

## LCQ12: Management fees of housing estate

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Following is a question by the Hon Starry Lee and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (July 6):

Question:

According to the Lands Department's Guidelines for Deeds of Mutual Covenant (the Guidelines), property management companies may receive a manager's remuneration which cannot exceed 10% to 20% of the total expenses incurred in the management of the buildings, based on the number of units in different buildings. The owners from quite a number of housing estates have criticised that these maximum percentage levels have rendered the management fees out of tune with the market, and the threshold to replace management companies is too high and even if the performance of the first management company is not satisfactory, the replacement shall be passed by the votes of the owners holding not less than 50% of the shares in aggregate. In addition, they have pointed out that in the absence of owners' corporations (OCs) in some new housing estates, the owners do not have the means to control the expenses incurred by management companies for the maintenance, tendering and commencement of new building works, etc., but the formation of an OC must be passed by a majority of the votes of the owners and supported by the votes of the owners holding not less than 30% of the shares in aggregate at a general meeting of the owners convened under section 3 of the Building Management Ordinance (Cap. 344) (the Ordinance). The owners of quite a number of large housing estates find it difficult to comply with such requirements. In this connection, will the Government inform this Council:

(a) whether it knows, the current percentage of the management fees of large housing estates in general in the total expenses incurred in the management of the estates; when and based on what criteria the maximum percentages as stipulated in the Guidelines were determined; whether it has planned to review such maximum levels; if it has, of the details; if not, the reasons for that;

(b) whether it will review the existing threshold for the replacement of management companies of obtaining the agreement of the owners holding not less than 50% of the shares in aggregate; if it will, of the details; if not, the reasons for that; and

(c) whether it knows the names of the housing estates which have not yet formed an

OC at present and the reasons for that, with a breakdown by District Council district; given that according to section 3A or section 4 of the Ordinance, the owners holding not less than 20% or 10% of the shares in aggregate may, pursuant to the relevant provisions, resolve to apply to the Secretary for Home Affairs or the Lands Tribunal for convening a meeting of the owners for the purpose of selecting an OC, of the respective numbers of such applications in the past three years, and among them, the number of those for which OCs were finally appointed, as well as the reasons why OCs could not be formed in the other cases?

Reply:

President,

The Building Management Ordinance (Cap 344) (the Ordinance) provides a legal framework for the formation of Owners' Corporations (OCs) to facilitate effective building management.

As regards the termination of the appointment of Deed of Mutual Covenant (DMC) managers, we understand that the service or fee level of some property management companies (PMCs) may not be able 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 DMCs, the Legislative Council (LegCo) passed the resolution to add a new provision to the Ordinance when it was amended in 2007, 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, and supported by the owners of not less than 50% of the shares in aggregate, terminate by notice the DMC manager's appointment. According to the Guidelines for DMCs (the DMC Guidelines) issued by the Legal Advisory and Conveyancing Office (LACO) of the Lands Department (revised version of June 2011), prior to the formation of the OC, the Owners' Committee may terminate the managers' appointment without compensation by a resolution passed by a majority of votes of owners in an owners' meeting and supported by owners of not less than 50% of the undivided shares in aggregate (excluding the undivided shares allocated to common areas) and by giving the manager three months' notice in writing.

Regarding the remuneration of the PMCs, if the PMC is the DMC manager of a building, according to the DMC Guidelines, the percentage of the manager's

remuneration is calculated in accordance with the number of residential units and parking spaces. If the number of residential units and parking spaces is 20 or below, the percentage of the manager's remuneration must not exceed 20% of the total expenses, costs and charges necessarily and reasonably incurred in the management of the development (excluding the manager's remuneration itself and any capital expenditure or expenditure drawn out of the Special Fund); if the number of residential units and parking spaces is 21 to 100, the percentage of the manager's remuneration must not exceed 15%; if the units and parking spaces is 101 or above, the percentage of the manager's remuneration must not exceed 10%.

As for the formation of OCs, at present, owners can convene an owners' meeting to establish an OC in accordance with sections 3, 3A or 4 of the Ordinance. In most circumstances, owners appoint an MC and form an OC under section 3 of the Ordinance. A resolution to appoint an MC shall be passed by a majority of the votes of the owners; and supported by the owners of not less than 30% of the shares in aggregate. If owners are unable to form an OC under section 3 of the Ordinance, they may also form an OC in accordance with sections 3A or 4 of the Ordinance, which requires a lower threshold of shares. Section 3A of the Ordinance stipulates that the owners of not less than 20% of the shares in aggregate may apply to the Secretary for Home Affairs for appointing a convener. According to section 4 of the Ordinance, the owners of not less than 10% of the shares in aggregate may also apply to the Lands Tribunal for appointing a convener. The convener may convene an owners' meeting according to the relevant orders for the purpose of appointing an MC and forming an OC by passing a resolution by a majority of the votes of the owners.

