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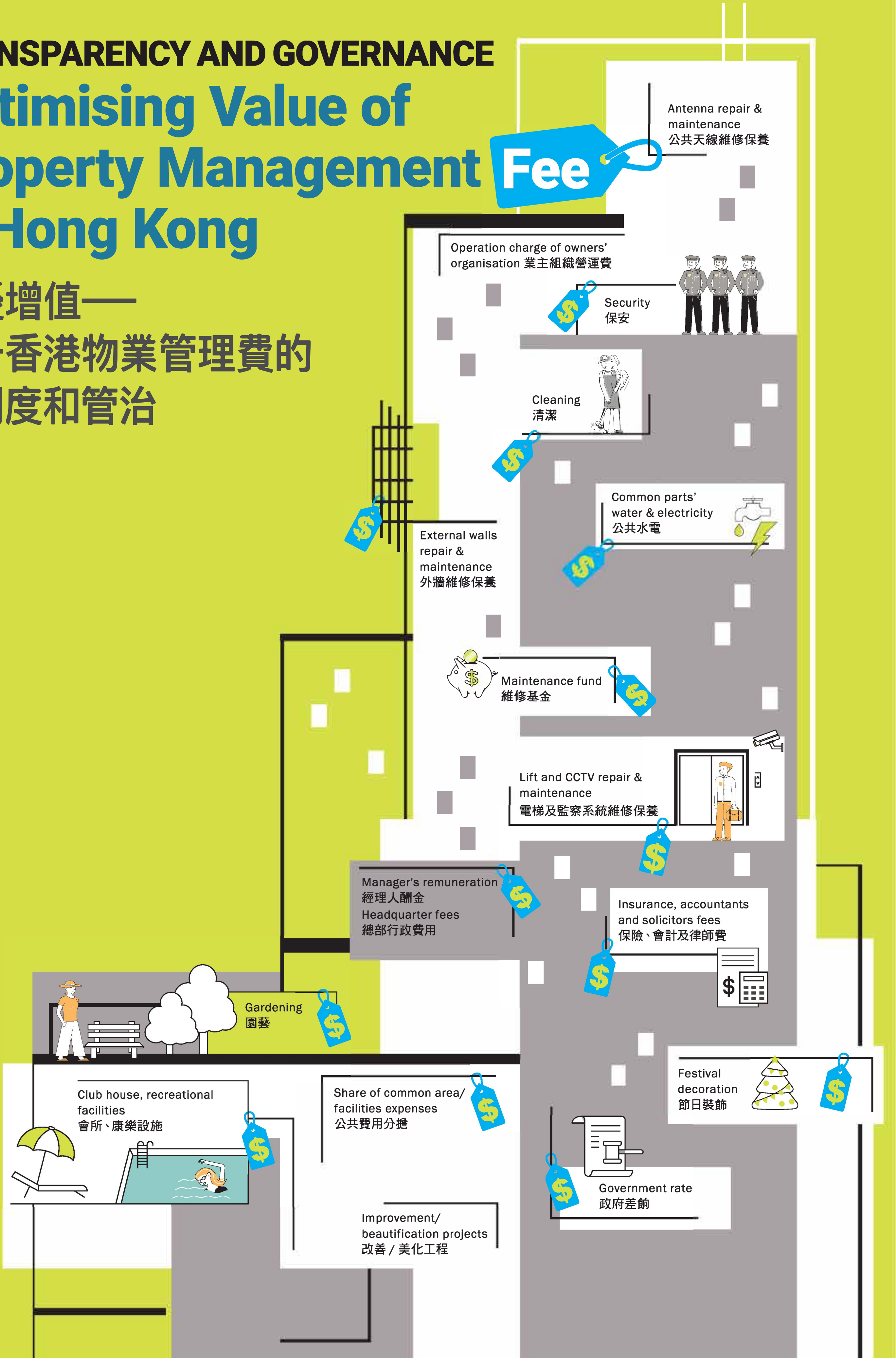
Optimising Value of Property Management Fee in Hong Kong

創優增值——提升香港物業管理費的透明度和管治



TRANSPARENCY AND GOVERNANCE

Optimising Value of Property Management Fee in Hong Kong

A Study on the Private Residential
Property Management Fees in Hong Kong

創優增值 — 提升香港物業管理費的透明度與管治

香港私人住宅物業管理費研究

Contents

This Report can be downloaded from www.consumer.org.hk.
In case of any update, the latest version shall prevail.

Abbreviations

AGM	Annual general meeting
AP	Authorised Person
BMO	Building Management Ordinance (Cap. 344)
BMSMA	The Building Maintenance and Strata Management Act (Singapore)
C&SD	Census and Statistics Department
CF	Contingency fund
Consent Scheme	Lands Department Consent Scheme
CPO	Conveyancing and Property Ordinance (Cap. 219)
DCCA	District Council Constituency Area
Developer	Property developer
DLP	Defects liability period
DMC	Deed of Mutual Covenant
DMC Guidelines	Guidelines for Deeds of Mutual Covenant
GF	General fund
GFA	Gross floor area
HAD	Home Affairs Department
HYAB	Home and Youth Affairs Bureau
ICAC	Independent Commission Against Corruption
LACO	Legal Advisory and Conveyancing Office
LandsD	Lands Department
LR	The Land Registry
Management fee	Property management fee
MBIS	Mandatory Building Inspection Scheme
MC	Management Committee
MSBO	Multi-storey Buildings (Owners Incorporation) Ordinance
MWIS	Mandatory Window Inspection Scheme
OC	Owners' corporation
OO	Owners' organisation
Owner	Property owner
PMC or property manager	Property management company
PMP	Property management practitioner
PMSA	The Property Management Services Authority
PMSO	Property Management Services Ordinance (Cap. 626)
RPO	Residential Properties (First-hand Sales) Ordinance (Cap. 621)
RTM	Right to Manage (UK)
RTMCo	Right to Manage company (UK)
SD	Statutory declaration
SF	Special fund
SRPA	Sales of First-hand Residential Properties Authority
SRPE	Sales of First-hand Residential Properties Electronic Platform
Sub-DMC	Sub-Deed of Mutual Covenant
The Mainland	Mainland China
URA	Urban Renewal Authority
UK	United Kingdom
VIF	Vendor's Information Form

Executive Summary

Property Management in Hong Kong

In Hong Kong, over half of the population live in private housing, a lot of which are multi-owned residential buildings. Ownership in multi-owned buildings is generally expressed in terms of undivided shares, which are assigned to each purchaser as co-owner with all other co-owners as tenants-in-common. Shareholding of the undivided shares is normally set out in the deed of mutual covenant (DMC) of the building or the development where there are multiple buildings. The DMC may also stipulate the shareholding of management shares which form the basis on which management fees are charged. Collective actions from owners are required to exert influence in decision making related to property management matters.

Common areas (e.g. entrance lobbies and communal corridors) and facilities (e.g. water supply systems and fire service installations) are co-owned by all owners, who are jointly responsible for the costs in managing and maintaining these common parts. To cover the aforesaid costs and all other expenses in relation to the management and administration of the building, owners are obliged to pay their share by way of payment of management fees. Survey commissioned by the Consumer Council (the Council) found that "staff salaries and related expenses" (40.4%) was the major component of the management fee budget, followed by "repairs and maintenance related expenses" (27.7%) and "cleaning related expenses" (10.8%).

Where a property management company (PMC) is hired to provide property management services, the PMC usually collects management fees from the owners on a regular basis. The Council's survey found that the monthly management fees paid by the respondent owners ranged from HK$200 to HK$3,700. On average, the respondent owners spent approximately 7.4% of their monthly household income on management fees. According to a market study, the total revenue of property management services in the residential market in Hong Kong was forecasted to reach HK$55.1 billion (2.0% of Hong Kong's GDP) in 2022. As the residential properties continue to age, a general rising trend in management fees is expected.

From time to time, the Council received stakeholders' concerns or consumer complaints related to property management, such as pricing or charge disputes and dissatisfaction with the quality of property management services. The resolution rate of this type of complaints is relatively low due to the complexity of the issues involved. Further problems of property management, including unreasonably high or even unaffordable property management fees, bid-rigging, over-charging and lack of information transparency are also found from court cases and news reports.[1]

In order to better understand, identify and assess if the existing system of management fees in private residential buildings in Hong Kong is working effectively, or whether there are issues giving rise to consumer detriment, the Council undertook this Study to look into the issues and put forward recommendations for enhancement of consumer protection.

[1] The Standard. (2023 Jan 06) ICAC smash syndicate over record HK$500 million building maintenance contracts, arrest 49.

This Study

The key objectives of the Study[2] are to:

- Gauge consumers' levels of awareness, understanding and influence on private residential property management fees in Hong Kong, their rights and obligations in property management, and their experiences and opinions on property management services and fees;
- Find out the roles and powers of owners' organisations (OOs) in property management in practice and their experiences and opinions in choosing and switching PMCs;
- Identify the prevailing issues and ranges of management fees and related expenses (such as property manager's remunerations) in the private residential property management market; the nature and extent of market competition among PMCs and their views and opinions; and
- Review the current state of safeguards so as to propose appropriate recommendations for enhancing consumer protection in property management.

To define the scope of the Study and to gain insight into the market situation, the Council reviewed the key statutory and regulatory requirements governing property management in Hong Kong; carried out an in-depth review of 694 complaint cases related to property management received during the last 11 years or so; and conducted a series of consultation sessions at various stages of the Study with a range of stakeholders including relevant government departments, regulatory authorities, public body, trade associations and professionals to solicit their views on property management issues in Hong Kong.

To enrich the perspective of the Study, the Council also made inquiries with relevant regulatory bodies in other markets and collected relevant regulatory information online with a view to identifying possible learnings or good consumer protection measures for consideration.

Noting the importance of owner's undivided shares and manager's remunerations in property management and management fees, and in order to understand the availability and accessibility of key property management information to prospective purchasers, the Council conducted desktop research into 50 sales brochures, 249 DMCs and two statutory declarations (SDs) of first-hand private residential developments in Hong Kong during the sample period of December 2019 to December 2021. The review analysis focuses on looking at the extent to which DMC manager's (i.e. the PMC specified in the DMC) remuneration is charged to the permitted ceiling; the presentation of allocation of undivided shares and management shares in DMC; the disclosure of DMC terms in sales brochure; and the connection of DMC managers with developers.

In order to find out more about the underlying causes and circumstances of the prevailing property management issues from the viewpoints of owners, OOs and PMCs, the Council commissioned a research agency to conduct substantive fieldworks covering three sets of surveys and in-depth interviews with selected owners, OOs and PMCs of multi-owned private residential buildings across Hong Kong during November 2020 to July 2021.

[2] Public buildings, industrial buildings, commercial buildings, composite buildings, public housing estates, buildings under home ownership scheme, and buildings/houses with three storeys or below are out of scope of the Study.

Laws, Regulations and Regulatory Bodies

The management of multi-owned buildings in Hong Kong is mainly governed by the Building Management Ordinance (Cap. 344) (BMO) and their respective DMCs, while property management services are regulated under the Property Management Services Ordinance (Cap. 626) (PMSO).

On the one hand, the BMO provides a statutory framework for the formation of owners' corporations (OCs) to facilitate the management and control of the common parts of buildings. It contains provisions to avoid multiplicity of lawsuits involving numerous owners and allows the majority rule in decision making so as to avoid the need for unanimous consent of all owners in property management matters. Also, Schedule 7 to the BMO introduced mandatory terms which are impliedly incorporated into every DMC and shall prevail over the express terms of a DMC in the event of inconsistency. The Legal Advisory and Conveyancing Office (LACO) of the Lands Department (LandsD) examines and approves DMCs to ensure compliance with the BMO and the Guidelines for Deeds of Mutual Covenant (DMC Guidelines), which is a set of guidelines it drew up for the purpose of providing a system of building management in private residential developments. On the other hand, the PMSO provides for the licensing of PMCs and property management practitioners (PMPs), regulates the provision of property management services and established the Property Management Services Authority (PMSA), which is the industry regulator in Hong Kong. The PMSA regulates and controls the provision of property management services through a licensing regime, disciplinary actions and promotion of industry development. Apart from the PMSA, the Home Affairs Department (HAD) has been dedicating efforts to encourage owners of private buildings in Hong Kong to form OCs and provided relevant supports to owners.

Review on Building Management in Five Selected Markets

Hong Kong's land holding and conveyancing system is unique in that multi-storey buildings are held under co-ownership, with each owner holding undivided shares in the building as tenants-in-common with each other. The co-owners' rights, interests and obligations are set out in and governed by the DMC of the building.

Although the system in Hong Kong is unique, it is beneficial to examine and draw on the experiences of other markets across the globe, especially when other markets are striving to improve their systems and legal frameworks such that their experience can serve as good reference for Hong Kong. In this connection, the Council reviewed the regulatory regimes of five selected markets, namely Victoria of Australia, Mainland China (the Mainland), Singapore, Taiwan and the United Kingdom, and details can be found in Chapter 5 of the Report.

In a nutshell, the transparency of information related to property management fees are higher in Victoria, Singapore and Taiwan, enabling consumers in these markets to make more informed decisions of property purchase; property managers can be appointed or terminated by simple majority of votes of owners in Victoria and Singapore; specified duties and requirements are imposed on developers in Victoria, the Mainland, Singapore and Taiwan; and step-by-step mechanisms are in place to address property management disputes in Victoria, Singapore and the United Kingdom. All the above serve as good reference for betterment of the system in Hong Kong.

Issues Related to Property Management Fees in Hong Kong

With an overarching objective to advocate for a healthy, competitive and sustainable marketplace in property management for the benefit of consumers in Hong Kong, by consolidating the findings from all surveys, review exercises, desktop research and stakeholder consultations undertaken, the Council has identified the following issues of concern and puts forward a list of key recommendations in the hope of instigating further discussion by stakeholders and society.

Lack of Transparency in the Basis of Allocation of Shares

One special feature of property ownership in Hong Kong is the allocation of undivided shares and management shares (if any) among co-owners, with the former defining ownership and the latter defining the sharing of property management and maintenance expenses that the owners should bear from the moment they take ownership of the property.

The Study found that the allocation of shares is disclosed in the DMC of a development and in the sales brochure under the section of summary of DMC. Nonetheless, no explanation on the calculation and formula that determine the allocation of shares could be found in either the DMC or the sales brochure. Absence of this piece of information is obviously unsatisfactory from a consumer protection point of view, as it is essential information to enable prospective purchasers to make informed purchase decisions. Without due consideration of such essential information, owners who had not taken the share allocation, common areas and facilities and maintenance fees into adequate consideration before purchasing the property may subsequently find their liability for property management and maintenance expenses exceeds their household budget. A natural consequence of ill-informed purchase decision is consumer disputes, which the Council received from time to time mainly involving questions of apportionment of shares, whether certain parts of the building were common parts, if the common facilities or open spaces were opened for public use, or whether the sharing of expenses was fair.

Although the calculation leading to allocation of undivided and/or management shares can be found in the SD of a building, it is not a sales document offered for the general public's reference. As a matter of fact, many consumers are not aware of its existence or how to access such information.

Difficulty in Obtaining Unanimous Owners' Consent to Amend Unfair Terms in DMCs

Under the current legal setting, the DMC of a development, once registered with the Land Registry, binds the successors in title of the covenantor and the persons deriving title from them, whether or not they have actual notice of the DMC. Also, no party should unilaterally modify any provisions in a DMC without the consent of all other parties.

Desktop research into relevant court cases showed that some DMCs drawn up by developers might no longer fit the prevailing interests and benefits of the owners, therefore causing disputes and controversies between the parties. However, under the current legal setting, any amendment of the DMC must be supported by a unanimous consent of all owners even in cases where the implementation of the problematic terms seriously jeopardised the rights and interests of the owners. Recognising such difficulty, especially in large-scale housing estates or where some owners are untraceable, uninformed or indifferent, Legislative Council's Panel of Home Affairs had years ago urged for a mechanism for amending the unfair provisions in a

DMC by a resolution of less than 100% of shareholding of owners, subject to certain pre-approval mechanism. The proposal was, however, not adopted due to concerns over the interest of the minority owners who would oppose the amendment. As a result, the problem continues and unanimous owners' consent has to be reached in order to amend terms in a DMC.

Potential Influence of the Developer or Major Owner or Management Committee (MC) Members on Property Management Matters

A party holding a substantial number of undivided shares of a development might have the voting rights to control the management of the property, such as establishment of the owners' corporation (OC), termination of the PMC, etc. It is noted from the court cases that the residential portion of some large-scale housing estates were allocated a low percentage of undivided shares, making it difficult for the residential owners to gather sufficient shares to pass resolutions for property management decisions. The analysis of sampled DMCs revealed that residential owners in five out of the total 249 reviewed developments actually held less than 50% of the total undivided shares. Furthermore, affiliation of DMC manager with the developer is a common practice in the market and that there appears to be a high level of market concentration. The analysis showed that 75% of the DMC managers in the reviewed developments were affiliated with the developers, and that the top 10 DMC managers managed around 47% of the reviewed developments.

When a developer decides to allocate less than 50% of the total undivided shares to the residential owners and simultaneously appoints its affiliate as the DMC manager, concerns may arise over potential conflict of interest. Besides the developers, as remarked by some stakeholders, concern about conflict of interest may also appear in respect of major owners and MC members during the appointment and termination of affiliated PMC as well as other service providers. When these parties exercise their influence to push for specific property management projects or activities, it may affect the choice and result in significant expenses that have to be borne by all residential owners.

Service Quality Issues of PMCs Including Financial Risks and Dissatisfaction over Performance

Apart from the front-end services which are primarily facility management and repair and maintenance, property management services nowadays involve the back-end general management to manage the finance, human resources and legal aspects of the property. Among the 694 complaints concerning property management received by the Council from 2012 to 2022, around 50% of the complaints is related to allegation of improper handling of financial related issues by PMCs and about 40% of the complaints is about dissatisfaction with PMCs' quality of services.

Notwithstanding the mandatory requirements and measures in place which aim at curbing mishandling of financial matters, allegations against PMCs having handled accounts indiscriminately and used the management fees collected improperly were reported from time to time. Although PMCs are statutorily required to account for their financial operations on a regular basis, and that owners have the right to access financial information related to management, some PMCs were reported to have refused to disclose financial and operational information in the complaint cases received by the Council. Sometimes, dissatisfied owners were left with no choice but to seek redress from the court, which might not be the best course as the process could be lengthy, costly and stressful.

The Study also revealed an expectation gap between PMCs and owners on the PMCs' performance, in that 71.4% – 100% of the PMCs surveyed considered their performance was up to expectation while only 43.7% – 56.4% of the owners and 54.8% – 65.9% of the OOs surveyed agreed that the performance was up to expectation. Apart from the expectation gap, 87% of the owners indicated that they did not know the procedures to terminate unsatisfactory PMCs, and many owners (40.4%) and OOs (33.3%) found it difficult to choose a suitable PMC due to a lack of adequate market information.

Passive Owners' Participation in Property Management Matters and Insufficient Communication between OOs/OCs, PMCs and Owners

The Council's survey found that about 60% of the owners were passive to attend general meetings (63.0%) opine (62.7%) or vote (58.0%) on building management-related matters. The findings also showed that a majority of owners (over 78%) lacked an understanding of building management and related regulations, which might be the reason for their low participation in the management of their buildings. In fact, over 97% of the owners were unwilling to join OOs as chairpersons or members with reasons such as "no spare time", "no interest" and "too old to participate" or did not even provide relevant reasons.

Managing a building entails decision-making on a wide range of issues, from daily cleaning arrangements to overseeing major building maintenance works. As such, some form of OO is required to be in place to facilitate collective decision-making of owners. Yet, statistics from the Research Office of the Legislative Council revealed that only 47% of the private buildings (including residential, mixed-use, commercial and industrial buildings) in Hong Kong had formed OCs as at the end of 2021. Despite many years of government efforts in assisting the formation of OCs and providing support services to OCs, the percentage remained at a similar level for years. Stakeholders pointed out that the key obstacle for setting up OCs was the unwillingness of owners, apart from the time commitment involved and a lack of knowledge and experience in building management. Such passiveness could increase owners' exposure to the risk of mismanagement or possibly manipulation of their properties, and eventually harming their rights and interests. Another problem is it may lead to misunderstanding or misinterpretation, as evident by the finding that most disputes between owners, OOs and PMCs were caused by a lack of adequate communication.

Substantial Rises in Management Fees Especially for Maintenance Costs

Feedbacks from PMCs indicated that the leading reasons for increases in management fees were "inflation" (100%), "a rise in minimum wages" (72.4%) and "repair and maintenance of the building" (31.6%). Although the DMC Guidelines stipulates the establishment of a special fund (SF) to meet irregular expenses for renovation, improvement, and repair of the common areas and other related costs, a study of the Urban Renewal Authority (URA) in 2017 revealed that only one-third of the buildings surveyed in Hong Kong had set up SF while the remaining buildings did not have reserves for major maintenance work. Even for buildings with SF, balances of the funds were found to be inadequate to cover the costs of major maintenance works. One main reason for inadequate funds in the SF is the lack of professional knowledge of owners to determine the level of reserves required to cover the expenditure involved in future maintenance works. Without SF or where the reserve in the SF is insufficient, the owners may have to bear millions or even tens of millions of dollars of project costs when the need for major maintenance arises. This kind of additional contribution could cause financial strain on some owners, especially retirees and the elderly. An affordable and sustainable mechanism to accumulate funds for maintenance and repair is therefore a key protection for owners.

Recommendations from the Consumer Council

To achieve effective and responsible property management, on the one hand, it is important to ensure information accuracy and transparency in both the pre- and post-purchase stages and that the rights and obligations of owners are enforced in a fair manner throughout their ownership. On the other hand, owners should play an active role in property management and exercise proactive supervision to safeguard their own rights and interest. With all these goals in mind, the Council puts forward eight key recommendations with the objectives of improving communication, minimising misunderstanding and promoting consumer interests in effective property management in the long run.

Enhancing Market Transparency, Fairness and Efficiency

Recommendation 1: To Boost Transparency on the Basis upon Which Property Management Fees are Shared between Owners

Information about undivided shares and management shares to prospective purchasers prior to their making of purchase decision is crucial to minimising future misunderstanding and disputes. The Council recommends that the disclosure of the calculation and allocation basis of the shares should be made by developers in first-hand sale of private residential properties, as a good corporate practice to satisfy consumers' right to know. It is further recommended that developers should present the information in salient points in the sales brochures, with the detailed calculation uploaded to the development's websites, and a link to the website specified in the sales brochures. To enhance consumers' ease of reference, different categories of expense items should be displayed in the sales brochures. When the allocation of undivided shares differs from that for management shares, a clear explanation for the difference should be given. An example to illustrate the suggested display can be found in Section 7.2 of Chapter 7.

Recommendation 2: To Make Available Updated Property Management Information to Promote the General Public's Understanding and Knowledge of the Industry

The Council considers that the PMSA in the long run may consider developing a reference database for the general public, by collating information on the levels of management fees across Hong Kong. References can be made to the Electrical and Mechanical Services Department's release of maintenance price information on lifts in private residential premises for public reference and the Mandatory Provident Fund Schemes Authority's MPF Fund Platform. To ensure that the database will serve its intended purpose, it should contain key information such as building age, number of building units, building location, facilities and services provided, area of horticulture, number of property management staff employed, etc. for owners' reference. Competitively sensitive information such as the names of the PMCs and the buildings would be anonymised before aggregating the information for publication and take a progressive arrangement in the scale of information provision.

Recommendation 3: To Promote Fairness through Allowing Amendment of the Terms of DMC (Other Than Those on Undivided Shares) with Majority Consent

Drawing reference from the experience in the Mainland and Singapore, the Council calls for a relaxation of the requirement of unanimous consent, such as by amending the BMO to allow amendment of the terms in a DMC by majority consent of owners, except for terms relating to the allocation of undivided shares. Recognising the need for further review and discussion on the percentage of shareholding required to form a majority consent, the Council proposes in reference to the Companies Ordinance (Cap. 622), which allows amendment of the articles of association of a company by a majority of at least 75% of the number (not shareholding) of the members who vote in person or by proxy, to take 75% of undivided shares as reference point in determining what should amount to a majority consent for the purpose of amending the terms of a DMC. To address the concerns of potential abuse of the power and the need to protect minority interests, the proposed amendment mechanism should only be available to buildings of not less than 10 years of age, conducted under stringent procedures and subject to appeal.

Recommendation 4: To Avoid Conflict of Interest from Over-engagement in Property Management Decisions

To address the potential risk of conflict of interest of developer, major owners with 30% or more undivided shares, or MC members with that of other owners and to promote healthy competition in property management, the Council recommends the introduction of the following provisions in the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (RPO) and/or DMC Guidelines:

- Relationships between the developer and the DMC manager should be disclosed in the sales brochure. Where the DMC manager has yet to be appointed, the sales brochure should have a clear indication on when and how the disclosure will be made.
- Relationship between any major owner holding 30% or more undivided shares or any MC members, the PMCs or other service providers should also be disclosed as soon as the latter is proposed for selection.
- Declaration of interest should be made by the developer, major owner with 30% or more undivided shares and any MC members when a conflict-of-interest situation arises. Where appropriate, he/she should withdraw from the meeting and abstain from voting.
- Bidding practice should be adopted to procure services from PMCs (after completion of the appointment of the first DMC manager) and other service providers for substantial scale projects and where nature of the service is critical.

The measures adopted in Victoria and the Mainland (Section 5.3 of Chapter 5) in this regard may serve as good reference to Hong Kong.

Recommendation 5: To Improve Performance Efficiency of Property Management Services with New Technologies and Intelligent Solutions

To improve the performance efficiency of property management services, the Council advocates the adoption of technological and intelligent solutions and puts forward the following suggestions for the industry to consider:

- Roll out new intelligent solutions for services such as cleaning, sanitising, security, communication, etc. at a suitable pace and priority.

- Enhance communication and sharing of information with owners through social media, communication tools and/or dedicated websites, in addition or alternative to the conventional way of displaying circulars.
- Involve owners and gather their feedback in all key project milestones, such as the initial stage, evaluation process, testing stage and after the launch of the solution.
- Explore the feasibility of bespoke software, apps, platforms or templates through synergising effort of the industry to facilitate cost management and proper handling of personal details and data. To this end, collaboration of the industry, the PMSA and the innovation and technology sector should be considered.

Encouraging Participation of Owners

Recommendation 6: To Promote Active Participation of Owners with More Effective Communication in Property Management Activities

The Council suggests strengthening owners' engagement and participation in property management matters in a progressive manner. To this end, an "information pack for owners", which introduces the nature of property co-ownership, the rights and obligations of owners in property management, the importance and procedure to form an OC, the available building management support services, etc, may be prepared and provided to every purchaser upon completion of the purchase through different channels. When owners move into their property, they should be introduced to the management of the property as soon as possible, such as through welcome gatherings or periodic workshops held by PMCs. To continue to inform and engage owners in property management during the course of ownership, the HAD may consider developing interactive learning kits or holding regular workshops about property management and regulatory requirements. To further engage the owners, PMCs could increase the use of social media and websites to strengthen mutual communication. In the long run the practicality of virtual owners' meetings could also be explored as a means to facilitate participation of owners in view of their busy schedule.

The Council also calls for owners to play their part in property management and get involved from the beginning of their ownership. Apart from always reviewing relevant documents to understand the details of the property management expenses, they should also attend owners' meeting regularly and keep track of the progress of any ongoing property management projects. Apart from raising interest in participating, such progressive approach in education and engagement could help the owners equip the required knowledge and present their opinion more confidently before major decisions are made, instead of after their interests or rights have been compromised.

Recommendation 7: To Facilitate the Early Set-Up of OCs or Join Forces of Owners to Address Property Management Issues

To address the problem of insufficient knowledge and persistent lack of incentive of owners to form OCs and join OOs, the Council calls for more education and publicity programmes to enhance the general public's understanding of the importance of OCs in property management so as to increase their interest and willingness in forming OCs.

In addition, the Council calls for a review of the time within which a property manager must call the first meeting of owners, as one main purpose of the meeting is to appoint an MC for the purpose of forming an OC. Currently, the DMC Guidelines stipulates a 9-month period from the date of the DMC for the property manager to call the first owners' meeting. Having regard to the fact that owners' eagerness and interest in the management of their property usually decrease with time after completion of the purchase, the Council believes that the first owners' meeting should take place as early as possible. Although some owners may not be ready to form the OC at the first meeting, it can still serve as a platform for owners to join forces to address concerns over the management of their buildings and set the foundation for the formation of OC. In this connection, a review analysis conducted by the Council supports the introduction of a requirement that, on top of the 9-month period, the first owners' meeting should be convened as soon as residential owners hold over 50% of the undivided shares in aggregate, so as to safeguard their reasonable need to convene the first owners' meeting as early as possible to voice their concerns and to facilitate the earlier set-up of an OC.

For buildings without OCs or other forms of OOs, the PMCs can consider holding the general meeting of owners at least twice per year to increase frequency of engagement with owners, instead of the current practice of once every 12 to 15 months.

To provide motivation to owners to join the MC, the HAD may consider introducing an award scheme to recognise the efforts, commitment and achievements of MCs or individual members of MCs in promoting good property management. In addition, the amounts of maximum allowances payable to specific members of an MC under the BMO may require a review in order to better reflect the value of their contribution to the management of the property.

Enabling Safe and Sustainable Buildings

Recommendation 8: To Maintain Building Sustainability for Expected Repair and Maintenance Expenditures with Reasonably Sufficient Reserve in the Special Fund

To avoid financial strain on owners as a result of the need to pay substantial one-off contributions to the costs of major maintenance work, with reference to the experience in Shenzhen of the Mainland and Australia in establishing reserve funds for future repair and maintenance needs, the Council recommends that a SF should be maintained with sufficient reserve by regular and reasonable contributions from owners in Hong Kong. In this connection, the Council proposes establishing a capital works fund with a 10-year maintenance plan, and that the contributions to be made could be determined based on the following options: (i) a maintenance budget prepared by independent qualified professionals; (ii) an amount equivalent to a certain percentage of the annual budget of property management fees; (iii) a hybrid model with a seed fund paid by the developer plus contributions by owners equivalent to two months' management fees, followed by owners' monthly contributions; or (iv) the current practice of a budget prepared by the PMC or OC.

