

立法會 *Legislative Council*

LC Paper No. CB(2)1038/16-17(04)

Ref : CB2/PL/HA

Panel on Home Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 27 March 2017**

Review of the Building Management Ordinance

Purpose

This paper summarizes previous discussions of the Panel on Home Affairs ("the Panel") on the review of the Building Management Ordinance (Cap. 344) ("BMO").

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.

3. In the light of the Review Committee's recommendations, the Administration published in November 2014 the consultation document entitled "Review of the Building Management Ordinance (Cap. 344)" ("Consultation Document") setting out a number of legislative and administrative proposals aiming to address 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. The public consultation exercise was conducted between 11 November 2014 and 2 February 2015.

Panel's discussion

4. The Panel discussed the Consultation Document at its meeting on 17 November 2014 and held a special meeting on 24 January 2015 to receive

views from deputations. At its meeting on 17 May 2016, the Panel was briefed by the Administration on the outcome of the public consultation exercise, and the proposed way forward regarding the amendments to BMO. The major views and concerns of members expressed at these meetings are summarized in the ensuing paragraphs.

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

Prevention of bid-rigging

5. 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. It was suggested that these measures had to be complemented by corresponding amendments to BMO.

6. The Administration advised that it would continue to adopt a multi-pronged approach, including legislation, law enforcement, support and assistance to property owners to prevent bid-rigging. The Administration informed members that the Development Bureau was working closely with the Buildings Department, the Hong Kong Housing Society and the Urban Renewal Authority ("URA") to implement a number of schemes to help owners maintain and repair their buildings. URA would launch the Building Rehabilitation Facilitating Services in May 2016 to enhance technical and professional support for owners, which included providing guidelines and contract samples, arranging professionals to provide independent advice, establishing a tendering platform, etc. to help reduce the risk of bid-rigging. On the law enforcement front, the Hong Kong Police Force and the Independent Commission Against Corruption ("ICAC") would continue with their investigation and enforcement work, as appropriate, to combat illegal activities relating to large-scale maintenance projects.

7. 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 the Operation Building Bright and to explore the feasibility of setting up a renovation cost database for public reference.

Definition of "large-scale maintenance projects"

8. At the Panel meeting on 17 May 2016, some members suggested that the tiered system in respect of the definition of "large-scale maintenance projects"¹ proposed by the Administration should be revised to take into account the fact that many building estates contained as many as 10 000 or more flats. They proposed that the tiered system should be divided into, say, small, medium and large housing estates or "100-1 000 flats", "1 001-5 000 flats", "5 001-10 000 flats" etc., based on which different costs for the definition of "large-scale maintenance projects" should be set. These members also expressed concern about the proposed high threshold of "40% of the annual budget of the OC" for the definition of "large-scale maintenance projects" which would mean that in some cases, only projects that cost over \$100 million could be regarded as a "large-scale maintenance project". There was also a view that a seven-day cooling-off period should be introduced in respect of large-scale maintenance projects to allow time for prudent consideration by owners .

9. The Administration explained that reference was made to the tiered remuneration rate of deed of mutual covenant ("DMC") managers under the DMC Guidelines issued by the Lands Department ("LandsD") in drawing up the proposed tiered system. Nevertheless, the Administration agreed to consider members' views in finalizing the relevant legislative proposals.

Enforcement and criminal sanctions

10. 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 and 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, thus causing losses 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. Some other members, however, considered that adding more criminal sanctions to BMO might deter people from serving as MC members.

11. The Administration advised that BMO sought to provide a legal framework for owners to organize themselves to discharge their building management responsibilities. For example, there were penalty provisions in BMO with respect to OCs' non-compliance with the registration requirements, their furnishing of false information and failure to maintain proper records of

¹ For details of the proposed tiered system in respect of the definition of "large-scale maintenance projects", please refer to paragraph 12 of the Administration's paper (LC Paper No. CB(2)1502/15-16(03)).

account and procure third party risks insurance for the common parts of the building. Law enforcement agencies would investigate into any suspected unlawful activities in the course of building management and maintenance works in accordance with the law. The Competition Commission might also launch investigations into anti-competitive conducts such as bid-rigging pursuant to the Competition Ordinance (Cap. 619), and apply to the Competition Tribunal for imposing penalties. Nevertheless, the Administration indicated that it was open to any suggestions in this regard.

