

LCQ8: Review of the Building Management Ordinance

Following is a question by the Hon Mrs Regina Ip Lau Suk-yee and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (December 14):

Question:

In recent years, the Government has all along been encouraging and assisting owners in multi-storey buildings to form owners' corporations (OCs) under the Building Management Ordinance (Cap. 344) (the Ordinance) to represent all owners to deal with issues relating to the control, management or administration of the common parts of buildings under the corporate body status of OCs. The authorities have also indicated that they will soon conduct a review of the Ordinance. In this connection, will the Government inform this Council:

(a) given that under section 40A of the Ordinance, the Authority or an authorized officer may, for the purpose of ascertaining the manner in which a building is being controlled, managed or administered, enter and inspect any common parts of a building, and attend meetings of an OC and inspect the records of account or other documents kept by an OC, of the number of times the authorities have invoked the powers under section 40A since 2005; and the factors that the authorities consider in deciding whether or not such powers should be invoked;

(b) given that Schedule 3 to the Ordinance stipulates that the chairman of the management committee (the committee) of an OC shall convene a general meeting of the owners at the request of not less than 5% of the owners for the purposes specified by such owners, yet some owners have indicated that such general meetings are only convened when there is a dispute between the committee and the owners and when the advice offered by the District Offices regarding the dispute is not accepted or the mediation undertaken is not successful, thus such general meetings of the owners presided over by the chairmen of the committees may inevitably invite suspicion that there may be favouritism towards one party to the dispute, whether the authorities will, when reviewing the Ordinance, consider introducing a statutory requirement that a general meeting of the owners shall be presided over by a third party, so as to increase fairness and transparency of the meetings and to address the owners' concerns; if they will not, of the reasons for that; and

(c) given that section 20 of the Ordinance stipulates that an OC shall establish and maintain a general fund to defray the cost of the exercise of its powers and the performance of its duties, and to pay Government rent, premiums, taxes and other outgoings in relation to any maintenance or repair work, and that an OC may also establish and maintain a contingency fund to provide for any expenditure of an unexpected or urgent nature, yet some residential property owners have complained to me that some OCs seek to reduce the amounts of such funds by resolutions passed at general meetings of owners, and have the shortfall of the funds in meeting the relevant expenses shared among owners according to their ownership shares, whereas at present the Ordinance neither restricts nor regulates the apportionment of such a shortfall, whether the authorities will, when reviewing the Ordinance, consider introducing provisions to plug the existing loopholes or specify the relevant arrangements; if they will not, of the reasons for that?

Reply:

President,

Management of private multi-storey buildings is the responsibility of all owners. Our policy objective is to encourage owners to organise themselves to effectively manage their properties. The Building Management Ordinance (Cap 344) (BMO) was enacted by the Government to provide a legal framework to facilitate owners to form Owners' Corporations (OCs) and to carry out the building management work properly in accordance with the requirements of the legislation.

To keep pace with changing circumstances since then and to address public concerns, the Home Affairs Bureau established in January 2011 the Review Committee on the Building Management Ordinance ("Review Committee"), which is now studying in detail common problems in building management and solutions to such problems. The Review Committee will examine if these problems should be resolved through amending the BMO. It will also make recommendations to the Government on measures to enhance the operation of OCs and protect the interests of owners. We expect that the Review Committee will submit an interim report to the Government by the first half of 2012.

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

(a) Since 2005, there have been 11 cases of requests for the Authority (i.e. the

Secretary for Home Affairs (SHA)) to invoke the powers under section 40A of the BMO. These cases involve conflicts between owners and OCs, as well as among owners. It is understandable that some owners would request the Government to intervene in their disputes as referees. From the Government's point of view, due consideration must be given and sufficient evidence must be presented in exercising the power to intervene in conflicts among owners.

Staff of the Home Affairs Department (HAD) conducted in-depth investigations on each of the above cases. Upon scrutiny by the senior staff and seeking of legal advice, proposals on how the cases should be handled were made to SHA. So far, none of the cases submitted by HAD has recommended taking legal action. Having thoroughly weighed all relevant factors, SHA agreed with each of the proposals and decided not to invoke the powers under the BMO.