As regards when owners should start to pay contributions to the SF, the Council proposes with reference to experience from other markets that owners of first-hand properties should start to contribute to the fund from the second year onwards. While buildings over 10 years may face major repair and maintenance needs and should seek advice from professionals for the required expenses, buildings at or below 10 years of age should set up a reserve fund to prepare for the forthcoming repair needs. Subject to the condition of their buildings, owners should decide the timing for contribution according to the respective maintenance needs. To promote good governance of the fund, the Council suggests that the current requirement of keeping the fund in a designated and interest-bearing account should continue. In addition, a list of maintenance project items for which the fund may be used in future should be specified in order to define its proper use. Furthermore, the contribution paid should not be transferable and owners should be required at law to make monthly contributions. Except in a situation considered by the property manager to be an emergency, no money shall be paid out of the SF unless it is for a purpose approved by a resolution of the owners' committee (if any).

To enhance owners' understanding of the importance in establishing and maintaining the SF, PMCs and OOs are recommended to communicate with owners about the background and rationale for establishing the fund, advise them on the basis of calculation of the contribution, and inform them periodically about how the fund was and will be used.

The Way Forward

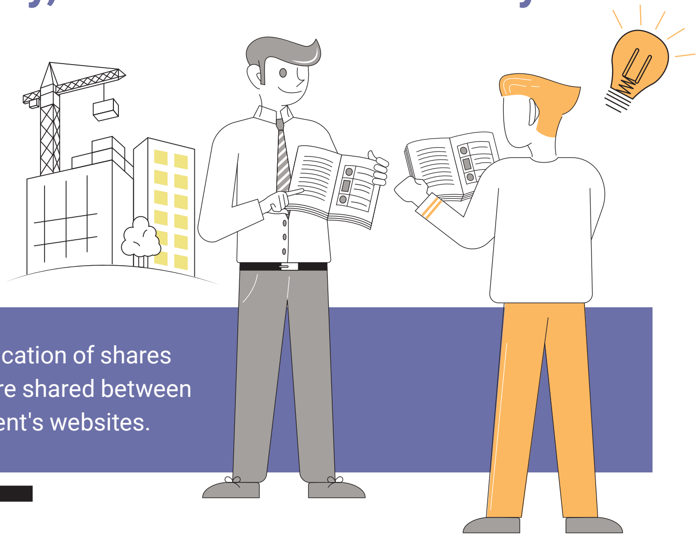
In most private residential buildings in Hong Kong, property management fee is the main source of income to fuel the effective operation of daily property management activities. Effective property management with high quality service and good maintenance would bring positive impact on the living environment as well as upholding the condition and market value of the building. To ensure financial sustainability and fair apportionment of management expenses, full and clear disclosure of information and proactive participation of owners in the management of their buildings are necessary. Yet, complicated laws and regulations in property management, insufficient disclosure of information to potential purchasers, low level of transparency of the property management market and generally weaker bargaining power of owners together give rise to miscommunication, misunderstanding and disputes among different parties.

The Study identifies various consumer protection issues in the property management market which warrant the joint efforts of stakeholders in finding workable solutions in the long run. By making the aforesaid recommendations, the Council hopes with informed and constructive discussion with all stakeholders involved, a fair marketplace with strengthened consumer protection could be achieved and that the value of the owners' contributions to the management of their property could be truly optimised.

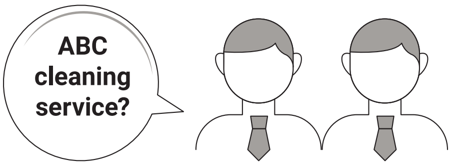
Issues and Recommendations

Enhancing Market Transparency, Fairness and Efficiency

Lack of transparency in the allocation basis of undivided and management shares among property units, which define ownership and the sharing of property management and maintenance expenses.



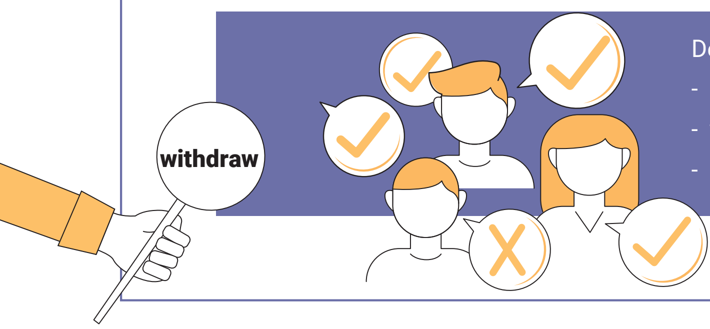
1 Elaborate the basis of calculation and allocation of shares upon which property management fees are shared between owners in sales brochures and development's websites.



Developer's/major owner's/management committee (MC) members' potential conflict of interest with owners over property management matters.

4 Declare potential conflicts of interest:

- relationships between parties.
- where appropriate, withdraw from meeting and abstain from voting.
- adopt bidding practice for substantial scale project.



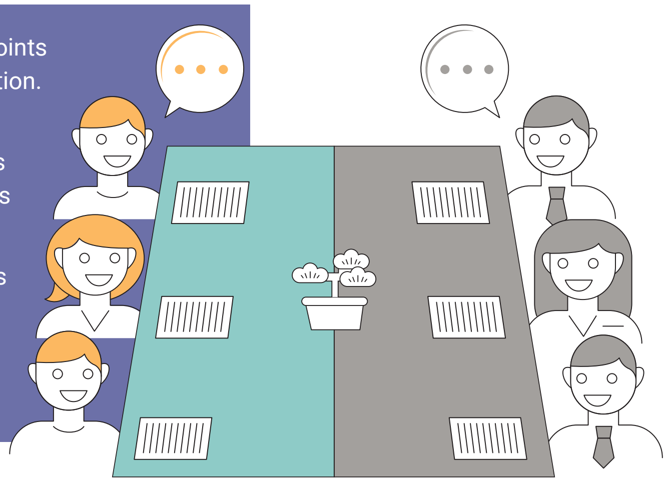
Encouraging Participation of Owners

Passive participation of owners and insufficient communication between owners, owners' organisations (OOs) and PMCs.

6 Increase engagement with owners in major touchpoints and the use of e-platforms to facilitate communication.

7 Allow convening the first owners' meeting upon residential owners reach over 50% undivided shares in aggregrate, apart from the no later than 9 months period under DMC guidelines.

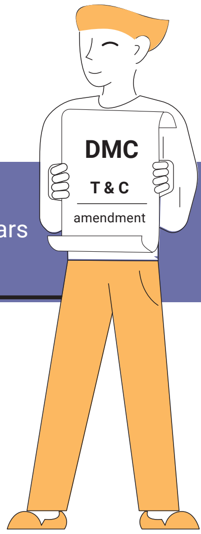
Introduce an award scheme to recognise the efforts of MCs or individual members of MCs, and review the amount of maximum allowances payable to members of MC.



Difficulty in choosing new property management companies (PMCs) due to insufficient market information.

2

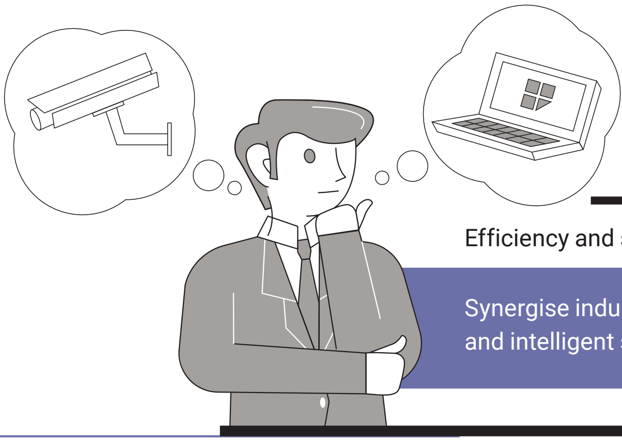
Increase market transparency through an open database as reference source on management fees.



Difficulty in obtaining unanimous owners' consent to amend unfair terms in Deed of Mutual Covenant (DMC).

3

Allow amendment of the terms of DMC (other than those on undivided shares) with majority consent for buildings ⩾10 years old under a stringent mechanism.



Efficiency and service quality issues of PMCs.

5

Synergise industry efforts to deploy new technologies and intelligent solutions for service enhancement.

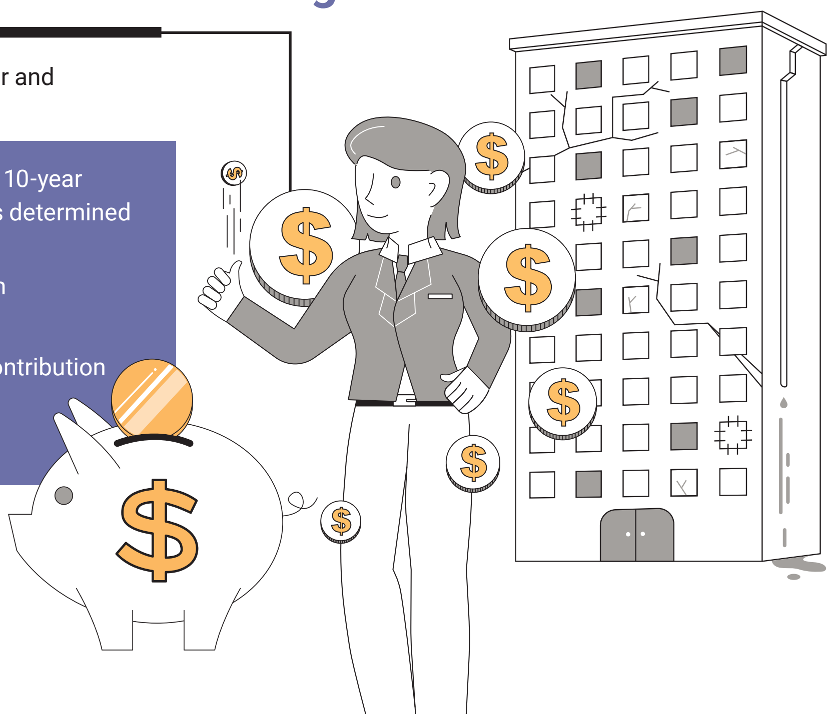
Enabling Safe and Sustainable Buildings

Insufficient reserve for building repair and maintenance

8

Establish a capital works fund with a 10-year maintenance plan, with contributions determined either by:

- professional assessment approach
- percentage of annual budget
- developer's seed fund + owners' contribution (start-up and monthly)
- PMCs and OCs



摘要

香港物業管理

香港有超過一半的人口居住於私人住宅樓宇，當中很多是由多個業主共同擁有。這類型樓宇的擁有權通常以不可分割份數（又稱「業權份數」）代表，這些份數被分配給每名業主以共有人身份持有，而全體業主則分權共有相關樓宇或發展項目。業權份數的分配通常列載在相關樓宇或發展項目的公契中。另外，有些公契或會訂明管理份數比例，作為收取管理費的基礎。此外，業主需要採取集體行動，才能在物業管理事務的決策中發揮影響力。

公用地方（例如樓宇的入口大堂和公共走廊）和設施（例如供水系統和消防裝置）由全體業主共同擁有，並共同負責管理和維護這些公用部分的費用。所以業主有責任支付管理費以分擔上述和所有其他與樓宇管理和行政相關的費用。消費者委員會(「消委會」)委託進行的調查結果顯示，「員工薪金及相關開支」（40.4%）是管理費預算的主要組成部分，其次是「維修及保養相關費用」（27.7%）和「清潔相關費用」（10.8%）。

物業管理公司（「物管公司」）被業主聘用提供物業管理服務後，通常會定期向業主收取管理費。消委會調查結果顯示，受訪業主每月支付的管理費介乎 200 港元至 3,700 港元，平均約佔家庭每月收入的 7.4%。據一項市場研究顯示，香港住宅市場的物業管理服務總收入估計在 2022 年達到 551 億港元（約佔香港本地生產總值的 2.0%）。隨著住宅樓宇日漸老化，預計管理費普遍將持續上升。

消委會不時接獲持份者的意見或消費者對物業管理的投訴，例如價格或收費糾紛、不滿物業管理服務質素等。由於涉及問題的複雜性，本會的調停成功率一般較低。至於其他物業管理問題，包括物業管理費不合理地偏高甚至難以負擔、圍標、多收費用、信息不透明等，在法庭案例和新聞報導中也屢見不鮮。[3]

為了深入地瞭解、檢視和評估香港私人住宅樓宇的現行管理費制度是否有效運作，或市場有否存在導致消費者權益受損的問題，消委會進行了是次研究深入探討有關問題，並提出相關加強保障消費者的建議。

[3] The Standard. (2023 Jan 06) ICAC smash syndicate over record HK$500 million building maintenance contracts, arrest 49.

本研究

本研究[4]的主要目的為：

- 探討消費者就香港私人住宅物業管理費的認知、理解程度和影響力，他們在物業管理方面的權利和責任，以及他們在物業管理服務和收費方面的經驗和意見；
- 瞭解業主組織在物業管理中的角色和權力，以及他們在選擇和更換物管公司方面的經驗和意見；
- 檢視私人住宅物業管理市場中有關管理費及相關開支（如物業經理人酬金）的當前問題和幅度，物管公司之間市場競爭的性質和程度，以及他們的觀點和意見；以及
- 檢視現行保障措施，提出適當的建議以加強保障消費者在物業管理議題上的權益。

為訂定本報告的研究範圍並瞭解市場情況，消委會檢視了香港物業管理的主要法例和規管要求；深入分析本會過去 11 年接獲的 694 宗與物業管理有關的投訴個案；以及在研究的不同階段諮詢相關政府部門、監管機構、公共機構、行業商會和專業人士等持份者，以收集他們對香港物業管理服務的意見。

為進一步加強研究的分析，消委會亦向其他市場的相關監管機構作出查詢及在網上搜集相關規例資訊，以找出可借鑒的經驗或良好的消費者保障措施，以作參考。

此外，為瞭解準買家能否容易獲取重要的物業管理相關訊息，例如業主所持有的業權份數、所需支付的管理費和經理人酬金，消委會就 2019 年 12 月至 2021 年 12 月 期間落成的一手私人住宅發展項目，審視了 50 份售樓書、249 份公契和 2 份有關樓宇的法定聲明。分析的重點是檢視公契經理人（即公契訂明的物管公司）收取的酬金有多大程度至允許的上限；公契如何展示業權份數和管理份數的分配；售樓書中披露有關物業管理的公契條款；以及公契經理人與發展商的關連。

為從業主、業主組織及物管公司的角度瞭解現時物業管理問題的根本成因和情況，消委會委託了研究機構在 2020 年 11 月至 2021 年 7 月期間進行調查和深入訪問，對象涵蓋本港由多個業主共同擁有的私人住宅樓宇的業主、業主組織及物管公司。

法例法規和監管機構

在香港，由多個業主共同擁有樓宇的管理主要受《建築物管理條例》（第 344 章）及其各自的公契監管，而物業管理服務則受《物業管理服務條例》（第 626 章）監管。

[4] 公共樓宇、工業樓宇、商業樓宇、綜合樓宇、公共屋苑、居者有其屋及三層或以下樓宇/洋房均不在研究範圍內。

一方面，《建築物管理條例》為業主立案法團的成立提供了法定框架，方便管理和監控樓宇的公用部分，它包含避免涉及眾多業主的多重訴訟的規定，並允許以大多數決定原則作出決策，避免了在物業管理事項上需要全體業主的一致同意。此外，《建築物管理條例》（第的附表 7 引入公契的強制性條款，這些條款納入每份公契內，而當強制性條款與公契條款不一致時，則以強制性條款為準。地政總署法律諮詢及田土轉易處則審查和批核公契，以確保其符合《建築物管理條例》和公契指引。公契指引是一套為私人住宅發展項目提供樓宇管理系統而製定的指引。另一方面，《物業管理服務條例》規管了物管公司和物業管理從業員的發牌及服務，並成立物業管理業監管局「物監局」。物監局作為香港的行業監管機構，通過發牌制度、紀律處分和促進行業發展來規管物業管理服務的提供。除物業管理業監管局外，民政事務總署亦一直致力鼓勵香港私人樓宇業主成立業主立案法團，並為業主提供相關支援。

審視五個選定市場的樓宇管理制度

香港的土地持有和轉讓制度獨一無二，當中的多層樓宇是由多個業主共同擁有，而每個業主以共有人身份持有業權份數。業主的權利、利益和責任則載於樓宇公契中並受其約束。

雖然香港的制度是十分獨特，但仍可借鑒全球其他市場的經驗，尤其是當其他市場正在努力完善其制度和法律框架時，他們的經驗可以為香港提供很好的參考價值。為此，消委會審視了澳洲、中國內地（「內地」）、新加坡、台灣及英國這五個選定市場的規管制度，在本報告第五章將詳述其內容。

總括而言，在澳洲的維多利亞州、新加坡和台灣，物業管理費相關信息的透明度較高，消費者在這些市場能夠獲得較多資訊從而作出知情的置業決定；維多利亞州和新加坡的業主能以簡單多數通過任命或解僱物業經理人的決議；維多利亞州、內地、新加坡和台灣亦對發展商在物業管理方面施加特定的職責和要求；同時維多利亞州、新加坡和英國已制定循序漸進的機制以解決物業管理糾紛。上述市場的做法都值得香港借鑒以完善其物業管理制度。

香港物業管理費相關問題

以倡導一個健康發展、有競爭力和可持續的香港物業管理市場為首要目標，通過整合所有調查、分析及諮詢持份者所得的結果，消委會歸納了以下問題並提出了一系列主要建議，希望能引發各持份者和社會大眾進一步討論。

業權份數的分配基礎缺乏透明度

香港物業所有權的一個特點是因應業主之間的業權份數和管理份數（如有）的分配而決定，前者定義物業的擁有權，後者定義業主從獲得物業擁有權開始就應該承擔的物業管理和維修費用的份額。

本研究發現，發展項目的公契及售樓書的公契摘要部分雖然有披露份數的分配，然而，在這些文件中均找不到有關決定份數分配的計算方法。從保障消費者的角度來看，缺少這些資料顯然不理想，有機會窒礙準買家作出知情的購買決定。如果準買家沒有適當考慮這些重要信息，日後的物業管理和維護費用的責任可能會超出預算。在所知不足的情況下作出的購買決定自然引發隨後的消費者糾紛，正如消委會不時接獲關於涉及份數分配、樓宇某些部分是否公用部分、公用設施或休憩用地是否供公眾使用、費用分攤是否公平等問題。

雖然分配業權份數和管理份數的計算詳情可在樓宇的法定聲明中找到，但它並非供公眾參考的銷售文件。事實上，許多消費者並不知道法定聲明的存在或如何取得其樓宇的法定聲明。

難以獲得全體業主同意修改公契中的不公平條款

在目前的法律框架下，發展項目的公契一旦在土地註冊處註冊，便對契約人的業權繼承人及受益人具有約束力（無論他們是否知悉該公契）。此外，未經所有契約方同意，任何一方均不得單方面修改公契中的任何條款。

從桌面研究相關法庭案例和新聞報導顯示，部分發展商擬訂的公契可能已不再符合業主當前的利益，因而引起業主之間的糾紛和爭議。然而，按現時的法律框架下，即使執行有問題的公契條款嚴重損害業主的權益，修改公契也必須得到所有業主的一致同意。當意識到業主難以滿足這項規定，尤其是在有眾多業主的大型屋苑或一些業主是無法聯絡或和追踪得到、不知情或不關心的情況下，立法會民政事務委員會多年前曾倡議建立一個機制，只須經特定的預先批准，以一項由少於 100%份數的業主決議便可通過修正公契中的不公平條文。然而，由於考慮到反對修訂的少數業主的利益，該提議未獲採納。因此，必須達到全體業主一致同意才可修改公契條款所衍生的問題至今仍然存在。

發展商或大業主或管理委員會委員對物業管理事宜的潛在影響

持有發展項目大量業權份數的一方可能擁有控制物業管理事宜的投票權，例如成立業主立案法團、解僱物管公司等。住宅發展項目落成後，所有未售出單位的業權份數均由發展商持有。隨著住宅單位陸續出售，發展商在住宅部分的業權亦逐漸減少。然而，法庭案例顯示，一些大型屋苑的住宅部分獲分配的業權份數比例較低，導致住宅部分的業主難以籌集足夠的份額以通過物業管理的決議。此外，從公契分析顯示，在 249 個審視的發展項目中，有 5 個項目

的住宅業主持有的業權份數總數不到 50%。同時，市場上的公契經理人普遍與發展商有關連，物管公司的市場集中度亦很高。在審視的發展項目中，75% 的公契經理人與發展商有關連，而 47%的發展項目則集中由排名前 10 名的公契經理人管理。

若發展商決定將少於 50% 的業權份數分配給住宅業主，同時委任與其有關連之物管公司為公契經理人，可能會引起潛在利益衝突的擔憂。除了發展商，一些持份者亦表示，大業主和管理委員會委員在與其有關連的物管公司以及其他服務提供者的任免過程中，亦可能出現利益衝突問題，當各方行使影響力干預特定的物業管理項目或活動時，可能會影響採購的選擇而導致所有住宅業主需要承擔更高的費用。

物管公司的服務質素問題，包括財務風險和服務表現不佳

除了設施管理及維修保養等前線服務，現今的物業管理亦涉及財務、人力資源及法律等後勤管理範疇。在 2012 年至 2022 年期間消委會接獲的 694 宗有關物業管理的投訴中，約 50% 的投訴涉及物管公司處理財務事宜不當，而約 40%涉及不滿其服務質素。

儘管當局已制定規例和措施遏止不當處理財務事項，關於物管公司財務帳目混亂和不當使用所收取的管理費的指控仍時有所聞。儘管法例規定物管公司須定期披露其財務營運，而且業主有權獲得與管理相關的財務資料，但據消委會接獲的投訴個案顯示，有一些物管公司拒絕披露財務和營運信息。不滿的業主因此在別無選擇的情況下，只能向法院尋求解決辦法，但過程可能會很漫長、昂貴及帶來沉重壓力，對業主來說並非上上之策。

本研究亦顯示物管公司與業主對物管公司的表現有預期落差，71.4 – 100% 的受訪物管公司分別認為其各項表現符合預期，而只有 43.7 – 56.4% 的受訪業主及 54.8 – 65.9% 的受訪業主組織認為物管公司的表現符合預期。除了預期落差外，87%的業主表示不知道解僱物管公司的程序，而不少業主（40.4%）和業主組織（33.3%）因缺乏足夠的市場信息而難以挑選合適的物管公司。

業主不積極參與物業管理事宜，業主組織/法團、物管公司與業主之間溝通亦不足

消委會調查發現，有大約 6 成業主很少或從不出席大會（63%）、就樓宇管理相關事宜發表意見（62.7%）或參與投票（58%）。調查結果亦顯示，大部分業主（超過 78%）對樓宇管理及相關法規缺乏認知，這可能是他們對樓宇管理參與度低的原因。數據亦顯示，超過 97% 的業主以「沒時間」、「沒興趣」、和「年齡太大，無法參與」 等為理由，不願加入業主組織擔任主席或委員。

從日常清潔安排到監督大型樓宇維修工程，管理樓宇需要就廣泛的議案項目做出決策，所以成立某種形式的業主組織來促進業主的集體決策是有必要的。然而，立法會資料研究組的數

據顯示，截至 2021 年底，全港只有 47%的私人大廈（包括住宅、綜合用途、商業及工業大廈）成立業主立案法團。儘管政府多年來致力協助成立業主立案法團及為業主立案法團提供支援服務，惟這個百分比一直維持在相近的水平。持份者指出，除了需付出時間及欠缺物業管理知識和經驗外，成立業主立案法團的主要障礙是業主缺乏參與意願。業主的不積極參與可能會增加他們面臨管理不善或其物業可能被操縱的風險，並最終損害自身權益。這亦可能導致溝通不足、誤解或曲解的問題，正如業主、業主組織和物管公司之間的大多數糾紛是由於缺乏充分溝通引起。

管理費尤其是維修成本大幅上漲

物管公司表示，管理費上漲的主要原因是「通貨膨脹」（100%）、「最低工資上漲」（72.4%）和「樓宇維修保養」（31.6%）。雖然公契指引規定設立特別基金以支付公用地方翻新、改善和維修的不定期開支及其他相關費用，但市區重建局在 2017 年的一項研究顯示，只有三分之一參與調查的樓宇已設立特別基金，而其餘則沒有為大型維修工程預留儲備金。即使是設有特別基金的樓宇，其資金結餘也不足以支付大型維修工程費用。資金不足的主要原因之一是業主缺乏專業知識來判斷未來維護工程支出所需的儲備金水平。如果沒有特別基金或特別基金中的儲備不足，當需要進行大型維修工程時，業主可能要攤分動輒以百萬元計、甚至更多的工程費用。這額外的供款可能會為業主，尤其是退休人士和長者，帶來經濟壓力。因此，制定一個可負擔和可持續的機制去累積維修保養資金是一項業主重要的保障。

消委會建議

為促進有效率和負責任的物業管理，一方面要確保業主在置業前後獲提供準確和具透明度的信息，而業主的權利和義務在其擁有物業期間得到公平處理。另一方面，業主應積極參與物業管理的事務，主動地進行監督以維護自身權益。為達致這些目標的前提下，消委會提出 8 大主要建議，目的在改善溝通、減少誤解並保障消費者權益，從而推動物業管理長遠健康發展。

促進市場透明度、公平性及效率

建議一: 提高業主分攤物業管理費的透明度

準買家在購買物業前，如清楚明白其將持有的業權份數及管理份數，將有助減少可能出現的誤解和物業糾紛。消委會建議發展商在銷售一手私人住宅物業時闡述業權份數之計算及分攤基準，透過企業良好操守以滿足消費者的知情權。上述信息應重點展示在售樓書中，而詳細資料可上載至發展項目的網站，並在售樓書內列明該網站的連結。另外，為方便消費者參考，發展商應在售樓書展示不同類別的開支項目，並提供住宅公共區域和設施的清單及分配詳情。當業權份數與管理份數的分配不相同時，發展商也應作出明確說明。相關例子列於報告第七章第 7.2 節。

建議二: 提供最新的物業管理信息，以增進公眾對該行業的瞭解和知識

長遠而言，消委會建議物監局可考慮透過收集本港管理費資料，以設立相關資料庫，為廣大市民參考。類似例子可參考機電工程署公佈有關私人住宅升降機保養價格資料，以及強制性公積金計劃管理局的強積金基金平台。為確保資料庫達到預期作用，消委會建議資料庫應按樓齡、單位數量、位置、提供的設施和服務、園藝面積、僱用的物業管理人員數量等重要信息作整合公布。另外，消委會亦建議在發布時將敏感資料，例如物管公司及樓宇的名稱匿名化，以釋除有關市場競爭的疑慮。

建議三: 以公平為原則，通過允許在大多數業主同意的情況下修改公契條款（不包括業權份數的條款）

借鑒內地和新加坡的經驗，消委會建議放寬現行修改大廈公契條款的機制，容許在大多數業主同意的情況下可修改公契的條款（不包括關於業權份數的條款）。考慮到業權份數的 75% 可作為構成修改公契條款的大多數決議的參考百分比，消委會建議持份者可參考《公司條例》（第 622 章）容許以最少 75%成員親身或委任代表表決（而非持股量）的多數票通過修改公司章程細則的做法，建議以75%的業權份數作為修改公契條款的參考門檻。同時，為免機制的被濫用及保護少數持反對意見的業主利益，修改公契的機制應主要針對 10 年樓齡或以上的物業，並設有嚴格的執行程序及上訴機制。

建議四: 避免因過度參與物業管理決策而產生的利益衝突

為減低發展商、擁有超過 30%業權份數的大業主或管委會委員與其他業主的潛在利益衝突問題，並促進物業管理的良性競爭，消委會建議當局在《一手住宅物業銷售條例》（第 621 章）及/或公契指引中引入以下條文：

- 在售樓書披露發展商與公契經理人的關係。若公契經理人在當期時尚未獲委任，售樓書應清楚顯示將來作出相關披露的時間及方式。
- 在選擇物管公司或其他服務供應商時，須披露他們與擁有 30% 或更多業權份數的大業主或任何管委員會委員之間的關係。
- 當出現利益衝突情況時，發展商、大業主以及任何管理委員會委員應作出利益申報。在適當的情況下，他/她應退出會議並就有關項目放棄投票權。
- 就大型項目和主要服務內容，採用招標方式招聘繼首位公契經理人任期後下一任物管公司以及其他服務供應商。

在這方面，香港可參考內地和維多利亞州採取的措施，詳情於報告第五章第 5.3 節中列出。

建議五: 以新科技和智能解決方案提高物業管理服務的效率

為提升物業管理服務的效率，消委會提倡採用科技及智能化的解決方案，並提出以下建議供業界考慮：

- 以合適的速度和優先次序推出用於清潔、消毒、保安、通信等服務的新智能解決方案。
- 除傳統張貼通告的溝通方式外，使用社交媒體、通訊工具及/或樓宇專屬網站加強與業主的溝通和信息共享。
- 在項目的關鍵程序讓業主得以參與並聽取他們的意見，例如在項目的初始階段、評估過程、測試階段和解決方案啟動後。
- 業界、物監局以及創新及科技界積極合作，尋找協同效益方案以定制軟件、應用程序、平台或範本，以促進成本效益和妥善處理個人信息及資料。

鼓勵業主積極參與

建議六: 通過更有效的溝通促進業主積極參與物業管理活動

消委會建議以循序漸進的方式加強業主對物業管理事宜的參與。 為此，建議可制作一份「業主資料包」，介紹物業的分權共有特性、業主的權利和義務、成立法團的重要性和程序、現有的樓宇管理支援服務等資料，在完成物業交易後，可透過不同渠道派發給每位業主。當業主搬進他們的物業時，應盡快讓他們認識物業的管理事宜，例如通過物管公司舉辦的歡迎聚會或定期工作坊。為了持續鼓勵業主參與物業管理及為其提供相關資訊，民政事務總署可考慮開發互動學習工具包或定期舉辦有關物業管理和監管要求的工作坊。為了進一步吸引業主，物管公司可以增加使用社交媒體和網站去加強與業主的相互溝通。從長遠來看，為方便業主在百忙中抽空參與物業管理事宜，當局亦可以探索業主大會引入線上型式的可行性。

