

covenant, we will also agree because small property owners can already resume their management right if they have a deed of mutual covenant. We cannot see any justification for failure in resumption of management right in the situation of the existence of a sub-deed of mutual covenant. Hence, the DAB will similarly support Mr James TO's amendment.

Mr LEUNG Kwok-hung's amendment is quite troublesome. President, Mr LEUNG proposes to "set up a unit with investigatory powers under the Home Affairs Department (HAD) to undertake investigation into and initiate prosecution against malpractices in the management of private buildings". When it comes to actual implementation, I believe the HAD might not be capable of accomplishing this task even with the recruitment of thousands of extra employees. At the same time, I believe OCs have no wish for the Government to carry out regular inspections. They certainly would not want to see government staff suddenly carrying out investigation to examine if there are management malpractices while they are performing their daily routine. This will result in infinite expansion of the Government's authority. Actually, building management is originally an internal matter for buildings and small property owners. We certainly do not hope to see excessive intervention by the Government. Therefore, the DAB will definitely vote against this amendment.

President, I so submit.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the management of private buildings is the responsibility of owners. The role played by the Government in this regard is that of a facilitator. Through various channels, the Government will assist owners in discharging their responsibility of building management. One important aspect of this work is the provision of a legal framework for compliance by owners. The Building Management Ordinance (Cap. 344), hereinafter referred to as the BMO, aims precisely to provide such a framework to facilitate the establishment of owners' corporations (OCs) by owners of multi-storey buildings and to set down the rules for building management.

So far, roughly 15 000 buildings in Hong Kong have established OCs in accordance with the BMO. Besides, owners of multi-storey buildings may also

choose to establish an owners' committee or employ a property management company to assist in the day-to-day management and repairs and maintenance of their buildings. We understand that with the rising public concern about building management, the public have become ever more exacting of the service standards of property management companies. Some members of the public have therefore recommended the Government to put in place a licensing regime for the purpose of regulating property management companies. The motion proposed by Miss CHOY So-yuk today also deals with this topic, aiming to upgrade building management standards and prevent the occurrence of problems.

However, we note that there are many different opinions about whether a licensing regime should be put in place to regulate property management companies. Those who support the introduction of a licensing regime think that such a regime can better protect owners' interest, as it helps raise the service quality of property management companies and management standards. At the same time, however, we have also heard some opposite views, that the introduction of a licensing regime may lead to huge increases in management fees, thus adding to the burden of owners. It is even argued that some smaller property management companies may fail to survive under a licensing regime. There are roughly several hundred small-scale property management companies and they mainly serve old tenement buildings. Generally, they provide some basic management services to buildings at relatively inexpensive prices. If these small-scale property management companies are out-competed under a licensing regime, the market may become dominated by large property management companies. Owing to the lack of choices, owners of old buildings may be forced to employ large property management companies and pay higher management fees.

For all these reasons, the Government adopts an open attitude towards the introduction or otherwise of a licensing regime to regulate property management companies. In order to gather more relevant information to facilitate the Government's consideration of the whole issue, we have started preparations for a phased study on the regulation of property management companies. In the first phase, we will collect and analyse information about three major areas, namely, the mode of operation and market conditions of Hong Kong's property management industry, the ways in which overseas authorities (including mainland authorities) regulate the property management industry and Hong

Kong's experience of regulating other types of industries. It is expected that the first phase of studies will be completed around April next year. Once the result of the first phase of studies is available, we will consider proceeding to the second phase on the basis of the available findings, so as to assess whether there is a need to set up a licensing regime. In the course of the studies, we will thoroughly consider all the views put forward by Members today.

Mr Tommy CHEUNG's amendment recommends the Government to conduct joint studies with the industry on introducing a licensing regime for property management companies. We do agree to this recommendation. Actually, in any comprehensive consideration of the need or otherwise to set up a licensing regime, the views of the industry are very important. Once the findings of the first phase of studies are available, we will consult the industry and brief the Legislative Council Panel on Home Affairs accordingly.

Some Members have mentioned that another property management company has closed down recently. According to the information we have, the property management company used to manage some 50 buildings. Immediately after its closure, the District Offices concerned already started to approach the OC Chairmen and owners of the affected buildings, with a view to providing them with appropriate assistance. We also held a briefing immediately, during which lawyers, accountants and property management professionals were invited to offer free advice to the affected owners.

We understand that most of the affected buildings have already established OCs and opened separate bank accounts for the handling of their finances. Our front-line liaison personnel have been maintaining contact with the OCs and owners of the affected buildings and providing them with appropriate assistance.

Miss CHOY So-yuk's motion on introducing a licensing regime for property management companies actually aims to protect owners' rights. And, Mr Alan LEONG's amendment even proposes that measures be taken to prevent conflicts of interest and to increase financial transparency. As a matter of fact, under the existing BMO, there are already provisions on the operation of property management companies. These provisions aim to ensure the protection of owners' rights, increase property management companies'

transparency of handling building finances and prevent them from misusing owners' monies.

