

**Minutes of the 15th Meeting of
Housing and Building Management Committee
Yau Tsim Mong District Council (2012-2015)**

Date : 29 January 2015 (Thursday)
Time : 2:30 p.m.
Venue : Yau Tsim Mong District Council Conference Room
4/F., Mong Kok Government Offices
30 Luen Wan Street
Mong Kok, Kowloon

Present:

Chairman

Mr CHONG Wing-charn, Francis

Vice-chairman

Ms KWAN Sau-ling

District Council Members

Mr CHUNG Kong-mo, JP
Ms KO Po-ling, BBS, MH, JP
Mr CHAN Wai-keung
Mr CHOI Siu-fung, Benjamin
Mr HUI Tak-leung

Mr LAU Pak-kei
Mr WONG Chung, John
Mr WONG Kin-san
Ms WONG Shu-ming

Co-opted Members

Mr LEE Chung-ming
Mr HO Fei-chi, Stephen

Mr LEUNG Hang-fai
Mr CHIN Chun-wing

Representatives of the Government

Mr TAM A-ray, Albert	Senior Structural Engineer/F1	Buildings Department
Mr CHAN Chi-ching, Thomas	Senior Liaison Officer (Building Management) Yau Tsim Mong District Office	Home Affairs Department

Secretary

Ms KWAN Ming-wai, Vivian	Executive Officer (District Council) 2 Yau Tsim Mong District Office	Home Affairs Department
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In Attendance:

Mr KWOK Wai-fan, Franco, JP	Assistant Director (4)	Home Affairs Department
Mr POON Yui-chau, William	Senior Professional Officer/Signboard Control 1	Buildings Department
Mr LEE Wai-hou, Truman	Senior Building Surveyor/Fire Safety 5	Buildings Department
Mr CHIU Wai-kin	Senior Divisional Officer (Building Improvement) 2 (Acting)	Fire Services Department

Mr TANG Kai-ming	Assistant Divisional Officer	Fire Services Department
Mr CHAN Man-hon	Assistant Divisional Officer (Fire Service Installations Task Force)	Fire Services Department
Ms PANG Wai-shan, Catherine	Senior Estate Surveyor/Kowloon Central (District Lands Office, Kowloon West)	Lands Department
Mr AU Wing-hung	Chief Officer (Licensing Authority)	Home Affairs Department
Mr WAN Shun-leung, Vincent	Chief Executive Officer (Licensing Authority)	Home Affairs Department

Absent:

Mr HAU Wing-cheong, BBS, MH	District Council Member	
Mr CHING Man-tai, Benny, MH	Co-opted Member	
Ms TSO Pui-hing, Tammy	Housing Manager/Kowloon West and Hong Kong 3	Housing Department

Opening Remarks

The Chairman welcomed all to the 15th meeting of the Housing and Building Management Committee (“HBMC”). He reported that Ms Tammy TSO, Housing Manager/Kowloon West and Hong Kong 3 of the Housing Department (“HD”) could not attend the meeting. He also reported that Mr HAU Wing-cheong was absent due to other commitments.

2. The Chairman declared that he was the lawyer representing the complainant of the case mentioned in Item 6. According to the Yau Tsim Mong District Council (“YTMDC”) Standing Orders, as the Chairman of a committee under the YTMDC, if he found that he had a personal interest in any discussion item on the agenda of the respective committee meeting, he should declare at the beginning of the meeting for all Members present to decide whether to include the item concerned in the agenda.

3. The Chairman added that the Home Affairs Department (“HAD”) pointed out in its written response that the guesthouse licence holder of the case had appealed to the relevant appeal board. The HAD would not comment further on the case. He proposed that Item 6 be discussed at this meeting, but the discussion should not involve the appeal case. There was no objection.

4. The Chairman also asked Members if he was agreed to speak on Item 6, or he should simply sit in on the meeting, or even withdraw from the meeting during the discussion of the item. If he was required to withdraw from the meeting, he asked if Members agreed that the Vice-chairman would chair the discussion of Item 6.

(Mr LEE Chung-ming joined the meeting at 2:37 p.m.)

(Mr LEUNG Hang-fai joined the meeting at 2:38 p.m.)

5. Mr HUI Tak-leung opined that the meeting should focus on the discussion of the policy regarding cancellation of guesthouse licences. He agreed that the Chairman could

chair the discussion of the item as long as the focus of discussion was on the policy issue in this area only without reference to the case in the discussion paper. There was no objection.

(Mr CHIN Chun-wing joined the meeting at 2:40 p.m.)

Item 1: Confirmation of Minutes of Last Meeting

6. Minutes of the last meeting were confirmed without amendment.

**Item 2: Review of the Building Management Ordinance (Cap. 344) (“BMO”)
(YTMHBMC Paper No. 1/2015)**

7. The Chairman welcomed Mr Franco KWOK, Assistant Director (4) of the HAD to the meeting.

----- 8. Mr Franco KWOK gave a PowerPoint presentation (Annex 1) to briefly introduce the contents of the consultation paper.

(Ms KO Po-ling joined the meeting at 3:00 p.m.)

9. The Vice-chairman asked about the number of target buildings for the Mandatory Building Inspection Scheme in Hong Kong. She said that the Buildings Department (“BD”) would issue notices for building inspection to households in a number of buildings simultaneously. Building owners would have difficulties in appointing relevant persons to implement the works due to the shortage of works inspectors and contractors. As a result, they might need to increase the project estimate to appoint contractors at a higher project cost. She wondered if the BD could issue notices for building inspection to target buildings in phases to provide convenience to the industry in allocating manpower and time for the inspection of aged buildings across Hong Kong. She supported the tightening of the requirements concerning the collection and verification of proxy instruments. Moreover, she noted that owners were misled by some deed of mutual covenant (“DMC”) managers in respect of the tenure of appointment and remuneration that they had to continue the DMC manager’s appointment at a high remuneration even if the DMC manager’s service was unsatisfactory.

(Mr CHUNG Kong-mo joined the meeting at 3:05 p.m.)

10. Mr HUI Tak-leung enquired about the penalties under the BMO (Cap 344). He said that when there were divergent views from owners regarding building management issues, the staff of District Offices (“DOs”) could only assume an advisory role or refer the cases to mediation organisations but could not conduct arbitration directly, which showed that the power vested in the DOs under the law was inadequate.

11. Mr WONG Kin-san hoped that the HAD would consolidate the opinions collected upon the end of the three-month consultation on the BMO review before carrying out another round of consultation with building owners and other relevant persons. He considered that raising the quorum for owners’ corporation (“OC”) meetings to 20% of the total number of owners could mitigate the problem of bid-rigging in building maintenance works. He added

that given the small number of flats in single-block buildings, OC meetings were often called off due to the lack of quorum. While owners of single-block buildings were unable to reach a consensus on building maintenance works, they kept on receiving building repair orders from the BD. Hence, the owners felt that they could do nothing about the issue. He continued that at present, the ratio between the number of OC members and the number of flats in the building was determined according to the scale of the housing estate. He suggested taking reference from the said ratio in determining the quorum for OC meetings. In addition, he had reservation about the suggestion of lowering the threshold for OC formation from 30% to 20% of shares in aggregate as it would reduce the legitimacy of the OC in his opinion. In fact, the Government should encourage more owners to participate in OC meetings and building management works.

12. Ms WONG Shu-ming indicated initial support for the direction of the amendments to the BMO. Nevertheless, she pointed out that the absence of detailed guidance in the BMO regarding the holding of owners' meetings by the OC had resulted in loopholes in building maintenance. For example, the method for verifying the original copy of the proxy instruments for OC meetings was not provided in the BMO nor the format of voting sheets was prescribed. At present, some OCs even counted the voting results without verifying the number of shares held by owners. She was of the view that it would be more appropriate to issue one voting sheet for each holding of the same number of shares. Furthermore, some newly established OCs cast votes by a show of hands while the number of shares represented by each vote was different. She hoped that the HAD would provide guidance to owners in this regard. She continued that the department proposed lowering the threshold for terminating the appointment of DMC managers from 50% to 30% of shares in aggregate. However, since the shares of many private buildings or housing estates were held by conglomerates, i.e. the majority owners, they could still vote for renewing the appointment of the original property management company ("PMC") even if 30% of owners agreed to terminate its appointment. As a result, the management fee would definitely increase. Therefore, she was of the opinion that it was necessary to impose conditions on the lowering of the threshold of shares in aggregate.