消委會呼籲業主從置業之初就參與物業管理，積極發揮其權益。除了經常查閱相關文件以瞭解物業管理開支的詳情外，他們亦應定期出席業主大會，並密切留意物業項目進行中的工程的進展。除了提高業主的參與度，以上循序漸進的做法亦可使業主具備所需知識，有助他們就物業管理事宜在做出重大決定之前發表意見，而非在利益或權利受到損害之後才發聲。

建議七: 促進早日成立業主立案法團或業主聯手解決物業管理問題

針對業主對成立業主立案法團及加入業主組織認識不足及缺乏動力的問題，消委會呼籲有關方面加強教育及宣傳活動，以加深大眾對業主立案法團在物業管理中的重要性的認識，從而提高他們的興趣以及成立業主立案法團的意願。

此外，本會呼籲檢討物管公司必須召開第一次業主會議的期限，因為首次會議的一個主要目的是組建管理委員會以成立業主立案法團。目前，公契指引規定公契經理人自公契日期起 9 個月內需召開第一次業主大會。考慮到業主對物業管理的熱情和興趣通常會在置業完成後隨著時間的推移而減弱，本會認為第一次業主大會應儘早舉行。雖然有些業主在第一次業主大

會時未必準備好成立業主立案法團，但該會議仍可作為一個平台，促進業主合力處理物業管理上的問題，及為將來成立業主立案法團奠定基礎。就此，消委會進行的研究分析支持除現行 9 個月的期限外，一旦住宅業主合共持有超過 50%的業權份數，就應立即召開第一次業主大會，讓業主儘早表達他們的關注以及促成法團早日成立。

對於沒有業主立案法團或其他形式的業主組織的樓宇，物管公司可考慮每年至少舉行兩次業主大會以加強與業主溝通，而不是目前每 12 至 15 個月舉行一次會議的做法。

為鼓勵業主加入管理委員會，民政事務總署可考慮推出嘉許計劃，以表揚管理委員會或管理委員會個別委員在推廣良好物業管理方面的努力、決心和成就。此外，當局可能需要檢視根據《建築物管理條例》支付給管理委員會特定委員的最高津貼額，以更好地反映他們對物業管理的貢獻價值。

推動發展安全及可持續宜居的樓宇

建議八: 為達致建築物的可持續性 – 特別基金要有合理充足的儲備以支付預期維修及保養開支

為避免業主因大型維修工程費用而需一次過繳付大筆費用，消委會參考了深圳及澳洲為維修及保養需要設立儲備金的經驗，建議香港業主定期和合理地就特別基金作出供款，使其有足夠的儲備應付日後維修工程費用。在這方面，消委會建議設立一個工程基金，並製定一個 10 年的維修保養計劃，並且可以根據以下方式去釐訂業主要作出的供款數額：(一)由獨立專業人員編制的維修預算；(二)相當於物業管理費每年預算的一定比例的數額；(三)混合模式，由發展商支付種子基金，加上相當於 2 個月管理費的業主供款，然後再由業主每月供款；或(四)沿用物管公司或業主立案法團現行編制預算的做法。

至於業主應何時開始向特別基金供款，參考其他市場的經驗，消委會建議新購置的一手物業業主應於第二年起開始向基金供款，樓齡超過 10 年的業主因應可能出現的大型維修和保養需要，應徵求專業人士的意見有關供款額，而樓齡在 10 年或以下的樓宇則應設立儲備金，以備日後的維修需要。業主應視乎樓宇狀況，按其維修需要決定供款時間。

為促進基金的良好管治，消委會建議應維持目前將基金存入指定有利息的賬戶的規定。此外，應列明未來可使用該基金的維修項目，以訂明該基金的正確用途。另外，應當立法規定必須設立特別基金及全體業主應依法按月供款，而其所支付的基金供款不可轉讓。除物管公司認為情況緊急外，特別基金儲備不得用於非經業主委員會(如有)決議批准的用途。

為了讓業主認識到建立和維持特別基金的重要性，消委會建議物管公司和業主組織與業主溝通設立特別基金的背景和理由，解釋供款的計算方法，並定期通知業主特別基金過去的使用情況及未來使用需要。

展望將來

在香港大部分私人住宅樓宇，物業管理費是推動日常物業管理事宜有效運作的主要資金來源。有效的物業管理加上優質的服務和良好的維修保養，將為居住環境帶來正面影響，並維持建築物的狀況和市場價值。為確保物業管理的財務可持續性和管理費用的公平分擔，全面和清晰的信息披露以及業主積極參與其物業的管理是必要的。然而，物業管理的法律法規複雜，市場對準買家的信息披露不夠充分，物業管理市場透明度低，以及業主議價能力普遍較弱，導致各方之間的溝通不足、產生誤解和糾紛。

本研究指出了物業管理市場中的各種消費者保障問題，這些問題長遠需要各持份者共同努力去尋找可行的解決方案。消委會提出上述建議，希望能引起社會各界不同持份者的討論，從而締造一個公平的市場環境，加強保障消費者權益，最終能為業主就其物業管理的貢獻創造最佳回報。

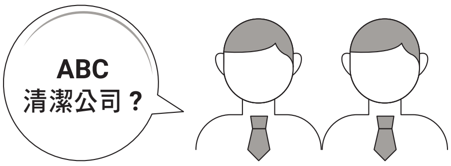
問題和建議

促進市場透明度、公平性及效率

業權和管理份數界定單位的擁有權以及物業管理和維修費用的分攤，但物業單位之間的份數分配基礎缺乏透明度

1

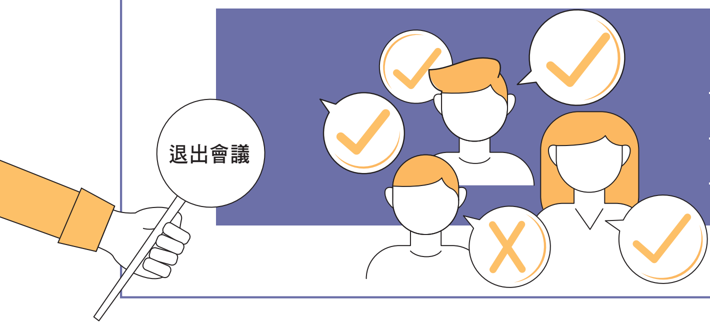
建議在售樓書及發展項目的網站內詳述各類與分擔物業管理費有關的份數之計算及分攤基準



發展商／大業主／管理委員會（管委會）委員與業主在物業管理事宜上的潛在利益衝突

4

申報潛在利益衝突：
- 各方之間的關係
- 在適當情況下退出相關會議並放棄投票
- 涉及大額費用的項目應採用招標程序



鼓勵業主積極參與

業主不積極參與，以及業主、業主組織和物管公司之間的溝通不足

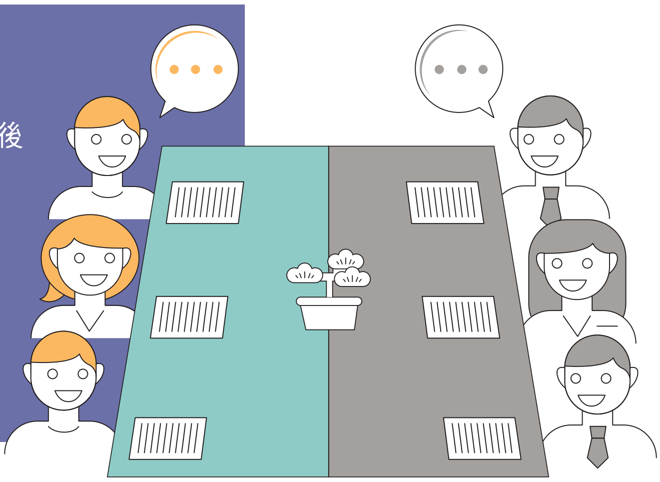
6

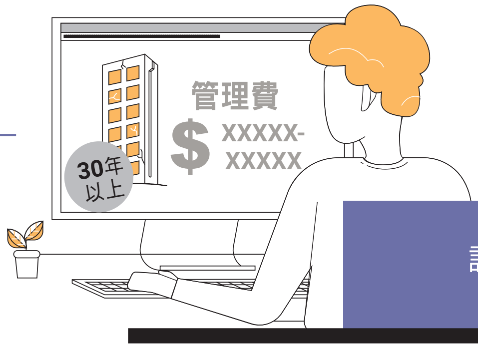
促進業主參與，以及利用線上平台加強溝通

7

除現行的「會議日期不得遲於公契簽定日期後 9 個月」的規定外，當住宅業主合共持有超過 50% 業權份數，就應立即召開第一次業主大會

推出嘉許計劃，以表揚管委會或個別委員的付出，並檢討委員的最高津貼額





由於市場信息不足，難以選擇新的物業管理公司（物管公司）

2

設立管理費參考資料庫以提高市場透明度

難以獲得全體業主一致同意修改公契中的不公平的條款

3

對於 10 年或以上的物業，設立嚴格的機制，容許在大多數業主同意的情況下作出修改（關於業權份數的條款除外）

物管公司的效率及服務質素問題

5

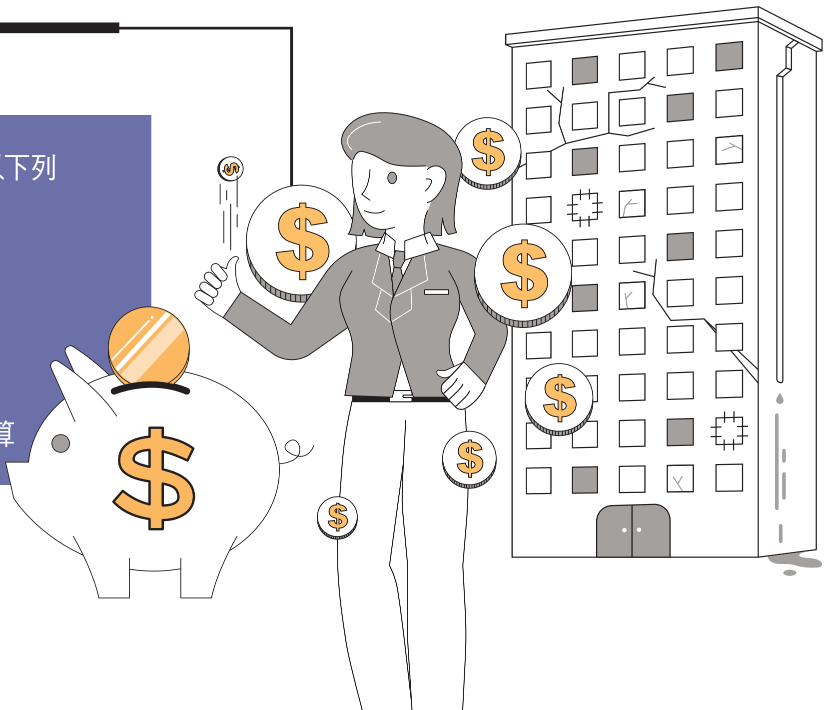
業界協同合作應用新科技和智能化的解決方案，以提升服務效率及質素

推動發展安全及可持續宜居的樓宇

樓宇維修保養儲備不足

8

設立工程基金及 10 年保養計劃，並以下列其中一種方式釐訂供款：
- 由專業人員編制預算
- 按年度預算的指定百分比
- 發展商支付種子基金，加上業主首次及其後每月供款
- 物管公司或業主立案法團編制預算



Introduction

1.1 Background

The costly housing in Hong Kong, which has been known as the most expensive among all international cities over the past decade,[5] is one of the most pivotal issues that Hong Kong is facing. The city has more than half of its population living in private housing. According to the official housing figures at the end of 2021,[6] there were approximately 1.4 million domestic households living in private permanent housing,[7] accounting for 52.4% of all domestic households or 53.4% of all housings in Hong Kong.[8] For the same period, a total stock of 1,237,995 private domestic units[9] was recorded in Hong Kong.[10] The number of private domestic units was forecasted to grow by 22,851 units by the end of 2022, with another 21,848 units were forecasted to complete in 2023.[11] It is therefore anticipated that households living in private housing being the majority is likely to remain the case in Hong Kong.

Apart from paying a substantial sum to buy a private residential flat, a monthly property management fee is payable by most property owners (owners) or tenants in Hong Kong. Survey commissioned by the Council found that the monthly management fees paid by the respondent owners of private residential flats ranged from HK$200 to HK$3,700, with the mean being HK$1,108 or around HK$2.7 per sq. ft. When separately asked, on average, they spent approximately 7.4% of their monthly household income on management fees. In view of the volume of private residential properties in Hong Kong, the cumulative amount of consumer spending for property management services in Hong Kong is substantial. According to a market study, the total revenue of property management services in the residential market in Hong Kong in 2016 stood at HK$39.7 billion (i.e. around 1.6% of Hong Kong's GDP as estimated by the Council), which was forecasted to grow at a compound annual growth rate of 5.6% to reach HK$55.1 billion by 2022 (i.e. 2.0% of GDP).[12] In addition, as the residential properties continue to age, coupled with the increasing repair and maintenance costs in Hong Kong, a general rising trend in management fees is expected.

[5] Demographia. (2022) Demographia International Housing Affordability. 2022 Edition.
[6] Hong Kong Housing Authority. Housing in Figures 2022.
[7] Private permanent housing covers (a) private housing blocks; (b) flats built under the Urban Improvement Scheme of the Hong Kong Housing Society; (c) villas/bungalows/modern village houses; (d) simple stone structures/traditional village houses; and (e) flats under various subsidised sale flat schemes such as Home Ownership Scheme that can be traded in the open market.
[8] In Hong Kong, housing is in general split into 3 main categories – private permanent housing, public permanent housing and temporary housing.
[9] Private domestic units comprise independent domestic units with exclusive cooking facilities, bathroom and toilet, but exclude village houses, quarters, dormitories, hotels and hostels.
[10] Rating and Valuation Department. (2022) Hong Kong Property Review 2022 Table 1.
[11] Census and Statistics Department. Housing and Property Statistics.
[12] Frost & Sullivan. (2016) Total Revenue of Hong Kong's Property Management Services.

From time to time, the Council received consumer complaints related to property management, such as pricing or charge disputes and dissatisfaction with the quality of property management services. More often than not, these complaints involved complicated issues and had a relatively low resolution rate.

The laws on property management in Hong Kong are complex and could be difficult for lay owners to understand. Although acting collectively they do have their influence on property management decisions, lay owners in general lack sufficient understanding about the laws and regulations relating to property management fees and their rights and obligations, putting them in a weaker position than property developers (developers) and property managers, who in general have more knowledge and resources for professional support in this regard.

With an overarching objective to advocate for a healthy, competitive and sustainable marketplace in property management for the benefit of consumers in Hong Kong, the Council undertook this Study on Private Residential Property Management Fees in Hong Kong (the Study) to probe into the existing system of management fees in private residential multi-owned buildings where property management companies (PMCs or property managers, which are used interchangeably in this Report) are engaged, to assess whether the system is working effectively, and to identify related consumer issues.

Carrying out the Study requires an understanding of the intricate and intertwined relationships between owners, owners' organisations (OOs),[13] developers and PMCs over the life cycle of the property development; identification of matters which impact on property management fees directly or indirectly; reviewing complicated provisions in Deeds of Mutual Covenant (DMCs); and a high-level understanding of applicable laws and rules in local and selected markets.

The surveys and interviews commissioned by the Council for the Study were carried out at the onset of the COVID-19 pandemic which affected the progress of the fieldwork and lengthened the period of enumeration. Many selected owners, OOs and PMCs refused to share their views face-to-face, resulting in their relatively low response rates. This was partly due to social distancing during the pandemic and partly the sensitive nature of the issues (e.g. termination of PMCs by OOs, cost components of PMCs) covered in the surveys and interviews.

1.2 Objectives and Approach

The key objectives of the Study are to:

- Gauge consumers' levels of awareness, understanding and influence on private residential property management fees (management fees) in Hong Kong, their rights and obligations in property management, and their experiences and opinions on property management services and fees;
- Find out the roles and powers of OOs in property management in practice and their experiences and opinions in choosing and switching PMCs;
- Identify the prevailing issues and ranges of management fees and related expenses (such as property manager's remunerations) in the private residential property management market, the nature and extent of market competition among PMCs and their views and opinions; and

[13] OOs in Hong Kong include owners' corporations (業主立案法團) and owners' committees (業主委員會). It used to include mutual aid committees (互助委員會), all of which were dissolved before 1 January 2023. They are of different constitution and functions which will be further discussed in the Report.

- Review the current state of safeguards so as to propose appropriate recommendations for enhancing consumer protection in property management.

The property types in Hong Kong are highly diverse but in general, a significant number of households in Hong Kong live in multi-owned private residential buildings that engage PMCs for property management services. Therefore, the Council dedicated its consumer protection efforts in this type of buildings in the Study by taking the following steps:

- To define the scope of the Study and obtain insight into the market situation, the Council carried out (i) a desktop review of the key statutory requirements governing property management in Hong Kong; (ii) a review of the property management-related complaints received by the Council in the last 10 years or so; and (iii) a series of consultation sessions at various stages of the Study with a range of stakeholders from different sectors to solicit their views on property management issues in Hong Kong (please refer to Chapter 2 for more details);
- Noting the importance of owner's undivided shares and manager's remunerations in property management and management fees, the Council also performed a review of the provisions relating to the calculation of management fees in the DMCs of selected first-hand private residential properties in Hong Kong, which were publicly available at the selected property developments' websites;
- The Council commissioned a research agency to conduct substantive fieldworks covering three sets of face-to-face surveys and in-depth interviews of owner occupiers,[14] OOs and PMCs to find out their level of understanding of the applicable laws in Hong Kong, owners and OOs' experience and level of satisfaction about the practice and service of PMCs, and PMCs' views on matters related to property management; and
- The Council conducted desktop research on the relevant regulations in other markets with a view to identifying possible learnings or good consumer protection measures for consideration. Given the unique system of ownership and possession of multi-owned buildings in Hong Kong, the Council was only able to identify a few markets (Australia, Mainland China, Singapore, Taiwan and the United Kingdom)[15] which adopt the strata titles or condominium type of ownership that resemble (but are not identical with) the unique system in Hong Kong.

By reference to all the above-mentioned work, the Council undertook post-study stakeholder consultation[16] with a view to holistically fleshing out issues related to property management and making recommendations to enhance protection to consumers.

[14] Only owner occupiers were enumerated in the survey. Housing units with tenants, housing units that were vacant and/or non-responding were excluded from the survey.
[15] Similar to multiple ownership in Hong Kong, these markets allow (i) individual ownership of specific part of a property (called a "lot" or more generally a unit); and (ii) shared ownership of the common areas and facilities of the property.
[16] At a later stage of the Study in December 2022, in order to solicit views from stakeholders on the identified issues and proposed recommendations in the Study, the Council held four stakeholder engagement sessions and met with a total of 11 organisations (in alphabetical order), namely Competition Commission, The Federation of Hong Kong Property Management Industry Limited, Home Affairs Department, Hong Kong Association of Property Management Companies, The Hong Kong Institute of Housing, Housing Department, Lands Department's Legal Advisory and Conveyancing Office, Property Management Services Authority, Real Estate Developers Association of Hong Kong, Sales of First-hand Residential Properties Authority and the Urban Renewal Authority.

1.3 Structure of the Report

The Study Report is structured as follows:

- Chapter 2 gives an overview of the property management market in Hong Kong with a summary of major governing laws and regulations on property management and relevant regulatory bodies, major legal obligations of owners in multi-owned buildings, condition of the local property management industry, and complaints received from the general public. It also sets out the stakeholders' inputs and feedback in relation to property management received by the Council between the preparatory stage and towards the completion of the Study;

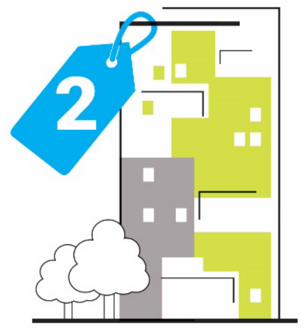
- Chapter 3 presents the Council's research and review of DMCs, statutory declarations and sales brochures of first-hand private residential properties in Hong Kong from December 2019 to December 2021. The review focused on information disclosed in the "Summary of DMC" in sales brochures, and information from DMCs on matters related to property management fees, namely, the extent to which DMC manager's remuneration is charged to the permitted ceiling; the presentation of allocation of undivided shares and management shares in DMC; the disclosure of DMC terms in sales brochure; and the connection of DMC managers with developers;

- Chapter 4 provides the methodology and major findings from surveys and in-depth interviews of selected owners, OOs and PMCs from a random sample of multi-owned private residential buildings across Hong Kong during November 2020 to July 2021 to solicit their views on practices related to property management fees in Hong Kong;

- Chapter 5 presents a summary of Hong Kong's unique conveyancing system of ownership and possession in multi-owned buildings and the results of comparative studies of selected markets to support the recommendations;

- Chapter 6 consolidates the issues related to property management fees in Hong Kong as identified in previous Chapters from multiple sources including the pre-and post-study stakeholders' consultation, complaints received by the Council, as well as desktop research and survey findings; and

- Chapter 7 puts forward a number of recommendations to address the issues related to property management fees that have been raised in previous Chapters taking into account the comments received by the Council.



Property Management in Hong Kong

2.1 Introduction

This Chapter gives a summary of major governing laws and regulations on property management in Hong Kong and an overview of relevant regulatory bodies. It then presents the major legal obligations of owners in multi-owned buildings, the condition of the local property management industry, the property management related complaints received by the Council, the Property Management Services Authority (PMSA) and Competition Commission. Lastly, it sets out the stakeholders' inputs and feedback in relation to property management received by the Council from the preparatory stage and towards the completion of the Study.

2.2 Laws and Regulations

In a multi-storey building in Hong Kong, common areas (e.g. entrance lobbies and communal corridors) and facilities (e.g. water supply systems and fire service installations) are co-owned by all owners with an undivided share. The owners are therefore jointly responsible for the management and maintenance of these co-owned common parts.

In layman's terms, property management involves management of building(s) and provision of related services (e.g. security, cleaning, financial management, gardening, repair and maintenance) tailored to the needs of the particular property. Property management service, however, has its statutory meaning under the Property Management Services Ordinance (Cap. 626) (PMSO), which came into force on 26 May 2016. More discussion on its impact on the property management industry in Hong Kong can be found in Section 2.7.

Owners may manage and maintain the property by themselves or appoint a property manager to do so on their behalf. For more efficient operation and management, owners can incorporate themselves as an owners' corporation (OC), which is a legal entity formed under the Building Management Ordinance (Cap. 344), or form other non-statutory owners' organisations (OOs) such as owners' committee and other residents' organisations. Section 2.5 will discuss in greater details on the relationship, roles and functions of different OOs.

The management of properties in Hong Kong is mainly governed by the BMO and their respective Deeds of Mutual Covenant, while property management services are regulated by the PMSO.

Appendix 1 of the Report provides an overview of the historical development of building management regulations in Hong Kong.

The Building Management Ordinance (Cap. 344) (BMO)

The BMO provides a statutory framework for the appointment of a management committee (MC) under sections 3, 3A or 4 and the formation of an OC to facilitate the management and control of the common parts of multi-storey buildings co-owned by different owners. Furthermore, the formation of OCs avoids multiplicity of lawsuits involving numerous owners. Over the years, there have been consultations and legislative amendment in place in light of changing circumstances and to address public concerns, such as clarifying the procedures for appointing the MC and its members, as well as procurement and financial arrangements applicable to OCs and property management companies (PMCs). As of the writing of this Report, the Home and Youth Affairs Bureau (HYAB) has presented a paper for discussion at the meeting of the Legislative Council Panel on Home Affairs, Culture and Sports, proposing legislative amendment to the BMO, which is expected to be introduced into the Legislative Council within 2023.

Schedule 7 to the BMO sets out the requirements in relation to property managers. Its provisions are mandatory terms to be impliedly incorporated into every deed of mutual covenant. In the event of any inconsistency between the provisions in Schedule 7 and the terms of a deed of mutual covenant, the provisions in Schedule 7 shall prevail.

The Deed of Mutual Covenant (DMC)

A DMC is a private contract entered into by the developer, the first purchaser and the property manager which defines the rights, interests and obligations of owners among themselves. The DMC is registered in the Land Registry (LR) and binds all subsequent owners and property managers appointed from time to time.

In a multi-storey building, ownership is generally expressed in terms of undivided shares of and in the land (where the building is erected) and the building. Prima facie, an owner owns undivided share as tenants-in-common with all other co-owners together with an exclusive right of possession of his/her unit. The DMC sets out the allocation of all undivided shares of and in the land and the building. DMC provisions are subject to the statutory provisions contained in the BMO as explained above.

The Property Management Services Ordinance (Cap. 626) (PMSO)

PMCs may be engaged by developers to manage newly developed properties as DMC Managers or otherwise hired by OCs or other OOs, on behalf of all owners, to manage the buildings.

In 2016, the PMSO came into force to regulate and control the provision of property management services via a mandatory licensing regime of PMCs and property management practitioners (PMPs). The PMSA was also established in 2016 under the PMSO to regulate the provision of property management services and to promote the professional development of the property management industry. The PMSA has since issued Codes of Conduct and Best Practice Guides covering different property management areas[17] to govern the behaviours of

[17] The areas covered including complaint handling mechanism, handling of moneys received on behalf of clients, ending of PMC appointment, handling payment for or arranging payment to be made by clients, provision of prescribed information and financial documents to clients, carrying out procurement for clients and prevention of bid-rigging.

the industry and to raise their competence and professionalism. Section 2.7 of this Report provides more details on the licensing regime for PMCs and PMPs in Hong Kong.

2.3 Regulatory Bodies

The following is a summary of the remit of the relevant government departments in encouraging and assisting owners to form OCs for managing their properties, and the role of the industry regulator in Hong Kong:

- Legal Advisory and Conveyancing Office (LACO) of the Lands Department (LandsD) examines and approves DMCs which require approval under the land leases before the sale of units. In approving DMCs, LACO ensures that the DMCs are in compliance with the BMO and the Guidelines for Deeds of Mutual Covenant (DMC Guidelines);[18]
- The Home Affairs Department (HAD), being the executive arm of HYAB, has been playing an active role in encouraging owners of private buildings to form OCs in accordance with the BMO and providing support to assist owners, including visiting owners of buildings without OCs, attending OC meetings upon invitation and handling enquiries on building management matters. Various initiatives such as the Building Management Professional Advisory Service Scheme, Free Legal Advice Service on Building Management and Building Management Dispute Resolution Service have been implemented by HAD. The HAD also oversees the implementation of the PMSO and formulate policies in relation to the property management industry; and
- The PMSA regulates and controls the provision of property management services through a licensing regime, and promotes the integrity, competence and professional development of PMCs and PMPs. Under the PMSO, it also possesses the powers to conduct investigation, convene disciplinary hearings and impose sanctions if PMCs and PMPs have committed disciplinary offence or no longer meets any of the prescribed criteria for holding the licence.

2.4 Obligations of Owners

As aforementioned, owners can incorporate themselves as an OC or form other non-statutory OOs to manage the building. Once the owners have been incorporated, all rights, powers, privileges and duties of the owners in relation to common parts shall be exercised and performed by the OC.[19] In this connection, the OC has the statutory duty to maintain the common areas in a state of good and serviceable repairs and clean condition and to comply with work orders in respect of common parts of a building, and to do all things reasonably necessary for the enforcement of the obligations contained in the DMC for the control, management and administration of the building.[20] In addition, the OC is required by law to procure and keep in force in relation to the common parts of the building a policy of insurance in respect of third-party risk.[21] In order to recoup itself of the expenses in carrying out its legal

[18] Practitioners are required to follow the DMC Guidelines issued by the Lands Department under LACO Circular Memoranda Nos. 79 and 79A for the approval of DMC by the LandsD. If any deviation from the DMC Guidelines is requested, explanation and full justification for the deviation is required. LACO of the LandsD may approve or reject any request for deviation from the DMC Guidelines or impose any other requirements as may be appropriate to the circumstances of any particular case. Incorporation of the standard clauses in the DMC Guidelines is not mandatory and the clauses may be incorporated with variations (provided that they comply with the DMC Guidelines) to suit the circumstances of the individual DMCs and the developments concerned.
[19] BMO. Section 16.
[20] BMO. Section 18(1).
[21] BMO. Section 28.

obligations, the OC is entitled under the BMO to collect management fees from owners of the building.

