

Executive Summary of the Investigation Report on the Role of Home Affairs Department in Facilitating the Formation of Owners' Corporations

Background

This Office has been receiving a number of complaints against the Home Affairs Department (HAD) for not providing adequate assistance to property owners in forming Owners' Corporations (OCs) for the management of their buildings. In April 2001, Government announced a comprehensive implementation strategy on building safety and timely maintenance including responsible building management. For this, Government allocated to HAD additional recurrent resources of \$43.9 million per annum. Meanwhile, there is considerable community concern over HAD's role in facilitating the formation of OCs. Against this background, The Ombudsman decided to conduct a direct investigation under section 7 (1)(a)(ii) of The Ombudsman Ordinance, Cap. 397.

The Investigation

2. This direct investigation probes the means and mechanism adopted by HAD for assisting property owners in the formation of OCs, scrutinises relevant departmental guidelines and procedures, examines the role(s) of HAD staff in facilitating the formation of OC, ascertains the adequacy and effectiveness of the mechanism, and assesses the need for improvement.

Government Policy

3. Responsibility for managing and maintaining private property rests with the owners. The role of Government is to assist and support responsible owners and to take action against non-compliance. Government's established policy on private building management is to encourage property owners to form OCs and to advise and assist them in carrying out their responsibilities.

Legal Framework

4. The Building Management Ordinance, Cap. 344 (BMO) provides for the incorporation of owners of private property and the management of their buildings. Sections 3, 3A and 4 provide for the appointment of Management Committee (MC). Section 5 provides for serving of notices and voting at owners' meetings convened for the purpose of forming OCs. Sections 7 and 8 provide for incorporation of owners. Schedule 2 provides for the composition

and procedures of MC while Schedule 3 for meetings and procedures of OC. Various provisions in the BMO make reference to the Deed of Mutual Covenant, a private contract between the developer and owners stipulating their respective rights and obligations.

Means and Mechanism for Assisting Property Owners

Organisational Set-up and Staff Deployment

5. In June 2001, HAD set up a Building Management Division in its headquarters for the overall planning and coordination of building management functions and services. The Division also provides support to staff in districts. To strengthen this support, maintenance and legal professionals have been deployed since March and November 2002 respectively to provide expert advice, prepare manuals and organise training for frontline staff.

6. At the regional level, HAD set up four Building Management Resource Centres (BMRCs) in Kowloon, Hong Kong, New Territories West and New Territories East to provide information, answer enquiries, offer advice and organise training courses, workshops and exhibitions on building management. BMRCs also arrange appointments for free expert advice by seven professional bodies upon the request of owners and MCs/OCs.

7. At the district level, there are District Building Management Liaison Teams set up in the 18 District Offices (DOs) to undertake frontline building management work, including OC formation. Comprising full-time and suitably trained Liaison and Housing Grade Officers, these teams assist owners to form OCs, provide outreach support service to OCs and owners, sit in meetings of OCs/MCs, handle complaints and mediate in disputes. They are assisted by Temporary Community Organisers (TCOs), varying in numbers according to district needs and workload.

Means of Service Delivery

8. HAD assists in OC formation by providing information, answering enquiries, offering advice, providing facilitation¹, handling complaints and mediating disputes as well as organising publicity and training programmes.

¹ Facilitation services include the issue of appeal letters and conduct of household visits to encourage owners to form OCs; loan of exhibition panels, arrangements of venues for owners' meetings and issue of exemption certificates in order to obtain a copy of owners' records from the Land Registry free of charge.

Support and Control

9. HAD supports frontline staff by publishing reference manuals, advising on difficult cases and equipping them with the necessary knowledge and skills. It promulgates appropriate guidelines and procedures for control and consistency in services, holds regular staff meetings, sets performance indicators and targets and conducts regular review of its services.

Observations and Opinions

Building Management (Amendment) Ordinance 2000

10. The Building Management (Amendment) Ordinance 2000 (BM(A)O), in operation since 1 August 2000, signalled Government's determination to enhance building management. The BM(A)O sought, *inter alia*, to facilitate the formation of OCs by lowering the percentage of undivided shares of a private building required for OC formation from 50%, 30% and 20% under sections 3, 3A and 4 of the BMO to 30%, 20% and 10% respectively. A comparison of the OC registration statistics over the two 24-month periods before and after August 2000 (*Appendix*) shows that there was an increase of only seven OCs (1%) formed under section 3 but a decrease of one OC (20%) formed under section 3A. No OC was formed under section 4 during the 48 months.