13. Mr John WONG said that he and his team together with Mr Thomas CHAN, Senior Liaison Officer of the DO discussed with the representatives of OCs the BMO review at the night of 21 January 2015. He would pass the paper setting out the views concerned to the District Officer later. He disagreed with a one-size-fits-all approach in lowering the shares in aggregate for OC formation. He considered that the threshold should be set according to the number of flats in the building to avoid causing unfairness to large housing estates and single-block buildings. Moreover, the Government should tighten the requirements for verification of proxy instruments as there were often disputes in verifying the authenticity of this kind of instruments. Owners had to seek help from the Police which was a waste of time. He also said that the supporting measures provided by the Government to owners for building management were insufficient. It was difficult for OCs to interpret the BMO and staff of the DO had no arbitration power in this regard. He opined that responsibilities were fragmented at present and a dedicated department should be responsible for the relevant law enforcement work.

(Ms WONG Shu-ming left the meeting at 3:35 p.m.)

14. Mr Stephen HO agreed that the quorum should be set according to the number of flats in a building. He pointed out that if the quorum was set to as low as 10%, a small

number of owners could control the OC in single-block buildings with two flats on each floor. On the holding of owners' meetings, he cited an example in which an OC informed owners in writing to discuss building management works involving 800 flats without bearing the name, signature or chop of the OC chairman. He consulted the views of the relevant departments in this regard but was told that there was no relevant requirement. He considered that doubt would likely be cast on the legal status of this kind of documents. He also said that the staff of DOs in attendance at the first owners' meetings should provide guidance on procedural issues instead of staying silent during the process of the meetings. He considered that the staff of the building management section of the DO was well-trained, but if they did not address the problems of owners at the initial stage, disputes would only accumulate. Thus the support of DO to owners was very important. Concerning proxy instruments, he indicated that some OC members visited owners to collect authorised signatures with ulterior motives. Moreover, the HAD should collaborate with the BD to set out the deadline for completion having regard to the scale of building maintenance works and the number of flats in a building to avoid delay of works. The HAD could even indicate that it would implement the works concerned on behalf of the owners when necessary and the works expenditure would be recovered with a surcharge. He continued that the BMO should be reviewed once every three years so as to introduce legislative amendments in time or else lawbreakers could take precautions which would in turn affect the effectiveness of legislative amendments and waste resources.

15. Mr LEE Chung-ming enquired whether the amended BMO could override the DMC of the building.

16. Mr Franco KWOK responded as follows:

- (i) The spirit of the BMO was to provide a legal framework for owners to form an OC to discharge the responsibility of building management. Under the framework, the Government assisted owners in addressing building management problems through the support of the DO. The Government reviewed the BMO from time to time having regard to its implementation problems. However, the process was quite lengthy and the Legislative Council ("LegCo") had passed the amendments of 2007 after deliberation for two years. During the deliberation, Councillors and community members continuously provided suggestions for improvement to reap the benefits of collective wisdom. The HAD would put forward improvement proposals for building management having regard to the situation, including issuing administrative guidelines to resolve problems.
- (ii) There were around 40 000 private buildings in Hong Kong at present, with 46% in urban districts and 54% in the New Territories.
- (iii) The HAD had submitted the Property Management Services Bill ("Bill"), which was under scrutiny by the LegCo, to address the conduct issues of PMCs. In order to enhance the overall service level of the property management sector, upon passage of the Bill, all PMCs, including the executives of companies, should obtain licences. PMCs would be required to comply with the code of conduct and assist OCs in the implementation of the BMO and other relevant legislation. He believed that legislating for the

licensing regime and clarifying the requirements on PMCs would be highly conducive to improving building management.

- (iv) There were penalty provisions in the BMO. For example, pursuant to Section 27, management committee members failing to prepare financial statements within the designated period were guilty of an offence and were liable to punishment on conviction. Pursuant to Section 28, OCs failing to take out third party insurance were guilty of an offence and would be liable to punishment on conviction. Anyone providing false statements and information would contravene Section 36. The HAD would state the penalties in its publicity materials. Nevertheless, the HAD had always stressed the voluntary nature of building management. He believed that deliberate malpractice could be prevented if more owners contributed to monitoring building management works in joint efforts.
- (v) Since the staff of DOs were not empowered to conduct arbitration under the existing BMO, disputes were referred to the Lands Tribunal for adjudication. Nevertheless, it was stated in the consultation paper that the HAD considered it undesirable to refer every case to the Lands Tribunal and encouraged the public to resolve the disputes over building management by way of mediation in view of high legal costs and considerable effort and time involved. He said that the HAD would soon work with Hong Kong Mediation Council and Hong Kong Mediation Centre to provide 15 hours of free mediation services for each case. According to past experience, the greatest difficulty in mediation was that one of the parties in dispute was unwilling to settle the issue by way of mediation. Therefore, under the new scheme, the Mediation Council/Mediation Centre would first meet with the parties in dispute separately to explain to them how the dispute would be settled by mediation. The formal mediation would be conducted afterwards. The Panel of Advisors on Building Management Disputes established by the HAD two years ago could also provide advice in respect of legal, works and building management issues to help owners settle disputes. He was of the view that owners would find the two complementary programmes helpful.
- (vi) Since the scope of this review was extensive, the HAD would maintain communication with the LegCo and the District Councils (“DC”) to gauge their views during consultation.
- (vii) Regarding the issue of setting the threshold at a certain percentage of shares in aggregate for OC formation and passing resolutions on large-scale works, the HAD understood that the situations faced by large-scale housing estates and single-block buildings were vastly different. Therefore, various issues might arise during implementation if the threshold issue was handled under a one-size-fits-all approach. The HAD hoped to collect various views through this consultation for considering the approaches concerned. However, the major principle was that the threshold should not be excessively high lest maintenance works for buildings (especially single-block buildings) were hampered. He added that while the direction of the HAD had been assisting in OC formation over the past decade or so, and the relevant threshold had

been lowering, the department needed to strike a balance to ensure a sufficient number of owners participating in and supporting OC affairs.

- (viii) He understood the concern raised by Ms WONG Shu-ming on the problem of proxy instruments. However, there should be some flexibility in the BMO for application to different housing estates and buildings. The HAD was willing to listen to the views of Councillors for formulating applicable guidelines. If relevant guidelines were available, the HAD would step up its publicity efforts.
- (ix) Land title disputes in different parts of commercial/residential buildings had long been a difficult problem. The DMC was a private deed among the developer, the DMC manager and the owners of the building. As in the case of any other private contracts, no party to a DMC shall unilaterally modify any provisions of the DMC without the consent of all other parties. The DMC had set out the shares of commercial and residential parts. If undivided shares or management shares were re-distributed, it would likely benefit one group of owners at the expense of another group. The HAD hoped that the mediation mechanism would assist owners in handling the problem concerned.
- (x) The HAD would assist owners in resolving disputes through different measures, such as the collaboration with relevant organisations to provide mediation services; the launch of the “AP Easy” Building Maintenance Advisory Service Scheme in which the Hong Kong Institution of Engineers, the Hong Kong Institute of Surveyors and the Hong Kong Institute of Architects would assist OCs in identifying and appointing authorised persons, and the collaboration with the Law Society of Hong Kong to provide free legal advice service to owners and OCs starting from January 2015.
- (xi) Regarding the issue of document format, OCs could formulate their own rules in respect of their operation. However, whether it had deviated from usual practice would be decided on a case-by-case basis.

(Mr John WONG left the meeting at 4:15 p.m.)

