

LCQ4: Building management

Following is a question by the Hon Mrs Regina Ip and a reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (February 16):

Question:

The owners of some residential units of Taikoo Shing, which is a large housing estate, who sought assistance from me pointed out that the developer had all along held the titles to the external walls of the buildings of the housing estate since the completion of the estate, and that during the period from 1993 to 1996, i.e. after the Building Management Ordinance had come into effect, the developer transferred the titles to the external walls of the buildings of various phases in the estate to a property management agency wholly owned by it, which was also in charge of the management of the estate. According to the information from the Land Registry, that property management agency is currently the holder of the titles to the external walls of the buildings of the housing estate. The aforesaid owners also pointed out that the property management agency claimed that it had acquired such titles on behalf of all owners and was their trustee, and the repair and maintenance fees of the external walls had all along been shared among owners of all units over the years. In this connection, will the Government inform this Council:

(a) if it has looked into whether that property management agency can acquire the titles to the external walls of the aforesaid buildings on behalf of all owners and be their trustee when no owners' corporation has been set up; if it has looked into the matter, of the results;

(b) if it has looked into whether the repair and maintenance fees of the external walls in the aforesaid case should be borne by that property management agency or all owners under the existing legislation, and whether that property management agency or all owners should be responsible for making compensation in respect of casualties or injuries caused by poor management of the aforesaid external walls; if it has looked into the matter, of the results; and

(c) given that I have learnt that many large housing estates have also encountered similar problems relating to management rights and obligations, what concrete measures the authorities have to assist owners in handling such disputes, so as to safeguard their legitimate interests?

Reply:

President,

Thank you for the question from the Hon Regina Ip. The multi-storey buildings in Hong Kong, in particular the individual blocks that comprise a large housing estate, involve various stakeholders of different interests, which concern residents' personal interest. The Building Management Ordinance (Cap 344) (the Ordinance) provides a legal framework for the formation of Owners Corporations (OCs) to facilitate effective building management. In 2007, the Legislative Council (LegCo) amended the Ordinance to further regulate the operation of OCs and their management committees.

We note that the existing Ordinance may not fully cover all disputes over the titles to and management of the buildings and housing estates. As such, we have established the Review Committee on the Building Management Ordinance (the Committee), which convened its first meeting last month and commenced the review of the Ordinance. The Committee and its co-opted members include LegCo Members, relevant professionals and experienced members of the management committees of OCs. The Committee discussed the existing problems in respect of building management, which include matters regarding the interests between Deeds of Mutual Covenant (DMC) managers and owners. The Committee will examine if the identified problems can be resolved through amending the Ordinance. In addition, the Committee will make recommendations to the government on how to take forward proposals to enhance the operation of OCs and to protect the interests of individual owners.

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

(a) Regarding the dispute over the titles to and management of the external walls of the residential buildings of Taikoo Shing, the Home Affairs Department (HAD) and the District Officer concerned have been keeping close watch on the issue. Given that there is no provision under the existing Ordinance stating whether or not property management agency can acquire the titles to the external walls of a building on behalf of owners and be their trustee, it depends upon the relevant provisions in the DMC concerned and whether there is any relevant agreement between owners and the property management agency.

(b) A DMC is a private contractual agreement among the owners, the manager and the developer of a building, stipulating the rights and obligations of the parties to the agreement, including specifying, among others, the common parts of the buildings and the sharing of repair costs, etc.. Some DMCs also specify the titles to and the management right of the external walls. The Ordinance also stipulates the liability and responsibility of the maintenance of the property and the common parts of the buildings. As such, whether the property management agency or owners should bear the cost of repair and be held legally responsible for the casualties or injuries caused by poor management of the external walls of a building would vary from case to case, and the circumstances of each case, the applicable DMC clauses and relevant legislation should be considered.

(c) Building management issues involve various stakeholders, including owners, tenants, OCs (or other residents' associations) and property management companies. Ineffective communication among stakeholders or inadequate professional knowledge are possible sources of conflicts and disputes. HAD has been providing assistance and support to OCs to enable them to handle building management matters effectively. Such assistance and support include attending 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 for reference.

The government encourages owners to resolve disputes over building management through communication and by mediation in order to find a win-win solution and reduce the financial burden on the parties involved. District Offices handle enquiries and complaints relating to building management, encourage owners to resolve disputes with a positive attitude, and refer those owners who are in need to any of the 10 Property Management Advisory Centres of the Hong Kong Housing Society for free appointments with lawyers, during which professional legal advice can be sought. With the active coordination of the Building Management Liaison Teams under HAD, most of the cases can be settled through enhanced communication among the parties concerned. If the parties concerned are willing to resolve their disputes through professional mediation service, HAD will make the necessary arrangements. The Lands Tribunal also offers free consultation services to any party seeking mediation and provides the parties concerned with a list of qualified mediators.

I have already mentioned whether we need to further amend the Ordinance, so as

to keep pace with time and better meet actual social needs. We have also started the public consultation on the regulation of the property management industry, which will end in the middle of next month. Having regard to the views collected, we will consider introducing a legal regulatory framework to enhance the professionalism of the industry. We believe that these will help safeguard owners' interests.

Thank you President.

Ends/Wednesday, February 16, 2011

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