Apart from the BMO, there are a number of legislations in Hong Kong governing owners or occupiers' obligations as regards repairs and maintenance. Some examples are given below:

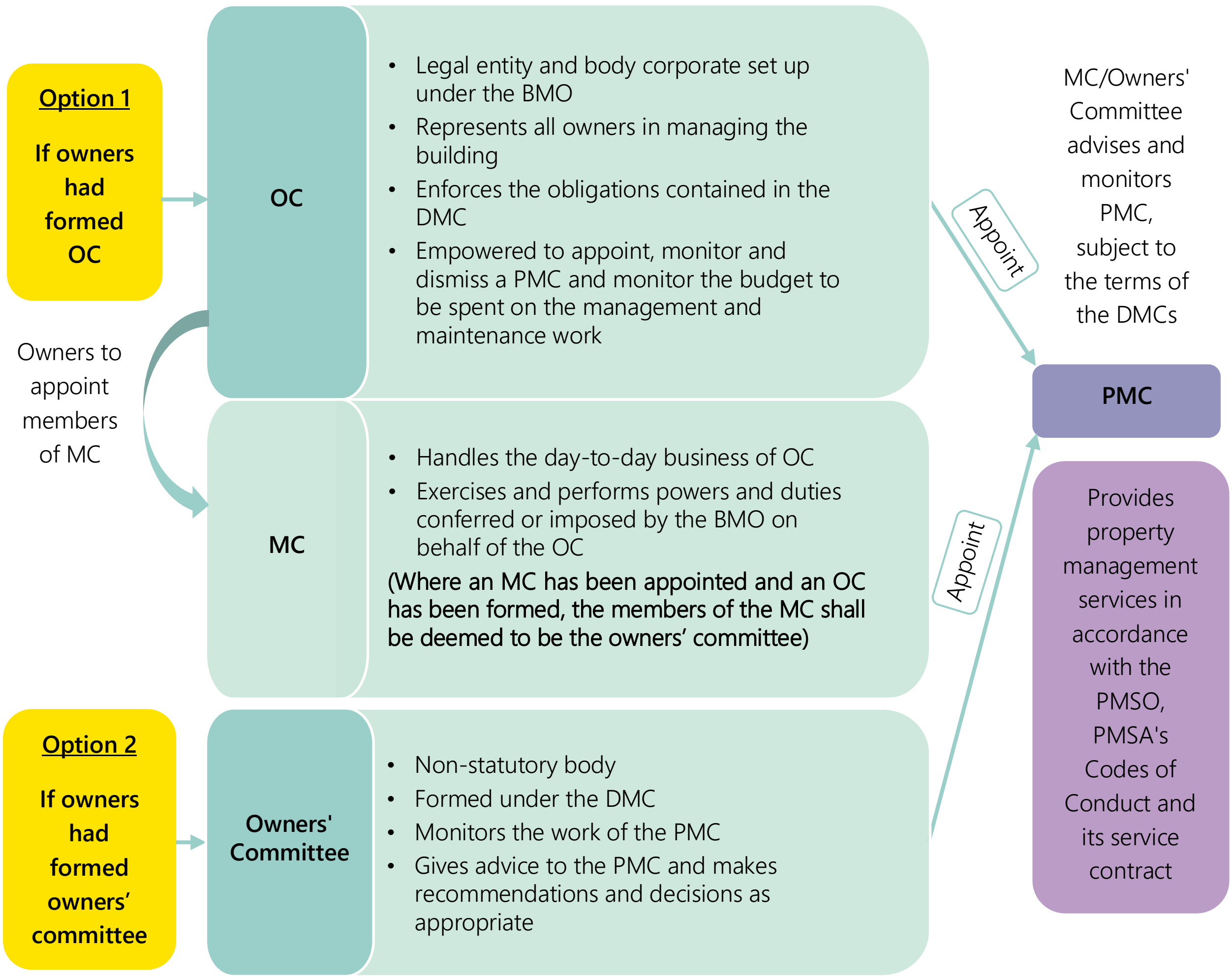
- Pursuant to the Buildings Ordinance (Cap. 123), the Director of Buildings of the Buildings Department may declare a building dangerous and compel an owner to remedy any structural defects;
- The Public Health and Municipal Services Ordinance (Cap. 132) confers power on the appropriate authority to require the owner or occupier of a property to take steps to deal with nuisances which are injurious to health (e.g. water seepage which originates from the property itself); and
- Under the Occupiers Liability Ordinance (Cap. 314), occupiers of premises have a duty to ensure their visitors are reasonably safe in their permitted use of the premises.

It follows from the above that where an OC is aware of relevant problems in the common parts of the building, it should take all reasonable steps in the circumstances including proper and expeditious action to address the problems. Liability may arise if there is fault on the OC's part or if it fails to take appropriate steps to remedy the defect. Owners and occupiers of the building also play an important part in this regard.

2.5 Relationship, Role and Function of OC, MC, Owners' Committee and PMC

To put the Report in context, this section provides information on the relationship, role and function of the crucial parties in the management of a building, as shown in Chart 1 below:

Chart 1: Relationship, Role and Function of OC, MC, Owners' Committee and PMC



Further information on each of these parties is as follows:

Owners' Corporation (OC)

An OC is a body corporate set up under the BMO, which deals with property management matters on behalf of all the owners with the legal status to represent all owners in managing the common parts of the building. It is also empowered to appoint a property manager, monitor and terminate the services provided, as well as to monitor the budget to be spent on the management and maintenance work.

Chart 2 shows the procedures for the formation of OC under the BMO: [22]

[22] HAD. (2017) A Guide on Building Management Ordinance (Cap. 344).

Chart 2: Procedures for Formation of OC via MC

Appoint an MC in owners' meeting

↓

Decide the number of MC members

↓

Appoint MC members

↓

Appoint a chairman, a vice-chairman, a secretary and a treasurer of the MC

↓

The MC shall within 28 days of such appointment apply to the LR for the registration of the owners as a corporation (i.e. an OC)

Management Committee (MC)

An MC handles the day-to-day business of the OC. Section 29 of the BMO provides that the powers and duties conferred or imposed by the BMO on an OC shall be exercised and performed on behalf of the OC by the MC.

Sections 3, 3A or 4 of the BMO contain provisions governing the appointment of MC, as follows (Chart 3):

Chart 3: Different Ways to Appoint MC

Section 3

A meeting of owners may be convened by
- Property manager;
- Person authorised by the DMC; or
- An owner appointed by the owners of not less than 5% of the shares in aggregate

→ The resolution of appointment of MC may be:
(a) Passed by a majority of the votes of the owners voting either personally or by proxy; and
(b) Supported by the owners of not less than 30% of the shares in aggregate

Section 3A (Application to the HYAB)

The owners of not less than 20% of the shares in aggregate may apply to the HYAB to convene a meeting of owners.

→ Subject to section 3A(5) on notices of objection from the owners, the resolution of appointment of MC may be passed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy.

Section 4 (Application to the Lands Tribunal)

The Lands Tribunal may, upon application by the owners of not less than 10% of the shares in aggregate or the HYAB or an authorised officer, order that a meeting of owners be convened.

→ The resolution of appointment of MC may be passed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy.

Owners' Committee

An owners' committee is an owners' organisation formed under and in accordance with the DMC. Its composition, operation details, duties and powers are generally stipulated in the DMC.

The property manager must call the first meeting of owners as soon as possible, but in any event not later than nine months after the date of the DMC (and to call further and subsequent meetings if required), which meeting must appoint a chairman and committee of owners or must appoint an MC for the purpose of forming an OC under the BMO.[23]

An owners' committee is not a body corporate and it gives advice to the property manager, subject to the terms of the DMCs, and makes recommendations and decisions as appropriate. It also monitors the work of the property manager.[24] Where an MC has been appointed under the BMO, the members of the MC shall be deemed to be the owners' committee under the DMC.[25]

Property Management Company (PMC)

A PMC may take the role of a property manager as provided under the DMC and provides professional expertise to execute on behalf of the owners or OC routine management duties including cleaning, repairing and maintenance of common areas and facilities of the building.

Acting in the capacity of the agent of the owners or OC, the PMC has duties and responsibilities (e.g. in relation to the preparation of budget and other financial management duties) as agreed and stated in its contract of appointment and also in the BMO.

Differentiation between DMC Manager and Contract Manager

PMCs can be broadly divided into two main types as follows:

(1) DMC manager who is specified in the DMC to manage the building (i.e. the PMC specified in the DMC). Its remuneration is subject to the manager's remuneration cap as provided by the DMC Guidelines (please refer to Chapter 3 for more details); and

(2) Contract manager who is appointed by the owners of the building on contract basis and for the time being is managing the building for the purposes of the DMC (i.e. a Contract PMC). Its remuneration could be based on "lump sum" (i.e. fixed amount received by the PMC including the expense of the buildings and manager's remuneration) or "cost plus" (i.e. the manager's remuneration is set out by a certain percentage or an agreed amount of the total expenditure of the building).

Both types of PMCs shall comply with the applicable requirements stipulated in the BMO,[26] such as the requirements on financial and procurement arrangement, as well as resignation and termination of the PMC. However, the means of terminating these two types of PMCs may be different.

Subject to the provisions of the BMO, the initial period of management by the first manager must not exceed two years from the date of appointment under the DMC. As prescribed by the DMC Guidelines No. 8(b), prior to the formation of the OC, the owners' committee may at

[23] DMC Guidelines. Clause 9.
[24] Buildings Department. (2002) Building Maintenance Guidebook.
[25] BMO. Section 34K.
[26] BMO. Section 34E (1) and (2).

any time terminate the manager's appointment without compensation by a resolution passed by a majority of votes of owners voting either personally or by proxy in an owners' meeting and supported by owners of not less than 50% of the undivided share in aggregate (excluding the undivided shares allocated to the common areas) and by giving the manager three months' notice in writing. Also, under Schedule 7 of the BMO, owners may by notice terminate the DMC manager's appointment by a resolution, at a general meeting convened for such purpose, which is (i) passed by a majority of the votes of the owners voting either personally or by proxy; and (ii) supported by the owners holding not less than 50% of the shares in aggregate.

The above mechanism is also applicable to a contract manager where the contract of appointment contains no provision for the termination of its appointment. However, if the contract of appointment contains provisions for its termination, the OC shall comply with those provisions, instead of applying the above termination mechanism.[27]

2.6 Management Fees

What are Management Fees?

Management fees are the sum of money which a PMC collects from the owners of the building on a regular basis (usually on a monthly basis) to pay for the expenditure incurred by it in carrying out its duties under the DMC and the BMO. The PMC is required to prepare a budget setting out the proposed expenditure for the financial year, which will become the total amount of management expenses payable by the owners for the financial year.[28] Owners of a building normally contribute to the total amount of management expenses by way of payment of management fees.

The level of management fees payable by owners varies depending on the location, amenities available, the age and state of repairs, the size of staff provided for managing common areas and facilities of the building.

Establishment of Funds

Table 1 outlines the different types of funds, namely general fund (GF), contingency fund (CF) and special fund (SF), which are set up for payment of different types of expenses related to property management. Under section 20(1) of the BMO, an OC shall establish and maintain a GF to defray the cost of the exercise of its powers and the performance of its duties under the DMC, if any, and to pay government rent, premiums, taxes or other outgoings (including any outgoings in relation to any maintenance or repair work) which are payable in respect of the building as a whole.

If the GF established thereby is insufficient to provide for any expenditure of an unexpected or urgent nature and to meet any payments of the kind specified in section 20(1), an optional CF[29] may be established and maintained. Contributions to the GF are collected from owners by way of monthly management fees, while contributions to the CF may be from the monthly collection of management fees or at a time and in a manner as determined by the OC.

Apart from the GF and CF established and maintained by OC, the BMO also specified that a SF shall be established and maintained by the PMC to provide for expenditure of a kind not

[27] HAD. (2017) A Guide on Building Management Ordinance (Cap. 344).
[28] BMO. Paragraph 1 of Schedule 7.
[29] BMO. Section 20(2).

expected to be incurred annually,[30] such as expenses for renovation, improvement and repair of the common areas, costs of the relevant investigation works and professional services, etc. The PMC must not use the SF for the payment of any outstanding management expenses arising from or in connection with the day-to-day management of the building. Contributions to the SF are collected from owners by way of special contribution. Contributions to the SF are neither refundable nor transferable to any new owner. If there is an OC, the OC shall determine, by a resolution at a general meeting of the OC, the amount to be contributed to the SF by the owners in any financial year, and the time when those contributions shall be payable. Some DMCs of the properties also state with the clauses, with or without any OOs, as determined by a resolution of owners at an owners' meeting convened under the DMC, that the amount to be contributed to the SF by the owners, or that the PMC should include in the budget for the next financial year, an estimated time and the amount of money when there will be a need to draw on the SF.

Table 1 below, which is extracted from the Building Financial Management Toolkit developed by the Independent Commission Against Corruption (ICAC), narrates the differences between the GF, CF and SF:

Table 1: Differences between the GF, CF and SF

<table>
<tr><th></th><th>General Fund</th><th>Contingency Fund</th><th>Special Fund</th></tr>
<tr><td>Use of Fund</td><td>1. Property management expenses (e.g. cleaning, security, insurance, repair and maintenance, staff, professional fees).
2. Government rent, taxes, rates, etc.</td><td colspan="2">1. Unexpected or urgent expenditure/ meeting payments when the general fund is insufficient or the expenditure is not expected to be recurrent.
2. Replacement of major equipment (e.g. lifts, playground).
3. Structural improvement and maintenance (e.g. slope, waterproofing works).
4. Large-scale projects (e.g. building renovation).</td></tr>
<tr><td>Determination of Amount of Contribution</td><td>MC based on annual budget.</td><td>MC based on maintenance plan.</td><td>MC based on project cost.</td></tr>
<tr><td>Approval of Amount of Contribution</td><td>1. MC; or
2. OC in general meeting (if contribution exceeds previous year's by >50%).</td><td>1. MC; or
2. OC in general meeting (if contribution exceeds previous year's by >50%).</td><td>OC in general meeting.</td></tr>
<tr><td>Collection of Contribution</td><td>Monthly collection of management fee.</td><td>Monthly collection of management fees, or in time and manner as determined by the OC.</td><td>Special contribution.</td></tr>
</table>

Source: The toolkit was developed by ICAC jointly with HAD, the Hong Kong Housing Society (HKHS), the Hong Kong Institute of Certified Public Accountants (HKICPA), and the Hong Kong Association of Property Management Companies (HKAPMC).

[30] BMO. Paragraph 4 of Schedule 7.

Preparation of Budget and Keeping of Accounts

For the purpose of fixing owners' contribution to the GF and the CF, if there is any, the first step is to prepare a proposed budget on the management expenses that are likely to be incurred in the next financial year.

The BMO contains provisions governing the preparation of budget by MC and PMC respectively. Where a PMC is engaged and its duties cover financial management, normally it is the PMC that prepares the proposed budget which is then reviewed by the MC. Appendix 2 provides further details on how management fees are determined in this regard.

The budget prepared by the MC shall set out the sums which in its opinion will be reasonably necessary to meet payments of the kind specified for the GF and the CF, if any.[31] A revised budget may be prepared if the MC is of the opinion that any sum set out in the budget is insufficient to meet the proposed expenditure.[32]

The MC is empowered under the BMO to determine the amount to be contributed by the owners to the GF and the CF, if any, during a period of not exceeding 12 months.[33] Where the amount to be determined by an MC exceeds the amount of the preceding 12 months by 150%, the amount has to be approved by the OC at a general meeting by a majority of the votes of the owners voting either personally or by proxy.[34]

On the other hand, the PMC under the BMO shall maintain proper books or records of account and other financial records for at least six years[35] and only the owner, registered mortgagee, their representatives or tenants' representatives are allowed to inspect the books or records of account, upon request with approval and a reasonable copying fee set by the OC.[36] The PMC shall also prepare a summary of income and expenditure and a balance sheet every quarter and display a copy of such in a prominent place in the building for seven consecutive days within one month after each consecutive period of three months.[37]

Apportionment of Contributions Between Owners

Owners' shares in a DMC can be found in undivided share and/or management share (Box 1).

Ownership in a multi-storey building is generally expressed in terms of undivided shares. According to the BMO, "share" means the share of an owner in a building determined in accordance with section 39. The voting rights of owners at an owners' fees will be charged based on the undivided shares owned by the owners.

Management share is not defined in the BMO or the DMC Guidelines. In practice, management share is the basis on which management fees are charged to owners. If a DMC does not consist of management shares allocation, the property's management fees will be charged based on the undivided shares.

[31] BMO. Paragraph 2 of Schedule 5.
[32] BMO. Paragraph 3 of Schedule 5.
[33] BMO. Section 21(1).
[34] BMO. Section 21(1A).
[35] BMO. Section 27(1) and (2).
[36] BMO. Paragraphs 1(A), (B) and (C) of Schedule 6.
[37] BMO. Paragraph 2 of Schedule 7.

The BMO provides that the amount to be contributed by an owner towards the GF and the CF (if any), shall be fixed by the MC in accordance with the DMC (if any) and payable at such times and in such manner as the MC may determine.[38]

If there is no DMC, or if the DMC does not provide for the fixing of contributions, which is more common in older buildings, the amount to be contributed by an owner shall be fixed by the MC (i) in the manner provided in an instrument registered in the LR; or (ii) if there is no such instrument or the instrument contains no such provision, then in the proportion which his/her undivided share in the building bears to the total number of shares into which the building is divided.[39]

Once the MC and/or the owners in a general meeting,[40] as appropriate, have decided on the amount and timing of contributions to management expenses of the building, the manager notifies each owner of the amount due and each owner is liable to pay the contribution, normally in monthly payments.

Box 1: Calculation Basis of Undivided Share vs. Management Share

In general, the allocation of undivided shares and management shares are calculated by reference to the gross floor area (GFA) of a unit in proportion to the GFA of the development as certified by an Authorised Person.[41] However, as indicated in past Legislative Council paper, some DMCs of existing buildings, particularly old buildings, allocated the undivided shares on (i) a "value" basis, which followed that those premises with a higher market value (e.g. commercial portions in a building) were allocated more undivided shares; or (ii) an "even distribution" basis, which each unit of the building was allocated the same number of undivided shares. Allocation of undivided shares and management shares on different bases could result in a discrepancy in the distribution of voting rights and management liability between residential owners and non-residential owners (e.g. carpark owners, commercial owners, etc.),[42] and certain groups of owners may unfairly bear higher management expenses. To tackle this issue, LACO has required that both the undivided and management shares of a building should be allocated on GFA basis, save for other justifiable basis which does not raise fairness concerns. If any basis other than GFA is proposed for the allocation of shares in the DMC, LACO will have to be satisfied with justification that the use of such basis will not result in disproportionate management charges being imposed on the owners of any specific parts of a development.[43]

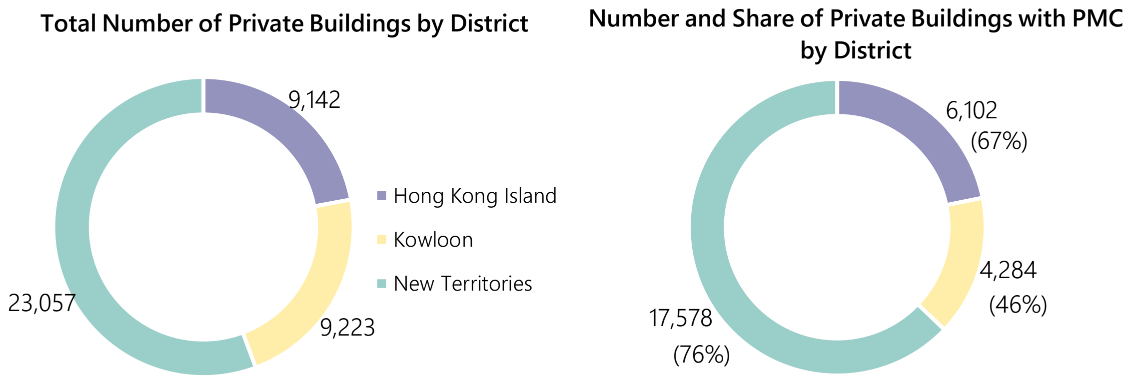
2.7 The Property Management Market

Private Buildings with PMCs

According to HAD's Database of Private Buildings in Hong Kong, as at 13 March 2023, there were about 41,000 private buildings (without distinction by types of buildings) in Hong Kong. Amongst these buildings, about 68% of them were managed by PMCs. Chart 4 shows the distribution of private buildings by district and those with PMCs in Hong Kong.

[38] BMO. Section 22(1).
[39] BMO. Sections 22(2) and 39.
[40] BMO. Section 21 (1A). If any subsequent amount determined by the MC increases over 50% of the preceding amount, that subsequent amount shall be approved by the OC by a resolution passed at a general meeting of the OC.
[41] An Authorised Person is appointed under section 4(1)(a) or (2) of the Buildings Ordinance (Cap. 123) as a co-ordinator of building works for the development.
[42] Legislative Council Paper No. CB(2)1839/01-02(01) (14 May 2002).
[43] DMC Guidelines. Clause 6.

Chart 4: Distribution of Private Buildings in Hong Kong as at 13 March 2023



Source: HAD. Database of Private Buildings in Hong Kong.

A PMC may be appointed by the developer (i.e. DMC manager) or subsequently by the OOs or owners (i.e. Contract manager). PMCs differ in size, portfolio of buildings under management and financial position. PMCs may manage one or more types of buildings like public housing, private residential buildings, commercial buildings, industrial buildings, or composite (or mixed-use) buildings.

Over the years, a range of factors such as consumers demand for improved standard of housing, and government measures to promote proper property management and encourage sustainable living, have accelerated the growth of the property management industry, which is now a major service sector in Hong Kong.

In terms of market concentration, according to the membership statistics[44] shared in December 2022 on the website of the Hong Kong Association of Property Management Companies, a major industry organisation in Hong Kong, 113 of its corporate property management members were providing services "for over 70% of the residential units, various commercial buildings, car parks, and private and government facilities in Hong Kong among those that hire PMCs".

It is also observed that developer-affiliated PMCs are often supported by their parent companies' pipeline real estate development projects. The relationships between PMCs and the developers of the buildings are further analysed in Chapter 3 of the Report.

Previously, the property management service industry is viewed as having relatively low entry barriers due to its less capital-intensive nature and that a licence was not required. Subsequent to the establishment of the PMSO, a licensing regime has been introduced.

[44] The Hong Kong Association of Property Management Companies. See https://hkapmc.org.hk/en/history-objectives/

Licensing of PMCs and PMPs

Section 8 of the PMSO provides for a single-tier licensing regime of PMCs and a two-tier licensing regime of PMPs to regulate the provision of property management services in Hong Kong. The implementation of the licensing regime, which sets out the minimum qualification requirements for PMCs[45] and PMPs,[46] came into effect on August 1, 2020. There is a three-year transitional period until 31 July in 2023, after which application of a licence will become mandatory for all property management practitioners.

According to the two-tier licensing regime for PMPs, an individual who assumes a managerial or supervisory role in a PMC which is required to hold a licence for the property management services provided by the PMC to a property are required to be licensed.

Business entities providing more than one category of the property management services set out in Schedule 1 to PMSO to properties with DMCs are required to hold a PMC licence. There are seven categories of services relating to the management of a property which included (i) general management services; (ii) management of the environment; (iii) repair, maintenance and improvement; (iv) finance and asset management; (v) facility management; (vi) human resources management relating to personnel involved; and (vii) legal services.

According to the PMSA, there were over 600 PMCs in Hong Kong in 2022, and as of 10 March 2023, 368 PMC licence and 11,304 PMP licence/provisional PMP licence were issued respectively. It should be noted that as the transitional period for mandatory licensing has yet to expire until 31 July 2023, more PMCs operating in Hong Kong may apply for a licence in the coming months. Table 2 shows the total number of PMCs and PMPs licences in Hong Kong as provided in the PMSA's website.

Table 2: Total Number of PMCs and PMPs Licences Issued as at 10 March 2023

	Licensed PMCs	Licensed PMPs	Provisional Licensed PMPs	Total Number of Licensees
Total	368	7,599	3,705	11,672

Source: PMSA. Registers of Licensees.

Licensees are required to comply with certain requirements set out in the PMSO and the Property Management Services (Licensing and Related Matters) Regulation. Among different requirements under the regime, the information that must be provided by PMCs to their clients concerns:

- Conflict of interests;
- Contracts entered into for or on behalf of clients; and
- Documents relating to management of property as may be specified by the PMSA from time to time.

If a licensee fails to comply with a requirement, he may commit a disciplinary offence and may be subject to disciplinary action. The PMSA is empowered by the PMSO to conduct investigation and hearing for a licensee who is suspected to have committed a disciplinary offence or to have no longer met any of the prescribed criteria for holding the licence; to

[45] PMSA. PMCs' "Criteria for Holding a Licence".
[46] PMSA. PMPs' "Criteria for Holding a Licence".

impose penalties on the transgressor if the evidence is sufficient and; to set out complaint handling procedures and issue Codes of Conduct for industry practitioners to comply with. More Codes of Conduct on various topics will be issued in the near future. The PMSA may discipline the licensee who has committed a disciplinary offence by making any of the following orders against the licensee:

- Verbal warning or written reprimand;
- Fine (the maximum fine of disciplinary offences is HK$300,000 under Schedule 2 to the PMSO);
- Impose a condition on the licence;
- Vary a condition of the licence;
- Suspend the licence; or
- Revoke the licence.

2.8 Complaints

It is observed that there are different avenues for complaints related to property management in Hong Kong. This Section provides a summary of the complaints received by the Council, the PMSA and the Competition Commission.

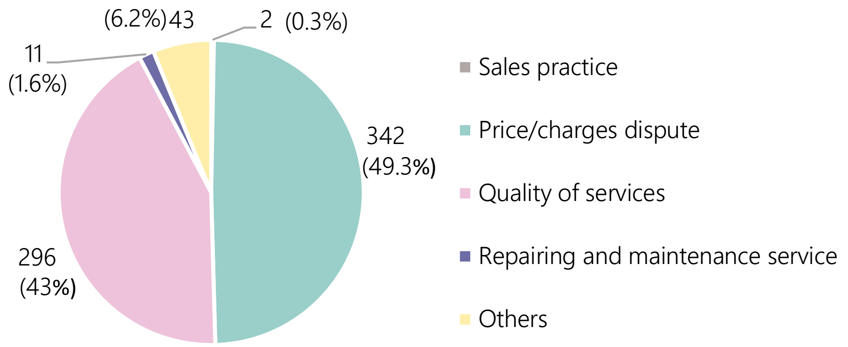
Complaints Received by the Council

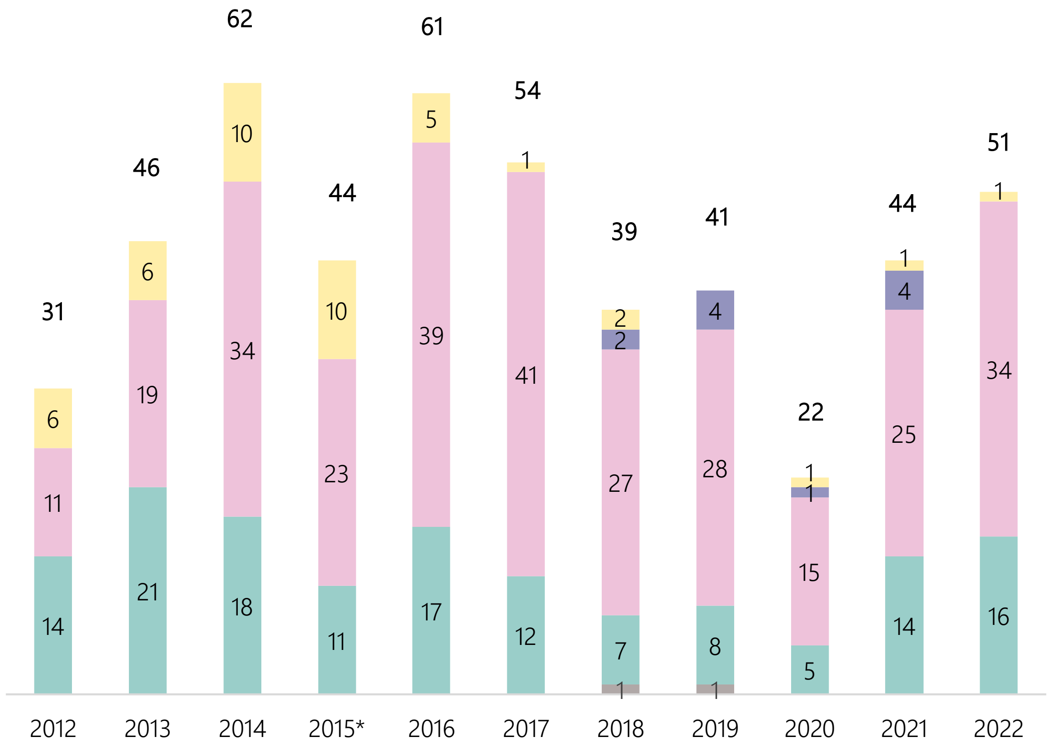
As shown in Chart 5, in the past 11 years or so, the Council received 694 complaints concerning property management services. About 342 complaints (about 50% of the total) were related to pricing and charges disputes, while over 296 complaints (about 40%) were related to quality of services. The remaining 8% or so were on miscellaneous matters.

The total amount involved in property management complaints received by the Council from 2012 to 2022 was HK$393 million. Of the 11 years, the yearly monetary amount involved exceeded HK$1 million in eight years and reached its highest at HK$320 million in 2015.

Furthermore, during the period of 2012-2022, about half of the complaints (50%) was resolved after the Council's conciliation, whereas over one-tenth (12%) were unresolved. The remaining 38% were either not pursuable (e.g. insufficient information provided by the complainants, lack of cooperation from the complainants) or were still under conciliation.

Chart 5: Breakdown of Consumer Complaints (% Share, Dollar Amount and Number) on Property Management by Categories in 2012 – 2022





Total Amount Involved ($HK Million)	$1.3	$28.9	$3.2	$320	$0.5	$6.6	$14.8	$0.07	$0.04	$12.1	$6.2

Remark:* For 2015 in Chart 5, as around 200 complaints for the "Price/Charges Dispute" category in 2015 were received from a group of purchasers of a first-hand residential property, the Council combined them into one incident in the above Chart in order not to distort the overall presentation. It should be noted that the total amount in consumer complaints on property management in 2015 included all of the aforementioned cases.

Pricing and Charges Disputes

For the 342 complaint cases related to pricing and charges disputes, some of the disputes between owners and OOs or property managers could have been amicably resolved, or at least better managed, had each party dedicated some efforts to strengthen communications. Certain cases also expose some core structural issues in the current laws and regulations regarding management fees that warrant a review to improve transparency on the calculation of management fees and effectiveness of the supervision of property managers to protect owners. The cases highlighted below (including resolution details, where available) show the disputes arose from the handling or interpretation of the obligations of OOs, MCs and property managers in their respective roles on property management:

Alleged/Suspected Misuse of Management Fees

- Of the 342 complaints, around 200 were received from a group of purchasers of a first-hand multiple block residential property with over 2,000 units in 2015. They alleged that the property manager misapplied the management fees to pay business expenses that should have been borne by the developer when handing over the newly completed units to them. To resolve the matter, the property manager eventually refunded the amount in dispute to the building's management fund.

- An OC complained in 2012 that the property manager of a multiple block residential property with over 1,500 units should not have charged the "headquarters and professional fee"[47] in addition to the "manager remuneration" which had already taken up a certain percentage of the management fee. The property manager claimed that he was allowed to charge all reasonable professional fees and costs he incurred in relation to the management of the estate and it was a common industry practice to charge such "headquarters and professional fee". Owing to confidentiality requirement, outcome of the case cannot be disclosed in this Report.