17. The Chairman opined that the Government should proactively study the feasibility of setting up a Buildings Affairs Tribunal (“BAT”). He said that the Small Claims Tribunal (“SCT”) could only handle disputes involving \$50,000 or less, and the amount of money involved in many building management disputes fell within this limit. As far as he understood, a merit of the SCT was that both parties to the litigation did not need to bear litigation costs. Likewise, as for the disputes handled by the BAT, there was no need for both parties to the litigation to bear litigation costs either. He continued that in Singapore, owners were required by law to handle water seepage problems in their flats within 21 days. Otherwise, the owners of the flats above and below the flat concerned would also be penalised, with a view to resolving disputes among owners effectively. He added that at present there were a total of 40 000 private buildings. If the Government was of the view that the caseload of the BAT would be too heavy to handle all building disputes, it could consider confining the scope of services of the BAT to owners of properties with lower rates payments or owners with fewer assets. For owners paying higher rates, they could seek to resolve their disputes in the Lands Tribunal, the District Court or the High Court. Besides, he pointed out that many members of the public did not know how to define the responsibility

of building management. For instance, when there was water seepage on the ceiling of a flat, the owner concerned was usually not sure if the problem occurred in the upper flat or the common area. He opined that as the disputes among owners would be handled by professionals in the BAT, the BAT should be able to accurately identify responsibility so as to resolve problems more quickly. He supplemented that as the HAD staff were not professionals in that respect, their advice on disputes among owners might not be useful. Furthermore, the Law Society of Hong Kong could only provide free legal advice service to members of the public, and disputes remained unresolved for years. In view of this, he hoped that the Government would seriously consider the suggestion of setting up the BAT.

18. The Vice-chairman said that in a housing estate in the district, the majority owner held 51% of shares in aggregate while the remaining 49% of shares were held by 190 owners, thus the majority owner had the final say on the selection of contractor for maintenance projects of the housing estate. Although the maintenance fees of the housing estate were expensive, the ratio of the fees borne by the majority owner was the same as that of each minority owner. The basis on which the maintenance fees were shared was unfair to minority owners. In this regard, she would like to know whether there were relevant provisions in the BMO to protect the interests of minority owners.

19. Mr Stephen HO said that the HAD should provide a sample notice of owners' meetings for OCs' and owners' reference. Moreover, he opined that too many owners' disputes were referred to the SCT. The scheduling of a hearing took a long time and the process was inefficient. He cited an example in which an OC chairman had let out the common areas of the building to newspaper hawker stalls for free without authorisation and could not provide the information of the hirers. He considered that such cases should be referred to the Police for direct handling.

20. Mr LAU Pak-kei agreed with raising the quorum for owners' meetings and the shares of votes required for passage of resolutions. However, he indicated that in some large housing estates, only OC members and staff of PMCs had the power to conduct door-to-door visits to request owners who did not intend to attend owners' meetings to sign proxy instruments while owners in general did not have such power. He considered that this would be unfair to owners who were not OC members if OCs or PMCs were allowed to do so. OCs or PMCs could still manipulate the voting results on building maintenance projects by collecting more proxy instruments even if the shares of votes required for passage of resolutions were raised. He further said that many building maintenance disputes arose from proxy instruments. In this regard, other than the transparency of OC meetings and the authenticity of proxy instruments, concerns should be given to the means through which proxy instruments were obtained. In order to prevent OCs and PMCs from threatening owners into signing proxy instruments to authorise them to vote on the ground of possible suspension of lifts or cleansing service during door-to-door visits, the Government should consider setting out in the BMO that all owners could conduct door-to-door visits and collect proxy instruments. He hoped that the HAD could propose improvement measures to address the problem by taking the opportunity of the BMO review or else it would be futile to amend the BMO.

21. Mr CHUNG Kong-mo indicated that the Government had amended the BMO for a number of times in the past decade or so. The extent of amendment was greater and the scope of review was also wider this time. As for the proposal to raise the quorum for owners' meetings and the shares of votes required for passage of resolutions, he said that he

understood the aims of the amendments concerned. As a large sum of money was often involved in building maintenance projects (especially for large housing estates), if the quorum for owners' meetings was only 10% of the total number of owners, the voting result could be endorsed by a minority of owners, e.g. selection of project contractors. He opined that raising the quorum for owners' meetings could help prevent bid-rigging in building maintenance projects. Nevertheless, owners' meetings of many large housing estates failed to reach a quorum and were attended by less than 10% of the total number of owners at present. An example was a major housing estate with 4 000 flats in his constituency which had convened two owners' meetings and both meetings were called off due to the lack of quorum. If the quorum for owners' meetings was raised to 20% of the total number of owners, the chance of calling off the meeting would even be greater. He hoped that the Government could try to encourage owners to attend owner's meetings to participate in the selection of contractors for large-scale maintenance projects or else it would be difficult for large-scale maintenance projects to proceed even if the newly amended BMO was passed. Moreover, some owners might disagree with building maintenance. When they knew that the threshold for reaching a quorum for owners' meetings was high, they would deliberately be absent which indirectly rendered the maintenance projects impossible to proceed. He opined that the Government should strike a balance in amending the BMO so that on the one hand it could prevent bid-rigging, on the other hand owners' meetings could also be convened such that building management projects could proceed.

22. Ms KO Po-ling said that since the number of households in large-scale housing estates could be up to 4 000 while that of single-block buildings was only 100 or so, it was not desirable to set the quorum for owners' meetings at 10% of the total number of owners for all buildings. She considered that the Government should not adjust the quorum for owners' meetings in a one-size-fits-all approach. She asked the departments concerned to carefully study the ways to set the threshold and consider whether to calculate the quorum according to the number of households in the building or to make flexible arrangements. She added that the BMO review could address the problems currently faced by OCs and owners. Nevertheless, the provisions on proxy instruments were still not clear enough and they could only reduce some kinds of disputes. Although the representatives of the HAD said that the provisions were complementary, the general public might not know the applicable provisions which they could invoke. In addition, she agreed that OCs or PMCs of large-scale housing estates could easily obtain owners' proxy instruments and the developers of these housing estates held a large proportion of shares. She continued that there was greater clarity in the proposed amendments to proxy instruments than in the previous versions but there was still insufficient focus. This was even more obvious in large-scale housing estates.

23. Mr CHAN Wai-keung said that there were different types of elections in Hong Kong. Political elections such as the DC and the LegCo elections were the most stringent in the sense that they were governed by a number of legislation. Any person who misled others, prevented others from voting or manipulated election results would commit a criminal offence. However, voting at owners' meetings was governed more leniently under the BMO. PMCs could convene owners' meetings after collecting a sufficient number of proxy instruments. Despite the fact that substantial interests would be involved in the resolutions on large-scale maintenance projects, PMCs were responsible for counting votes and engaging accountants. This would result in conflicts of interests. As only one representative from the DO would be present to monitor the voting process, the PMC, which was an interested party, would be in charge of the voting process. He considered this practice ridiculous and suggested that in future, the Government should introduce legislation to make it mandatory

that an independent company should conduct the voting process at an owners' meeting and the company concerned should be governed by the legislation relevant to anti-corruption to prevent PMCs from monopolising the voting. He continued that in some buildings, the security guards who were acquainted with owners would advise the owners not attending the meeting or the aged owners to sign proxy instruments. As a result, the owners concerned might be misled into casually authorising others to vote by proxy. He questioned whether the persons misleading owners would be prosecuted under any relevant legislation. He hoped that no one could take advantage of grey areas in the law to make huge profits and engage in malpractices for personal gains.

