

## LCQ2: The Building Management (Amendment) Ordinance

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Following is a question by the Hon Ronny Tong and a reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (November 17):

Question:

The Building Management (Amendment) Ordinance (the Amendment Ordinance) came into operation on August 1, 2007. I have learnt that since its implementation, the number of disputes among owners' corporations (OCs), owners and management companies has not been reduced, and there is even an increasing number of complaints lodged by members of the public that District Offices cannot effectively help them resolve their disputes relating to the Building Management Ordinance (Cap. 334). In this connection, will the Government inform this Council:

(a) of the respective number of cases received by various District Offices each year since the implementation of the Amendment Ordinance from owners and OCs seeking the District Offices' interpretation, intervention or mediation as an intermediary on matters related to the Building Management Ordinance, with a breakdown in table form by their progress or outcome (i.e., cases resolved or settled through mediation, unresolved, withdrawn, outstanding, or in which the parties concerned have taken the cases to court themselves or have lodged complaints with other government departments);

(b) focusing on the problems arising from the statutory procedure for the replacement of managers, in particular the situation where an OC may not be able to dismiss an unsatisfactory manager over a protracted time because a resolution to terminate the manager's appointment was not passed by owners of not less than 50% of the shares at its meeting, whether the Government will introduce further legislative amendments to the Building Management Ordinance; if it will, when the amendments will be introduced; if not, of the reasons for that; and

(c) focusing on the fact that OCs cannot be formed for house-type properties due to the interpretation of title, resulting in the rights of owners not being protected collectively, whether the Government will introduce legislative amendments to the Building Management Ordinance to include house-type properties in the Ordinance; if it will, when the amendments will be introduced; if not, of the reasons for that?

Reply:

President,

The main purpose of the Building Management (Amendment) Ordinance was to make further provisions on the appointment and composition of management committees of owners' corporations (OCs), as well as the better operation of OCs. After detailed deliberation by the Bills Committee, the Amendment Bill was passed by the Legislative Council in April 2007 and took effect on August 1 in the same year.

The Chief Executive has announced in his recent Policy Address that the Government will adopt a number of measures to enhance private building management, including consideration to re-amend the Building Management Ordinance (the Ordinance) to ensure that buildings will not become a threat to the safety of occupants or other members of the public as a result of poor management, and to effectively require the owners or OCs concerned to hire property management companies if the situation warrants. In the meantime, we will also review other provisions of the Ordinance to improve the legal framework of building management. We have proceeded with the preparatory work of forming a task force to review the Ordinance.

The reply to the three parts of the question is as follows:

(a) The Home Affairs Department (HAD) has been actively providing assistance and support to OCs to enable them to handle building management matters effectively. Such assistance and support include sending staff to attend meetings upon invitation, handling enquiries on building management and giving advice on procedures of the meeting convened under the Ordinance and procedures pertaining to procurement, repair and financial management. If there are disputes among owners, OCs and management companies, we may refer the owners and OCs to the Property Management Advisory Centres of the Hong Kong Housing Society for professional advice as the circumstances require.

The respective number of cases of requests for handling disputes on building management received by district offices (DOs) are as follows:

2007 (from July)	2008	2009	2010 (as at end of September)
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951	1768	1590	1330

In respect of the request for a breakdown by the progress or outcome of the cases, we do not have comprehensive figures for the time being as some owners may not report all the progress to DOs.

As far as we understand, most of the disputes over building management are caused by different understanding of the provisions of the Ordinance on the part of owners. To this end, staff of the DOs will give advice to them with reference to relevant provisions of the Ordinance and precedent cases. Most of these cases can be settled through communication and co-ordination.

If the dispute persists and the parties are willing to deal with it by means of mediation, HAD will refer them to a mediation scheme launched by HAD in collaboration with the Hong Kong Mediation Council and the Hong Kong Mediation Centre to receive free professional mediation service. So far, 19 cases have been handled under the scheme, mostly involving disputes over appropriation of maintenance and management fees. There were three cases in which settlement agreements were signed after mediation.

In addition, the Lands Tribunal has implemented a new scheme on building management cases starting July 1, 2009 to facilitate a more expeditious and efficient disposal of cases by the Lands Tribunal. Specific arrangements include: being more proactive in case management through the adoption of automatic and paper directions and checklists, and encouraging the use of mediation as an alternative dispute resolution. In support of such mediation under the scheme, the Judiciary has set up a Building Management Mediation Co-ordinator's Office (BMMCO) in the Lands Tribunal. The BMMCO provides information and enquiry services for members of the public who are willing to attempt voluntary mediation before or after they commence proceedings in the Tribunal. Mediation service is provided by private mediators outside the Judiciary.

(b) We understand that the service level of some property management companies is

unable to meet the satisfaction of owners and OCs who hence would like to have their managers replaced in the hope of obtaining better services. To address the problem that no termination mechanism in respect of the appointment of managers was provided for in some older Deeds of Mutual Covenant (DMCs), a new provision was added to the Ordinance when it was last amended, stipulating that under the above circumstances, OCs might, at a general meeting convened, and by a resolution passed by a majority of the votes of the owners voting either personally or by proxy, and supported by the owners of not less than 50% of the shares in aggregate, terminate by notice the DMC manager's appointment without compensation. The Ordinance provides that only owners of the shares who are required to pay management fees are entitled to vote on the resolution of terminating the appointment of managers. We believe that this provision should have maintained a balance of interests among owners, developers and DMC managers.

We are eager to listen to the views of the public and Members and will study, in the coming review, whether the number of shares in relation to the termination of the appointment of managers as set out in the Ordinance should be adjusted.

(c) When the Government enacted the Multi-storey Buildings (Owners Incorporation) Ordinance in 1970, the main purpose was to provide a mechanism for owners of undivided shares in a multi-storey building to form an OC to better manage the common parts of their building. The Multi-storey Buildings (Owners Incorporation) Ordinance was renamed the Building Management Ordinance in 1993. The Ordinance has provided a legal framework for owners of multi-storey buildings to carry out management of their buildings.

In recent years, some owners of house developments have requested the government to provide them with similar legal framework for the management of their developments, but it may not be feasible to apply the concept of management of multi-storey buildings to that of house developments. This is because owners of individual house developments are the sole owners of their respective lots and they do not co-own the land or properties in the development with other owners. Unlike owners of multi-storey buildings, they do not own undivided shares. In fact, the areas which are taken as common parts in house developments are for the use of owners only. Such areas are still owned by the developers. It follows that the management and maintenance of these common parts are still the responsibilities of the developers.

There are fundamental differences in respect of ownership structure, nature of the

title and management between multi-storey buildings and house developments. We understand that owners' committees have been formed in some house developments and that they have been working closely with the managers in the management and maintenance of the developments. We will examine ways to enhance the management of house developments when reviewing the Ordinance.

Thank you, President.

Ends/Wednesday, November 17, 2010

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