- In 2016, an owner suspected that the building's management fees might have been wrongfully applied for the benefit of a private enterprise operated in the housing estate with over 1,000 units, in which the housing estate was a part of a mixed-use development. The owner complained to the Council that the property manager had refused to disclose accounting records and annual budgets of the private enterprise to support his suspicion. As the case involved multiple issues, no settlement was reached at the end.

- An owner of a multiple phase residential development with about 3,000 units complained and alleged that the property manager had hired full time staff using the building's management fees but deployed such staff to serve the housing blocks of other developments. The case was settled between the owners' committee and the property manager.

Alleged Contravention of the BMO and Related Code of Practice

- An owner of large-scale housing estate with over 6,000 residential units from a mixed-use development complained in 2018 that the property manager had failed to provide him/her with the building's books and accounting records, allegedly in violation of paragraph 2(5), Schedule 7 of the BMO that requires the property manager to permit any owner to inspect the books or records of account and any income and expenditure account or balance sheet at any reasonable time; and on payment of a reasonable copying charge, supply any owner with a copy of any record or document requested by him/her. The management office advised the complainant the channel through which the complainant could obtain the documents.

[47] Such "headquarters and professional fee" includes headquarters fee which is pooled indirect expenses incurred by the headquarters or the holding company of the property manager for managing a building or blocks of buildings.

- An owner of a multiple phase residential development with over 1,200 residential units complained in 2021 that the property manager did not display the income and expenditure account, the budget and the audited accounts of the building in a prominent place. The owner did not further pursue the complaint after bringing it to the Council's attention.

- An owner from a multiple block residential development with over 600 residential units complained that the outgoing property manager did not properly transfer payment records of management fees to the incoming property manager, in violation of statutory requirements relating to the termination of appointment under the BMO. With the assistance of the Council, the outgoing property manager eventually transferred the outstanding management fee to the incoming property manager to resolve the matter.

Court Cases. HKSAR v WONG WAI LUNG (KTCC 1149/2021); and THE INCORPORATED OWNERS OF CHOI MING COURT v. WONG WAI LUNG & GUARDIAN PROPERTY MANAGEMENT LIMITED (HCA 1740/2021)[48]

- In July 2021, it was reported that the then property manager of Choi Ming Court, Wong, under the employment of Guardian Property Management Limited, was prosecuted with a charge of theft. According to the prosecution, for a period of ten years from 2010 to 2020, the defendant had embezzled around HK$50 million of the OC's money through forgery and fraudulent fund transfers from the OC's bank account to his own account.

- Subsequently, in November 2021, the OC of Choi Ming Court filed a civil claim in the High Court against both parties for compensation. According to desktop research, no judgment has been handed down.

Alleged Breach of DMC

- In 2017, an owner of a smaller-size flat from a multiple block residential development with 600 residential units, was concerned that the management fees charged to him increased at a higher percentage (7.4%) than that charged to owners of larger-size flats (6%). He questioned if the property manager had followed the DMC provisions to allocate management fees among owners based on the GFA of flats, as the average management fees per square foot (sq. ft.) should be the same regardless of the flat size. The complainant subsequently advised the Council that he was satisfied with the further details provided by the property manager to explain how the management fees for the small-size flats were arrived at.

[48] Oriental Daily. (2021) 彩明苑數千萬元疑遭挪用　法團向物業經理索償 HCA 1740/2021; Oriental Daily. (2021) 涉盜法團近半億元 物管經理還押候訊 KTCC 1149/2021.

Court Case. 宜高物業管理有限公司 對 遠東銀行（旺角）大廈業主立案法團 (LDBM 152/2000)[49]

- The building is divided into the theatre, shop and residential premises under the DMC. There was divergence of views among owners of different premises on their liability for the expenses of repair works over the common parts and facilities of the building concerning the canopies, electrical installation, corridors, fire escape staircases, exterior walls, scaffolding and painting of exterior walls. The Lands Tribunal ordered that the costs be apportioned in accordance with the DMC and the BMO. In particular, owners of the residential premises shall not be responsible for the costs of repairing the canopies as the owners of the theatre and shop premises enjoy exclusive right of use/occupation and thus owe the duty of maintenance under section 34H of the BMO. As for the repair costs of the other areas or parts thereof, based on the DMC, the Lands Tribunal held that they should be borne by the relevant owners solely as provided for in the DMC or apportioned among the owners in accordance with the shares stipulated therein.

Alleged Lack of Transparency on Coverage of Management Fees and Charges

- An owner of a residential development with multiple blocks and houses with over 200 residential units alleged in 2020 that the owners' committee excluded some owners from participating in meetings of owners, leading to questions over the fairness and transparency of the decisions related to management expenses made at the meetings. The owner did not further pursue the complaint after bringing it to the Council's attention.

- In 2018, an owner of a multiple block housing estate with over 1,000 residential units was puzzled by the property manager's refusal to deduct the internet service charges from the management fee previously borne by each owner of the building, after the contract between the building and the internet service provider ended. The owner did not further pursue the complaint after bringing it to the Council's attention.

- In 2020, an owner of a residential flat of a multiple block housing estate with over 2,000 residential units from a mixed-use development complained and questioned why residential flat owners were required to share the management expenses of common areas which, according to the complainant, were solely attributable to and incurred for the benefit of commercial owners. The case was not pursued due to inconsistent viewpoints among residential owners.

Court Case. 蘇惜鑾 訴 恆盛大廈(譚公道)業主立案法團 (LDBM 124/2012)[50]

- The Applicant (the owner) sought the Lands Tribunal's clarification on the determination of management fees of the building. Prior to the establishment of the OC, the management fees of the building were charged according to the size and the location of the units. After the first MC of the OC was formed, it resolved that the amount of management fees should be determined according to the terms of the DMC such that different ratios would be applied to residential units and commercial units. This gave rise to heated and continuous dispute among the owners. Subsequently, the second MC resumed the previous practice of charging management fees according to the size

[49] The Hong Kong Legal Information Institute (HKLII). 宜高物業管理有限公司 訴 遠東銀行（旺角）大廈業主立案法團 [2000] HKLdT 178; (LDBM 152/2000).
[50] The Hong Kong Legal Information Institute (HKLII). 蘇惜鑾 訴 恆盛大廈(譚公道)業主立案法團 [2012] HKLdT 71 (LDBM 124/2012).

and location of the units. Considering this decision as confusing and unreliable, an owner applied to the Lands Tribunal for clarification of the relevant terms of the DMC. The judge held that the amount of the management fees should be determined according to the proportion of each owner's undivided shares set out in the DMC. As the difference of opinion over the interpretation of DMC had caused annoyance to the owners for more than four years, the current OC agreed to refer the matter to the Lands Tribunal for decision. He also praised the applicant and the OC for their practical attitude in handling the case as they did not raise unnecessary arguments in the proceedings and seek costs against each other.

Dissatisfaction with Service Quality

Generally speaking, complainants in this category were dissatisfied with the attitude of PMC frontline staff in attending to their requests, and the speed and the way in which their complaints (e.g. water and electricity supply, noise nuisance and water seepage from the external walls) were handled. Some complainants were also discontented that the lobby was unmanned at times.

Disruption of Water Supply

- An owner of a multiple block housing estate with over 2,300 residential units complained in 2018 that there were frequent breakdowns of the sanitary water supply at his housing estate. According to the complainant, the origin of the problem was from a restaurant in the estate but the management office did not take prompt follow-up actions to resume the sanitary water supply. The complainant added that the property manager did not apologise to owners for the prolonged trouble caused and prepare any contingency plans in case of the disruption of water supply. It took one more month to resume the water supply upon the Council's conciliation.

Noise Nuisance

- The Council received a number of complaints related to noise nuisance from time to time, in which the complainants were dissatisfied that the property managers concerned were unable to resolve the problem of noise nuisance occurring in their units.

Water Seepage from External Walls

- An owner of a multiple block housing estate with over 1,500 residential units alleged in 2018 that after the renovation of the building's external wall, he found water seepage to his unit from the external wall. He complained against the property manager and the construction company responsible for the renovation and alleged that these two parties had delayed their response in resolving this matter promptly. The management office followed up the rectification works with the complainant upon the Council's conciliation in the end.

Unmanned Lobby

- An owner of a multiple phase development with over 1,900 residential units complained in 2018 that the lobby of his building was unmanned from the evening to the next morning for 1.5 months and the property manager allegedly told him that this was due to cost saving. The dispute was unable to be resolved.

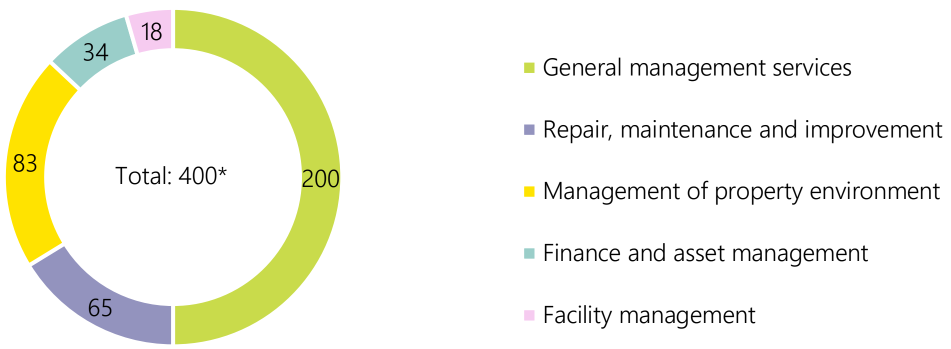
Complaints Received by the PMSA

From 2018 to 2021, the PMSA received about 400 complaints per financial year. During the period from 1 April 2021 to 31 March 2022, the PMSA received and handled 378 complaints mainly from property owners of residential properties as stated in its 2021-22 Annual Report (Chart 6).

Among different types of complaints, those involving "general management services", "management of property environment", and "repair, maintenance and improvement" form the majority. The complaints were mainly against the PMCs for not handling owners' complaints properly, failing to assist owners to convene meetings, failing to handover properly at the end of service appointment, delay in taking follow-up actions about repair and maintenance works of common facilities, inadequate provision of cleaning or security services, inappropriate handling of noise nuisance or unauthorised occupation of common areas, etc.

On top of the above, the PMSA also received a total of 34 complaints on issues of "finance and asset management", which were about unclear or incorrect budgeting and accounts, refusal or delay in answering requests for inspection of financial records, etc.

Chart 6: Classification of Complaints within Jurisdiction of the PMSA for 2021-2022



Source: The PMSA

Remark: * Since a single complaint case may involve more than one category of complaint, the total number of complaints in different categories is not equal to the total number of complaint cases.

Complaints Received by the Competition Commission

In a recent statement, the Competition Commission indicated that from 2021 to 2022, "real estate and property management" has been one of the top three sectors where the Competition Commission has received the greatest number of complaints.[51] In respect of its ongoing initial assessment and investigation cases relating to anti-competitive issues, nine cases belonging to the real estate and property management sector were initiated from 1st April 2021 to 31 March 2022.

From 2018 to 2021, the real estate and property management sector ranked first among all sectors involved in ongoing initial assessment and investigation cases, with 6, 13 and 11 cases in the respective years.

[51] Competition Commission. (6 January 2023) Statement by the Competition Commission regarding estate agencies' internal memos on commission for first-hand property transactions.

2.9 Stakeholder Consultation

In kick-starting the Study, the Council met with HAD, LACO and the PMSA to seek their views relating to the Study in late 2019. During the Study, ongoing communications, advice and support were obtained from these stakeholders in strengthening and clarifying the Council's understanding of the crux of the issues about property management. The Council would like to thank these organisations for their valuable contributions.

Furthermore, the Council had also approached various industry organisations[52] to seek their views, but possibly affected by the pandemic, only one organisation managed to meet with the Council in December 2019.

On the other hand, the Council kept contacting a number of industry professionals as well as representatives from the Urban Renewal Authority (URA) during the course of the Study to collect their opinions on the interim Study findings.

The stakeholders whom the Council consulted at the various stages of the Study identified the following key problems in property management in Hong Kong:

Absence of Official and Published Information on Property Management Market Structure and Fees

At the time of the stakeholder consultation, official collection and disclosure of information on property management fees or related costs such as manager's remunerations were lacking. Such information was considered important to consumers in making prospective selections.

There was market comment that the Government might set up a property management fee monitoring mechanism which measured the average property management fee across Hong Kong in order to provide benchmarks for consumers' reference.

Owners' Lack of Awareness and Understanding of DMC, Its Provision and Long-term Impact

Under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (RPO), the sales brochure must, amongst other things, contain a summary of provisions of the DMC or draft DMC, as applicable, that deal with the common parts of the development, and state (i) the identity of the DMC manager; (ii) the number of undivided shares assigned to each residential property; (iii) the term of years for which the property manager is appointed; and (iv) the basis on which the management expenses are shared among the owners of the residential properties.

Yet, prospective home buyers might not have read or understood the aforesaid details in a sale brochure, resulting in unawareness or insufficient consideration of the ongoing costs to be incurred in owning a flat. Their discontent with management expenses might also arise from a lack of understanding of the DMCs which contain provisions with technical terms and jargons.

Insufficient Participations by Owners in First Appointment of DMC Manager

A DMC binds a registered owner and its successors and assignees, and hence home buyers normally have no control over the appointment of the DMC manager. Accordingly, owners, in

[52] The industry organisations include the Hong Kong Association of Property Management Companies, the Hong Kong Association of Property Services Agents, the Federation of Hong Kong Property Management Industry Limited, and the Hong Kong Institute of Housing.

accordance with the DMC, normally have to wait until the expiry of the DMC manager's 2-year appointment before they could appoint another PMC through tender.

Difficulty in Termination of DMC Managers' Appointment

The appointment of a DMC Manager can be terminated by following the steps and procedures stipulated in Schedule 7 of the BMO. However, it is observed that termination is extremely difficult in practice since it requires consent from owners holding not less than 50% of the undivided shares in aggregate. Given the general unwillingness of owners in attending owners' meeting and spending time in property management matters, it is in practice difficult to achieve such a majority decision.

It Is also observed that, for some large-scale property developments that come with a shopping mall, developers tend to retain a relatively large proportion of undivided shares to themselves. This gives rise to the issues of potential conflict of interest, as well as potential domination of the developer in decisions about the appointment of PMCs. Chapter 3 of the Report provides examples in this regard.

Potential Issues of the Basis of Manager's Remuneration

According to the market observation and as illustrated by the survey findings in Chapter 3, it is a general practice that DMCs are drafted in a way that the DMC manager's remuneration would reach the ceiling permissible by the DMC Guidelines.

To address the foregoing issue, the BMO review exercise proposed some possible measures such as the provision of a more detailed breakdown of expense items (i.e. how the service fee of the headquarters is apportioned among the developments managed by the same property manager), exclusion of expenditure items which do not involve any value-added services by the PMC (e.g. electricity and water charges) from the formula for calculating the DMC managers' remuneration and lowering the ceiling of the remuneration rate of DMC managers. Please refer to Appendix 1 for further details.

Another point of the view from the stakeholder was that manager's remunerations should not be based on the expenditure in order to avoid inflation of the expenditure to increase the manager's remuneration, and that expenditure should be based on needs and reference to market price.

Lack of Proactive Routine Maintenance

Regarding property maintenance, with developers responsible for the repair and maintenance of new developments under the Defects Liability Period (DLP) for six months, some industry experts commented that the PMC normally excludes the repair and maintenance expenses from the first-year budget. Such responsibility would then rest with the owners of the building from the second year on. However, owners may not be aware of the importance and only address them when the building becomes dilapidated or requires immediate repair. It will result in the deterioration of the building's condition if repair and maintenance needs are not attended to in a timely fashion.

More involvement from PMCs in routine maintenance by changing the BMO and DMC was also mentioned. Instead of dealing with emergency maintenance at the last minute or when accidents happen, it is more desirable to include the cost of routine maintenance and emergency maintenance in the monthly management fees. The maintenance requirements of the Housing

Authority's tender approach could provide useful reference to OCs of private buildings. This, however, will increase the expenditure base which in turn may boost up property manager's remuneration if the existing basis of charge remains unchanged.

Absence of a Centralised Complaint Mechanism

Relevant Government departments (i.e. HAD), industry regulators (i.e. the PMSA), statutory bodies (i.e. ICAC, the Competition Commission and Office of the Privacy Commissioner for Personal Data), trade associations (i.e. The Hong Kong Association of Property Management Companies, the Federation of Hong Kong Property Management Industry Limited, the Hong Kong Institute of Housing, Real Estate Developers Association of Hong Kong), and the Council all receive complaints in relation to property management and fees. Different parties are in charge of different scopes and aspects, for example, the complaint mechanism under the PMSO only covers complaints against licensees with the PMSA. As a result, only segregated figures are available in the market, making it hard to get a full picture of the consumer issues. By the end of the three-year transitional period on 31 July 2023, all PMCs providing two or more property management services to properties with DMCs and PMPs assuming a supervisory or managerial role in such PMCs in relation to the property management services provided by them must be licensed pursuant to the requirements in the PMSO. The PMSA has the power to handle and investigate complaints against all licensees. Members of the public may lodge complaints against licensed PMCs and PMPs to the PMSA.

2.10 Summary

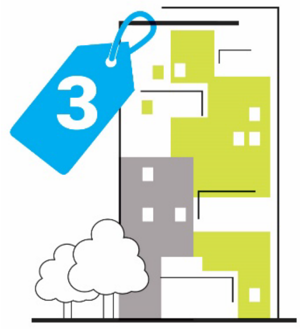
The management of multi-owned properties in Hong Kong is mainly governed by the BMO and the DMC of the building, which stipulate the structure of management fees, the setup of OOs, rights and obligations of owners as well as the management and maintenance obligations of the property manager.

However, owners in general may not fully understand the impact of DMC on the management of their building. Even for owners who recognise the importance of DMC as a binding contract, they may find the provisions written with technical terms and jargon difficult to understand. Not to mention that most owners actually have no choice but to accept the provisions of the DMCs. Stakeholders engaged by the Council shared the observation of a phenomenon that many DMCs were drafted in a way that the managers' remuneration would be charged up to the ceiling. However, the quality of services provided by the managers does not always live up to the price. Regrettably, when owners are not satisfied with the performance or charges of the DMC manager, it is difficult for them to meet the criteria under schedule 7 of BMO to terminate the manager. At the same time, property management related complaints reflect some structural problems and unfairness in the property management fees charged to consumers, such as unfair apportionment of fees and charges, the basis of manager's remuneration, etc.

In the absence of official and published information on the property management market structure and management fees, owners may not have the required knowledge on the operation of the property management activities, especially regarding the charge scope and how they should be handled. One key area of concern is repair and maintenance, for which the owners or OCs normally overlook the importance of routine maintenance of buildings, which may increase the management expenditure substantially in the long run.

Meanwhile, complaints nature reflected that owners expressed dissatisfaction on the service quality of PMCs or PMPs, part of these complaints might be due to misunderstanding that could be resolved by better communication.

The issues identified above will be further explored and discussed in the following Chapters of the Report, with which the Council expects that attention and policy debates will be directed to improving the current practices for the benefit of the owners and the healthy growth of the property management industry.



Market Overview of Key Property Management Information to Consumers

3.1 Introduction

When a consumer contemplates purchasing a first-hand residential property, he/she may want to know certain property management information before making decision. Among all, consumers would be concerned with how much management fee they have to pay and the calculation involved. However, this kind of information is generally untransparent to consumers as found in the Study, as prospective purchasers may not be able to easily access the information required, such as the allocated shares for residential flats and how they come about, or the potential management fees and how they will be shared by residential owners. On top of that, as it is commonly the case, most first-hand residential properties on sale are uncompleted developments, which escalates the challenge for consumers to obtain key information such as the name of the appointed property management company (PMC), the amount of management fees, etc. vis-a-vis completed developments, where such information may be readily available in the "Vendor's Information Form" (VIF).[53]

To understand the accessibility of such information required by prospective purchasers and the transparency of the information in general, the Council had researched into 50 sales brochures, 249 deed of mutual covenants (DMCs) and two statutory declarations (SDs) of residential property developments.[54] From reviewing the disclosure of information relating to property management in sales brochures and SDs, it was revealed that the basis for the allocations of undivided shares and management shares was not found in the sales brochures but in the SD of the developments,[55] a document which the general public is rarely aware of.

The Council also reviewed DMCs to analyse the apportionment of management expenses among different types of owners, the appointment of DMC managers and their relationship with developers, as well as how the manager's remuneration is determined in the DMCs.

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[53] For the sale of completed first-hand residential property, developers must provide a VIF that sets out the amount of management fee payable for a specified residential property.

[54] The data source for the desktop research on sales brochures is the Sales of First-hand Residential Properties Electronic Platform (SRPE) maintained by the Sales of First-hand Residential Properties Authority; the data source for DMCs were retrieved from the link of the development's website listed on the SRPE; and the data source for the SDs were obtained from the Land Registry.

[55] The SDs are available for uncompleted residential developments that fall under the Consent Scheme at the Land Registry.

3.2 Analysis of Information Disclosure in Sales Brochure, DMC and SD

This analysis of information disclosed in sales brochure, DMC and SD has three main objectives:

- To find out what pre-purchase information related to property management is available to consumers;
- To find out what information is required to be disclosed to consumers under the current regulations or guidelines; and
- To identify the factors affecting management fees, e.g. appointment of DMC manager and the setting of its remuneration rate.

The Council had identified a total of 414 first-hand private residential developments[56] from the Sales of First-hand Residential Properties Electronic Platform (SRPE) maintained by the Sales of First-hand Residential Properties Authority (SRPA) covering the period from 23 December 2019 to 31 December 2021. From these 414 developments, after excluding those with missing or incomplete DMCs and out of scope of the Study, 292 developments[57] were used for further analysis. Out of all, 221 developments were standalone developments which had their own DMCs, whereas the remaining 71 developments were multi-phase developments which had their respective DMCs (and sub-DMCs) designed in the following manners: [58]

1) One DMC for all phases of the same multi-phase development; or
2) One principal DMC for the whole multi-phase development and different sub-DMCs for individual phase developments.

Under section 8(1A) of the Building Management Ordinance (Cap. 344) (BMO), the Land Registry (LR) shall not issue a certificate of registration to more than one corporation for a building in respect of which a DMC is in force. As such, only one owners' corporation (OC) can be incorporated under one DMC or principal DMC, no matter how many sub-DMCs are in force. Hence, in the Council's analysis, only the DMCs or principal DMCs of these 71 multi-phase developments were counted. Furthermore, the Council noted that some of the phase developments in the sample belong to the same multi-phase residential property development, which had the same DMC or Principal DMC. After taking out the duplicated ones, there were 28 DMCs or Principal DMCs in total from the 71 multi-phase developments. Combining the 221 DMCs from the standalone developments mentioned above with the 28 DMCs from the multi-phase residential property developments, a total of 249 DMCs of developments were examined. Please refer to Chart 7 below for the screening process.

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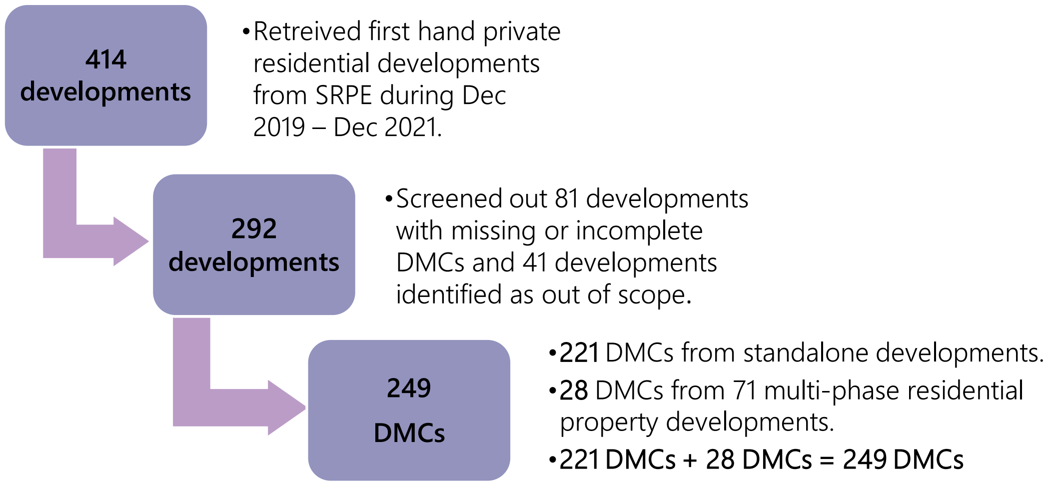
[56] These 414 developments were either with sales in progress or with sales terminated in the past 18 months at the time of research. Developments with sales terminated for over 18 months were kept on a separate register on the SRPE and excluded in the Council's analysis.

[57] In the Council's analysis, a phase of a multi-phase residential property development is counted as one development.

[58] While the Council has identified two types of DMC design for multi-phase developments from the sample, existence of other DMC designs cannot be excluded for multi-phase developments outside the sample. It is observed that multiple OCs were formed within the same multi-phase development for older developments. See LCQ18: Formation of owners' corporations in large private housing estates.

Chart 7: Selection Process of the 249 DMCs Qualified for the Analysis



Through studying all materials gathered, the Council carried out in-depth analysis on the following topics:

- Property management-related disclosure in sales brochures
- Calculation of undivided shares and management shares of residential flats
- Owners' share of management expenses
- Appointment of DMC manager by developer
- Manager's remuneration

I. Property Management-related Disclosure in Sales Brochure

Currently, the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (RPO),[59] which came into effect on 2 April 2013, sets out certain requirements relating to the disclosure of property management information in the "Summary of DMC" in sales brochures. The requirements include, but are not limited to, the following:

- The number of undivided shares assigned to each residential property in the development;
- The basis on which the management expenses are shared among the owners of the residential properties in the development;
- The basis on which the management fee deposit is fixed; and
- The term of years for which the manager of the development is appointed.

Display of the Required Information in the DMC Summaries of the Sales Brochures

(1) The Number of Undivided Shares Assigned to Each Residential Property in the Development

All reviewed developments have specified the number of undivided shares allocated to each residential unit in the form of a table, while the presentation format of the shares may be different.

[59] RPO. Paragraph 14(2) of Schedule 1.

The Council has selected three developments as typical examples of how the number of undivided shares assigned to each residential unit was presented in their sales brochures. The first example showed the number of undivided shares allocated to each residential unit as the numerator and the total undivided shares shown as the denominator in fractional format. The second example showed only the number of undivided shares allocated to each residential unit. The third example showed the allocation of both undivided shares and management shares per residential unit in the same table.

Example 1: Number of Undivided Shares per Unit shown in a Fraction of Total

Floor	Residential Unit	No. of Undivided Shares Allocated to Each Residential Unit
2/F	Flat A	38/3609
	Flat B	28/3609
	Flat C	28/3609
	Flat D	28/3609

Example 2: Simple Number of Undivided Shares per Unit

Floor	Residential Unit	No. of Undivided Shares Allocated to Each Residential Unit
3/F	A	32
	B	17
	C	15
	D	18

Example 3: Numbers of Undivided Shares and Management Shares per Unit

Residential Units		Undivided Shares per Residential Unit	Management Shares per Residential Unit
Floor	Flat		
5/F	A (including flat roof adjacent thereto)	32	32
	B (including balcony thereof)	23	23
	C (including balcony thereof)	17	17
	D (including balcony thereof)	17	17

(2) The Basis on which the Management Expenses are Shared among the Owners of the Residential Units in the Development

In general, management expenses are shared among the owners of the residential properties in the development in proportion to either the management shares or the undivided shares allocated to the owner's unit. It is observed that owners could be required to share the management expenses of some parts of a development which they do not have exclusive right of possession. Later part of the Chapter will discuss on the calculation of undivided shares and management shares.

Sales brochures of all 50 reviewed developments specified how the management expenses are shared among the residential owners. In terms of contribution to the management expenses, owners in 39 developments are allocated based on their management shares allocated, whilst owners of the remaining 11 developments are in proportion to the undivided shares allocated.

However, none of the sales brochures reviewed contained details on the calculation and apportionment of the undivided shares or management shares.

While 20 reviewed developments have car park areas, only eight of them have provided specific formulas for calculating management expenses attributable to car park common areas.

It is however observed that none of the reviewed development provided a formula for calculating management expenses attributable to the residential units.

In this review exercise, only one development[60] provided the exact amount of the monthly contribution to management charges currently payable by each owner for the corresponding floor of the development. This development, which was a residential development launched prior to the SRPE, uploaded its sales brochure onto the SRPE in 2021 for the sale of its remaining units. Its sales brochure stated that the amount of monthly contribution to management charges payable by each owner shall be specified by the manager from time to time by notice in writing.

(3) The Basis on which the Management Fee Deposit is Fixed

All reviewed developments have stated the basis of the management fee deposit in the sales brochures, ranging from one month to three months of management fee. A majority (44) of developments stated three months' management fee as deposit, while five developments with two months' management fee as deposit and one development stated one month's management fee as deposit.

(4) The Term of Years for which the Manager of the Development is Appointed

All reviewed developments have specified an initial 2-year term of appointment of the DMC manager in the sales brochures. Most developments (i.e. 49 developments) specified that the appointment may be automatically renewed at the expiry of the initial term unless terminated in writing in accordance with the terms of the DMC. The remaining one development did not specify the terms of renewal.

II. Calculation of Undivided Shares and Management Shares of Residential Units

The Council's analysis indicates that although the allocated numbers of undivided shares (and/or management shares) for property units are listed in the sales brochures as well as in the DMCs, the underlying mechanism and formula to determine the undivided shares and the subsequent allocation are not disclosed.

In fact, this missing piece of information can be found in the SD, which is one of the mandatory documents prepared by the developer in support of the application for pre-sale consent for any units in an uncompleted development as required by the Lands Department Consent Scheme (Consent Scheme). Under the Consent Scheme, the developer must apply through its solicitors to LACO, with the SD registered in the LR, for the consent of the Director of Lands before the first Preliminary Agreement for Sale and Purchase of the unit is signed. However, the Council observed that SDs are not widely known by the general public. Also, they are not readily accessible to most consumers. Coupled with the highly technical terms used in most SDs, information as to how undivided shares and management shares are calculated and allocated is indeed not transparent to consumers.

[60] Development no. 378 is a single residential building with 20 units in total. The occupation date of the building was January 2008. In 2021, the developer uploaded the sales brochure of the development to the SRPE and released the sales arrangement of four units.