24. Mr Franco KWOK responded as follows:

- (i) The establishment of a BAT had been debated for a long time. The effectiveness of a BAT in building management had been studied in detail in the interim report on the BMO review. He continued that since the Lands Tribunal formed a part of the Judiciary and had judicial power over building management, there would be overlapping in structure if the BAT was set up. In addition, while disputes over building management which involved interpretation of the BMO or the DMC might not be settled effectively without legal representatives for both parties, simpler cases could be settled by way of mediation without being referred to the Lands Tribunal. The Government welcomed all opinions, yet he believed that setting up a BAT might not be the most effective way to resolve the disputes over building management in actual operation. He encouraged the public to provide more opinions in this aspect for the Government's consideration.
- (ii) The Government realised that the DMC formulated in the early days often led to building management disputes that were difficult to resolve. Moreover, a DMC was a tripartite agreement which involved distribution of benefits among stakeholders, thus it was hard to introduce changes. Regarding the use of public power to intervene and make rectification, it would involve legal issues and even the Basic Law. The Government encouraged owners to enhance communication or use mediation service to seek a mutually acceptable settlement.
- (iii) The HAD encouraged OCs to prepare documents properly. In the event of disputes involving legal proceedings, the keeping of complete documents could protect the interests of OCs and owners. The HAD realised that at present quite a number of disputes were caused by proxy instruments, especially the arrangement of the collection and verification thereof. In view of this, a number of improvement measures were put forward in the current BMO review to tighten the requirements on collection and verification of proxy instruments. Nevertheless, the circumstances faced by large housing estates and single-block buildings were vastly different. If the measures were made mandatory by law, housing estates of different types might not be able to achieve full compliance. As for the arrangement of collection of proxy instruments, as an OC was a body corporate formed by owners to be responsible for the management of common parts of buildings/housing estates, communication with owners should be carried out by OCs in the light of the actual situation of housing estates. The Government was aware of the public

concern about the conflict of interest between OCs and PMCs on the collection of proxy instruments. Accordingly, the consultation document proposed that proxy instruments be collected with a box. In future, the Property Management Services Ordinance would also require PMCs to comply with the code of conduct. The Government welcomed the public to provide their views on the collection of proxy instruments, with a view to improving the collection process and enhancing its transparency, fairness and feasibility.

- (iv) Regarding the threshold for passing resolutions on large-scale maintenance projects, a one-size-fits-all approach might not be applicable to all large housing estates and single-block buildings. The HAD would carefully consider the criteria (such as number of flats and shares of ownership) for setting the threshold concerned. The HAD would follow up the views collected during the consultation period and report the progress to the LegCo.

25. The Chairman thanked the Assistant Director of the HAD for attending the meeting.

Item 3: Progress Report on Handling of Signboards in Yau Tsim Mong District by Buildings Department (“BD”)
(YTMHBMC Paper No. 2/2015)

26. The Chairman welcomed Mr William POON, Senior Professional Officer/Signboard Control 1 of the BD to the meeting.

27. Mr William POON briefly introduced the contents of the progress report. He said that apart from writing to the DCs to appeal to Councillors to report abandoned or dangerous signboards, the BD would also arrange student ambassadors to conduct inspections in the district to report such problematic signboards. The BD hoped that the above measures would result in an increase in the number of reported cases.

28. The Vice-chairman thanked the BD staff for their efforts in handling unauthorised signboards in the district. She said that the BD had handled two large signboards reported by her. She commended the BD staff for maintaining close contact with the owners of the buildings concerned throughout the removal process, so that the removal works could be completed smoothly.

29. The Chairman said that there were only 36 reported cases of abandoned or dangerous signboards in the district last year. He enquired if all the cases were reported by the public. He added that at present, there were 120 000 unauthorised signboards in Hong Kong, he wanted to know the number of unauthorised signboards in Yau Tsim Mong (“YTM”) District.

30. Mr WONG Kin-san said that the BD had been following up unauthorised signboards in the district with pleasing results. He asked the BD to provide the target number of unauthorised signboards to be handled in 2015.

31. Ms KO Po-ling recalled that at the last HBMC meeting, some Councillors pointed out that there was a large advertisement stand extending from the lower floor external wall of a building at Sai Yeung Choi Street South to the roadside, with one end of the stand being supported by iron poles on the roadside, causing obstruction to passers-by. However, no

action was taken by the BD since the last meeting. She would like to know the progress of following up on that structure by the BD.

32. Mr William POON responded as follows:

- (i) According to the statistical data earlier, there were 28 000 signboards in YTM District and most of them were illegal. The BD was committed to handling dangerous/abandoned signboards in the district and it was believed that the number of problematic signboards would continue to decrease.
- (ii) The BD had set the initial target on the number of abandoned or dangerous signboards to be handled in the district in 2015, which would be higher than that in 2014. The department would make an announcement at the HBMC meeting when it came up with the target figure for this year.

33. Mr Albert TAM responded as follows:

- (i) Concerning the large advertisement stand on the roadside of Sai Yeung Choi Street South, the BD had issued a removal order to the owner concerned under Section 24 of the Buildings Ordinance (“BO”) for the removal of the stand. The owner’s representative lodged an appeal thereafter and the case had been referred to the Appeal Tribunal of the BD for handling. The department would follow up the case again after a ruling was made.
- (ii) The owner of the large advertisement signboard claimed that the stand concerned was used for window maintenance works and would only be erected at the above location for a short period of time. The signboard owner also said that he would handle the structure upon the completion of the maintenance works.

34. Ms KO Po-ling said that the above stand obstructed the pavement and aroused public concern. She hoped that the BD could follow up the case as soon as possible after the Appeal Tribunal made a ruling.

35. The Chairman worried that signboard owners would abuse the right of appeal. They might lodge an appeal when the BD requested them to remove the illegal signboard so as to put back the deadline of removal by as long as one to two years. He urged the departmental representative to request the department to study whether it could revise the appeal procedure.

Item 4: Concern over Implementation of Fire Safety (Buildings) Ordinance (Cap. 572)
(YTMHBMC Paper No. 3/2015)

36. The Chairman welcomed the following representatives to the meeting:

- (i) Mr Truman LEE, Senior Building Surveyor/Fire Safety 5 of the BD; and
- (ii) Mr CHIU Wai-kin, Senior Divisional Officer (Building Improvement) 2 (Acting), Mr TANG Kai-ming, Assistant Divisional Officer and Mr CHAN

Man-hon, Assistant Divisional Officer (Fire Service Installations Task Force) of the Fire Services Department (“FSD”).

37. The Vice-chairman supplemented the contents of the paper.

38. Mr CHAN Man-hon responded as follows:

- (i) The FSD had in place a strict registration and monitoring mechanism for fire service installation (“FSI”) contractors. To become a registered FSI contractor, one must meet the requirements of academic qualifications concerned or possess the relevant professional qualifications, and pass an examination.
- (ii) For example, to register as a Class 2 FSI contractor, the applicant or one of the directors, employees or partners of the applicant’s company must hold a Grade I plumbers licence issued under the Waterworks Ordinance; and at least one of the above persons must hold a diploma from the Hong Kong Polytechnic University (former Hong Kong Polytechnic) or a Technical Institute, or a higher certificate in Electrical Engineering or a qualification considered by the Director of Fire Services as equivalent to such diploma or certificate.
- (iii) In order to monitor the standards of works of registered FSI contractors, the FSD had drawn up the Code of Practice for Inspection, Testing and Maintenance of Installations and Equipment (“the Code”) for compliance by registered FSI contractors. The FSD would from time to time review and revise the Code to ensure that the guidelines were in line with the latest standards required by the department. FSD would also disseminate the latest information on FSIs and equipment to contractors by means of circular memorandums and talks.
- (iv) To effectively monitor the conditions of FSIs and equipment in buildings and premises, as well as to ensure that the works conducted by registered FSI contractors complied with the FSD’s requirements, the FSD would inspect the building in question in accordance with a risk-based approach upon receipt of a “Certificate of Fire Service Installations and Equipment” “with defective items” from a contractor. For those Certificates of Fire Service Installations and Equipment “with no defective item”, the FSD would randomly select some of the installations for inspection by means of computer balloting.

