

Review Committee on the Building Management Ordinance

Interim Report

March 2013

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Abbreviations

BAT	Building Affairs Tribunal
BMO	Building Management Ordinance, Cap. 344
CO	Crimes Ordinance, Cap. 200
DMC	Deeds of Mutual Covenant
HAD	Home Affairs Department
JP	Justice of the Peace
LACO	Legal Advisory and Conveyancing Office
LegCo	Legislative Council
MC	Management Committee
MC Chairman	Chairman of the Management Committee
MC Secretary	Secretary of the Management Committee
MC Treasurer	Treasurer of the Management Committee
OC	Owners' Corporation
PMC	Property Management Company
Review Committee	Review Committee on the Building Management Ordinance
SHA	Secretary for Home Affairs

circumstances –

- (a) a resolution has been passed at an owners’ meeting or all MC members agree to the deregistration; and
- (b) when the acquiring party files an application to the Court for compulsory sale under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) and the OC has no outstanding liabilities.

Incorporation of Owners of House Developments

4.38 The Review Committee notes that some owners of house developments would like to form OCs to better manage their properties. However, there is legal difficulty in the incorporation of owners of house developments under the BMO because the ownership structure and nature of house developments do not fall within the ambit of the BMO.

4.39 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 OC. This is reflected in the definition of the term of “owner” in section 2 of the BMO that “a person who for the time being appears from the records of the Land Registry to be the owner of an undivided share in land on which there is a building”. Owners of house developments usually are not allocated any undivided shares. In other words, owners of house developments are sole owners of the respective subsections but not co-owners of the whole development, and hence do not fall within the definition of “owner” in the BMO.

4.40 Given that the provisions and fundamental concepts in the BMO were construed specifically to cater for the management of multi-storey buildings, it is doubtful whether amendments to the BMO can address the problem. In addition, there are two fundamental problems arising from the ownership structure of house developments. Firstly, while the common parts of a multi-storey building are usually co-owned by the owners of the flats of the building, the so-called

“common parts” of house developments remain private properties of the developers. It follows that even if owners of individual houses in house developments incorporated themselves into an OC, the OC would not be able to carry out a fundamental duty of an OC which is to manage and maintain the common parts (within the meaning of the BMO) as it might amount to interference of property rights of the developers.

4.41 Secondly, given that the size of the subsections (or houses) of house developments often varies to a great extent and a house development might contain individual houses and multi-storey buildings, unless it is provided for in the DMC, it would be extremely difficult for owners to agree among themselves on a basis for determination of their shares.

4.42 In view of the above, it might not be feasible for owners of house developments to form an OC under the BMO. Some consider that a way out would be to set up a mechanism, by introducing provisions under the BMO or under a new piece of legislation, to enable owners of house developments to form committees so that they can have a greater say in the management of the common parts and facilities of the house developments. However, it should be noted that the setting up of such kind of committees of the owners may not enable the owners concerned to have any management control of the common parts and facilities of the house developments. If the Government tried to confer powers on such committees by introducing legislative amendments, this might amount to infringement of private property right.

4.43 The Review Committee considers that 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 PMCs. Many owners of house developments have already formed non-statutory organisations like owners’ committees for the better management of their properties. Besides, the Government is now working on the proposed licensing regime of the property management industry which aims to ensure the service quality of PMCs and property management personnel. As the

incorporation of owners of house developments involves complicated legal issues, the Review Committee will further study the issue at its next stage of work.

Matters relating to DMCs

4.44 A DMC is a deed and a private contract signed among the developer, the manager and the first purchaser of a unit in the building. It sets out the rights and responsibilities of the various parties. The Government has introduced a DMC clause in all non-industrial land grants since 1985. The Legal Advisory and Conveyancing Office (LACO) of the Lands Department is the approving authority of DMCs submitted by developers if the land grant contains a DMC clause. LACO issued Guidelines for DMCs and revised Guidelines for DMCs in 1987, 1999, 2006 and 2011. In approving DMCs, LACO will ensure that the current Guidelines for DMCs are complied with.

4.45 Sub-DMCs are most common in phased developments. In most cases, the principal DMC covers matters which are applicable to the entire development and the first phase of the development. The sub-DMCs cover matters which are applicable to the subsequent phases. Paragraph 29 of the Guidelines for DMCs issued by LACO provides that the developer may reserve rights to execute sub-DMCs in respect of separate towers, phases, etc. All sub-DMCs (as well as the principal DMC) require the approval of the Director of Lands but where the Director is satisfied, upon submission of the draft sub-DMC to the Director, that the sub-DMC relates only to the internal sub-division of an existing unit and by the sub-DMC there will be no alteration to common parts or liability for management or other charges under the principal DMC, the Director may, in his absolute discretion, waive the requirement of approval of the sub-DMC.

4.46 Some owners raise the following concerns regarding the applicability and the terms of DMCs –

