
 - (II) when the owners default the payment for / fail to settle the payment for maintenance.
 - (III) Alongside with this, the departments concerned should be authorized to use the fund and to "cease the transaction" of the flats whose owners fail to settle the payment.

3. OCs Exist in Name only

Many buildings which are old and are not manned by a management company have complicated management problems. As such, many owners only set up OCs to arrange for the maintenance upon the receipt of the maintenance order from the Buildings Department. Their OCs no longer operate after the building maintenance has been completed and no election is held for the new term.

4. Restricting the Frequency of Changing the Chairmen

In accordance with Chapter 344, only 5 % of the owners are required to be present for a meeting to be held and considered valid. With the presence of 10% of the members, the Chairman can be replaced. We are of the view that the relevant requirements are reasonable, only that some OCs have ten odds flats and it will be very easy to replace the Chairmen. A small number of trouble-makers can cause nuisance on some pretexts, crippling the OCs. Are there any Ordinances to exercise check and balance? For example, proposing the frequencies of replacing the chairmen for each term, or increasing the percentage of the voting members in a by-election of OC Chairmen.

5. Authorisation

OCs accept authorization as the valid quorum for each meeting, but the result may be manipulated by the minority. How to exercise check and balance for that case?

- (I) Signature faking has become serious, and the fake signatures are difficult to verify.
- (II) The legality of the date of authorization (Signing on the spot is also accepted).
- (III) Land search is expensive. The information is not updated timely and it is difficult to verify the identity of the owners.
- (IV) The authorization should have a standard format.
- (V) The no. of authorizations for each household should be capped so as to avoid the voting result being monopolized /manipulated.

6. Defining the power of OCs, and avoiding the politicisation of OCs

The extent of power of OCs / Mutual Aid Committee (MAC) and their scope of duties are not well defined. Some OCs and MACs will use section 18 of Chapter 344 "liaising residents for common interests" as the excuses to hold picnics and gatherings. As a result, they can manipulate and control residents easily whenever there is a clash of interests and thus collude with the contractors to reap the profits. OCs should operate on a rational basis without being politicized.

7. Strengthening the Role of Estate Management Companies and Introducing the Licensing and Registration System

At present, many estate management companies have in place a sophisticated system. Therefore, OCs can entrust the management of estates to the estate management companies with the result that the management companies can play a more active role. The Government should also establish a registration and licensing system for estate management companies to enhance their professionalism. The management companies will be deleted from the list when they cannot perform their roles properly.

8. The Renewal of Contract for the Management Company

The contract can be renewed every four to five years instead of two years at present, which is too short. This can prevent the management companies from being controlled by OCs.

9. HAD's Role of Liaison in Building Management

The role of HAD in building management is not apparent. Although Liaison Officers (LOs) in the district act as mediators between OCs and the owners, they are not well-versed in Chapter 344 (Mistakes are made in the meeting procedures of OCs) and, as such, cannot play their roles of assisting the OCs / MACs well. When most of the owners hope that the LOs can offer a judgement, most of them just quote the cases on both sides for reference. As a result, OCs and MACs are still at a loss what to do.

10. Enhancing the Promotion and Education

Apart from strengthening the promotion of the importance of building maintenance, the Government should also promote the responsibilities and power of OCs and the management companies to the public so that the public can understand their operation and avoid being taken advantage of.

Set out below are our responses to questions raised by Members of Wong Tai Sin District Council about management of private building in old districts.

Government's Policy on Private Building Management

1. Building management is squarely the responsibility of property owners. It is the Government's objective to assist and support private property owners in the better management and maintenance of their properties. The Home Affairs Department (HAD) provides a legal framework through the Building Management Ordinance (BMO) to facilitate the incorporation of owners of flats in buildings and to provide for the management of buildings. To better equip property owners to put good building management into practice, we also provide supportive services, offer advice and regularly organise training courses for the owners of private buildings.