In order to gain a better understanding about the calculation and allocation of shares, the Council obtained the SD of two sample developments from the LR for further analysis.

Observations of the Reviewed SDs

With respect to the information related to management expenses, the DMC section of the reviewed SDs provided a list of expenses, costs and charges to be covered by management fees, and that the owners of units shall contribute to the estimated management expenses in the proportion of the number of undivided shares/management shares allocated to each of the units.

Examples of Management Expenses Items Extracted from the Reviewed SD

(a) The charges for the supply and consumption of fuel, oil, electricity, gas, water, telephone and other utility services serving the Common Parts in the management of the Land under this Deed;

(b) The payment of Government rent and all sums (other than the premium paid for the grant of the Land) payable under the Land Grant;

(c) The direct cost of employing staff involved with the management of the Land;

(d) Legal, accounting, surveying and other professional fees properly incurred by the Manager in exercising or performing its powers and duties under this Deed;

(e) Administrative expenses relating specifically to the Manager exercising or carrying out its powers and duties under this Deed including administrative support charged by the head office of the Manager, rent and other office overheads incurred in the management of the Land under this Deed;

(f) All charges, assessments, impositions and other outgoings in recurring nature payable by the Owners for the management in respect of the Common Parts;

(g) The direct cost of postage, stationery and other sundry items incurred by the Manager in connection with the management of the Development;

(h) Premia of insurance taken out by the Manager in accordance with this Deed;

(i) The Manager's Remuneration;

(j) All expenses incurred in relation to the Yellow Area;[61] and

(k) All expenses incurred in relation to the Slope Structures.

Regarding the allocation of undivided shares and management shares among the flats, extensive details can be found under the Authorised Person (AP)'s Certificate section in the SD. Taking Gross Floor Area (GFA) as the basis for allocation of shares, the following section elaborates the calculation with breakdown items for the undivided share and management share applicable to each unit of the development.

[61] Yellow Area means the "Yellow Area" as defined in Special Condition No.(2)(a)(i) and all structures, surfaces, gullies, sewers, drains, fire hydrants, services, signages and lightings constructed or to be constructed, installed and provided thereon or therein in accordance with the Government Grant.

For residential owners, the basis of allocating undivided shares and management shares to each flat can be translated into the following formula:

Allocation of undivided share or management share to each flat = GFA of the flat (excluding flat roof, roof, garden & stairhood of the flat) in sq. m. + 0.1 x GFA of flat roof, roof, garden & stairhood of the flat in sq. m.

The following table was captured from the AP's Certificate of the SD, which showed how undivided shares and management shares for different residential flats were derived (Table 3).

This review demonstrates that the calculation details which enumerate the allocation of undivided shares and management shares of the developments are available for reference if needed, but are not revealed in materials readily accessible to consumers, such as sales brochures or DMCs.

Table 3: Calculation of GFA, Undivided Shares and Management Shares of Residential Flats

Calculation of GFA of flats (sq. m.)

Floor Level	Flat	GFA (sq. m.)						
		Flat	Balcony	Flat Roof	Garden	Roof	Stairhood	Total
G/F	A	194.541	5.686	7.151	6.218	38.870	6.058	258.524
G/F	B	194.230	5.712	7.159	5.103	38.870	6.058	257.132

Calculation of undivided shares or management shares of flats

Floor Level	Flat	GFA (sq. m.)						Total Undivided Shares	Total Management Shares
		Flat	Balcony	Flat Roof	Garden	Roof	Stairhood		
		1 share per sq. m.		0.1 share per sq. m.					
G/F	A	194.541	5.686	0.715	0.622	3.887	0.606	206	206
G/F	B	194.230	5.712	0.715	0.510	3.887	0.606	206	206

Illustration: The AP's Certificate of the SD has specified the basis of allocating undivided shares and management shares to each flat, in which one undivided share and one management share will be allocated to each sq. m. of GFA of that Flat (excluding flat roof, garden, roof and stairhood) and one undivided share and one management share will be allocated to each 10 sq. m. of GFA of flat roof, garden, roof and stairhood.

For the owner of Flat A on G/F, the residential unit is composed of Flat, Balcony, Flat Roof, Garden, Roof and Stairhood.

GFA of Flat + GFA of Balcony = 194.541 + 5.686 = 200.227 sq. m.
GFA of Flat Roof + GFA of Garden + GFA of Roof + GFA of Stairhood = 7.151 + 6.218 + 38.870 + 6.058 = 58.297 sq. m.

Undivided Share or Management Share = GFA of Flat and Balcony + 0.1 x (GFA of Flat Roof, Garden, Roof and Stairhood)
= 200.227 + (0.1 x 58.297) = 206.057

The outcome "206.057" is rounded to the nearest integer 206 as the Undivided Share or Management Share.

III. Owners' Share of Management Expenses

Allocation Basis of Undivided Shares and Management Shares

The Council found that different bases were used to allocate undivided shares and management shares for different parts of buildings. The reasons of using different allocation bases are mainly due to the different natures or purposes of different parts of the building. For instance, LACO usually allows the adoption of the same ratio for the allocation of undivided shares and management shares for balconies, utility platforms and the interior space of units, and a lesser ratio for gardens, open space or flat roofs that are uncovered or parking spaces that are solely used for parking purpose (Box 2).

In some of the reviewed developments and according to an industry stakeholder, the ratio for residential areas to non-residential areas is usually 10:1, and a nominal basis is commonly adopted for car parks.

Box 2: Allocation Basis of Undivided Shares and Management Shares

The Guidelines for Deeds of Mutual Covenant (DMC Guidelines) No. 6 is set out as:

(a) Subject to sub-paragraphs (c) and (d) below, the allocation of undivided shares and management shares will be calculated by reference to the GFA of a unit in proportion to the GFA of the development as certified by the AP. For the purpose of this Guideline, GFA includes any GFA which has been exempted under the conditions of the land grant or the Buildings Ordinance (Cap. 123). If any other basis is proposed for the allocation of undivided shares and management shares, full justification for the proposal must be produced.

(b) In the allocation of undivided shares and management shares, LACO will have to be satisfied that the use of any basis other than GFA will not result in disproportionate management charges being imposed on or voting rights being granted to e.g. the owners of any specific parts of a development or the prevention or hindrance of incorporation of an OC.

(c) The allocation of undivided shares and management shares to common areas such as parking spaces, gardens, flat roofs, balconies, utility platforms and other similar spaces attached to a unit may be made on a nominal basis/lesser ratio than a strict GFA basis, provided that each type of these spaces is calculated on the same basis.

(d) The undivided shares to be allocated to the common areas must be made on a nominal basis.

Allocation of Expenses Among Owners

One key concern of consumers in property management is the allocation of the building's expenses among owners. While some consumers may not be clear about how management expenses incurred for common parts are shared among different type of owners, most may be unaware that the maintenance expenses for certain common parts or facilities (e.g. public walkways within the development) are in some cases borne by owners. From reviewed DMCs, the current practice of expenses allocation was analysed.

DMC Guidelines No. 24 sets out how expenses of the common parts should be allocated to owners in the DMC. It states:

"For a development comprising residential units, non-residential units, parking spaces or any combination of them, the manager must keep separate management accounts and budgets for each part. The owners of the residential units, non-residential units and parking spaces will only be liable to contribute to the management and maintenance costs of their respective parts (e.g. owners of residential units will only be responsible for residential common areas). All owners will be liable for development common areas".

Box 3 below demonstrates the different types of management expenses payable by residential owners.

Box 3: Different Types of Management Expenses payable by Residential Owners

Examples of management expenses payable by a residential owner without parking space are given below:

(i) Where any expenses relate to the residential common areas and facilities, such expenses form part of the management expenses of the residential flats and shall be borne by all owners of the residential flats.

Examples of such expenses include expenses for renovation, improvement and repair of "Residential Common Areas and Facilities", include residential entrance lobby and lifts, staircases, fire services installations or security installations intended for the use of residential owners.

(ii) Where any expenses relate to the building's common areas and facilities which do not form part of the "Residential Common Areas and Facilities", "Residential Carpark Common Areas and Facilities" (if any) and "Commercial Common Areas and Facilities" (if any), such expenses are expenses of "Development Common Areas and Facilities" or "Estate Common Areas and Facilities" and shall be borne by all owners of the building as a whole.

Depending on the terms of the DMC, "Development Common Areas and Facilities" or "Estate Common Areas and Facilities" usually mean the areas, systems, devices and facilities of the lot and the estate intended for the common use and benefit of the development/estate as a whole and not just any particular part thereof, such as master water meter room, emergency vehicular access, driveways, picking up/setting down lay-by for taxi and private cars, planters, canopy, greenery areas, etc.

In some residential developments, the conditions of the land grant require that the common areas and facilities shall include parts of the developments which are open for public use, such as pedestrian links, greenery areas, 24-hour walkway, pedestrian walkway, footbridge, public open space, etc., or maintenance of slope structures and retaining walls.

Residential owners are generally concerned about the facilities or open spaces for public use in private developments [62,63] as well as the maintenance responsibility for slope structures,[64] as the expenses can be substantial. Many of them might not know these responsibilities when they purchased the property. The Council's analysis found that although detailed information was in fact shown in the sections of "Information on Public Facilities and Public Open Spaces" and "Maintenance of Slopes" in sales brochures, consumers may not realise that they have to refer to these sections alongside "Development Common Areas and Facilities" or "Estate Common Areas and Facilities" in the section of "Summary of Deed of Mutual Covenant", in

[62] Legislative Council Panel on Development. (2008) LC Paper No. CB(1)1273/07-08(04). Public Facilities Provided in Private Developments.

[63] Legislative Council Panel on Development. (2010) LC Paper No. CB(1)930/09-10(03). Public Open Space Provided in Private Developments.

[64] HK01. (2016) 買樓送斜坡 天價維修 拖延修葺隨時釘契 過來人語: 勿購免煩.

order to obtain a full picture of their future liability for property management and maintenance expenses.

Although the DMC Guidelines do not generally specify how the benefit principle should be applied when drafting a DMC, the industry has already applied it in a manner they consider appropriate in practice. It is common that the annual budget of a building is divided into different parts where the expenses of different categories of the building's common areas and facilities are allocated to corresponding categories of owners in the building. The allocation of expenses is based on the availability and benefit conferred by the expenses to different categories of owners.

Under each part of the annual budget, the expenses are shared among the corresponding category of owners in proportion to the management shares (or undivided shares) held by them respectively.

Table 4 below illustrates how the allocation of undivided shares and management shares to different categories of owners is usually presented in the DMC. It can be seen that, in terms of magnitude, the management shares are multiples of the corresponding undivided shares (e.g. the management shares are about two times of the undivided shares as shown in the table). However, in terms of relativity between different categories of owners, there is not much difference between undivided shares and management shares, as illustrated in Table 4, noting that undivided shares allocated to common areas will not carry any liability to pay charges as prescribed in DMC Guidelines No. 7.[65]

Table 4: A Common Way of Presenting Allocation of Undivided Shares and Management Shares in DMC (as Multiples)[66]

Summary of Allocation of Undivided Shares	**No. of Undivided Shares**	**% of Shares***	**Summary of Allocation of Management Shares**	**No. of Management Shares**	**% of Shares***
Description			Description		
1. Residential Flats	6,874	*94.2%*	1. Residential Flats	13,784	*94.0%*
2. Residential Car Parking Spaces	416	*5.7%*	2. Residential Car Parking Spaces	864	*5.9%*
3. Motorcycle Parking Spaces	6	*0.1%*	3. Motorcycle Parking Spaces	12	*0.1%*
4. Common Areas and Facilities	645		4. Common Areas and Facilities	0	
Total Undivided Shares	7,941	*100%*	Total Management Shares	14,660	*100%*

Remark: * % of Shares (without Common Areas and Facilities) were illustrated by the Council.

The DMC does not however provide any information on the rationale for the slight difference in proportion of management expenses allocated to different categories of owners, as shown in Table 4.

[65] The DMC Guidelines No.7 also specifies that the undivided shares allocated to the common areas will not carry any voting rights at any meeting whether under the DMC, the BMO or otherwise nor will those undivided shares be taken into account for the purpose of calculating the quorum of any meeting.

[66] This is taken from a DMC of a development, which was a single block residential building with 24 units in total.

Another example as shown in Table 5 illustrates how the shares are presented in the DMC in which the management shares are the same as the corresponding undivided shares in terms of magnitude. Furthermore, in terms of relativity between different categories of owners, there is no difference between undivided shares and management shares, noting that undivided shares allocated to common areas will not carry any liability to pay charges under the DMC.

Table 5: Another Common Way of Presenting Allocation of Undivided Shares and Management Shares in DMC (Same Figures)[67]

Summary of Allocation of Undivided Shares	No. of Undivided Shares	Summary of Allocation of Management Shares	No. of Management Shares
Description		Description	
1. Residential Flats	3,044	1. Residential Flats	3,044
2. Residential Car Parking Spaces	400	2. Residential Car Parking Spaces	400
3. Motorcycle Parking Spaces	168	3. Motorcycle Parking Spaces	168
4. Common Areas and Facilities	100	4. Common Areas and Facilities	0
Total Undivided Shares	3,712	Total Management Shares	3,612

A third example as shown in Table 6 below illustrates how the shares are presented in the DMC for a mixed-use development.

Table 6: The Presentation of Allocation of Undivided Shares and Management Shares in DMC for a Mixed-use Development[68]

Summary of Allocation of Undivided Shares	No. of Undivided Shares	Summary of Allocation of Management Shares	No. of Management Shares
Description		Description	
1. Residential Flats	45,905	1. Residential Flats	45,905
2. Parking Spaces	1,623	2. Parking Spaces	1,623
3. Commercial Accommodation	2,498	3. Commercial Accommodation	2,498
4. Common Parts	2,467	4. Common Parts	0
Total Undivided Shares	52,493	Total Management Shares	50,026

As illustrated by the three examples, there are different parts in the annual budget which cover expenses for different areas allocated to different categories of owners in the building. The ways of presentation in the DMCs are not standardised, thus, making it hard for owners (especially residential flat owners) to assess and comprehend relevant information related to management fees.

Proportion of Undivided Shares Allocated to Residential Flats

Apart from determining the share of management fees, the number of undivided shares allocated to a residential flat also impact on the voting right of its owner in property management matters. For instance, the owners' undivided shares in aggregate must meet the resolution thresholds in order to appoint an MC and form an OC or to terminate the PMC[69] in

[67] This is taken from a DMC of a development, which was a single block residential building with 84 units in total.

[68] This is taken from a DMC of a development, which was a mixed-use development (for both residential and commercial use), with 1,006 residential units in total.

[69] In most circumstances, owners would appoint a management committee (MC) and form an OC on their own under section 3 of the BMO, for which a resolution supported by 30% of owners' undivided shares in aggregate is required. In other cases, owners with ≥20% of the shares in aggregate may apply to the Authority for an order to convene the owners' meeting for appointing an MC

owners' meetings, such as when the management fee is unreasonably high or the quality of service is substandard.

In view of the importance of undivided shares in property management, the Council reviewed the allocation of undivided shares to residential owners in 249 developments in order to examine their voting rights on property management matters in general. In 5 of the 249 developments, the undivided shares of residential flat owners are below 50%; whereas all other developments (244) have over 50% undivided shares in total held by residential flat owners. The findings are shown in Table 7.

Table 7: Undivided Shares Held by the Residential Units

Development	Undivided Shares Allocated to Residential Flat	Remarks
No. 236	14%	Less than 50% of undivided shares in total
No. 94	33%	
No. 287	36%	
No. 217	47%	
No. 235	48%	
Others (244 developments)	Over 50%	–

- For the five developments where less than 50% of the undivided shares are allocated to residential flat owners, they are all mixed-use developments with both residential and commercial purposes, such as hotel or shopping mall. This means that residential flat owners who together cannot meet the 50% resolution thresholds will not be able to terminate non-performing DMC managers without the co-operation of owners in other categories.

- For Development no. 236 in Table 7, i.e. the residential flat owners holding only 14% of the total undivided shares, they will not be able to form an OC under section 3 of the BMO which requires the support of at least 30% of the total undivided shares. As of 7 December 2022, the development concerned has not formed any OC.[70]

In brief, the relatively lower percentage of undivided shares allocated to the residential owners as found would disempower them in managing their own property. Their influence on subsequent management matters is also undermined. All these would have an impact on the level of management fees eventually payable by the owners.

IV. Appointment of DMC Manager by Developer

As discussed in Chapter 2, the responsibilities of setting the management fee budget, managing the daily operations as well as financial accounts of the property are entrusted to the PMCs. It is therefore key for consumers to have an understanding of how the PMCs were appointed and who they were. In relation to the 249 developments, the Council examined the linkage between DMC managers and developers through a combination of desktop research and search on the Companies Registry for shareholding information. It was observed that the relationship between the developer and the DMC manager was not disclosed in the sales brochures of the reviewed developments, as the RPO does not mandate such disclosure in the sales brochures.

under section 3A of the BMO, and owners with ≥10% of aggregate shares may apply to the Lands Tribunal for such an order under section 4 of the BMO. On the other hand, under Schedule 7 of the BMO, ≥50% of owners' undivided shares in aggregate is required for owners to terminate their PMC.

[70] Land Registry. Index of Owners' Corporations.

The 249 developments reviewed were managed by a total of 85 DMC managers. To illustrate the findings, the DMC managers are ranked in Table 8 below according to the number of developments managed, with the most developments managed in the sample classified as "Top 10 DMC managers".

Table 8: Split of Developments Managed by Top 10 and Non-top 10 DMC Managers which Were Affiliated with the Developers

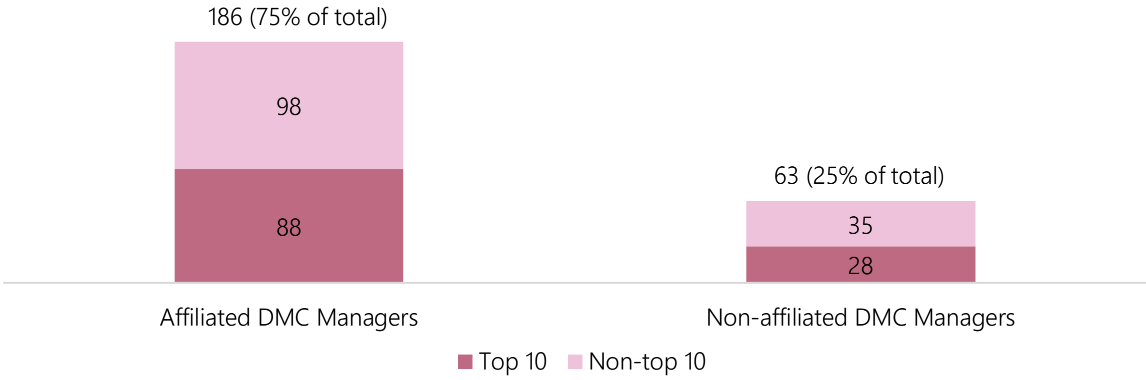
Classification of DMC Managers According to the Number of Developments Managed	No. of Developments Managed	% of Developments Managed	No. of Developments Managed by the DMC Manager Affiliated with the Developer
Top 10 DMC Managers*	116	47%	88
Non-top 10 DMC Managers	133	53%	98
Total	249	100%	186

Remark: * The "Top 10 DMC Managers" managed 6 to 21 developments. Among these ten, except two DMC managers which were specialised PMCs, all other eight were affiliated with the respective property developers, and out of those eight, three of them were property management subsidiaries of the same property developer.

The findings show that (Chart 8):

- Of the 249 developments, 186 developments (75%) were managed by DMC managers who are affiliated with the property developer of their respective development.
- The "Top 10 DMC Managers" were appointed to manage 116 developments which account for nearly half (47%) of the 249 developments, implying high market concentration among the DMC managers in the sample.
- The split of Top-10 and Non-top 10 DMC Managers had similar high ratios of affiliation with the developers.

Chart 8: Split of Developments Managed by Top 10 and Non-top 10 DMC Managers and Their Affiliation with the Developers



V. Manager's Remuneration

From the stakeholders' observation, one of the concerns from owners was the manager's remuneration which forms a constant and major component of the management fee. The manager's remuneration, if specified in the DMC of the development, is based on a percentage of the total expenditure.

As defined in the DMC Guidelines No. 19, for residential developments, the property manager's remuneration must not exceed a prescribed percentage of the total expenses, costs and charges necessarily and reasonably incurred in the management of the development. The percentage is capped according to the number of units and parking spaces as follows:

- 20 residential units and parking spaces or below: 20%
- 21 to 100 residential units and parking spaces: 15%
- 101 residential units and parking spaces or above: 10%

For composite developments comprising both residential and non-residential units, the capped percentages apply as if each non-residential unit is a residential unit.

The manager's remuneration rate of the 249 reviewed developments can be categorised into two types:

1. At a fixed percentage (wordings used include "shall be", "shall be the sum equivalent to", "equals to the rate of" and "shall be fixed at"); or
2. At the capped percentage (wordings used include "shall not exceed", "shall not be more than", "an amount not exceeding the rate of" and "shall be up to").

Table 9 shows the number of the 249 developments classified under the three range scales and the distribution of manager's remuneration (%) as stated in their related DMCs. Overall, the most commonly adopted manager's remuneration rates are 10% and 15%, with only three exceptions – two 5% and one 7%. Among the three exceptions, the development with 20 or less units was launched in 2008, while the other two with 101 or more units were launched in 2018 and 2019 respectively. The respective manager's remuneration rates were stated in the DMCs of these cases without further explanation or justification.

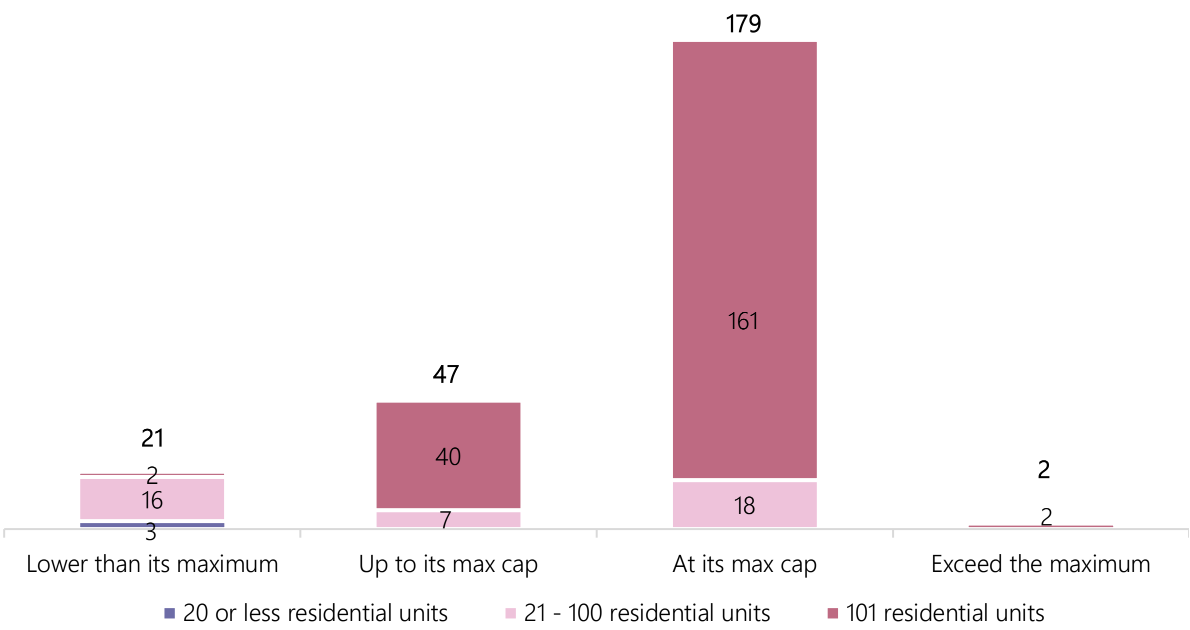
On the other hand, the manager's remuneration of two developments with "101 residential units and parking spaces or above" was found to have exceeded the cap rate of 10%, which were stated as "shall be fifteen per cent (15%) of the total annual Management Expenses" and "shall be paid by way of remuneration an amount equal to the rate of 15% of the total annual Management Expenses" in their respective DMCs. As prescribed by DMC Guidelines No. 19, no variation of the percentage ceilings may be made except with approval by a resolution of owners at an owners' meeting convened under the DMC.

Table 9: Distribution of Manager's Remuneration Rates of the 249 Developments

Number of Residential Units and Parking Spaces: Capped %	Number of Developments	Manager's Remuneration Rate stated in DMC (Number of Developments)
20 or less: 20%	3	• Shall be 15% (1) • Shall not exceed 15% (1) • Shall be 5% (1)
21-100: 15%	41	• Shall be 15% (18) • Shall not exceed 15% (6); Shall be up to 15% (1) • Shall not exceed 13% (1) • Shall be 10% (12) • Shall not exceed 10% (3)
101 or more: 10%	205	• Shall be 15% (2) • Shall be 10% (160); Shall be the sum equivalent to 10% (1) • Shall not exceed 10% (38); Shall not be more than 10% (2) • Shall be 7% (1) • Shall not exceed 5% (1)
Total	249	5% to 15% (249)

Chart 9 below presents the distribution of manager's remuneration rates stipulated in the DMCs vis-à-vis the prescribed cap rates. Of the 249 developments, 179 (72%) charge manager's remuneration at the cap rates while 47 (19%) charge up to the cap rates. As shown in Chart 9, developments with 101 residential units and parking spaces or above form the majority of the aforesaid two groups (78% of the 179 developments charging at the cap rates; 85% of the 47 developments charging up to the cap rates).

Chart 9: Distribution of Manager's Remuneration Rates Compared to Cap Rates (Number of developments)



In summary, in the 249 developments reviewed, property manager's remuneration ranges from 5% to 15% of the total expenses, costs and charges incurred in the management of the property, with a majority of the developments (179 or more, ≥72%) charging manager's remuneration at or above the cap rates. Together with the earlier finding that most of the DMC managers are affiliated with the developers, it may imply a lack of competitive drive to pressurise PMCs in lowering their remuneration rate.

3.3 Analysis of the Time within which the First Owners' Meeting could be Convened

It is observed that completed developments usually have more property management related information available for general public's reference than uncompleted ones, such as those in the VIF which include information on the appointed PMC and the amount of management fees, etc. If a prospective purchaser would wait till the development is completed, gather and consolidate the critical information as discussed above, it would help him/her to get a better picture before making the decision. In this connection, the Council analysed the sales speed of first-hand residential property developments.

The SRPE maintained by the SRPA was used as the sampling frame for the desktop research and a random sampling was adopted. The selection criteria for the sample developments were as follows:

- First-hand, completed and/or uncompleted, residential property developments;
- Sales brochures first uploaded to the SRPE between 2018 and 2021 (the sample period);
- Large scale multiple-block and/or single block residential developments; and
- Developments with the effective date of the DMC available on their websites.[71]

Within the sample period, a total of 199 developments were identified. Out of these developments, a total of 30 residential property developments were selected for this analysis.[72]

[71] It should be noted that the effective date of the DMC was not available for some developments launched during the sample period, due to the fact that some developments' websites were not accessible when the review exercise was conducted, or that some developments did not upload their DMCs onto their websites, or that for some first-hand residential developments which were uncompleted at the time when the review exercise was conducted, those developments have only uploaded a draft version of the DMC on their websites, but not the finalised version of the DMC.

[72] After identifying 69 out of the 199 developments that matched the selection criteria for analysis, the Council had selected about half of these developments, from the respective sub-categories "multiple-block buildings" and/or "single block building" from the uncompleted and completed developments, making up a total of 30 residential property developments as samples for this analysis.

Table 10: Breakdown of the Selected Private Residential Property Developments in 2018 – 2021

Developments	Total	No. of developments with the executed DMC date available	No. of developments matching the selection criteria	Sample
Uncompleted	**148**	**92**	**64**	**27**
- Multiple-block buildings	61	35	28	12
- Single block building	64	39	36	15
- Independent houses and low-storey buildings	23	18	/	/
Completed	**37**	**30**		**3**
- Multiple-block buildings	9	6	/	/
- Single block building	13	8	5	3
- Independent houses and low-storey buildings	29	16	/	/
Total	**199**	**122**	**69**	**30**

As shown in Table 10, over 74% (148 out of 199 developments) of the first-hand private residential property developments in the sample period were uncompleted developments, and after matching the selection criteria for the survey, around 93% (64 out of 69) of the developments left were uncompleted developments. When owners made their purchase decisions on these developments, it means that it would not be feasible for most of them to have access to much critical information as those for completed developments.

Chart 10 and Chart 11 show that over half of the units were sold as at the dates of the DMC in 86.7% of the sampled developments (26 out of total 30 developments); and in 63.3% of the sampled developments (19), the residential owners held over 50% of the undivided shares of the development. As over half of the undivided shares were allocated to residential owners in about two-thirds of the developments in the sample, the Council is of the view that it would be helpful for owners to start communicating on the property management arrangements, clarifying unclear details, or addressing identified issues as soon as they move in the building. However, under the existing DMC Guidelines, the PMCs are allowed a period of nine months after the date of DMC to convene the first owners' meeting which, in the Council's opinion, may be too long.

Findings from this analysis may justify that on top of the "within nine months after the date of DMC's time frame", it is feasible for owners to initiate the first meeting at an earlier time, for example, when above 50% of the undivided shares of the owners in the aggregate is reached, as "above 50% of owners" undivided shares' can be considered as the simple majority that is required to pass majority of decisions. This proposed threshold should be representative enough to balance the need for owners to convene the first owners' meeting as early as possible for voicing out the concerns about their properties to property managers and also help facilitate the earlier set up of OOs and OCs.