39. Mr Truman LEE said that the qualifications, registration procedures and disciplinary actions against certain matters of authorised persons, registered structural engineers and registered contractors were fully set out in Sections 3 to 13 of the BO. The BD would consider taking appropriate actions if it knew that such persons were involved in disciplinary matters. Prosecution actions would be taken if such persons committed an offence under Section 40 of the BO.

40. The Vice-chairman said that some building owners had received “Fire Safety Directions” from the FSD, requiring them to install a roof tank. In this connection, the owners conducted a tendering exercise and considered that the tender of one of the contractors could best meet the requirements of the FSD. Therefore, the contractor was commissioned

to carry out roof tank installation works. However, given the actual circumstances of the building, the contractor had encountered a lot of difficulties in the installation works. The works failed to be completed in accordance with the tender even after more than one year of delay. On the other hand, the FSD had repeatedly sent letters to the owners concerned, urging them to complete the FSI works in accordance with the “Fire Safety Directions”, putting owners in a dilemma. As seen in this case, legislation failed to effectively regulate FSI contractors to protect the interests of owners. She asked about the measures undertaken by the FSD to regulate FSI contractors.

41. Mr CHIU Wai-kin said that the FSD would take into account the actual progress of the improvement works for FSIs as well as the building owners’ justifications when considering applications for delay on a case-by-case basis so that the owners could comply with the “Fire Safety Directions” within a reasonable timeframe. The FSD would not initiate prosecution against owners indiscriminately.

42. The Vice-chairman asked whether there was any mechanism in place to regulate registered FSI contractors with poor performance.

43. Mr CHAN Man-hon responded as follows:

- (i) For minor irregularities, the FSD would record “demerit points” against such contractors through the Demerit Point System for Registered FSI Contractors and step up inspection on the FSIs and equipment handled by them.
- (ii) For major irregularities, the FSD might take prosecution action against the registered contractors concerned under Section 9 of the Fire Service (Installations and Equipment) Regulations. The maximum fine was \$50,000 upon conviction.
- (iii) The FSD might also consider referring the cases of irregularities of registered contractors to the Registered FSI Contractors Disciplinary Board (“Disciplinary Board”) for disciplinary inquiry under Section 10 of the Fire Service (Installation Contractors) Regulations. The maximum penalty was the permanent removal of the contractor from the register. The outcome would be published in the Gazette and the FSD’s website for public information.
- (iv) From January 2012 to September 2014, the FSD recorded “demerit points” against 14 registered contractors. There were 11 prosecution cases against registered contractors with fines between \$1,000 and \$15,000. In addition, in 13 cases, contractors were reprimanded by the Disciplinary Board. There were two and four cases involving the removal of contractors from the register for 7 and 14 days respectively.

44. The Chairman thanked the representatives of the relevant government departments for joining the discussion on this item.

Item 5: Should Non-profit Making Hostels Be Put Under Control?
(YTMHBMC Paper No. 4/2015)

45. The Chairman said that the written responses of the Lands Department (“LandsD”) and the HAD (Annexes 2 and 3) were distributed to Members by email for information before the meeting. He then welcomed Ms Catherine PANG, Senior Estate Surveyor/Kowloon Central (District Lands Office, Kowloon West) of the LandsD to the meeting.

46. The Chairman supplemented the contents of the paper. He said that the captioned paper was submitted with a view to requesting the Government to address the problem that non-profit making organisations (“NPOs”) leased government land at a low premium for hostel development but charged high room rates to earn profits. Although some NPOs clarified that all the revenue generated from renting out the rooms would be ploughed back for use by their other service units, he considered that the explanation was unacceptable. He asked whether the Government had put measures in place to monitor the hostels operated by NPOs, such as setting a mandatory ceiling rate for their rooms. He further said that NPOs should tie in with the Government’s tourism policy to provide rooms at a low rate when setting the rates based on the demand and supply of rooms.

47. Ms Catherine PANG responded as follows:

- (i) Generally speaking, in respect of the “non-profit making operation” stated in the conditions of the land leases granted directly to NPOs, the essence was that the grantees were not allowed to allocate the profits generated by operation of the facilities on the land concerned for other purposes, rather than prohibiting the grantees to generate profits by operation of the facilities on the land concerned.
- (ii) No maximum room rates of the hostels operated by NPOs were stipulated in the land lease conditions.

48. The Chairman said that NPOs were permitted to operate hostels on designated land with low land premiums and annual payment of Government rents. While the conditions of the land leases entered into between NPOs and the Government varied, room rates of the hostels operated by the grantees were not capped. Therefore, some NPOs might go against the principle of non-profit making for high profits. He wondered how many NPOs in Hong Kong had leased Government land for hostel operation.

(Mr HUI Tak-leung left the meeting at 4:50 p.m.)

49. Ms Catherine PANG responded as follows:

- (i) NPOs registered under the Inland Revenue Ordinance (“IRO”) were required to submit their accounts to the Inland Revenue Department. As such, hostels operated by NPOs were also regulated under the IRO. To fulfil the requirements set out in the IRO, the profits generated by hostel operation by NPOs should be applied for charitable purposes.
- (ii) The LandsD implemented the conditions of the land leases granted to NPOs in the capacity of a landlord.

- (iii) She was unable to immediately provide the number of the NPOs operating hostels or hotels in Hong Kong at present.

50. The Vice-chairman enquired whether the Government would audit the accounts of the hostels operated by NPOs in accordance with the IRO and whether the NPOs were required to pay tax on the profits generated by hostel operation.

51. Ms KO Po-ling would like to know when the legislation related to the land lease of the hostels and the IRO were enacted. She considered that the NPOs should enhance the transparency of the accounts of the hostels operated by them and the Government should impose stringent regulation on those hostels lest NPOs would not report to the Government the profits they had made by taking advantage of grey areas of the law.

52. The Chairman realised that land lease conditions varied according to the time NPOs entered into the lease with the Government. However, he was discontented with inadequate regulation under the said conditions and considered that the conditions were not forward-looking. He hoped that the representative of the LandsD would convey to the department that land lease conditions should be formulated after careful consideration. He continued that the Government intended to provide hostel rooms to tourists at relatively cheaper rates through low-premium land grant to NPOs. However, the NPOs leased out hostel rooms in the way in which hotels were operated and at the rates of hotel rooms after obtaining guesthouse licence from the Office of the Licensing Authority (“OLA”) under the HAD. The Government was therefore suspected of transferring benefits to NPOs through low-premium land grant. He added that at the time of renewing the land leases with NPOs and introducing amendments to the relevant legislation, the Government should have thorough discussions on issues such as whether NPOs should be required to pay tax on the profits generated by leasing out hostel rooms and how the Government could ensure that the NPOs would lease out their rooms at a low rate.

53. Ms Catherine PANG said that the LandsD should tie in the relevant policies and consult the policy bureaux concerned when NPOs applied for land lease renewal in the future.

54. The Chairman thanked the representative of the LandsD for joining the discussion on this item.

Item 6: What Are the Criteria for Cancellation of a Guesthouse Licence by the Hotel and Guesthouse Accommodation Authority?
(YTMHBMC Paper No. 5/2015)

55. The Chairman reiterated that he was the lawyer representing the complainant of the case mentioned in the paper and he had obtained Members’ consent at the start of the meeting to chair the discussion of this item.

----- 56. The Chairman said that the written response of the HAD (Annex 4) was emailed to Members for perusal before the meeting. He then welcomed Mr AU Wing-hung, Chief Officer (Licensing Authority) and Mr Vincent WAN, Chief Executive Officer (Licensing Authority) to the meeting.

57. The Vice-chairman supplemented the contents of the paper. She said that there were 397 convicted cases of unlicensed guesthouse operation from 2010 to the first quarter of 2014. She would like to know in how many of such cases the licences of guesthouse licence holders were cancelled due to unlicensed guesthouse operation and in how many cases the renewal applications for licensed guesthouses of licence holders were refused.