In fact, subsequent to the public consultation and detailed deliberation at the Bills Committee of the Legislative Council in 2000, the Administration amended the ordinance to reduce the requirement of the support of the owners of 50% of shares in aggregate under section 3 of the Ordinance to 30%, as well as reducing the requirement of the support of the owners from 30% and 20% to 20% and 10% of the shares in aggregate respectively under sections 3A and 4 of the Ordinance, so as to facilitate the formation of OCs.

We understand the public concerns on the Ordinance. We have already established a Review Committee on the Building Management Ordinance (the Review Committee) which is currently conducting the review work in detail. The Review Committee and its co-opted members include LegCo Members, professionals from the relevant industries and experienced MC members of the OCs. The Review Committee will

study the problems commonly found in respect of building management, including the termination and remuneration of the DMC managers. The Review Committee will also examine if these problems can be resolved through further amending the Ordinance. Besides, the Review Committee will make recommendations to the Government on measures to enhance the operation of OCs and protect the interests of individual owners.

For the three parts of the question, our reply is as follows –

(a) & (b) The Lands Department indicated that the existing LACO issued the earliest DMC Guidelines on October 15, 1987 via the LACO Circular Memorandum No. 91. The version of 1987 has already laid down the maximum limits of the percentage of the manager's remuneration, which was drawn up in view of the then social circumstances and needs.

Regarding the current percentage of the management fees of large housing estates in general in the total expenses incurred in the management of the estates, the Government does not have information in this regard.

As mentioned above, the Review Committee is conducting the review on the Ordinance and has already convened a number of meetings. The items under review include the remuneration of and the threshold of terminating the DMC managers. The Review Committee commenced operation in January this year and aims to submit an interim report to the Home Affairs Bureau after a year to put forth suggested directions to amend the Ordinance.

If the Review Committee's suggestions concern the amendment of the DMC Guidelines, the Lands Department will consider and follow up on these relevant suggestions.

(c) At present, the detailed number of buildings which have not yet formed an OC in the eight urban districts with a relatively higher concentration of old buildings and New Territories districts with more small houses is as follows -

Districts	Number of buildings which have not yet formed an OC
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Central & Western	1,938
Kowloon City	1,242
Sham Shui Po	1,126
Wan Chai	1,247
Yau Tsim Mong	1,512
Sai Kung	936
Tai Po	2,391
Yuen Long	7,508
Other Districts	4,064

There are various reasons for buildings not forming OCs. The common reasons can be categorised into four. First, quite a number of buildings have already formed other forms of owner/resident organisations, which have maintained close communication with the PMCs and can effectively manage their buildings. Second, some buildings have already engaged PMCs and the PMCs concerned can provide good building management and maintenance services, with which the residents are satisfied. Third, there are many old single tenement buildings in old districts, the flat owners of which are mainly elderly or grass-root residents, who have limited financial resources and ability in organising themselves for action. In addition, the ownership is unclear in many of these buildings, with some other owners leasing their flats to tenants and collecting the rent through agents. As it is difficult to maintain regular contact with these owners, forming OCs in these buildings are often very difficult. Fourth, since a small number of developers (who usually hold the PMCs) hold a large percentage of undivided shares, other owners find it very difficult to obtain sufficient votes to form an OC if the developers do not cooperate.

As for individual house developments, owners of these 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. Thus, the Ordinance does not cover these individual house developments which do not have undivided shares.

In fact, apart from forming OCs, private property owners can also choose to form other forms of resident organisations, such as Owners' Committees, or engage a PMC to assist the owners in handling the daily building management and maintenance work.

In the past three years from 2008 to 2010, the number of applications made under section 3A of the Ordinance is five. Among these cases, MCs were finally appointed and OCs were formed in four cases, while one case failed to appoint an MC in order to form an OC because the resolution was not passed by the majority of the vote of the owners. According to the records of the Lands Tribunal, there was one application filed to the Lands Tribunal pursuant to section 4 of the Ordinance in each of the year of 2008 and 2009. However, the Lands Tribunal does not have the information on whether an MC is appointed or not.

Ends/Wednesday, July 6, 2011

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