Chart 10: Percentage of Units Sold as at the DMC Date and 3/6/9 Months after the DMC Date of the Development

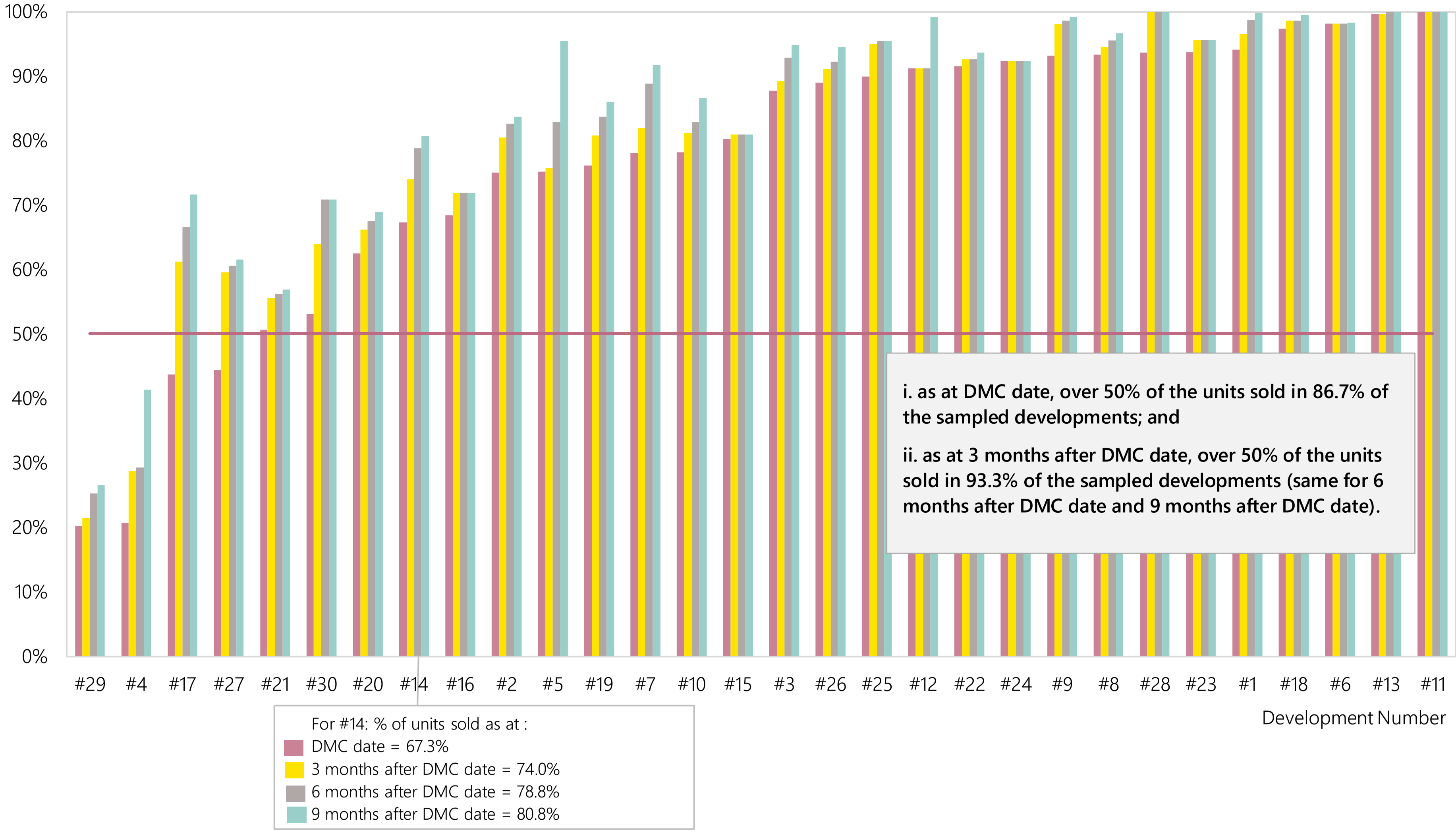
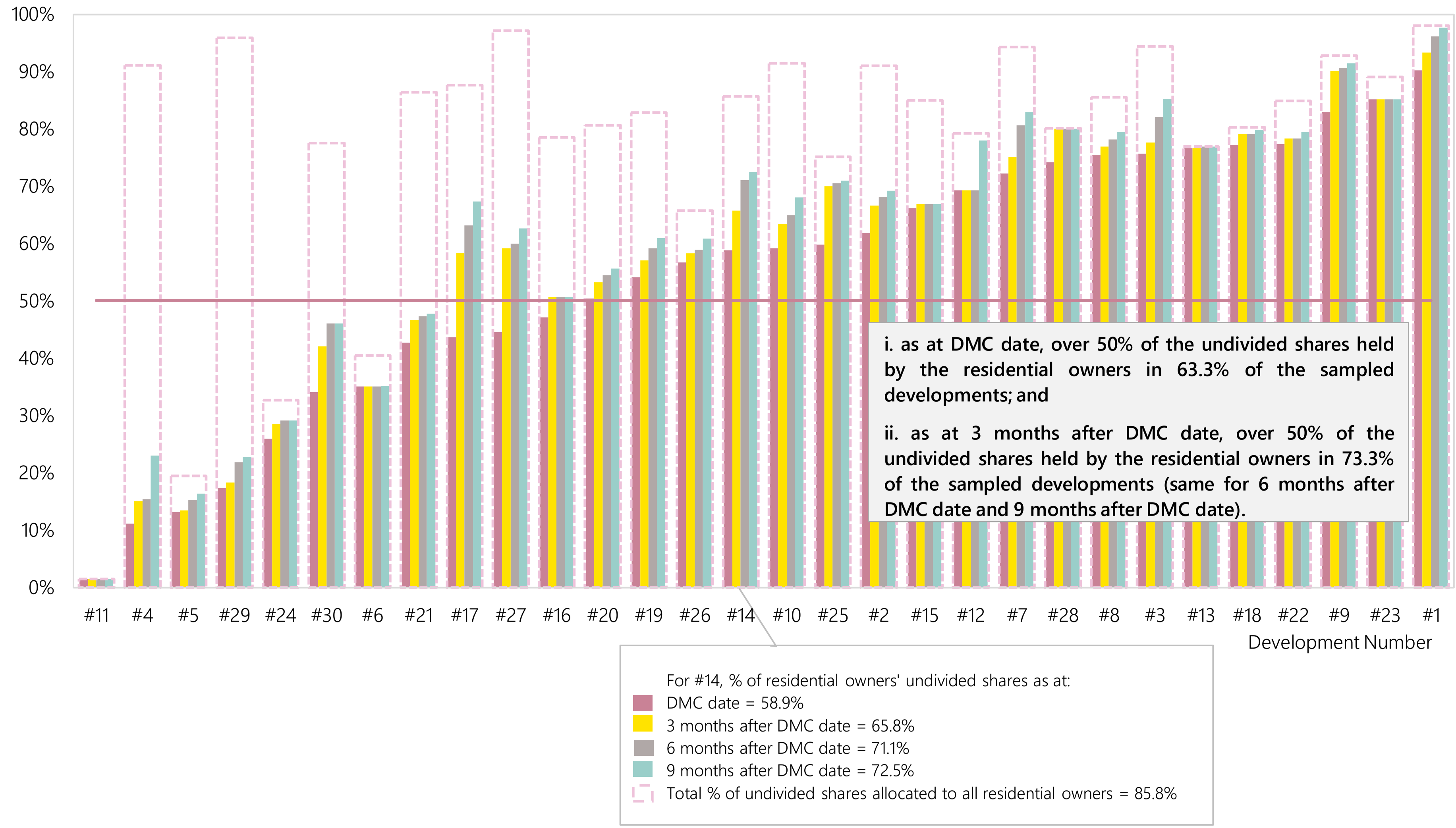


Chart 11: Percentage of Undivided Shares Held by Residential Owners as at the DMC Date and 3/6/9 Months after the DMC Date of the Development



3.4 Summary

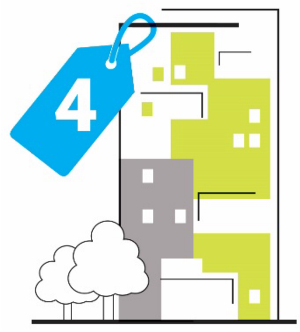
This Chapter presents the Council's review and analysis of 50 sales brochures, 249 DMCs and two SDs. The review of the sales brochures showed that the allocation of undivided shares and management shares (if applicable) to residential units, which respectively determine the owners' voting rights and share of management fee, was not elaborated with enumeration in the sales brochures and DMCs. This missing piece of information can only be found in the SD which is not readily accessible to and easily understood by most consumers.

The analysis of DMCs revealed that less than 50% of the total undivided shares were allocated to residential owners in 5 out of 249 developments. In one extreme case, the residential owners only held 14% of the total undivided shares in aggregate. Without sufficient undivided shares, the bargaining power of residential owners on the formation of OC, the termination of DMC manager and other property management-related matter is severely undermined.

The DMC analysis also showed a high ratio (75%) of affiliation between DMC managers and developers. At the same time, it was found that over 72% of the reviewed DMC managers charged a remuneration up to the ceiling of the rates allowable by the DMC Guidelines, implying a general lack of competitive drive on PMCs in lowering their remuneration rate.

On the other hand, the Council found that over 74% of the sample developments were uncompleted at the time of sale and a majority of the units were sold before the DMCs came into force. This is unsatisfactory from the consumers' point of view as the information available at the time of purchase was inadequate. It was further found that most developments have sold over 50% of the undivided shares to residential owners as at the DMC date, therefore justifying a shorter period within which the first owners' meeting could be convened.

Taking note of the above findings and other identified issues, the Council reviewed the practices and experience of other markets, consulted stakeholders from related fields for viable comments, and has raised possible proposals with a view to furthering protection and safeguards to consumers in Hong Kong.



Views and Practices Related to Management Fees in Hong Kong

4.1 Introduction

It is common for residential owners of multi-storey buildings in Hong Kong to rely on property management companies (PMCs) and/or owners' organisations (OOs) to manage their properties, with whom there were reports from time to time on communication issues or disputes on property management matters.

On the other hand, although the Building Management Ordinance (Cap. 344) (BMO) stipulates the formation of owners' corporation (OC) to handle property management matters on behalf of all owners of the building, the percentage of private buildings with OCs in Hong Kong has remained at a stagnant level,[73] making it difficult for owners to pursue property management decisions on a collective basis. Furthermore, as pointed out in Chapter 2, although owners or OOs expressed dissatisfaction with the services of PMCs, replacing them is not easy.

Another key concern of owners is that while they pay management fees on a regular basis, many of them are unclear of a breakdown of the fees paid and whether the level of the fees is justified. The level of management fees is also found to have great variance among different properties in the market.

In order to find out more about the underlying causes and circumstances of the above issues, the Council commissioned a research agency to conduct face-to-face surveys and in-depth interviews with selected owners, OOs and PMCs drawn from a random sample of multi-owned private residential buildings across Hong Kong. This Chapter presents the methodology and the major findings from a combination of quantitative and qualitative interviews with owners, OOs and PMCs.

4.2 Methodology

Quantitative Approach: Face-to-face Surveys

The face-to-face surveys consisted of three separate questionnaires targeting owners (of private residential buildings managed by PMCs), PMCs and OOs. The objectives of the surveys were to:

- Gauge consumers' levels of awareness, understanding and influence on private residential property management fees in Hong Kong, their rights and obligations in property management, and their experiences and opinions on property management services and fees;

[73] Research Office of the Legislative Council. (2022) Policies on improving building management and operation of owners' corporations in selected places.

- Find out the roles and power of owners' organisations in property management and their experiences and opinions in choosing and switching PMCs;
- Identify the prevailing trade practices and range of management fees and related expenses in the Hong Kong private residential property management market, the nature and extent of market competition among PMCs and their views and opinions; and
- Review the current state of consumer safeguards so as to propose appropriate recommendations for enhancing consumer protection in property management.

Sampling design

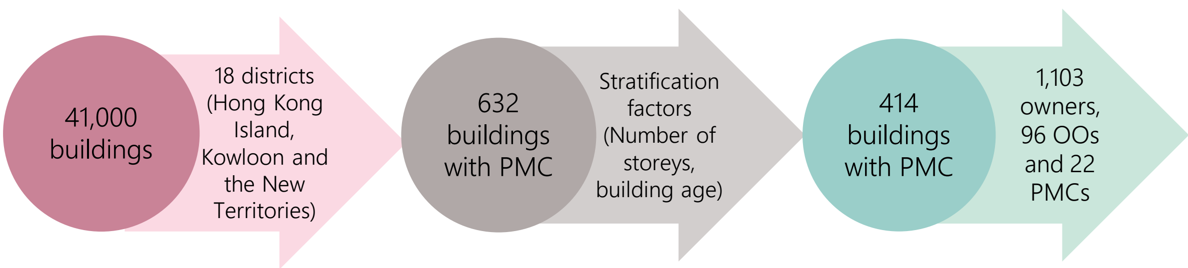
The Home Affairs Department's (HAD) Database of Private Buildings in Hong Kong was used as the sampling frame for the surveys.[74] After screening out private buildings without residential units which were outside the scope of the Study, a three-stage stratified random sampling was applied as follows:

First stage: A number of areas were randomly selected from the 18 District Council Districts across Hong Kong Island, Kowloon and the New Territories, and at least one District Council Constituency Area (DCCA) was chosen from each district.[75]

Second stage: 632 multi-owned private residential buildings that hired PMCs and stratified by number of storeys (four to nine storeys and more than nine storeys) and building age (below 30 years, 30 – 49 years and 50 years or above) were randomly selected and visited, among which 414 buildings were enumerated.[76] As such, it should be noted that those old and dilapidated buildings which are not managed by PMCs, OCs or OOs, and commonly known as "three-nil" (三無大廈), fall outside the scope of this study.

Third stage: OOs, PMCs and three randomly selected owners from each of the sampled buildings were invited for face-to-face interviews. From 23 November 2020 and 31 July 2021, a total of 1,103 owners, representatives of 96 OOs and 22 PMCs were interviewed (Chart 12 and Table 11).

Chart 12: The Three-stage Stratified Random Sampling Design



[74] As at 30 April 2020, there were a total of around 41,000 private buildings in HAD's database.
[75] DCCAs with mainly village-type of housing (村屋), which are typically buildings with three storeys or below, were not selected as such type of buildings are outside the scope of the Study.
[76] The remaining 218 buildings were not enumerated due to reasons including access denial, buildings having been demolished or non-residential.

Table 11: Response and Refusal Rates of Owners, OOs and PMCs

Sample Status	Number of Owners	Number of OOs	Number of PMCs
Complete interviews	1,103	96	22
Refusal and break-off[77]	223	17	172
Non-contact[78]	534	244	187
Total sample number	**1,860**	**357**	**381**
Response rate	59.3%	26.9%	5.8%
Refusal and break-off rate	12%	4.8%	45.1%

It is worth noting that face-to-face fieldwork amidst the COVID-19 pandemic was extremely difficult. Only a small number of PMCs agreed to participate in the survey (5.8%). Even when participated, many did not answer questions which involved details of their operational costs and management fees, manager remuneration and renewal of management contracts.

Profiles of Owners, OOs and PMCs

The key distributed elements of owners, OOs and PMCs are as follows (Table 12):

Table 12: Key Distributed Elements of Owners, OOs and PMCs

<table>
<tr><th></th><th>Owners</th><th>OOs</th><th>PMCs</th></tr>
<tr><td>Sample size</td><td>1,103</td><td>96</td><td>22</td></tr>
<tr><td>Distribution of the respondents</td><td>Aged ≥50 years old (68.6%)
Residing in the buildings >10 years (69.1%)
Educational attainment was secondary or above (78.0%)
Within the labour force (39.1%)</td><td>OCs (78.2%) and other forms of OOs (21.8%)
Members of OOs (52.2%) and chairmen/vice chairmen of OOs (47.8%)</td><td>Majority provided general property management and management of building environment (99.0%)
Not affiliated with the developers of the buildings (66.4%)</td></tr>
<tr><td>Distribution of the buildings where respondents resided/ managed</td><td>>100 units (70.8%)
Located in New Territories (44.3%)
Buildings aged <50 years (93.2%)
Non-single block buildings (59.5%)
Without facilities or clubhouse (54.2%)
With OCs formed (71.3%)</td><td>>100 units (62.0%)
Located in New Territories (44.3%)
Buildings aged <50 years (93.2%)
Single block buildings (53.1%)
Without facilities or clubhouse (59.5%)</td><td>>100 units (54.0%)
Located in Kowloon (72.0%)
Buildings aged 30 – 49 years (48.4%)
Single block buildings (69.1%)
With facilities or clubhouse (66.4%)
With OCs formed (72.0%)</td></tr>
</table>

Figure in ( ) represents the % distribution of the respondents or buildings enumerated in the survey.

For details, please refer to Appendix 3 which provides a breakdown of the profiles of the respondent owners, OOs and PMCs and the distribution of the selected buildings in the face-to-face surveys and in-depth interviews.

[77] Break-off includes drop-out, incomplete or partial interviews.

[78] Non-contact refers to unsuccessful attempts to contact the target interviewees.

Qualitative Approach: In-depth Interviews

Individual in-depth interviews were also conducted with 20 owners, representatives of 20 OOs, two PMCs and two professional associations from 40 multi-owned private residential buildings in Hong Kong. Opinions on their experience and perception about property management fees and related issues were further collected.

4.3 Survey and In-depth Interview Findings[79]

An overview of the survey and in-depth interview findings is set out below:

- Level of understanding of owners: There was a general lack of understanding by owners about property management and related regulations, such as not understanding "the difference between deed of mutual covenant manager (DMC manager) and contract manager" (95%) and "the procedures of appointment of or terminating the DMC manager, PMC and member of the management committee (MC)" (94.4%, 87.0% and 84.6% respectively).

- Owners' participation: Owners' participation at general meetings was quite low. They were passive in voting (42.0%), expressing opinions (37.3%) and joining OOs (2.7%).

- Power of OOs: A higher proportion of OOs inclined to agree that they had the authority (70.9%), knowledge (64.5%) and resources (53.6%) to supervise PMCs; but fewer agreed that they have the authority (50.4%), knowledge (47.6%) and resources (38.1%) to terminate PMCs.

- Management fee level: Over half of the respondent owners considered the current management fee level reasonable (55.4%). The management fee paid by the owners ranged from HK$200 to HK$3,700 per month, with the mean being HK$1,108 or around HK$2.7 per sq. ft. On average, owners spent approximately 7.4% of their monthly household income on management fees.

- Factors affecting management fee level: Newer buildings and buildings with facilities (e.g. clubhouse, recreational facilities and shuttle bus service) charge relatively higher management fees than older buildings and those without facilities. Owners residing in smaller flats also paid a relatively higher management fee per sq. ft.

- Magnitude of management fee increment: Owners' participation and influence on PMCs could keep the increase in management fee under closer scrutiny. The mean rate of increase in management fee was the lowest in the group of owners who were considered as "participatory" (9.5%) in building management matters and with strong influences on PMCs (9.1%). Those who were "non-participatory" (11.3%) faced the highest rate of increase in management fees.

- Availability of information: Market information were insufficient to owners and OOs, hence hindering their selection of PMCs.

- Selection of PMCs: The most important consideration of owners in choosing PMCs was service quality.

[79] The finding results presented in this Chapter are on weighted basis to generalise the surveyed samples to the total market distribution with a fair approach. The sample findings for owners and OOs were weighted by the matrix of district and age of buildings, while those for PMCs were weighted by age of all buildings in Hong Kong.

- Appointment of PMCs: Nearly half of the PMCs (43.1%) was appointed by the OOs, 29.0% were appointed by the developers as DMC managers, and only 4.0% were appointed by the owners, at the time of survey.
- Switching of PMCs: Relatively less OOs had taken action to switch their PMCs (13.4%), and the key difficulty was to reach consensus among owners.
- Nature of complaints: About one third of the owners had lodged complaint to their PMCs. The complaints were mostly related to water seepage, hygiene and environment of their buildings. Some owners (13.4%) and OOs (11.0%) were dissatisfied with complaint handling performance of the PMCs.

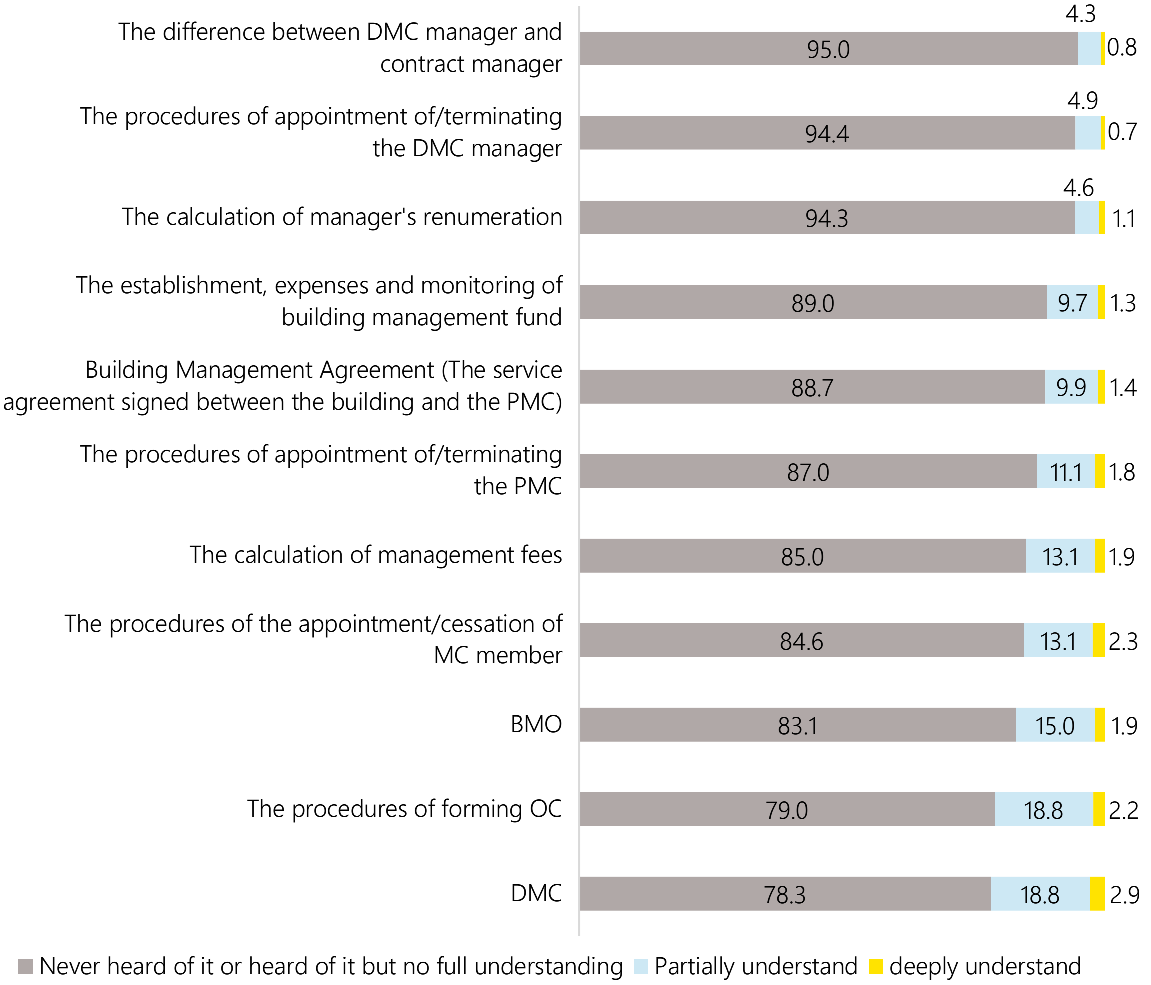
I. Owners' Understanding

Understanding of Property Management Matters and Related Regulations

A considerable number of owners indicated in the survey that they had never heard of or did not have full understanding of various aspects of property management matters and related regulations, including "the difference between DMC manager and contract manager" (95.0%), "the procedures of appointment of/terminating the DMC manager" (94.4%), "the calculation of the manager's remuneration" (94.3%). "DMC" (2.9% deeply understand; 18.8% partially understand) and "the procedures of forming OC" (2.2% deeply understand; 18.8% partially understand) were the two most understood aspects of property management but the level of understanding remains to be low (Chart 13).

Some owners from the in-depth interviews opined that public education by the Government is required on fostering general knowledge of property management, such as how to supervise the conduct of PMCs. They also suggested setting up platforms for owners to make enquiries.

Chart 13: Owners' Understanding of Property Management Matters and Related Regulations (%)

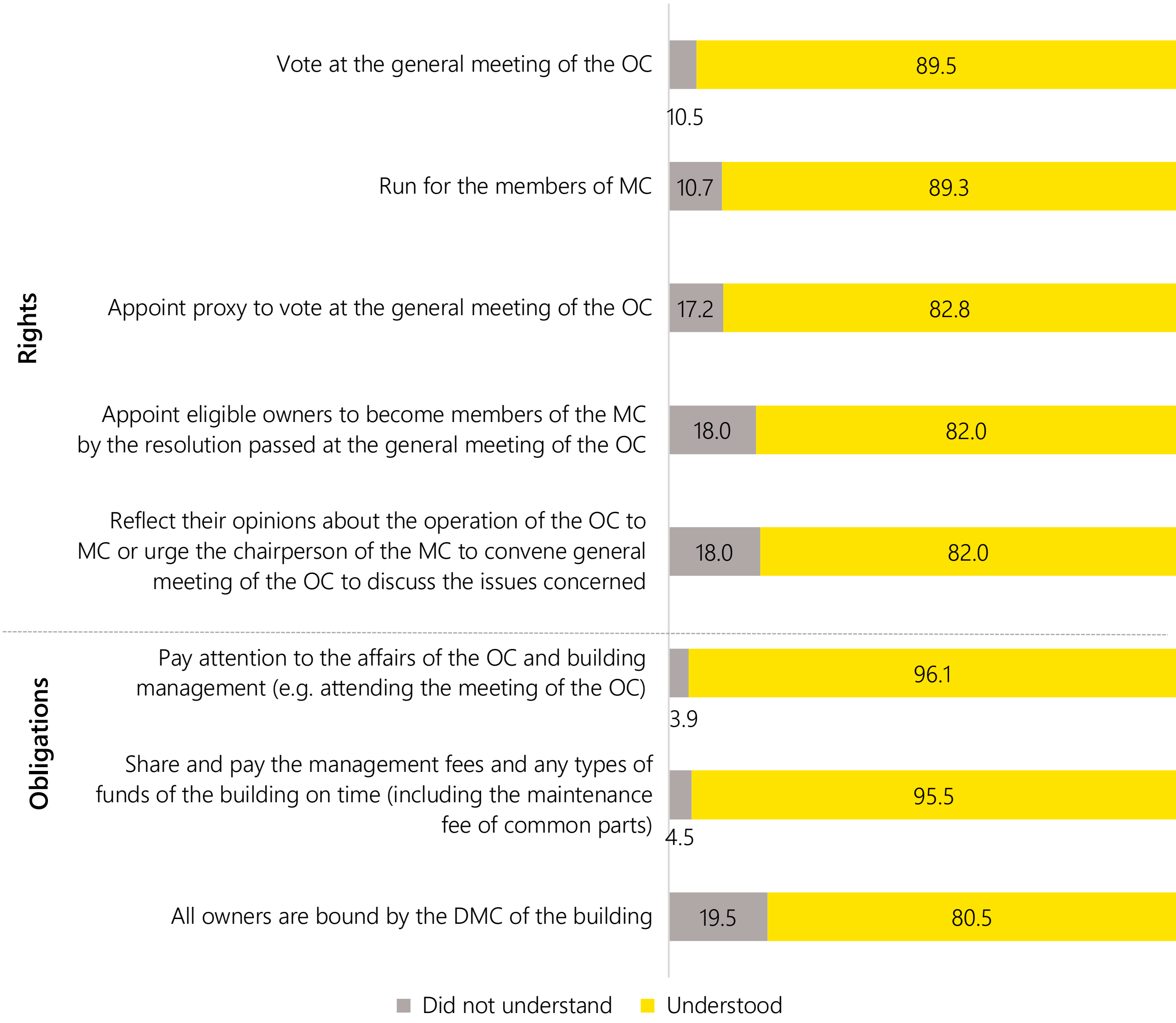


Base: N=1,103

Understanding of Their Rights and Obligations

The survey found that most owners understood their rights and obligations on property management, such as "pay attention to the affairs of the OC and building management (e.g. attending the meeting of the OC)" (96.1%) and "all owners are bound by the DMC of the building" (80.5%, albeit at a slightly lower score) (Chart 14).

Chart 14: Whether Owners Understood Their Rights and Obligations in Management of the Buildings (%)



Base: N=1,103

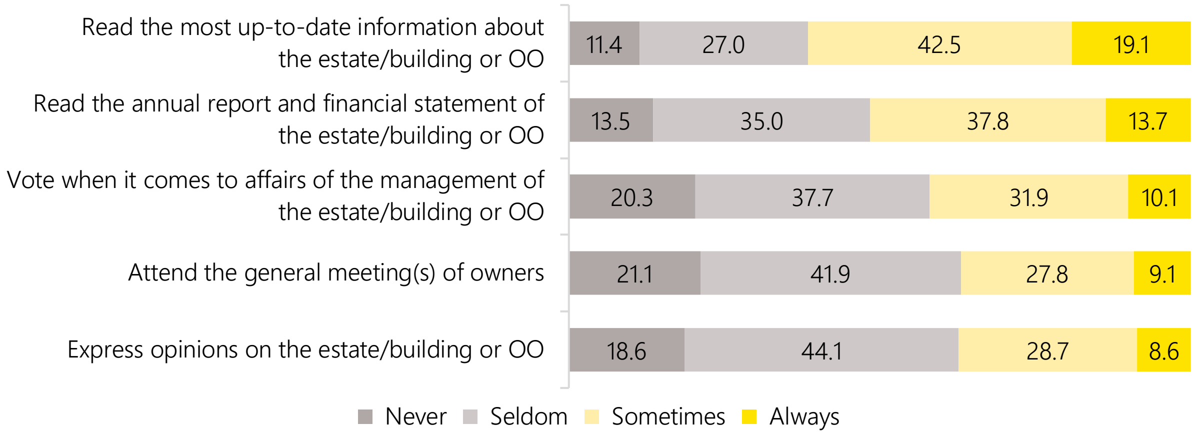
II. Participation and Influence of Owners

Participation in Building Management Matters

With respect to the participation of owners on building management matters, 61.6% of the respondent owners always or sometimes "read the most up-to-date information about the housing estate/apartment building or OO" and 51.5% always or sometimes "read the annual report and financial statement of the housing estate or apartment building or OO".