58. Mr AU Wing-hung responded that if licence holders were convicted of operating unlicensed guesthouses, the Hotel and Guesthouse Accommodation Authority (“the Authority”) would consider cancelling their licences under Section 10 of the Hotel and Guesthouse Accommodation Ordinance (“HAGAO”). Of the above 397 cases, guesthouse licence holders were involved in 18 cases and all their licences were cancelled due to unlicensed guesthouse operation.

59. Mr Vincent WAN said that the Authority had also refused a renewal application in 2009.

60. The Chairman asked if the licence of a licence holder operating unlicensed guesthouses would necessarily be cancelled. If the Authority had the power to consider cancelling or suspending the licence of a licence holder for operating unlicensed guesthouses, he would like to know the factors based on which the Authority determined penalties.

61. Mr AU Wing-hung responded as follows:

- (i) According to the HAGAO, if a licence holder was convicted of operating unlicensed guesthouses at different premises, the Authority would consider cancelling or suspending all the guesthouse licences of the licence holder by invoking Section 10(b)(i) of the HAGAO.
- (ii) The Authority had written to all guesthouse licence holders in February 2010, August 2011 and September 2011 respectively to remind them that the Authority could consider taking actions under Section 10 of the HAGAO to cancel their licences or refuse their renewal applications if they were convicted of an offence under the HAGAO for operating unlicensed guesthouses.
- (iii) If the Authority decided to cancel or suspend the licence of a licence holder, or refuse his renewal application after giving thorough consideration to his written representations and the relevant factors of the case, it would serve a written notice on the licence holder. If the licence holder was aggrieved by the decision of the Authority, he could appeal to the Appeal Board under Section 13 of the HAGAO. The Appeal Board would make a final decision after considering the factors of each case.

62. Mr Stephen HO asked if a licence holder was found to have operated unlicensed guesthouses, whether the renewal applications of his licensed guesthouses would be refused; and if the licence holder was applying for licences for guesthouses that had yet to commence operation, whether the licences would not be granted.

63. Mr Benjamin CHOI said that according to the prevailing HAGAO, the penalties meted out for operating unlicensed guesthouses were the same, regardless of whether they were guesthouse licence holders, but in the case of operating unlicensed guesthouses by

licence holders, the licences of their guesthouses would be cancelled. In this regard, their cost of unlicensed guesthouse operation was higher than that of non-licence holders and the law had an unintended consequence of discouraging those who intended to operate a guesthouse from applying for a licence from the OLA, which might result in more cases of unlicensed guesthouse operation in future.

64. The Vice-chairman asked the OLA to clarify whether only the licence holders in 18 out of the 397 convicted cases of unlicensed guesthouse operation had their licence cancelled, while the operators of the other 300-odd cases received no associated punishment as they did not operate other licensed guesthouses.

65. Mr CHUNG Kong-mo said that there was a divergence between the numbers of prosecution and conviction cases. He wondered under what circumstances the offenders would not be convicted. Moreover, he enquired about the number of unlicensed guesthouses which had commenced operation during the period of licence application among the 18 cases of licence cancellation or refusal of renewal.

66. Ms KO Po-ling asked what penalties would be imposed by the OLA if a licence holder was found operating licensed and unlicensed guesthouses concurrently. She also asked whether the OLA had given the operators who were not granted a licence the reasons for the decision and assisted them in properly carrying out and completing the upgrading works for the premises in accordance with the established standards so that they could be licensed for guesthouse operation as soon as possible. Furthermore, she asked the OLA to elaborate on the performance pledge on the time for processing applications for guesthouse licences.

67. Mr AU Wing-hung responded as follows:

- (i) All the operators of unlicensed guesthouses in those 397 cases had been convicted and fined. As for the cases in which licence holders were involved, the court had indicated clearly that the Authority was empowered under the HAGAO to cancel the licences of the licence holders who had breached the HAGAO. Under existing policies, the OLA must cancel the licences of the licence holders concerned. He stressed that all guesthouse licence holders were fully aware of the serious consequences of any unlicensed guesthouse operation on conviction under Section 10 of the HAGAO.
- (ii) The OLA would issue a confirmation notice to the applicant on receipt of a guesthouse licence application and would send staff to conduct site inspections at the premises concerned and issue a letter of upgrading requirements within 22 working days thereafter. The applicant was required to submit a “Report of Completion” and relevant documents, including all certificates, upon completion of all upgrading works. The OLA would conduct a compliance inspection within 28 working days on receipt of the documents to ensure that the premises had fulfilled all safety requirements before issuing a licence.
- (iii) To his knowledge, in general, applicants failed to complete the upgrading works for the premises within the specific timeframe mainly because they had not hired sufficient workers and the works did not fulfil the building safety and fire safety standards laid down by the OLA.

- (iv) The OLA would make its utmost efforts to assist licence applicants in the completion of upgrading works for the premises so that they could obtain a guesthouse licence as early as possible.

68. The Vice-chairman questioned whether the OLA could fulfil its performance pledge on the time for processing applications for guesthouse licences. She said that a number of licence applicants were still not licensed after submitting their applications for more than one year. Some applicants had reflected that the delay in the issue of licence was because the OLA had not been able to arrange staff for site inspection at the premises. She suggested that the OLA urge its frontline staff to inspect the premises intended for guesthouse operation as early as possible, so that the applicants could commence the upgrading works for the premises and obtain a guesthouse licence as soon as possible. She continued that some operators of “shadow guesthouses” had made licence applications to the OLA a long time ago, but the issue of licence had been procrastinated. The applicants had to operate unlicensed guesthouses to make ends meet during that period as they must pay the rent and other expenses of the premises.

69. Mr CHIN Chun-wing agreed that the OLA should impose heavy penalty on operators of “shadow guesthouses”, but he pointed out that some of these operators had already submitted an application for guesthouse licence to the OLA a long time ago, they were just operating before the licence was granted. He wanted to know if the OLA could exercise discretion in handling this kind of cases.

70. Regarding the persons who operated “shadow guesthouses” during the licence application period, the Chairman enquired if the OLA had exercised discretion not to cancel all the guesthouse licences held by such persons.

71. Mr AU Wing-hung reiterated that the OLA had been communicating proactively with licence applicants to assist them in completing the upgrading works for the premises and obtaining guesthouse licences. If licence holders were convicted of operating “shadow guesthouses”, they could make written representations to the Authority in respect of a notice of intention to revoke served on them. A final decision would be made by the Authority after thorough consideration of the relevant factors of the cases.

72. Mr Vincent WAN supplemented that “shadow guesthouses” which had not been granted licences by the OLA were no different from unauthorised guesthouses. Whether these premises had met the statutory safety standards for building structure and fire safety could not be assured. They would pose a threat to the life and property of the lodgers and the public, and the consequences would be catastrophic in case of accidents. In this regard, the OLA had all along been sparing no effort to eradicate unauthorised guesthouses to ensure the safety of the lodgers and the public.

73. Mr Stephen HO asked the OLA to follow the practice of the Liquor Licensing Board in assessing liquor licence applications by considering the issue of temporary licences before the issue of formal licences to facilitate the legitimate operation of guesthouses.

(Mr Benjamin CHOI left the meeting at 5:20 p.m.)

74. Mr CHUNG Kong-mo said that the licensing process by the OLA was complicated and lengthy, he opined that the process should be simplified. He also suggested that the OLA hold briefings for contractors specialising in guesthouse retrofitting works for the industry to understand the OLA's requirements for building structure and fire safety of guesthouses.

75. Mr AU Wing-hung responded as follows:

- (i) At present, the Authority was not empowered to issue temporary licences under the law. Since the issue of temporary licences involved legislative amendments, the OLA needed to give thorough consideration of the matter.
- (ii) Briefings were held by the OLA to discuss with the industry the specific technical problems they would encounter during the upgrading works for the premises.

76. The Vice-chairman learned that the OLA staff would pose as customers and visit unauthorised guesthouses (commonly known as "covert operations"). She hoped that the OLA would not only carry out "covert operations" against licensed guesthouses or guesthouses which were awaiting the grant of licence, but also impose heavy penalty on those unauthorised guesthouse operators who had not applied for licences.