There are prerequisites and limits on the powers vested in the Authority under the BMO. The applicability of the powers is not the same as what some owners may envisage. For instance, an owner said that there was financial problem of a building and requested the Authority to invoke Section 40A of the BMO to inspect the financial statements of the OC. However, the prerequisite of exercising such power is that there must be major building management problems involved. The legislation has provided a threshold in exercising the power. Having further understanding the situation, we confirmed that the circumstance of the building did not warrant the invocation of the powers. Another example is that an owner requested the Authority to invoke Section 40A to inspect the instrument for the appointment of a proxy so as to determine its validity. However, the BMO expressly provides that only the management committee (MC) chairman or the person presiding at the meeting (in the absence of the chairman) has the power to make these decisions. Even if SHA inspects the relevant proxy instruments, he does not have the authority to determine their validity. Any owner who disagrees with the decision of the MC chairman may apply to the Lands Tribunal for adjudication under Section 45 and Schedule 10 of the BMO.

The powers vested in the Authority under the BMO should be exercised for the benefits of the public. Our policy objective is to encourage owners to form OCs to work together on building management, so as to foster a harmonious living environment, ensure that the owners' interest is best protected and avoid aggravation of conflicts in the neighbourhood. Hence, we have endeavoured to resolve the disputes through communication and admonition. Nevertheless, if an OC deliberately

violates the law, jeopardises the owners' legal rights and does not take the District Office's advice, we are determined to invoke such powers.

(b) Private buildings are owners' properties and owners have the responsibility to manage the common parts of their buildings and oversee the operation of their OCs. In this connection, owners are empowered and shall be responsible under the Ordinance to monitor whether their OC and its MC are performing their work according to the BMO. This includes if owners have any views on building management issues, a general meeting of the OC may be convened to discuss the issues within a specified time frame at the request of not less than 5% of the owners made to the chairman of the MC under paragraph 1(2) of Schedule 3 to the BMO.

An OC chairman is appointed by resolution moved by a majority of votes of the owners either voting personally or by proxy at an owners' general meeting convened under Section 3, 3A or 4 of the BMO. The MC chairman, therefore, has a definite degree of representation. Moreover, all matters to be resolved at an owners' general meeting convened at the request of not less than 5% of the owners shall be decided by a majority of votes. The overall fairness and transparency of the meeting shall not be dampened by any individual persons or the person presiding at the meeting.

To further improve the procedures of OC meetings and to prevent any MC chairman from only giving notice of meeting while delaying the holding of a general meeting, an amendment to the BMO was made in 2007, with a new provision added to Schedule 3, providing that the MC chairman shall convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receipt of such a request, and shall hold the general meeting within 45 days of receipt of such a request.

We understand the concern of some owners over the requirements in relation to the holding of OC meetings. We shall reflect their views to the Review Committee.

(c) Financial management is important to building management. The BMO has thus made certain provisions on the financial management of OCs for their effective management of the financial matters. Under Section 20 of the BMO, an OC shall establish and maintain a general fund to defray the cost of the exercise of its powers and the performance of its duties under the deed of mutual covenant and the BMO, as well as to meet the daily general expenses of the building. An OC may also establish and maintain a contingency fund for use in emergencies or when the general fund is

insufficient. The amount to be contributed by the owners to both funds shall be determined according to Section 21 of the Ordinance. Schedule 5 to the BMO stipulates that the MC shall draw up an annual budget for the OC in which the estimates of each expenditure item, whether paid by the general fund or contingency fund, shall be included.

It is the responsibility of the MC to prepare an annual budget based on the actual requirements of the building to ensure that the amount required to be contributed by owners is sufficient to cover the basic expenses and/or contingency of the OC and the building. If the MC is of the opinion that any sum set out in the budget is insufficient to meet the expenditure, a revised budget may be prepared. According to section 21(1A) of the BMO, if the subsequent amount determined by the MC increases by over 50% of the preceding amount, that subsequent amount shall be approved by the OC by a resolution passed at a general meeting of the OC.

We understand that some owners consider it necessary to enhance the requirements pertaining to the financial arrangements of OCs. We shall reflect their views to the Review Committee.

Ends/Wednesday, December 14, 2011

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