HAD's Assistance to Property Owners

2. As owners who participate in the voluntary work of owners' corporations (OCs) may lack professional knowledge on specific building management matters, they may find that they are not up to the task. To help owners to properly manage their buildings, HAD has set up District Building Management Liaison Teams (DBMLTs) in each of the 18 District Offices to provide outreach services to building owners. These include —

- (a) visit private buildings in the district to introduce to owners the good practices of building management;
- (b) give guidelines and advice to owners on the procedures of OC formation;
- (c) attend owners' meetings and give advice to owners as and when necessary;
- (d) give advice to owners on the operation of OCs;
- (e) organise training courses, seminars, talks and workshops on building management for members of the management committee;

- (f) organise educational and publicity activities to promote proper and effective building management; and
- (g) help mediate in disputes between owners, OCs and management companies.

3. In addition, four Building Management Resource Centres (BMRCs) have been set up in the territory to provide information, advice and free professional service to property owners. BMRCs also provide free professional consultation to the public by appointment. Owners may obtain free preliminary advice on various aspects of building management, including legal, accounting, surveying, engineering, and management advice, from volunteer experts on duty at BMRCs. Furthermore, owners or OCs may invite, by appointment, professionally-qualified members of the Lions Club International District 303 Hong Kong & Macau to owners' meetings so that professional advice can be provided on the site.

4. It must be stressed that though liaison officers of DBMLTs have received on-the-job training on building management, they are not legal professionals. They cannot and should not provide legal advice to OCs and owners or make any decision on individual cases. That said, they will explain to owners the relevant provisions in BMO and provide court cases for their reference.

Staff Training

5. All liaison officers have to take an induction training course covering the basic knowledge of building management. After that, they will join in training on BMO, including "Legal Aspects of Multi-storey Building Management (Part I and II)" and "Training Course on Professional Mediation Practice" jointly organised with local tertiary institutions. To facilitate the exchange of experience in building management, we also organise workshops on building management on a regular basis. Starting from 2005, we have been granting subsidies to our staff taking degree courses on building management offered by local tertiary institutions.

Government Subsidies to Encourage Owners to Maintain Their Buildings

6. The Government has all along been assisting owners to maintain their properties. The Co-ordinated Maintenance of Building Scheme (CMBS), implemented by the Buildings Department (BD) since 2000, aims to help owners resolve problems related to building management and maintenance. Apart from the Urban Renewal Authority (URA) which participate in the scheme by providing subsidies to owners, the Hong Kong Housing Society (HKHS) is also invited to join in providing technical and financial supports to owners.
7. It is the responsibility of owners to manage and maintain their buildings. However, we understand that owners who are less well-off may find it hard to afford the maintenance works. BD will continue to help those owners in need to maintain their buildings through various subsidy schemes offered by HKHS and URA.
8. In some cases, the deed of mutual covenant (DMC) empowers the manager to register a charge against the property of an owner who fails to pay any sum payable under DMC and sell the property concerned. It is stipulated in BMO that the power of registering such a charge and sale will be transferred to OC if an OC is established. If there is such a clause in DMC, OC or the manager will normally file a claim with the Small Claims Tribunal (for claims up to \$50,000) or the District Court (for claims up to \$1,000,000), together with all the relevant evidence, before registering a charge against the property and selling it. If this is not provided for in DMC, OC or the manager will normally provide the Small Claims Tribunal with evidence on the debt before applying to the Lands Tribunal for registering a charge against the property and selling it. The power of OC or the manager to register such a charge and sell the property will have deterrent effects on uncooperative owners.
9. BMO provides that the amount payable by an owner shall be a debt due to OC. It further set out the steps that can be taken to recover the debt. For instance, if the owner does not occupy the property in question, OC may demand payment from the occupier, who shall deduct such amount from the rent. Alternately, such amount may deem to be the rent payable to OC as if the latter were the landlord of the property under Part III of the Landlord and Tenant (Consolidation) Ordinance (Cap 7). In other words, OC may apply, in

the form of an affidavit, for a warrant of distress in respect of the rent payable to OC for the purpose of demanding payment from the owner concerned. The registered mortgagee of the property concerned may also pay the due amount on the owner's behalf and then recover such amount from the owner as if the amount of such payment formed part of the principal sum due under the registered mortgage. In any case, it is more common for the Lands Tribunal to rule against the owner in arrears of payment and have its decision enforced by various orders. These include warrant of distress, garnishee proceedings, charging order, appointment of receiver, warrant of commitment, writ of sequestration, and also order of imprisonment.