77. Mr Stephen HO said that guesthouse operators would appoint licensing consultants to assist them in obtaining guesthouse licences as early as possible.

78. Mr AU Wing-hung responded that "covert operations" of the OLA were conducted in the light of reports and online rental advertisements on guesthouse rooms, rather than the information of premises submitted by applicants.

79. The Chairman thanked the HAD representatives for joining the discussion on this item.

Item 7: Any Other Business

80. There being no other business, the Chairman closed the meeting at 5:30 p.m. The next meeting would be held at 2:30 p.m. on 26 March 2015.

Yau Tsim Mong District Council Secretariat
March 2015

21/1/2015

《建築物管理條例》檢討 公眾諮詢



《建築物管理條例》檢討公眾諮詢

背景

- 《建築物管理條例》(第344章)(《條例》)提供法律框架，讓業主合力履行管理大廈的責任。
- 上一次修訂：2007年

《建築物管理條例》檢討公眾諮詢

背景

- 2011年：成立《建築物管理條例》
檢討委員會
 - 主席：鍾沛林律師
 - 成員：物業管理、法律、建築、工程界
別專業人士以及立法會議員
 - 增補委員：資深業主立案法團主席

3

《建築物管理條例》檢討公眾諮詢

背景

- 2013年：發表中期報告
- 兩份指引
 - 《委任代表出席業主立案法團大會》
 - 《應不少於5%的業主要求召開業主立案
法團大會》



4

《建築物管理條例》檢討公眾諮詢

主要建議

- 〈1〉關於大型維修工程的決策程序
- 〈2〉收集和核實委任代表文書的規定
- 〈3〉成立法團
- 〈4〉公契經理人的委任和酬金



《建築物管理條例》檢討公眾諮詢

〈1〉大型維修工程

- 業主大會表決
- 現時規定：
 - 法定人數 – 業主總人數10%
 - 通過決議所需票數 – 出席會議過半數票數



《建築物管理條例》檢討公眾諮詢

〈1〉大型維修工程

- 在討論過程中加強業主的參與
 - 減少日後爭拗的機會
- 採納其中一項建議？
 - 法定人數 – 業主總人數20%？
 - 或
 - 通過決議所需票數 – 出席會議75%票數？



7

《建築物管理條例》檢討公眾諮詢

〈1〉大型維修工程

- 如何界定大型維修工程？
- 考慮因素：
 - 不應不合理地妨礙法團日常的採購(例如清潔、保安)
 - 如何處理必要的維修工程(例如按照政府命令進行的工程)

8

《建築物管理條例》檢討公眾諮詢

〈1〉大型維修工程 - 會議通知

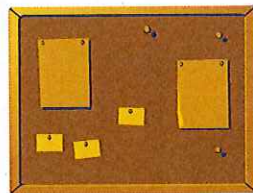
- 現在規定：14天前
- 建議：提前至21天前
- 以顯眼文字載列“提示”：
 - 每名業主可能須承擔的開支

9

《建築物管理條例》檢討公眾諮詢

〈1〉大型維修工程 - 招標過程

- 在《條例》就招標過程附加額外的規定：
 - 在大廈顯眼處展示招標書
 - 讓業主查核招標文件



10

《建築物管理條例》檢討公眾諮詢

〈1〉大型維修工程 – 由5%業主要求召開大會

- 規定管委會主席須把業主提出的討論事項列為議程的優先處理項目



11

《建築物管理條例》檢討公眾諮詢

〈1〉管委會主席一職出缺以致未能召開業主大會

- 副主席召開業主大會
- 如沒有選出副主席
 - 管委會在指定時間內委任其中一名委員召開業主大會
- 如管委會未能委任委員
 - 召開業主大會的業主可在他們當中提名一名代表召開業主大會

12

《建築物管理條例》檢討公眾諮詢

〈2〉委任代表文書 - 收集

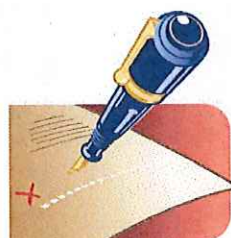
- 我們建議採取一系列措施以收緊安排，例如：
 - 在會議通知中清楚列明收集箱的確實位置，以及開啓收集箱時間
 - 收集箱應雙重上鎖，由兩名鎖匙保管人在他人見證下開啓

13

《建築物管理條例》檢討公眾諮詢

〈2〉委任代表文書 - 核實

- 只接受委任代表文書的正本
- 在會議舉行至少**24**小時前，在大廈顯眼處展示送交了委任代表文書的單位的清單，直至會議後七天為止



14

《建築物管理條例》檢討公眾諮詢

〈3〉成立法團

- 成立法團的門檻
 - 考慮由總共擁有份數的30%降至 **20%**
- 考慮因素：
 - 利便業主成立法團
 - 法團成立後有足夠業主參與法團事務
- 兩者之間取得平衡



15

《建築物管理條例》檢討公眾諮詢

- 召集人在法團成立過程中擔當重要角色
- 需具備誠信
 - 加入召集人資格規定(參考現時適用於管委會委員的規定)
 - 不是破產人士
 - 過去五年沒有干犯判刑超過三個月的罪行

16

《建築物管理條例》檢討公眾諮詢

〈4〉終止委任公契經理人

- 讓業主能較靈活地終止委任表現欠佳的公契經理人，可考慮採用下列其中一個方案：
 - 把終止委任公契經理人所需的總共擁有份數門檻由50%降至30%；或
 - 把公契經理人的委任期限於五年

17

《建築物管理條例》檢討公眾諮詢

〈4〉終止委任公契經理人

- 為何需時五年？
 - 成立法團或業主委員會或委出業主代表
 - 委任新物管公司的招標程序
- 同時適用於新和現有發展項目？只適用於新發展項目？



18

《建築物管理條例》檢討公眾諮詢

〈4〉公契經理人的酬金

- 酬金上限現時由地政總署發出的《大廈公契指引》規限：

建築物的住宅單位和車位總數	酬金比率上限
不超過20	20%
21至100	15%
101或以上	10%

19

《建築物管理條例》檢討公眾諮詢

〈4〉公契經理人的酬金

- 建議：



- 每年按指明的百分比降低公契經理人酬金比率的上限
- 為大型發展項目的公契經理人設定較低的酬金比率上限，例如，就有超過500、700和1 000個等住宅單位和車位的發展項目，設立不同的上限

20

《建築物管理條例》檢討公眾諮詢

- 在計算公契經理人酬金的公式中，不計電費及水費等項目
- 公契經理人須向業主提供詳細分項數字，說明總部/母公司服務費如何由各發展項目分攤
- 同時適用於新和現有發展項目？只適用於新發展項目？

21

《建築物管理條例》檢討公眾諮詢

總結

- 物業擁有權 → 權利和義務
- 業主共同參與 → 完善的大廈管理
- 政府角色
 - 提供與時並進的法律框架
 - 適切的措施支援業主管理大廈(“顧問易”計劃、大廈管理專業顧問服務計劃、大廈管理糾紛顧問小組)

22

《建築物管理條例》檢討公眾諮詢

總結

- 諮詢18區區議會
- 會見相關團體



23

《建築物管理條例》檢討公眾諮詢

總結

- 誠邀公眾人士在2015年2月2日或之前，以書面發表意見。
- 我們會考慮諮詢期內所收到的意見，然後草擬《條例》修訂草案。



24

《建築物管理條例》檢討公眾諮詢

謝謝

25

九龍西區地政處就
非牟利旅舍(Non-profit making hostel)應受監管嗎?
所作的書面回應

就有關文件，本處回應如下：

個別個案是否有違反地契條款的情況，須視乎有關地契條款及相關團體的實際運作而定。如有懷疑，相關分區地政處會向相關機構了解情況，並按需要徵詢有關部門及法律意見。一般而言，在有關直接批地予非牟利團體的地契條款之中所指的「非牟利」性質運作，最重要的要求是承批地契的團體不可以分撥從運作有關地段內的設施所得利潤（若有）出該團體外，而並非禁示有關團體從中取得利潤。