Means of Service Delivery

Information

11. The information booklets and VCDs produced by HAD offer good reference on the statutory provisions governing the formation of OCs and related services but are inadequate for practical guidance. HAD has not provided sufficiently detailed procedures, checklists, forms or documents for different stages of OC formation for public reference, bearing in mind OCs comprise mainly, often wholly, volunteers. The information contained in HAD website on building management <www.buildingmgt.gov.hk> is time-consuming, often difficult, to retrieve without themes or sitemap as guide.

Advice

12. BMRCs open from 10 a.m. to 6:30 p.m. on weekdays and from 10 a.m. to 2 p.m. on Saturdays. The opening hours are extended to 10 p.m. on two evenings a week and are closed on Saturday afternoons, Sundays and public holidays. This is not sufficiently customer-oriented : most property owners are more likely to be free in the evening and over the weekend. Past

customer satisfaction surveys conducted by HAD have not covered the opening hours of BMRCs.

13. Each BMRC operates a telephone enquiry and advisory service, with different telephone numbers and different operating hours. This is not sufficiently customer-oriented, and may even be confusing to users. As for their answering enquiries and providing advice, there are user feedback that some HAD staff are not conversant with the BMO; that their advice is not specific enough and their attitude not sufficiently enthusiastic.

14. For the free expert advisory service provided by professional bodies at BMRCs, HAD has not set out definite criteria. As a result, some owners have been misled and not made use of the service.

Facilitation

15. HAD provides little guidelines or procedures to districts for the issue of appeal letters and conduct of household visits to encourage owners to form OCs. As a result, different districts adopt different practices, with varying degrees of enthusiasm and proactivity. Similarly, annual visits to private buildings, to identify those where OCs can be formed, suffer from a lack of guidance. In this light, these activities may not achieve their intended purpose.

Complaint Handling and Dispute Resolution

16. Mediation performed by HAD is informal and cannot proceed without the consent of the disputing parties. On the other hand, arbitration of building management disputes by the Lands Tribunal is time-consuming and costly. A variety of mechanism exists for the settlement of labour disputes and employment claims in a quicker, simpler and less expensive manner than the Lands Tribunal. HAD should take reference from these for settling building management disputes.

Publicity and Education

17. HAD has introduced services for OC formation in its booklets and website (para. 11). However, some of these services, such as facilitation, are not covered. There is also no publicity leaflet to promote these services. As a result, some owners have not been aware and accordingly have not made use of such services.

18. Some District Councils (DCs) or DOs publish building management bulletins or newsletters to promote good building management in their districts. Due to resource constraints, these publications have limited circulation and may not be sufficiently informative in content or attractive in design.

19. On building management training to owners and MC/OC members, only 1% of the talks and workshops conducted from 1999 to 2002 focused solely on OC formation while 99% concerned other building management topics, with OC formation only briefly covered. The participants for most of the talks and workshops were members of existing MCs/OCs rather than owners interested in the idea of, or wishing to form, OCs.

Support and Control

Staff Advisory Service

20. The internal staff advisory service has been operating in a rather informal and unprofessional manner, with little guidelines and procedures on its operation. There is a lack of clear designation of staff with expertise in different areas of building management to advise frontline staff. The expertise of the maintenance and legal professionals in HAD headquarters (para. 5) have not been used to the best advantage.

Staff Training

21. With the increase in resources, HAD has over the past two years considerably intensified training for frontline staff on the BMO and other building management issues, skills for negotiation, interpersonal relations, communication, complaint handling and mediation. HAD should build on this and strengthen its staff training programmes.

Guidelines and Procedures

22. Staff should be guided by common guidelines and clear procedures to ensure the release and receipt of common and consistent messages and to make for continuity despite staff movement. However, frontline staff in HAD are informed of operational arrangements for service delivery only verbally at induction courses, training courses and staff meetings. Such informal arrangements are ad hoc, unstructured and inadequate.

Performance Monitoring

23. The performance indicators currently adopted by HAD cannot adequately reflect its efforts on OC formation. There is a need to include more indicators and set more targets. HAD should also regularly publish its targets and achievement to enable the public to monitor its performance more readily.

Service Reviews

24. In May 2002, HAD set up an internal working group to review and identify means to further improve its building management services. Some Government departments have set up client liaison groups to tap customer feedback and to channel suggestions to senior management direct. This is a good practice which HAD should consider.

25. At the district level, few District Building Management Liaison Teams have reported their work or consulted their respective DCs (or its Committees). As DC members have close working relationship with the MCs/OCs and owners in their districts and are well acquainted with local building management problems, they, as district representatives, are well placed to offer valuable views and comments on the strategies, priorities and targets of district building management services.

Organisational Set-up and Staff Deployment

District Building Management Liaison Teams

26. While some DOs have dedicated District Building Management Liaison Teams nominally, the liaison manpower in these teams have in practice been merged with staff in the community liaison team to perform both community liaison and building management work in their precincts. This dilutes staff expertise and undermines the intentions for dedicated outreach teams to provide building management services.