Mr LEE Wing-tat and Mr Albert HO have also mentioned that Part VI A of and Schedule 7 to the BMO are both about mandatory terms in deeds of mutual covenant (DMCs). All property management companies must abide by such provisions. Under Schedule 7, a property management company must prepare a draft budget and a financial statement at regular intervals, in addition to maintaining proper books or records of account. The BMO also provides that a property management company shall allow owners to have access to the relevant documents. All these provisions aim precisely to increase property management companies' transparency in handling building finances, so that owners can monitor the financial position of their buildings.

With a view to further improving the provisions of the existing BMO, we submitted the Building Management (Amendment) Bill 2005 (the Bill) to the Legislative Council in April last year. This Bill proposes, among other things, to set down a number of new provisions on the operation of property management companies, so as to accord to owners' better protection.

Under the existing BMO, a property management company shall open and maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building concerned. The Bill proposes to further require a property management company to open and maintain one or more segregated trust/client accounts under the OC's name. This proposal can ensure that the property management company will keep the management fees received in a bank account separate from its own monies. Besides, it can also ensure that the management company will not deposit the management fees received from different buildings in one single bank account.

Besides, a property management company must from time to time make procurement or sign contracts on behalf of the OC or building owners. In this connection, we propose to stipulate in the BMO that any procurement of goods or services exceeding a specified value shall be done through tendering and be screened by the owners at a general meeting. These proposals can help increase property management companies' transparency in using management fees, thereby enabling owners to better understand the financial expenditure of their buildings. Through the tendering process and general meetings, owners can monitor the operation of property management companies more effectively.

The Legislative Council has already set up a Bills Committee to scrutinize the Bill and more than 30 meetings have been held to discuss the clauses of the Bill (including the proposed amendments I have mentioned).

The second part of the motion proposes to establish a Building Affairs Tribunal. This topic falls within the portfolio of the Housing, Planning and Lands Bureau. According to the information provided by the Bureau, it actually conducted the first phase of a public consultation exercise on building management and maintenance from late 2003 to early 2004. As indicated by the findings, society as a whole generally subscribes to the view that owners are duty-bound to inspect and repair their buildings for the protection of public safety.

Based on the findings of the first-phase consultation, the Housing, Planning and Lands Bureau formulated the details of a Mandatory Building Inspection Scheme and launched the second-phase consultation in late October 2005. The consultation document concerned seeks to solicit people's views on whether or not it is necessary to establish a separate mechanism for settling building management and maintenance disputes separate from the existing Judiciary or tribunal systems. The second-phase consultation was completed in mid-March this year.

The findings show that some people find it necessary to establish a mechanism not requiring any legal representation. They hope that this new channel can reduce the costs involved and the time spent by the Court handling such disputes. However, there are also other views holding that the establishment of another mechanism may result in overlapping structure and make the systems of Courts and tribunals unnecessarily complicated. And, they also think that the absence of legal representation under the new mechanism may lead to human rights problems.

For these reasons, the Housing, Planning and Lands Bureau is currently conducting an in-depth study on the issue in conjunction with other relevant departments. The Housing, Planning and Lands Bureau and the Judiciary will consider and follow up the public opinions on the Lands Tribunal put forward during the consultation period. The outcome will be announced following the completion of the work concerned.

Mr LEUNG Kwok-hung's amendment to this part of the motion proposes to set up a unit under the Home Affairs Department for initiating prosecutions in

respect of the management of private buildings. We do not agree to Mr LEUNG's amendment. At present, some government departments are already vested with the authority of enforcing the legislation on building management and maintenance. For this reason, it is not necessary to establish a separate unit to handle such matters as proposed by Mr LEUNG.

At present, the Secretary for Home Affairs is the Authority under the BMO, and the Home Affairs Department is the executive arm of the Home Affairs Bureau for the purpose. Building maintenance, on the other hand, is a matter under the ambit of the Buildings Ordinance, and the Director of Buildings is responsible for enforcement. When District Offices notice any contravention of the BMO, they will draw the attention of the persons concerned to the requirements of the ordinance. If we observe any continuation of contravention, we will conduct an investigation and seek the advice of the Department of Justice, so as to determine whether it is necessary to stage a prosecution. Likewise, the Buildings Department will also conduct investigations into any contraventions of the Buildings Ordinance and institute prosecutions if necessary.

However, I wish to emphasize that private buildings are the private properties of owners. Owners themselves should bear the responsibility of managing their private properties. The Government should only play the role of providing appropriate assistance to owners in discharging their responsibility, instead of interfering too much with the private affairs of building management. What is more, experience tells us that most complaints about building management are actually caused by owners' ignorance of the legislation or misunderstanding among owners themselves. The majority of such cases can in fact be settled through communication. As rightly pointed out by Mr Albert HO, our current approach is to settle building management disputes through mediation. If prosecutions are lightly instituted, the relationship among neighbours will be adversely affected and their mutual misunderstanding will also worsen. What is more, this may not necessarily be the most effective means of settling disputes. We must after all bear in mind that our ultimate purpose is not the punishment of any sides. Rather, we should aim to ensure the maximum protection of owners' rights and to create a harmonious living environment.