必須一提，按《稅務條例》第 88 條註冊的非牟利團體，其帳目須提交稅務局。據本處理解，一般而言，有關非牟利團體須將獲得利潤用作慈善用途以符合《稅務條例》第 88 條的要求。

本處會以地主身份，執行有關地契條款。若有關地段被證實有違反地契情況，相關分區地政處定會採取合適地契執行行動。總括而言，就所關注的非牟利團體所營辦酒店/旅舍，本處相信各相關部門亦會按其職權或相關法例賦予的權力作合適的監管/跟進。

Annex 3

油尖旺房屋事務及大廈管理委員會第 4/2015 號文件
書面回應(2)

油尖旺區議會房屋事務及大廈管理委員會

2015年1月29日第十五次會議

討論項目：非牟利旅舍(Non-profit making hostel)應受監管嗎

在香港經營旅館受《旅館業條例》(第349章)(《條例》)所監管，目的是確保擬用作旅館的處所的樓宇結構和消防安全達至法定標準，以保障入住者及公眾安全。本署轄下的牌照事務處(牌照處)是負責處理《條例》下有關旅館牌照簽發及執法工作。

根據《條例》，「旅館」是指任何處所，其佔用人、東主或租客顯示在他可提供的住宿範圍內，會向到臨該處所的人士提供收費的住宿地方。現行《旅館業條例》並沒有「旅舍」(Hostel)的定義，任何處所，若其經營模式符合《條例》對「旅館」的釋義，不論是否牟利，均必須領有旅館牌照，方可經營。除非有關處所內提供的所有住宿，每次出租均為連續 28 天或以上，則可根據《旅館業(豁免)令》(第 349C 章)，獲豁免不受《條例》的規限。

按照現行的發牌機制，擬用作旅館的處所必須是經建築事務監督批准可用作「住用用途」或酒店用途，牌照處才會處理有關申請。牌照處在接獲旅館牌照申請後，會對擬用作旅館的處所的樓宇結構安全、消防安全和衛生配置作出審核和規定，有關的要求是按照《建築物條例》(第123章)及《消防條例》(第95章)而訂定。在確定有關處所符合指定的樓宇結構及消防安全標準後，才會根據《條例》向申請人簽發旅館牌照。

牌照處在處理旅館牌照申請時，須按照《條例》所賦予的權限處理有關申請。根據《條例》第8(3)條，旅館業監督只可因為擬用作旅館的處所未能符合《條例》訂明的樓宇結構安全、消防安全、衛生配置和旅館管理等原因而拒絕向有關旅館發出牌照。

牌照處簽發的旅館牌照旨在證明有關處所已達致相關條例訂明的樓宇結構及消防安全標準，而並非針對規管旅館牌照持牌人所經營的業務。旅館牌照並不會免除任何由政府所批出的地契、租約或牌照內所載的任何條件，亦不會影響或改變旅館所在樓宇的大廈公契或其他私人契約的條文。牌照處已在牌照申請表及指引，以及發牌通知信件等相關文件中，提醒持牌人如違反法例、大廈公契或其他契約，須承擔一切後果和責任，絕對不會因獲簽發牌照而得到豁免或受到保護。

民政事務總署

2015 年 1 月

Annex 4

油尖旺房屋事務及大廈管理委員會第 5/2015 號文件
書面回應

油尖旺區議會房屋事務及大廈管理委員會

2015年1月29日第十五次會議

討論項目：旅館業監督撤銷旅館牌照的準則是什麼

在香港經營旅館是受《旅館業條例》(第349章)(《條例》)所監管。《條例》的目的是通過發牌制度，確保擬用作旅館的處所的樓宇結構和消防安全達至法定標準，以保障旅客及公眾安全。民政事務總署轄下牌照事務處(牌照處)是執行《條例》的部門，負責處理牌照簽發及相關的規管和執法工作。

無牌旅館的樓宇結構及消防安全，均未經確定符合法定的安全標準，對入住者及公眾的生命及財產毫無保障，一旦發生意外，後果不堪設想。因此，為保障旅客和公眾的安全，牌照處一直致力打擊和掃蕩無牌旅館活動，並推行針對旅館牌照持有人涉及無牌經營旅館的嚴厲政策。如旅館牌照持有人曾觸犯在持牌處所以外的處所經營無牌旅館而被定罪，旅館業監督(監督)會考慮援引《條例》第10條(b)(i)¹，撤銷或暫時吊銷該持牌人名下所有旅館牌照，或拒絕為該(等)牌照續期。

旅館牌照持有人如因經營無牌旅館而被法庭定罪，監督便會展開撤銷牌照的程序。如該持牌人於程序開展前已為其旅館牌照遞交續期申請，監督則會展開拒絕牌照續期的程序。監督會按照《條例》第11條，在根據第10條送達通知書之前，向該持牌人發出其意向通知書，並在通知書內說明他考慮援引《條例》第10條(b)(i)的原因，以及告知該持牌人可於指定時間內向監督作出書面申述。如監督在全面詳細考慮持牌人的書面申述和該個案其他的相關因素後，決定撤銷或暫時吊銷有關牌照或拒絕有關牌照續期申請，監督會將有關決定寫成書面命令，然後將命令以掛號郵遞寄予有關持牌人。如該持牌人對監督的決定而感受委屈，可根據《條例》第13條向上訴委員會(旅館業)提出上訴。

牌照處在實施上述針對旅館持牌人涉及無牌經營旅館的政策時，已分別於2010年2月、2011年8月及9月向所有旅館牌照持有人發出信函，提醒他們如曾因經營無牌旅館而觸犯《條例》所訂的罪行而被定罪，監督可考慮根據《條例》第10條採取行動，撤銷或拒絕將牌照續期。有關信函亦已上載至牌照處的網頁內的「給旅館牌照持有人及準申請人的建議」，以供參閱。同時，牌照處亦已於簽發旅館牌照予申請人時夾附的信件內提醒申請人，如他們因經營無牌旅館而觸

犯《條例》所訂的罪行而被定罪，監督可考慮根據《條例》第10條撤銷或拒絕將牌照續期，並告知他們須瀏覽上載至牌照處網頁「給旅館牌照持有人及準申請人的建議」內資料。因此，所有旅館持牌人均已非常清楚知悉如因經營無牌旅館而被定罪，根據《條例》第10條所導致的嚴重後果。

此外，於早前一宗有關撤銷旅館牌照而申請批准司法覆核的案件中，主審法官已明確指出《條例》第10(b)(i)條清楚賦予監督有權對被裁定觸犯《條例》的牌照持有人，採取撤銷、暫時吊銷或拒絕將牌照續期的行動。

截至2014年第一季，共有18²宗因旅館持牌人涉及無牌經營旅館，而被撤銷旅館牌照的個案，另有一宗個案為監督於2009年拒絕為該牌照續期。

至於關秀玲議員及錢雋永委員於2015年1月12日提交的文件中提及有持牌人因涉及無牌經營旅館，而被撤銷旅館牌照的個案，由於該持牌人已向上訴委員會（旅館業）提出上訴，因此本署不便作進一步評論。

根據牌照處的紀錄，截至2014年12月31日，位於油尖旺區的持牌賓館數目為982，其中445間位於尖沙嘴區。

民政事務總署
2015年1月

¹ 監督可隨時向就某旅館發出的牌照持有人送達書面通知，因該人被裁定觸犯《條例》而撤銷或暫時吊銷該牌照，或拒絕將該牌照續期，或修訂或更改該牌照的條件。

² 其中兩宗被撤銷旅館牌照的持牌人在民政事務總署於2014年7月發表「《旅館業條例》的檢討」諮詢文件時，已就其個案向上訴委員會（旅館業）提出上訴，因此該兩宗個案並不包括在諮詢文件內的統計數字。上訴委員會（旅館業）其後已審理有關個案，並維持監督撤銷有關旅館牌照的決定。