Aged Buildings to Procure Third Party Risks Insurance

10. According to the Hong Kong Federation of Insurers, the buildings having difficulties in procuring third party risks insurance are mostly those which lack proper maintenance or have unauthorised building works (UBWs). The insurance companies will not refuse to cover aged buildings as long as they have no UBWs and are well managed and in good maintenance.

11. To assist property owners to carry out repair and maintenance works and remove UBWs, URA and HKHS offer subsidy to owners or OCs under schemes set up for the purpose. Owners will generally be able to get insurance coverage for their buildings after the building conditions have improved.

12. Should owners encounter difficulties in removing UBWs, they may seek assistance from BD. Depending on individual circumstances, BD may issue orders to require owners to remove UBWs.

13. The requirement for OCs to procure third party risks insurance will take effect 12 months after the Building Management (Third Party Risks Insurance) Regulation 2005 has been enacted. Meanwhile, the Government and organisations concerned will continue to encourage and assist property owners who have not yet procured third party risks insurance for their buildings to make the necessary preparations, such as carrying out maintenance works and removing UBWs.

Arrangements relating to Proxy Instrument

14. At present, the absence of statutory requirement regarding the format of the proxy instrument has given rise to many disputes over the appointment of proxy among OCs and owners. To enable effective management for OCs, we have included a standard format of proxy instrument in the Building Management (Amendment) Bill 2005 (the Bill) and clarified the procedures for the appointment of a proxy if the owner is a body corporate. The Bill further provides that submission of proxy instrument should be made 24 hours before the time for the holding of the owners' meeting to minimise disputes arising from delivery.

15. Given that the appointment of proxy to attend owners' meetings on his behalf is the right of every owner, HAD does not consider it appropriate to restrict the maximum number of proxy held by individual persons. An owner should carefully appoint a person who shares his thoughts to attend and exercise his rights on his behalf at the owners' meeting. HAD also proposes that information in respect of those flats where a proxy has been appointed shall be posted (personal data should be kept confidential) at a prominent place in the building to avoid forgery.

Duties, powers and operation of OC under BMO

16. The duties and powers of an OC are clearly specified in BMO. Our staff in district offices are ready to offer assistance to owners who have queries in respect of the operation of OCs. They will keep in contact with OCs, give advice on building management matters and remind the management committees (MCs) to comply with BMO. As for the provisions relating to the removal of MC members from office, any decision to replace a MC member shall only be passed by a resolution at the owners' meeting. The resolution shall be deemed valid only if a quorum is present at the owners' meeting and there is a majority of votes of the owners at the same meeting. It is therefore clear that there is no statutory provision relating to the removal of the chairman (or other members) of OC from office at the request of 10% owners.

Tightening the Regulation of Property Management Companies

17. HAD has considered the proposal and decided to launch a two-phase

study on the matter. The first phase of the study aims to collect and analyse data in the following three aspects: (1) the operation and general situation of the property management industry in Hong Kong; (2) the overseas practices and situation in regulating the property management industry; and (3) the regulatory regime for other comparable industries/professions in Hong Kong. HAD will consider further follow-up actions once the results of the first phase of the study are available.

18. Regarding the renewal of management contracts, HAD has proposed to the Bills Committee on Building Management (Amendment) Bill 2005 that the mechanism for termination of the appointment of managers under paragraph 7 of Schedule 7 to BMO shall apply to the first manager (i.e. the manager specified under the deed of mutual covenant) and subsequent contract managers whose contracts with OC do not specify a termination mechanism at all. In other words, if the contract has already provided for a termination mechanism (regardless of the terms/requirements), then the contractual spirit should be upheld. We will introduce Committee Stage Amendments as appropriate.

Strengthening the Publicity and Education on Building Management

19. HAD has placed a lot of emphasis on publicity and educational activities on building management. We maintain a building management website, publish booklets/posters/promotional leaflets, produce compact discs/exhibition panels and organise regular seminars/workshops/Quality Building Management Competitions. We strive to promote a greater understanding of building management in television and radio programmes. Leaflets on the services provided by BMRCs are distributed to the public through the communication networks of District Offices. We also arrange, when necessary, special publicity and educational activities, for example on the safety of aluminium windows.

Home Affairs Department
October 2005