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立法會議員何俊仁辦事處的信頭
Letterhead of ALBERT HO CHUN YAN'S OFFICE
THE HONOURABLE LEGISLATIVE COUNCIL MEMBER

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9th June 1999

Mr. David Tsui
Deputy Secretary for Home Affairs
31st floor, Southorn Centre.
130 Hennessy Road, Wanchai, Hong Kong

BY HAND

Dear David,

I refer to our previous telephone conversation and enclose herewith a set of our proposals for further amendments to the Building Management Ordinance Cap.344 for your consideration.

I sincerely hope that your Bureau will carefully consider our proposals and incorporate the same (as far as possible) in your drafting instructions to the Department of Justice.

As said, the paper I sent under this letter covers only the part of the Democratic Party's proposed reform concerning legislative regulation over building management, namely amendments to the BMO. I will be completing very shortly our proposal on government policy in (a) supervising the operation and conduct of management companies (b) enhancing the role of the Home Affairs Department in resolving neighbourhood disputes such as providing conciliation or mediation services etc. The paper will be provided to you in early July 1999.

If you or your staff members have any query over the paper I just sent you, please do not hesitate to contact me or my assistant Ms. Winnie Lam at telephone No.2869-9634 and if necessary, I am pleased to attend a meeting to explain our position.

Thank you for your kind attention.

Yours sincerely,

HO CHUN YAN ALBERT

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PROPOSAL FOR CHANGE:

Building Management Ordinance (BMO)

Formation of Owners Corporation ("OC") (S3, 3A and 4)

Problem A: threshold requirement of 50% shares in support of the resolution

The statutory requirement that the resolution must be supported and passed by the owners of not less than 50% of the shares under S.3 to form an OC is too difficult to fulfil. This is particularly so if the developer or certain major owner (e.g. owner of the commercial complex) holds a substantial percentage say 20% to 25% of the shares in land which is not uncommon. Therefore even if the promotors can get 45% shares and pass a resolution with a majority of 45% to 25% in favour of forming an OC, the requirement under S.3 is still not fulfilled. This high threshold requirement is inconsistent with government policy to encourage the formation of OCs.

Proposal A:

It is proposed that S.3(2)(b) should be changed to lower the threshold requirement such that "owners of not less than 30% shares support the passing of a resolution in a meeting in which owners of not less than 50% shares have attended" can appoint a management committee and form an OC.

Problem B: requirement to advertise the notice of meeting in an English language press and a Chinese language press. S5(3)

There are many cases where the buildings in respect of which an OC is sought to be formed comprises less than 30 units. It is doubtful whether advertisement in newspapers is effective as notice to the owners. Further, if the number of owners involved is relatively small, it appears quite unjustified to spend large amount of money on advertisement in newspaper.

Proposal B:

It is proposed that the Secretary for Home Affairs may in appropriate cases dispense with the advertisement in any or both of the English or Chinese language newspaper.

Termination of Manager's appointment (S.7 of Schedule 7 to BMO)

Problem C: termination of manager in the same owner's meeting for the formation of OC

At present, the owners, having succeeded in passing a resolution for the formation of an OC and the appointment of a management committee under S.3, 3A or 4, cannot pass another resolution in the same meeting to terminate the manager's appointment. This is due to S7(1) in Schedule 7 which requires that the resolution for termination must be passed by a resolution convened by an OC.

Proposal C:

It is proposed that a resolution for the termination of manager's appointment may be passed in the same owners' meeting convened for the formation of an OC provided that the validity of the resolution of termination is subject to and conditional upon the successful incorporation of the OC as certified by the Land Registrar under S.8 of the BMO.

Problem D: threshold requirement of 50% shares for termination

The statutory requirement that the resolution of termination must be supported and passed by owners of not less than 50% is too difficult (or even in some cases impossible) to fulfil. Moreover, this requirement appears to be reasonable compared with the usual provision in a management contract where the manager's appointment may be terminated by three months notice given by the Management Committee in writing.

Proposal D:

It is proposed that the resolution of termination may be passed in an owners' meeting where owners of not less than 50% have attended (i.e. the requisite quorum) and passed with the support of the owners of not less than 30% shares.