Temporary Community Organisers

27. With the increasing complexity of building management issues and introduction of legislation, it is necessary for full-time officers with the requisite skills and experience to replace the TCOs in building management duties. The current duties of TCOs have become obsolete and should be reviewed and revised.

Other Observations

Enforcement of Legislation

28. HAD has explained that it has no power or duty to ensure compliance with the legal requirements for OC formation. While HAD may not afford the resources for initiating enforcement action, it cannot shy away from investigating into allegations of non-compliance.

Public Expectations

29. HAD sees its role as liaison and advisory in OC formation and private building management. There are user feedback expressing discontent over the limited part played by HAD while some consider HAD's role unclear and its assistance inadequate. These comments are understandable, given the rising community expectations and the increasing complexity of building management issues.

Conclusions

30. On the basis of our investigation, this Office has come to the following conclusions -

- (a) there is scope for HAD to improve the means and mechanism for delivering services on OC formation;
- (b) HAD will benefit from clearer departmental guidelines and procedures on services for OC formation;
- (c) HAD staff should be more professional and proactive in assisting owners in OC formation; and
- (d) HAD's overall efficiency and effectiveness in OC formation work could be raised if the points at (a) to (c) above were properly addressed.

Recommendations

31. The Ombudsman has made the following recommendations to HAD -

Means of Service Delivery

- (a) to produce a comprehensive information-cum-resource kit including VCD on OC formation for reference of owners and those who wish to form OCs;
- (b) to improve the website on building management by adding a thematic section and a sitemap for ready retrieval of information;
- (c) to seek client feedback and review the opening hours of BMRCs to suit client convenience;

- (d) to enhance the telephone enquiry and advisory service for client convenience;
- (e) to enrich the contents of reference manuals, and to publish categorised case studies of good practice and summaries of court judgments on building management cases for staff reference;
- (f) to produce information materials, such as leaflet and poster, on the criteria, limitations and procedures of the free professional advisory service;
- (g) to identify and review operations essential to the delivery of services on OC formation, draw up appropriate criteria, guidelines and procedures for these operations and suitably promulgate them among staff;
- (h) to consider the scope for simpler, less formal and less costly mechanism for resolving building management disputes;
- (i) to expedite the production of a clear and comprehensive pamphlet to publicise building management services;
- (j) to publish a central building management bulletin or newsletter to disseminate to the public up-to-date building management information and services;
- (k) to organise and conduct more talks with OC formation as the main theme;

Support and Control

- (l) to provide support for frontline staff by professional advisory service in a more systematic manner;
- (m) to strengthen staff training on customer services, communication and mediation skills as well as training on the BMO and other building management issues;
- (n) to include more performance indicators to better reflect efforts on OC formation and to set out corresponding targets to better monitor staff performance;

- (o) to regularly publish performance targets and achievement on OC formation services for improved transparency and accountability;
- (p) to set up client liaison group(s) to tap client feedback and suggestions for service improvement;
- (q) to tap the local knowledge of DCs for views on strategies, priorities, targets and feedback on the work and performance of District Building Management Liaison Teams;

Organisational Set-up and Staff Deployment

- (r) to rectify the situation in some DOs where District Building Management Liaison Teams exist nominally but not in practice;
- (s) to review and revise the duties of TCOs;

Others

- (t) to consider amending the law to empower the department to investigate into complaints alleging non-compliance with the legal requirements for OC formation; and
- (u) to review critically, in consultation with stakeholders, the department's role and services in building management.

Final Remarks

32. Overall, HAD has accepted all recommendations in the report. The Ombudsman is pleased that the department has taken steps to implement a number of similar measures in the course of our investigation.

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**OC Registration Statistics before and after the Enactment
of the Building Management (Amendment) Ordinance 2000**

Table 1: OC Registration Statistics

<i>Period</i>	<i>No. of New OCs formed under</i>			
	<i>s. 3</i>	<i>s. 3A</i>	<i>s. 4</i>	<i>Total</i>
8/1998 to 7/1999	271	2	0	273
8/1999 to 7/2000	294	3	0	297
8/2000 to 7/2001	288	2	0	290
8/2001 to 7/2002	284	2	0	286

Source : HAD

**Table 2: Comparison over the Two 24-month Periods
before and after August 2000**

<i>Section</i>	<i>8/1998 to 7/2000</i>	<i>8/2000 to 7/2002</i>	<i>Difference</i>	<i>Percentage</i>
3	565	572	7	1%
3A	5	4	-1	-20%
4	0	0	0	0%

Note : The Building Management (Amendment) Ordinance 2000 came into operation on 1 August 2000.