12. Some members suggested that the Administration should consider setting up a Building Affairs Tribunal to hear relevant cases so as to avoid incurring large amount of litigation costs to owners. They also considered that the Liaison Officers ("LOs") lacked the authority and power to resolve disputes relating to building management and maintenance. While expressing support for strengthening the manpower of LOs, members suggested that enhanced training should be provided to LOs so that they would provide better support in handling building management disputes.

13. The Administration advised that HAD had been encouraging the parties in dispute to resolve their conflicts through mediation and other dispute resolution arrangements. In addition, training would be provided for LOs to facilitate their effective implementation of building management work.

Formation and operation of Owners Committees

14. Some members considered 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.

15. 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. In response to members' concerns about the difficulties in the formation of OCs for "three-nil" buildings, the Administration advised that through engaging property management companies to provide assistance to these buildings, HAD had succeeded in assisting some 400 in forming OCs amongst some 2 000 "three-nil" buildings in Hong Kong. Besides, HAD had recruited more than 2 000 owners/residents of "three-nil" buildings to serve as Resident Liaison Ambassadors for promoting better management of their buildings. They would assist the Government in contacting residents with a view to forming OCs in the long run.

16. In response to members' enquiries on the operation of OCs, the

Administration advised that owners could apply to the Lands Tribunal in the event that the MC Chairman did not convene a general meeting upon the request of not less than 5% of owners. However, some members suggested that it should be HAD rather than the Lands Tribunal to take up the responsibility of convening and chairing the general meeting under such circumstances. Some members also suggested that the Administration should take measures to resolve the situation that the operation of OC came to a standstill due to disputes between the old and the new OCs during their handover. They considered that the Government should have the power to require convening a general meeting of OC in this situation.

Collection and verification of proxy instruments

17. Noting the Administration's proposed amendments to BMO to stipulate that the proxy instrument should be lodged with the MC Secretary at least 72 hours before the meeting,² some members suggested that this new measure should be complemented with the introduction of sanctions in order to ensure compliance.

18. Some members expressed support for the proposed arrangement that the maximum number of proxy instruments a person could hold should not exceed 5% of the owners.³ It was suggested that a random checking mechanism should be put in place to ensure compliance, and that the name of the person holding 5% of proxy instrument should be disclosed to enhance transparency. Besides, it was suggested that a warning stating that "the representative was allowed not to vote according to the wish of the owner" should be shown on the proxy form.

Matters relating to deeds of mutual covenant

19. 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.

² Please see Annex 4 ("Proposed Amendments to Proxy Arrangements") to LC Paper No. CB(2)1502/15-16(03).

³ Please see Annex 4 ("Proposed Amendments to Proxy Arrangements") to LC Paper No. CB(2)1502/15-16(03).

20. 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 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

21. Members expressed grave concern about the difficulties encountered by owners in terminating the appointment of DMC managers. Some members expressed support for lowering the threshold for terminating the appointment of DMC managers from 50% to 30% of shares in aggregate, as well as 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.

22. At the Panel meeting on 17 May 2016, the Administration advised that in order to strike a proper balance between ensuring stability in building management and provision of services and allowing owners to terminate the appointment of non-performing DMC managers when needed, it was proposed to maintain the existing threshold for terminating the appointment of DMC managers. The Administration also proposed an additional arrangement that the term of appointment of DMC managers would be automatically terminated five years after the formation of OC, and by then the OC might enter into a new contract and negotiate new contract terms (such as the tenure of appointment, remuneration, etc.) with the existing DMC manager or engage a new manager / service provider through open tender.⁴

⁴ Please refer to paragraphs 22-24 of the Administration's paper (LC Paper No. CB(2)1502/15-16(03)) for details.

23. Some members, however, considered that the threshold should be lowered to 30% of shares of owners, as they noted that section 3 of BMO only required a resolution of owners of not less than 30% of the shares for the formation of OC. In response to members' enquiry as to whether the shares of common areas would be counted when calculating the threshold of "50% of the owners" in the context of termination of appointment of DMC managers, the Administration advised that it was already stipulated in DMCs of some new buildings that only owners of shares who were liable to pay management fees would be entitled to vote in the resolution on the appointment of MC and the formation of OC.