Deeds of Mutual Covenant (Part VI A of BMO)

Problem E: Control over shares in common parts

There are cases where the developers expressly allocate in the DMC substantial percentage of undivided shares to the common parts which are not attached with any liability to pay management charges (which are determined by management shares but the common parts usually have nil management share) and reserve such undivided shares in the common parts to themselves as developers. This scheme is obviously designed by the developers to achieve the aim of retaining control over the management of the developments.

In one case in Tuen Mun (name will be provided upon request), the developer reserves ownership of the commercial complex and also all the undivided shares in the common parts as mentioned. In this case, the liability to pay management shares is determined by management shares and the common parts carry no management share at all. As a result, the developer keeps control of more than 50% of the undivided shares and the manager of the development which is a wholly owned subsidiary of the developer is absolutely protected from termination even when all owners act together seeking to dismiss it.

Proposal E:

(a) It is not workable to change the law such that all the shares of the common part are deemed to be owned by all the owners or the owners corporation, as the "common shares" will still be an obstacle to the owners in obtaining the requisite majority to pass a resolution for the formation of an OC or the termination of the manager's appointment.

(b) It is rather proposed that all the undivided shares in land which are not attached with any obligation to pay management fees shall be disregarded for the purpose of counting the quorum or the votes of the owners in all owners meeting conducted pursuant to the provisions in the DMC or the BMO.

Problem F: - amendment to DMC

There are many examples of extremely unfair provisions in DMCs, which are drafted by the developers entirely in its favour without any regard to the interest of the small owners. The example in (E) is one of them. There are also cases where the provisions in the DMC are obsolete, absurd or impracticable to implement. However, under the current law, the provisions in a DMC cannot be amended unless with the unanimous consent of all owners which is practically impossible to obtain. Moreover, even an overwhelming majority of the owners being desirous of amending a DMC with no one opposing, still cannot effect any change or amendment to the DMC.

Proposal F:

A statutory provision be made in Part VI of the BMO stipulating that the provisions in a DMC can be changed or amended when:

(a) owners of not less than 50% of the shares apply to the Secretary for Home Affairs for a certificate that such proposed change and amendment is fair, reasonable and justified in the circumstances and that such a certificate is issued after making public inquiry with the owners;

(b) the said owners of not less 50% may then through their representatives apply to the Lands Tribunal for an order to effect such change and amendment;

(c) the Tribunal may by an order declaring such change or amendment to a DMC be effected as from the date of the order.

Meetings and Proceeding of the Corporation (Schedule 3)

Problem G: Proxy

S3(5)(b)(ii) requires that the proxy shall be signed by the co-owner whose name stands first in relation to that share in the register.

This provision creates unnecessary inconvenience for the promotors of OC in cases where it is difficult to contact and obtain the signature of persons who are not at home until very late at night and whose name happens to stand first in the register.

It is absurd that the 2nd named owner who is ready and willing but cannot give a proxy while the 1st named owner can but who is never available to do so.

Proposal G:

S3(5)(b)(iii) should be amended to read

"... by proxy by any of the co-owners, provided that if the co-owners have given separate proxies to different persons, the proxy of the co-owner whose name stands first in relation to that share in the register kept by the secretary ... shall be the only valid proxy."

Problem H: definition of "owners"

S.5 provides that the quorum at the meeting of the corporation shall be 20% of the owners for dissolution of the management committee and 10% of the owners in any other case.

The terms "owners" here is interpreted by the Lands Tribunal to mean individual persons and hence 10% of the owners means 10% of the total number of owners.

However, it is common that:

(a) different owners may appoint the same person as proxy;

(b) one person may own more than 1 flat or unit in the development; and

(c) a flat may be owned by more than 1 owner.

Therefore, disputes occasionally arise as to how "10% of the owners" is counted.

Proposal H:

For the purpose of counting the quorum herein, each flat shall be deemed to be owned by one owner, and

(a) if there is more than one owner of a flat or unit, all the co-owners thereof shall be treated as one owner.

(b) an owner owning say 5 flats shall be counted as 5 owners.

(c) a person holding say 5 proxies shall be counted as 5 owners.

Democratic Party
June 1999