

LCQ5: Disputes on building management

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 14)

Question:

Since the commencement of the Building Management (Amendment) Ordinance 2007 (the Ordinance), I have been receiving complaints from owners' corporations (OCs) and owners, saying that the Ordinance could not help resolve disputes between the owners and OCs nor those between owners and property management companies. Moreover, they consider that the Home Affairs Department (HAD) is unable to provide needed assistance to them. On the other hand, mediation service has been used by the Lands Tribunal (LT) since July 1, 2009 as a standard practice for the disposal of building management cases in an efficient, expeditious and fair manner. In this connection, will the Government inform this Council:

(a) of the total number of cases received in each of the past five years by HAD and its various District Offices from owners or members of OCs seeking assistance in issues concerning compliance with the Ordinance; the mediation work carried out by HAD on the disputes involved in these cases; the number of cases involving breaches of the Ordinance; and the number of cases in which legal proceedings have been instituted by the authorities as well as the respective issues involved in such cases;

(b) as some members of the public have pointed out that there are inadequacies in the Ordinance, whether the Government has considered amending the relevant legislation; if it has, of the specific legislative timetable; if not, the reasons for that; and

(c) of the financial and other resources currently allocated to the mediation service scheme under LT each year; whether it has assessed the results achieved by this scheme so far and compared them with the authorities' expectations; if there is a discrepancy between them, how the authorities will improve the scheme?

Reply:

President,

Building management is the responsibility of property owners. The policy of the

Administration is to play the role of a facilitator to, through multi-pronged measures, encourage and assist owners to form owners' corporations (OCs) and provide appropriate support to assist owners in discharging their building management responsibilities. The Building Management Ordinance (Cap 344) (the Ordinance) provides a legal framework for building management, formation and operation of OCs, and other related matters. The Building Management (Amendment) Ordinance 2007 primarily aims to further assist OCs in performing their duties, safeguard the interests of property owners, enhance the clarity and rationality of the appointment procedures of members of management committees (MCs).

My reply to the Hon Tong's question is as follows:

(a) The Home Affairs Department (HAD) and its District Offices (DOs) have 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 meetings convened under the Ordinance and procedures pertaining to procurement, repair and financial management etc. If there are disputes among owners, OCs and management companies, the DOs will make every effort to assist in mediation in an impartial manner, which includes arranging negotiation meetings between the two parties in dispute. However, staff of the DOs have no authority to determine on the matters in dispute.

The number of requests for handling disputes on building management received by the DOs in the past five years are as listed in the table:

Year	2007	2008	2009	2010	2011
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Cases	1,801	1,768	1,590	1,749	1,479

Among the about 1,000 cases each year, most of them are caused by different understanding and interpretation of the provisions of the Ordinance by the owners and the OCs. Therefore, staff of the DOs will give advice to them with reference to relevant provisions of the Ordinance and precedent cases. In fact, most of these cases can be settled through communication and co-ordination.

If the dispute persists, the HAD will refer them to the Panel of Advisors on Building Management Disputes set up under the Department to meet a team of

experts for professional advice. The DOs will also refer them to a voluntary professional mediation service scheme launched by the HAD in collaboration with the Hong Kong Mediation Council and the Hong Kong Mediation Centre to receive free professional mediation services, provided that both parties are willing to try and accept to deal with their dispute by mediation. If the dispute remains unsettled, the DOs will advise the OCs or owners to seek legal advice and refer the case to the Lands Tribunal (LT) for judgment.

In the past five years, the HAD has handled a total of 14 cases of suspected non-compliance of the Ordinance. Upon receipt of the cases, the HAD will thoroughly examine them and conduct investigation. So far no prosecution has been instituted under the Ordinance, mostly because there was insufficient evidence, the provisions of the Ordinance were inapplicable, or active remedial actions had been taken by the OCs to rectify the irregularities, etc.

(b) In order to ensure the Ordinance keep pace with changing circumstances, the HAD is conducting a review on the Ordinance. The Review Committee on the Building Management Ordinance (Review Committee), comprising members from relevant sectors, has been established. The Review Committee has examined the various common building management problems in its first stage of work. In its second stage of work, the Review Committee will focus on the more complicated issues and conduct an in-depth study on them, with the aim of submitting its recommendations to the Administration next year.

(c) To tie in with the LT's adoption of mediation services as a standard practice since July 1, 2009, the Building Management Mediation Co-ordinator's Office (BMMCO) was set up in the LT by the Judiciary in January 2008 to help litigants in building management cases to consider using mediation to resolve their disputes. The role of the BMMCO is to act as a focal point for the litigants to seek information relating to building management mediation. The BMMCO conducts information sessions on mediation and reports attendance of the parties concerned to the court. It also provides pre-mediation consultation with a view to facilitating those litigants who are willing to seek mediation to select suitable mediator. Mediation is conducted by independent and professional mediators outside the Judiciary.

The BMMCO is staffed by a Mediation Affairs Officer, with professional and clerical support. In 2012, the salary expenses of the BMMCO is approximately \$1,330,000.

The Judiciary had conducted an in-house mediation user satisfaction survey for the period of three years from January 2008 to end of December 2010. On the whole, the users gave very positive feedback about the service of the BMMCO. Of the 329 respondents surveyed, 77% were "very much satisfied" or "satisfied" with the service they received from the BMMCO.

During the four-year period from January 1, 2008 to December 31, 2011, a total of 500 cases have been referred to mediators by the BMMCO. As at December 31, 2011, 441 mediation cases had been conducted and completed, of which 191 cases had been settled. The success rate, based on the number of completed cases, is 43%. The Judiciary would continue to monitor the service provided by the BMMCO.

Thank you, President.

Ends/Wednesday, November 14, 2012

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