24. Regarding the proposed arrangement that the term of appointment of DMC managers would be automatically terminated five years after the formation of OC, concern was raised that, for those buildings which were unable to form OC, the appointment of the DMC managers might continue indefinitely.

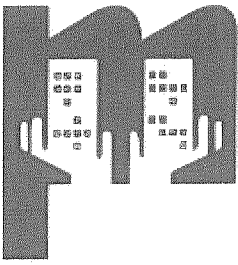
Latest development

25. Members may wish to note that a submission on amendment proposals relating to BMO was provided by the Hong Kong Association of Property Management Companies on 7 September 2016 (LC Paper No. CB(2)51/16-17(01)) for members' reference. It is attached in **Appendix I** for members' easy reference.

26. The Administration will consult the Panel on the way forward for the review of BMO at the next meeting on 27 March 2017.

Relevant papers

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



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立法會秘書處

(煩請轉交予 民政事務委員會所有委員)

敬啟者：

有關《建築物管理條例》(344 章) 公眾諮詢結果及建議

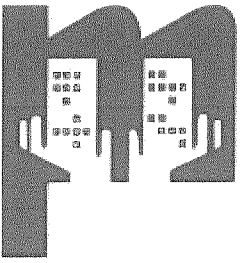
香港物業管理公司協會(本協會)，大致上支持政府民政事務局就《建築物管理條例》(第 344 章)(《條例》) 公眾諮詢後提交之建議，惟有部分之建議會對業界、業主及樓宇發展造成深遠影響，本協會不得不反對相關之建議，並將有關的反對理據詳列如下(次序與立法會討論文件 CB(s) 1502/15-16(03) 相同)：

(C)：公契經理人的委任和酬金

(I) 終止委任公契經理人

24. 增設一項新安排，即在法團成立 5 年後，公契經理人的任期將自動結束；屆時法團可選擇與現有的公契經理人簽訂新合約及商議新合約條款(包括委任期、酬金等)，或透過公開招標委聘新的經理人/服務提供者。把公契經理人的委任期限於五年，期間須協助業主成立法團或委出業委會，然後藉公開招標委任新服務提供者或簽訂新合約。

本協會反對此建議。 在現實環境中，如果公契經理人的服務水平未能達到大多數業主要求，自然會有足夠的業主支持終止其委任；相反，如公契經理人的服務水平良好，深得業主支持，業主又何以需要進行不必要的招標委聘安排，故委任公契經理人與否之選擇權，應由業主自行靈活掌握，不應由當局強制進行。

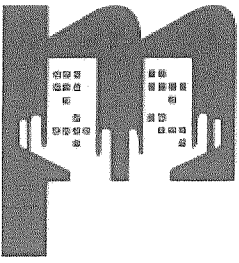


物業管理服務所涵蓋的多個範疇，例如：樓宇維修、設施保養和更換、環境改善、各級服務人員培訓和發展、和諧社區的建立等等，均需要制訂長期(通常為3至5年)計劃及投放大量資源。如委任期限於五年，公契經理人因未能確定委任期後是否仍能繼續管理，故會阻礙其訂定長遠管理計劃的構想及推行，同時亦影響業界的發展，包括各級物業管理從業員的生計、工作熱誠(維持/提昇服務素質的動力)及工作發展；另一方面，對客戶的服務資源投放，亦會變得萎縮，對服務的品質會帶來負面的效果，而最終受損害的將會是業主們。

此外，大型屋苑通常分階段落成，並可能透過分公契(Sub-DMC)分期管理，又或部分屋苑擁有多過一個法團(不同地契 lots)，例如太古城、杏花邨、黃埔花園、麗港城等等，如硬性規定公契經理人任期及自動啟動新服務提供者的招標程序，結果可能出現屋苑各期由不同的經理人管理，嚴重影響對整個項目管理的延續性及統一性，管理水平變得不一致，甚至可能落差很大，有礙發展商將來考慮投資發展大型項目。對業主而言，亦會失去大型屋苑一貫享有的議價優勢和成本效益，變相是增加了業主們的負擔，而各期業主間的利益衝突將會更多。