The Government appreciates people's hope of handling building management and maintenance disputes in a more effective manner. We will seek improvements in this regard. However, in order to achieve this goal, it

will be most important to obtain the co-operation of owners. As a matter of fact, the full involvement of owners is vital to the satisfactory management and maintenance of buildings. If all property owners can play the role of responsible owners and attach importance to building management and maintenance, the number of disputes will naturally decline substantially.

Besides, Mr James TO and Mr Alan LEONG have also put forward respective amendments to the motion, proposing to establish a mechanism for amending unreasonable provisions in DMCs. Mr James TO has even proposed an amendment on sub-DMCs. These two amendments are both about DMCs and were discussed in detail during the meetings of the Bills Committee of Building Management (Amendment) Bill 2005. DMCs are private agreements among building owners, managers and property developers. The Government is not a party to any such covenants. 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 the other parties. This is a very important spirit and principle underlying our laws.

However, the Government is also aware that the drafting of certain old DMCs may not have given full consideration to the rights of all parties. Therefore, since 1986, the Government has been stipulating in land leases that all DMCs must be approved by the Lands Department and comply with the Guidelines for Deeds of Mutual Covenant issued by the Department. Besides, the Government has also prescribed a number of mandatory terms applicable to DMCs in Part VI A of and Schedule 7 to the BMO. They provide for the responsibilities of property management companies and the power of owners to set up OCs. In these provisions, the management fees applicable to vacant building units as mentioned by Mr Albert CHAN are dealt with and so are the lawsuits between property management companies and OCs. These mandatory terms shall override the provisions of DMCs.

Notwithstanding all this, we are aware of problems with some DMCs. In some cases, such DMCs have even hindered the effective management and maintenance of buildings. Regarding the amendments of Mr James TO and Mr Alan LEONG, I wish to point out that in order to enable owners to manage and maintain their buildings effectively, the Government does not oppose in principle

the enactment of legislation on establishing a mechanism for amending DMCs. As a matter of fact, the Building Management (Amendment) Bill 2005 also contains a number of provisions with enhanced overriding authority over DMC terms. But we must bear in mind that DMCs have set out the powers and responsibilities of owners, developers and managers, so any amendments to them will inevitably affect the powers and responsibilities of the parties concerned. As pointed out by several Members earlier, the concerns of most owners are about their ownership shares and management shares. And, all these concerns are directly or indirectly related to property rights. Consequently, any mechanism that may affect DMCs must comply with the principle of "fair balance". This means the striking of a fair balance between the interests of society as a whole and the protection of owners' rights. When considering whether or not to introduce any relevant mechanism, the Government must take account of the extent to which DMCs can be amended, so as to ensure appropriate protection for affected owners or owners who oppose the amendment of their DMCs. I hope Members can understand that the law can actually do very little in regard to the modification of existing contract rights and property rights.

Mr James TO has made special mention of sub-DMCs. Like master DMCs, sub-DMCs are also private contracts and must thus be approved by the Lands Department in accordance with the Guidelines for Deeds of Mutual Covenant. However, in contrast to a master DMC, a sub-DMC is not applicable to the entire building and it only regulates certain parts of a building, such as the commercial portions or the residential portions. Or, it may even regulate only one unit of a building. The mandatory terms carried in the BMO can only be applied to a master DMC regulating the management of the entire building. They cannot be applied to sub-DMCs regulating only certain portions of a building. However, generally speaking, a developer will specify the appointment of property managers in a master DMC, so in accordance with the Guidelines for Deeds of Mutual Covenant, a mechanism for the termination of appointment must be provided for in the master DMC. Since sub-DMCs must also comply with the Guidelines for Deeds of Mutual Covenant, it will be necessary to provide for a mechanism for the termination of appointment in case the appointment of property managers is specified in a sub-DMC. In such case,

owners regulated by a sub-DMC will also be able to terminate the appointment of a property manager by virtue of the sub-DMC.

Finally, I wish to emphasize that the Government attaches very great importance to building management and maintenance. We will continue to endeavour to perfect the existing legal framework and step up publicity and education, so as to increase owners' understanding of the provisions of the BMO. That way, they will know their powers and responsibilities clearly and can exercise the powers conferred on them by the legislation for the effective management of their buildings. We will continue to discuss the proposed amendments to the Building Management (Amendment) Bill 2005 with the Bills Committee. We also hope that Members can pass the various proposed amendments early, so as to ensure the smooth management of buildings and better protect owners' rights.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr Tommy CHEUNG to move his amendment.

MR TOMMY CHEUNG (in Cantonese): President, I move that Miss CHOY So-yuk's motion be amended.

Mr Tommy CHEUNG moved the following amendment: (Translation)

"To add "better protect the interests of small property owners," after "That, in order to"; to delete "implement" after "to expeditiously" and substitute with "explore with the industry the setting up of"; and to delete "a Building Affairs Tribunal" after "establish" and substitute with "a tribunal mechanism for building affairs"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Tommy CHEUNG to Miss CHOY So-yuk's motion, be passed.