

## LCQ15: Management fees of private housing

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Home and Youth Affairs, Miss Alice Mak, in the Legislative Council today (June 21):

Question:

It is learnt that complaints against property management companies (PMCs) for unsatisfactory services and excessively high charges occur from time to time. According to a study report of the Consumer Council (CC), CC received a total of nearly 700 complaints related to property management in the past 11 years and, among them, nearly 50 per cent of the respondent owners considered the amount of management fee to be too high, and more than 20 per cent of the owners considered the level of management fee unreasonable. In addition, some members of the public have criticized that PMCs charge high fees and wield great power (for example, during the COVID-19 epidemic, the PMC of a blue-chip housing estate received subsidies under the Government's Employment Support Scheme on the one hand, and significantly increased the management fee by nearly 10 per cent on the other), and facing the substantial increase in management fees by PMCs year after year, minority owners are left with no solutions as the regulatory requirements in the Building Management Ordinance (Cap. 344) governing the increase in management fees by PMCs are too lenient. Also, given the fact that developers of large-scale housing courts are mostly the majority owners of their courts, even if all the ownership shares of the minority owners are taken into account, it is not enough to replace the PMCs (the deeds of mutual covenant (DMCs) of some blue-chip housing estates even specify the PMC to be selected in the future). Such situation is like "being robbed of money by the developer's PMC year after year in front of one's eyes". In this connection, will the Government inform this Council:

- (1) whether it has compiled statistics on the number of PMCs of large-scale private housing courts in the territory which are affiliated companies of the developers of the courts concerned; if so, of the details;
- (2) whether it has gained an understanding of the average rate of increase in the management fees charged by PMCs of large-scale private housing courts in the territory in the past five years;
- (3) as the relevant provisions of Cap. 344 provide that the rate of increase in the management fee does not need to be approved by a resolution passed at a general meeting convened by the management committee or the corporation as long as it does not exceed 50 per cent, whether the authorities will consider amending Cap. 344 to lower the relevant threshold, so as to protect the rights and interests of minority owners; and

(4) given that situations like the aforesaid one, where the developer of a large-scale blue-chip housing court has stipulated in the DMC that the PMC of its subsidiary is responsible for the management of the court, and it has been difficult for minority owners to pool together enough ownership shares to amend the DMC and replace the PMC of the developer, are described by some owners as akin to forced patronage, whether the Government has examined if the aforesaid situation has violated the principle of competition, and whether it will request the Competition Commission to intervene and investigate?

Reply:

President,

The Government's role in building management is to encourage and facilitate owners to form suitable residents' organisations, including the formation of owners' corporations (OCs) in accordance with the Building Management Ordinance (Cap. 344) (BMO), so as to support owners in discharging their responsibility for managing their buildings. Meanwhile, the Property Management Services Authority (PMSA) established under the Property Management Services Ordinance (Cap. 626) "PMSO) is responsible for the implementation of the licensing regime for the property management (PM) sector, which will promote the professional development of the PM sector, and enhance the competence and conduct of the PM sector.

In consultation with the Commerce and Economic Development Bureau, the reply to the four parts of the question is as follows:

(1) According to the estimate by the PMSA, there are about 700 PM companies (PMCs) in Hong Kong required to be licensed under the PMSO. The PMSA does not have statistics on whether PMCs are related companies of developers.

(2) Fees payable to PMCs engaged by each building or estate and the level of adjustment of such fees vary depending on factors including the condition of the building or estate, ancillary facilities of the building or estate, and services PMCs need to provide. The PMSA does not have relevant figures.

(3) The BMO provides for the formation and operation of OCs, including the financial management of OCs. It stipulates, inter alia, that the management committee of an OC shall determine the amount to be contributed by owners to the building's funds in accordance with the annual budget.

According to section 21(1A) of the BMO, if the relevant amount exceeds the preceding amount by over 50 per cent, approval by the OC through a resolution passed at a general meeting is required. The provision aims to protect owners by ensuring that their approval has to be obtained for significant increase in the fees. It, however, does not mean that owners can only veto an increase of building management fees that exceeds 50 per cent. Pursuant to paragraph 1(6) of Schedule 7 to the BMO, a budget may be rejected by the OC through a resolution of owners within a period of one month from the date that a budget is sent or displayed in accordance with the specified procedures. Besides, pursuant to paragraph 1(2) of Schedule 3 to the BMO, not

less than 5 per cent of the owners may request a general meeting of the OC be convened by the chairman of the management committee for the purposes specified by such owners.

(4) The Competition Ordinance (Cap. 619) (CO) aims to curb harmful anti-competitive conduct. The First Conduct Rule of the CO prohibits any behaviours that prevent, restrict or distort competition in Hong Kong. The Second Conduct Rule of the CO prohibits undertakings with a substantial degree of market power from abusing that power to prevent, restrict or distort competition in Hong Kong which have the object or effect of excluding competitors from the market, thereby limiting choices available to consumers. The two Conduct Rules both regulate behaviours of market participants. When the Competition Commission has reasonable cause to suspect contravention of any Conduct Rule under the CO, it could commence investigation in accordance with the CO. However, whether there is any contravention of the Rules for a specific case is a matter of evidence after investigation.

Besides, owners may replace the manager in accordance with the terms of the Deeds of Mutual Covenant (DMCs). By virtue of paragraph 7 of Schedule 7 to the BMO, where an OC has been formed, owners may terminate a DMC manager's appointment at a general meeting of owners by a resolution passed with the majority of votes and with the support of owners of not less than 50 per cent of the shares in aggregate.