事實上，現時業主要求的是靈活掌握委任公契經理人與否之選擇權，並非經理人之委任期限。若然讓業主能較靈活地終止委任表現欠佳之公契經理人，此安排應較為符合業主所需。當然本協會明白，上述建議可能受現有地契條款所限，本協會建議當局可考慮先行於新落成的物業內嘗試分拆其住宅、商場及車場等的業權部份，讓各部份的業權份數可獨立計算，只要住宅部份的業主能持有該部份的50%或以上之業權份數，並於業主大會內通過，便可終止委任住宅部份的公契經理人；這樣的話，發展商及公契經理人仍可就其他部份(例如：商場及車場等)繼續發展及管理，此舉既可增加靈活性，又不會影響發展商的發展規劃，更不會違反少數服從多數的原則。

如此建議於新落成的物業能行之有效，屆時政府可透過立法修訂，將建議推行至現有之所有物業，使條例更能平衡業主、發展商及公契經理人的需求。



(II) 公契經理人的酬金

26. 在考慮各方面的意見，以及現時屋苑的實際管理情況後，我們認為公契經理人計算酬金的方法應盡量公開透明，而且代繳費用並不涉及管理督導等增值服務，加上隨着公契經理人累積經驗，管理開支成本應可逐年減少。因此，我們會向地政總署建議修訂《大廈公契指引》，規定公契經理人須：

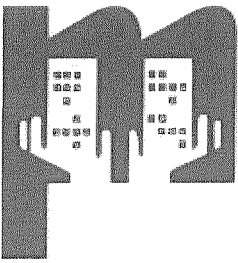
- (i) 向業主提供詳細分項數字，說明總部服務費如何由各發展項目分攤；

本協會反對此建議，因大部份經理人總部會為不同類型的物業提供服務，不同經理人於不同時期又會管理有不同的物業組合，而這些物業組合又會經常出現變動。所以，經理人實在難以長期維持同一個分攤公式或方法。

本協會建議由業內人士商討下達至一個共同的總部服務費表達方式，例如：現時行之有效而又廣為接受、應用的方法為業主與經理人共同協議收取一個固定金額或酬金比率。

- (ii) 在計算公契經理人酬金的公式中，不計算代繳費用金額（例如電費、水費等）；

本協會反對此建議。如要在公契經理人酬金的公式中扣減一些代繳費的開支項目，釐定哪些項目是不涉及任何增值服務，實在是十分困難的，例如：公契經理人為大廈制訂合適及有效的環保節能措施，為大廈/屋苑減省電費、水費開支，節省所得應屬增值服務。如果電費、水費又或其他類似項目被界定為扣減項目，經理人便缺乏誘因為大廈實施有關措施，最終亦會影響管理成效。事實上，物業增值是經理人盡心盡力做好各個範疇，及在業主支持下達至的雙贏果效。



更重要的是，物業管理公司絕大部份均為管理代理人的角色，對物業內公用部份的一切支出均須代為處理，每個公用管理開支項目所據的處理時間亦不同，若然要區分開支項目中那一項應計算在酬金公式中，那將衍生怎樣去界定所計算的準則及如何釐定每項支出的比例等問題，結果只會那把酬金的計算公式複雜化。

- (III) 有關文件內建議將部份現時載列於民政事務局局長根據「條例」發出的「供應品、貨品及服務採購工作守則」中的規定，納入「條例」的附表

本協會反對此建議。因為根據附件二第二段所建議：「管委會最少須邀請遞交 5 份標書。如接獲的有效標書數目少於 5 份，管委會須通過決議決定是否接受該次投標結果。」

現實是雖然發出 5 份或以上招標邀請是一貫做法，但強制要收到至少 5 份回標通常並不可行，而要求管委會通過決議是將責任無理地由各委員承擔。以往是工作守則，修改後成為法律條文，對管委會是沉重壓力。

本協會曾就上述「條例」檢討後之建議向會員反映，並經集合各會員的意見後，現向 貴委員會表示反對相關之建議及其原因，希望 貴委員會能接納本協會的意見，另行修訂該部分之建議，使「條例」更能平衡各方之需求及權益。

香港物業管理公司協會



會長

2016 年 9 月 7 日

The Hong Kong Association of Property Management Companies
香港物業管理公司協會

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

Committee	Date of meeting	Paper
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))
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
	2.12.2015	Motion on "Combating acts of bid-rigging in repair works of private residential buildings" Progress report on the motion
HA Panel	17.5.2016 (Item III)	Agenda Minutes