However, quite a number of owners seldom or never attended the general meeting(s) of owners 63.0%, expressed their opinions on the building management or OOs (62.7%), and voted in relation to the affairs of building management or OOs (58.0%). In this regard, it can be observed that owners were passive in attending the general meetings, opining or voting on building management matters (Chart 15).

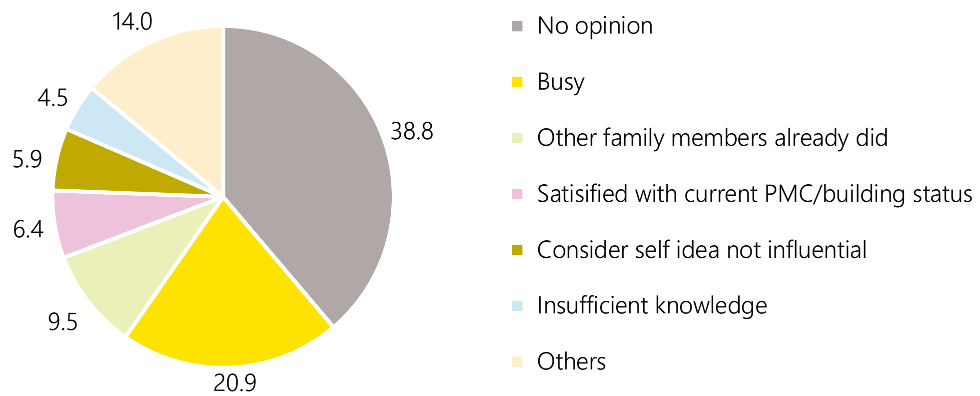
Chart 15: Owners' Participation in Building Management Matters (%)



Base: N=1,103

Owners who never or seldomly engaged were further asked about the underlying reasons; 38.8% said they had no opinion while 20.9% explained that they were too busy to participate. 10.4% thought their idea was not influential or lacked sufficient knowledge to participate (Chart 16).

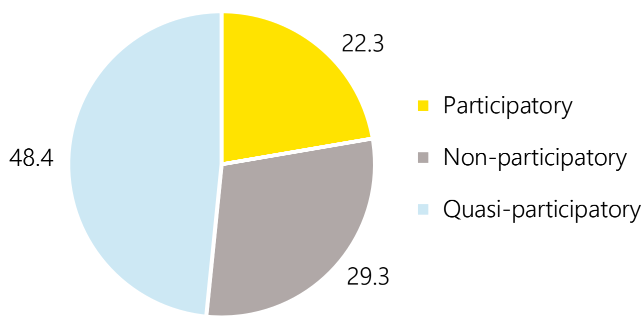
Chart 16: Reasons for Owners Never or Seldom Engaged in Building Management Matters (%)



Base: N=836

The above respondents are classified into the following three groups for further profiling:

- "Participatory" – participated in all five activities in Chart 15 above (22.3%);
- "Non-participatory" – seldom or never participated in those activities (29.3%);
- "Quasi-participatory" – occasionally participated in some of the activities (48.4%).



Base: N=1,103

In general, most owners were not actively involved in the property management matters across all age groups, education levels, employment status and years of residence at the property.

- All age groups showed high "quasi-participatory" rates (41.3% – 60.6%) and "non-participatory" rates (24.1% – 35.7%). The younger the owners' age, the higher was the "quasi-participatory" rates. The age groups "50 – 64 years old" and "65 years old or above" had higher proportion of owners who were classified as "participatory" (23.5% and 23%). Yet, the group "65 years old or above" also had the highest portion of "non-participatory" owners (35.7%), showing that this group was more split between the two extremes than others.

- In general, the higher the education level, the higher was the "quasi-participatory" rate, in aggregate ranging from 31.1% for "primary education or below" education level to 56.8% for "post-secondary or above" education level. The higher "non-participatory" were found at "primary education or below" education level of 51.4%.

- All groups of employment status showed the same pattern with high "quasi-participatory" rates (42.4% – 56.2%), followed by "non-participatory" (23.4% – 34.1%), but low "participatory" (18.6% – 24.0%). Owners in the "retired" and "homemakers" groups had higher proportion classified as "participatory".

- The proportion of owners classified as "participatory" generally rose with years of residing in the buildings. However, a high share of "quasi-participatory" category (43.2% – 60.3%), and "non-participatory" (26.2% – 31.8%) was still found across all residing years.

- Owners' level of participation increased with the age of the building. Owners were more "participatory" in buildings aged 30 – 49 years (27.7%) and 50 years or above (28.1%).

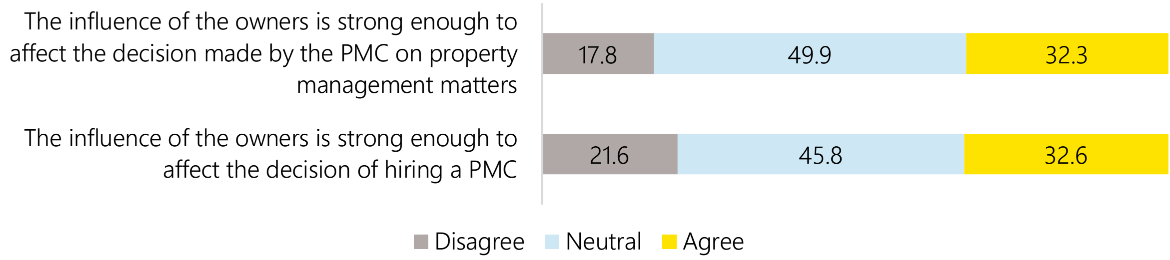
For details, please refer to Appendix 3 to look into the distribution of owners at different levels of participation within different segment groups.

Influence on Management Fee and PMCs

The owners' level of participation is further analysed with their responses to the survey question on the magnitude of the last adjustment to the management fee of their buildings. It was found that the mean rate of increase in management fee was the lowest in the group of "participatory" (9.5%) as compared with the group of "quasi-participatory" (10.5%) and "non-participatory" (11.3%). In other words, if the owners are willing to spend more time in managing their property management affairs, they may enjoy less of an increase in management fee as a result.

When the owners were asked to self-evaluate their influence on the PMCs of their buildings, a higher portion of them in the survey stated "neutral" in evaluating about their influence on the decisions made by the PMC in relation to property management matters (49.9%) and the decision of hiring a PMC (45.8%). 32.3% and 32.6% of them agreed that they had influence on property management matters and the hiring a PMC respectively (Chart 17). Some owners in the in-depth interviews opined that their level of influence might depend on the number of owners exerting pressure on PMCs.

Chart 17: Whether the Owners Have Influence over their PMCs (%)



Base: N=1,103

Based on the responses of the owners regarding their influence on PMCs, they were classified into three groups. For those who agreed with all the above two statements were classified into the group with "strong" influence; those who disagreed with all the above two statements were classified into the group of "weak" influence; the remaining owners were classified into the group of "average" influence.

While the adjustment of management fees is subject to various factors, it is inductive that the extent of owner's influence has a positive impact on the mean rate of increase in management fees, as shown in a lower increase of management fees as compared with that with weak influence (Chart 18).

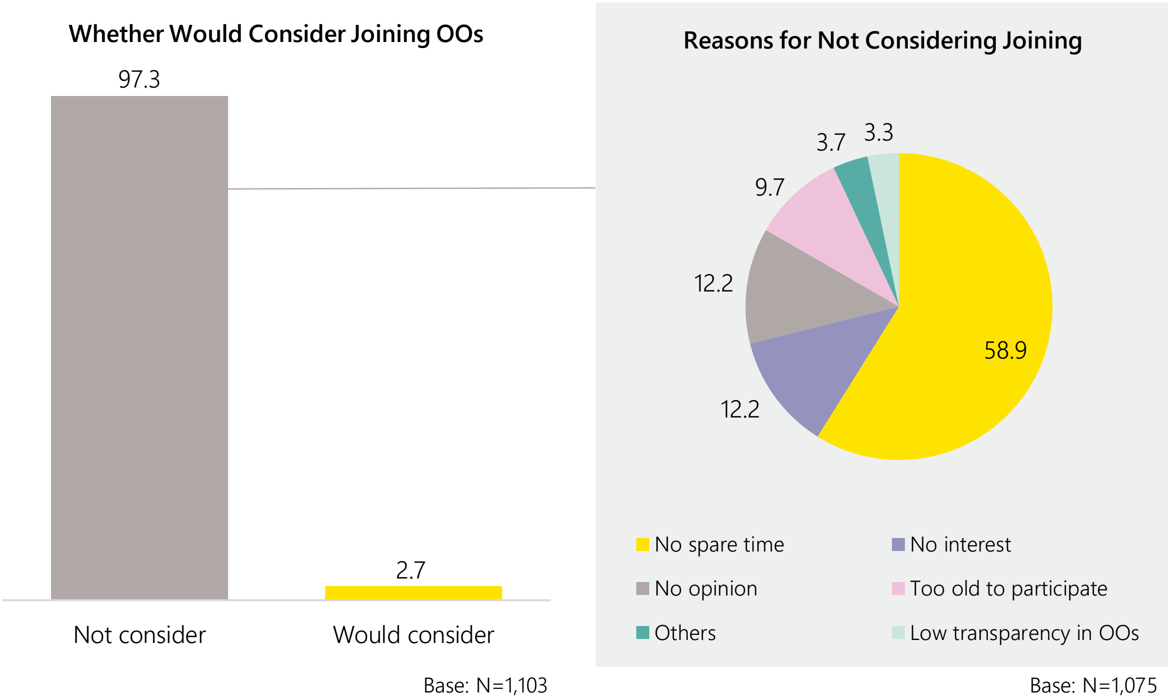
Chart 18: Mean Rate of Increase in Management Fees Against the Extent of Owners' Influence over PMC (%)

Base: N=1,103

Willingness to Join OOs in the Future

The owners were also asked whether they would consider becoming the chairpersons or members of OOs in the future. Most of them (97.3%) showed no willingness, with a high proportion stating the reasons of "no spare time" (58.9%), "no interest" (12.2%) or "no opinion" (12.2%) (Chart 19).

Chart 19: Whether Owners Would Consider Joining OO and Reasons for Not Consider Joining (%)

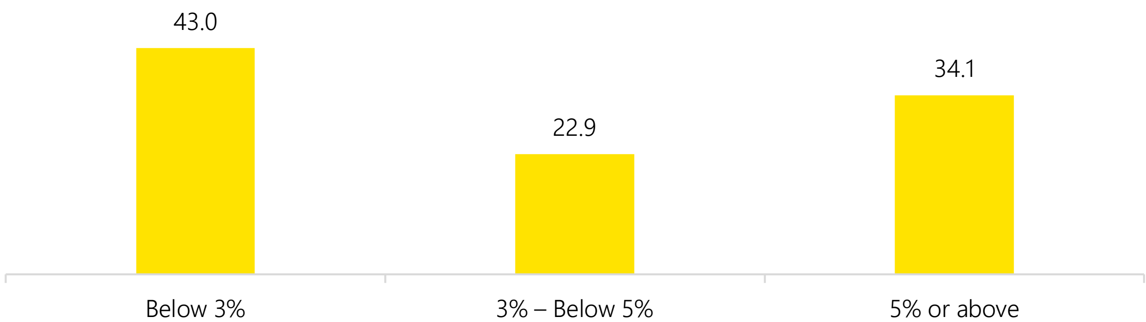


III. Satisfaction of Owners on Management Fee

Management Fee in Proportion to the Monthly Household Income

To understand the affordability of management fee among the owners, the owners were asked about the proportion of their monthly household income allocated to paying management fees. On average, the owners spent approximately 7.4% of their monthly household income on management fees; 43.0% of owners paid "below 3%" of their monthly household income for management fees and 22.9% of owners paid "3% – below 5%", and 34.1% of owners paid "5% or above" (Chart 20).

Chart 20: Distribution of Owners Categorised by Monthly Management Fees in Proportion to Monthly Household Income (%)



Base: N=1,103

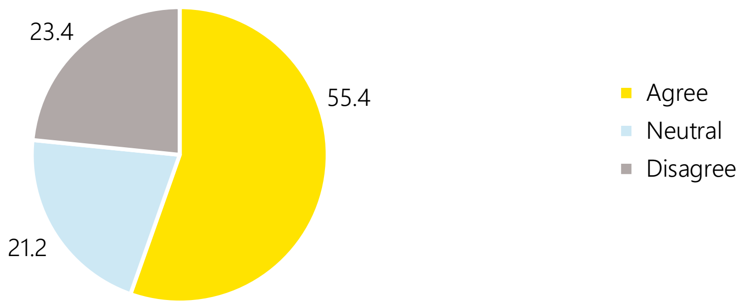
More of the owners living in the New Territories (48.9%) and Kowloon (40.4%), as well as owners living in older buildings aged 50 years or above (49.1%) and younger buildings of 0 – 29 years of age (48.2%), were paying "below 3%" of their monthly household income for management fees. Such observation could be a combined result of comparatively lower management fee level for buildings in the New Territories and Kowloon, as well as older buildings aged 50 years or above, for which more details can be found in Section V, and that owners living in younger buildings of 0 – 29 years of age in general had a higher monthly household income as compared with other building age segments in the survey.[80]

On the other hand, more owners living on the Hong Kong Island (49.6%) and owners in buildings aged 30 – 49 years of age (43.8%) were paying "5% or above" of their monthly household income for management fees, which could be due to the higher level of management fee for the buildings on the Hong Kong island and the buildings with repair and maintenance needs that are identified under the Mandatory Building Inspection Scheme.[81]

Satisfaction of Management Fee Level

More than half of the owners agreed that "the current management fee was at a reasonable level" (55.4%) (Chart 21). Among these owners, a higher proportion of them (26.3%) paid less than 1% of their monthly household income for management fees. Conversely, for the owners who considered the current level of management fee unreasonable (23.4%), a higher proportion of them (28.9%) paid more than 10% of their monthly household income for management fees. In general, owners who spent a higher proportion of their household income on property management fees were less likely to consider the fees to be reasonable.

Chart 21: Owners Considered the Current Management Fee was at a Reasonable Level (%)



Base: N=1,103

Regardless of whether the owners considered their management fees as reasonable, an overwhelming majority of owners (92.6%) claimed that they always paid the management fee on time.

[80] Of the respondent owners who disclosed their monthly household income, 35.3% of them living in buildings of 0-29 years had monthly household income of HK$30,000 or above, as compared with only 25.2% and 22.2% of owners falling in the same monthly household income category in the "30 – 49 years" segment and "50 years of above" segment respectively.

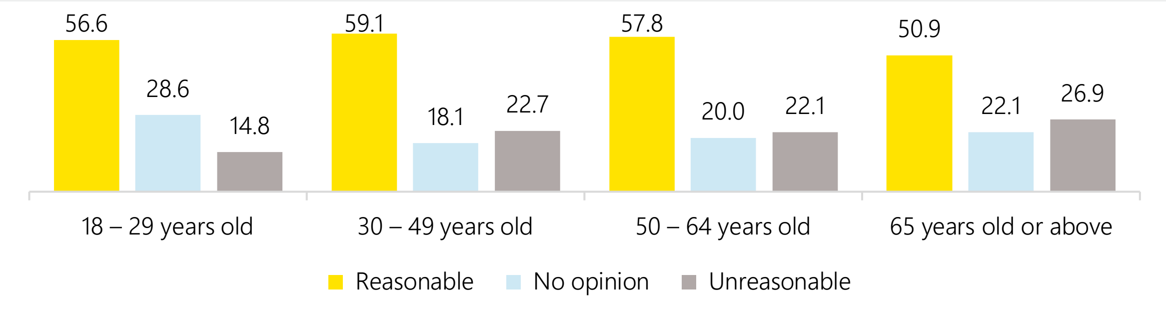
[81] Under the Mandatory Building Inspection Scheme, owners of buildings aged 30 years or above (except domestic buildings not exceeding three storeys) and served with statutory notices are required to appoint a Registered Inspector to carry out inspection works and any necessary repair works of the buildings.

Box 4: Profile of Owners (Base: N = 1,103)

Owners of different background (age, flat size, age of the building and district) had different perception of justifiability of management fee.

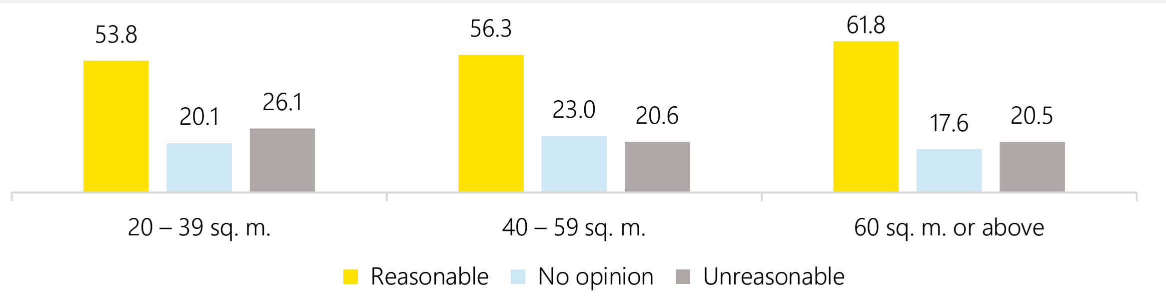
More than half of the owners in all age groups considered the current level of management fee reasonable, of which the age group 30 – 49 years old had the highest proportion (59.1%). The age group of "65 years old or above" recorded a relatively lower reasonable level (50.9%) and a higher unreasonable level (26.9%) than other groups) (Chart 22). The finding may be a factor of earning power at different life stages of the owners' group.

Chart 22: Distribution of Owners within Different Age Groups Considered the Current Level of Management Fee Reasonable or Not (%)



A high proportion of owners of all flat sizes considered the current level of management fee reasonable (53.8% – 61.8%), especially for the group of "60 sq. m. or above" (61.8%). For smaller flat size group of "20 – 39 sq. m.", more owners considered it unreasonable (26.1%) (Chart 23).

Chart 23: Distribution of Owners by Flat Sizes Who Considered the Current Level of Management Fee Reasonable or Not (%)



A high proportion of owners living in buildings aged 16 years or above considered the current level of management fee reasonable (53.9% – 61.1%), except for those of younger building age "0 – 15 years" who showed higher proportion (38.9%) of no opinion and only 26.1% opined the fee is reasonable. As stated in Section V of this Chapter, the mean of management fee paid by such group of owners was higher, as newly completed properties are usually more diversified with more facilities than older buildings, leading to higher management fee (Chart 24).

Chart 24: Distribution of Owners of Different Building Ages Who Considered the Current Level of Management Fee Reasonable or Not (%)

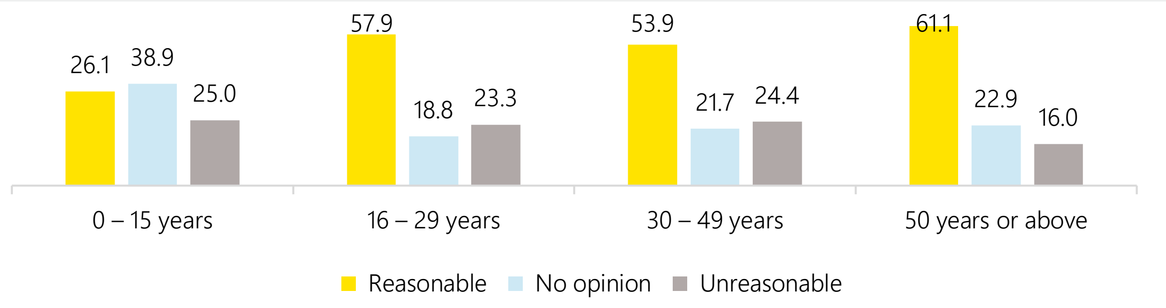
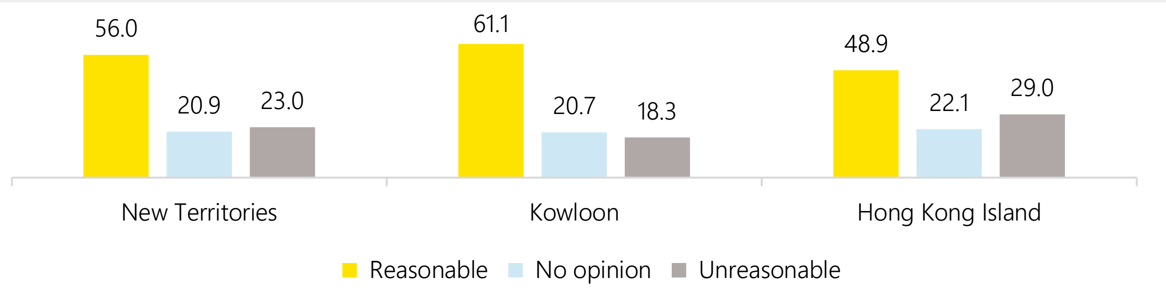


Chart 25: Distribution of Owners for Different District Who Considered the Current Level of Management Fee Reasonable or Not (%)

The "Kowloon" district had the highest proportion of owners who considered the current level of management fee reasonable (61.1%), while those of the "Hong Kong Island" district had the lowest proportion (48.9%), probably due to the general higher management fees charged (Chart 25).

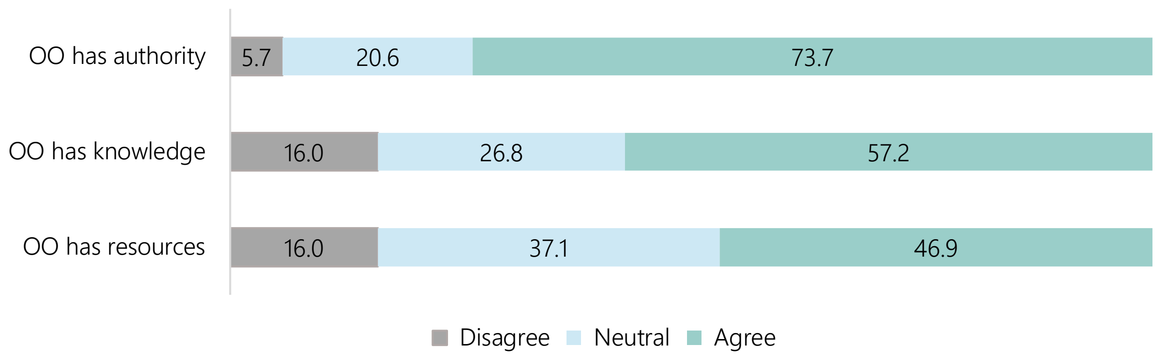


IV. Capability and Influence of OOs

Capability of OOs to Deal with Management Fee-related Matters and Influence on PMCs

The OOs were asked to self-evaluate their capability to deal with management fee-related matters and their influence on PMCs in terms of resources, knowledge and authority. Regarding management fee-related matters, more OOs agreed that they had the authority (73.7%) and knowledge (57.2%) to do so; whereas less OOs agreed to have the resources (46.9%) (Chart 26).

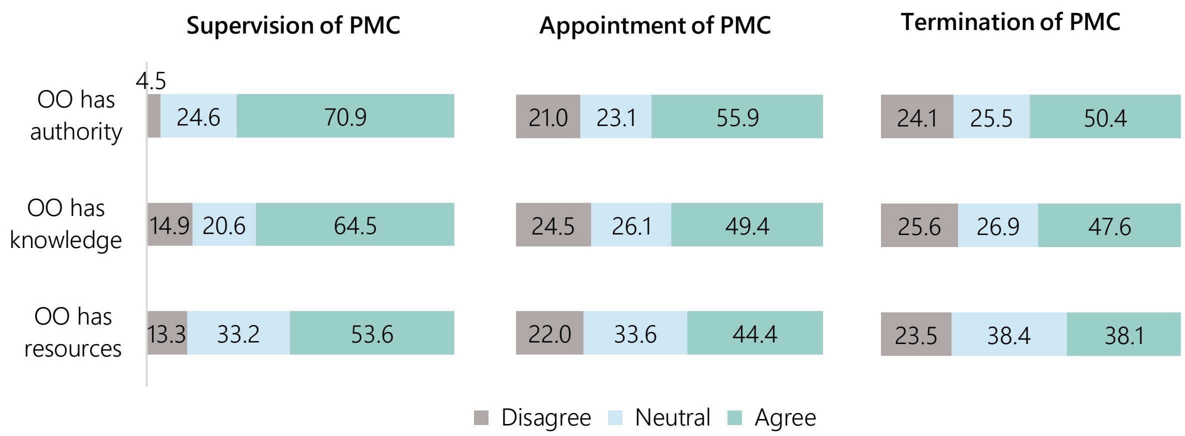
Chart 26: Perception of OOs' Capability to Deal with Management Fee Matters (%)



Base: N=96

However, for the supervision, appointment, and termination of PMCs, the responses were more diverse. In general, OOs agreed that they had stronger authority (70.9%), knowledge (64.5%) and resources (53.6%) to supervise PMCs, but less for the appointment and termination of PMCs (Chart 27).

Chart 27: Perception of OOs' Influence on Supervision/Appointment/Termination of PMCs (%)



Base: N=96

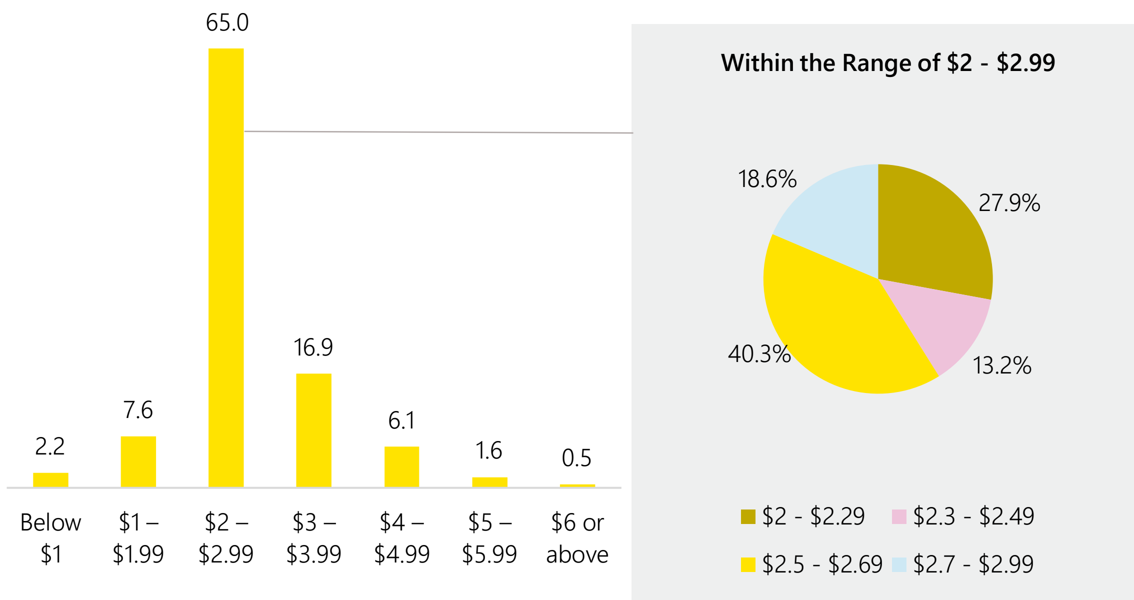
According to the OOs in the in-depth interviews, they considered themselves to have sufficient power, knowledge or resources to manage their buildings because of the assistance from various parties such as the Government or other professionals (e.g. lawyers, accountants).

V. Management Fee Level

Overall Management Fee Level Paid by Owners

It was found that close to 65% of the owners paid the management fee within the range of HK$2 – HK$2.99 per sq. ft. per month, and 40.3% of this group of owners paid at the level of HK$2.5 – HK$2.69 per sq. ft. (Chart 28).

Chart 28: Percentage Distribution of Owners by Monthly Management Fees per Sq. Ft. (%)



Base: N=1,103

Base: N=682

The overall mean of monthly management fee paid by the respondents was HK$2.68 per sq. ft. In terms of dollar amount, the average was HK$ 1,108 per month, ranging from HK$200 to HK$3,700. It is noted that newer buildings, buildings with facilities such as clubhouse and smaller flats charged relatively higher management fees per sq. ft. than that of older buildings, buildings without facilities and larger flats. Table 13 below also compares the overall mean of management fees per sq. ft. paid by all owners and the mean of the same paid by the owners who considered the fee level reasonable or unreasonable respectively, cross-referenced with different factors.

Table 13: Mean of Management Fee Paid by All Owners and Owners who Considered the Fee Level Reasonable or Unreasonable

Factors	Mean of management fee per sq. ft. (HK$) paid by		
		Owners who considered the fee level	
	All owners	Reasonable	Unreasonable
By building age			
0 – 15 years	3.4*	3.3	3.6
16 – 29 years	2.9	2.8^	3.3^
30 – 40 years	2.6	2.4	2.8
50 years or above	1.9	1.7	2.0
By district			
Hong Kong Island	3.0*	2.8^	3.5^
Kowloon	2.4	2.3	2.5
New Territories	2.7	2.6	2.9
By flat size			
20 – 39 sq. m.	2.8*	2.6^	3.2^
40 – 59 sq. m.	2.5	2.4	2.7
≥ 60 sq. m.	2.5	2.5	2.6
By number of blocks			
Single-block building	2.8*	2.4^	3.1^
Non-single block buildings	2.5	2.6	2.9
By number of units			
Buildings with ≤ 20 units	1.5	1.4^	2.5^
Buildings with 21 – 100 units	2.8*	2.5	3.2
Buildings with > 100 units	2.7	2.6	2.9
By facility			
Buildings without residential clubhouse/recreational facilities and shuttle bus service	2.6	2.4^	3.0^
Buildings with residential clubhouse/recreational facilities and shuttle bus service	2.8*	2.7	2.9
By type of OO			
Buildings with OCs	2.6	2.5^	3.0^
Buildings with Owners' Committees/MACs	2.8	2.7	2.9
Buildings without any OO	3.0*	3.0	3.0

* refer to the one with highest value within the specified category.

^ refer to the choice with the biggest mean differences between the management fees considered to be (i) reasonable and (ii) unreasonable within the specified category.

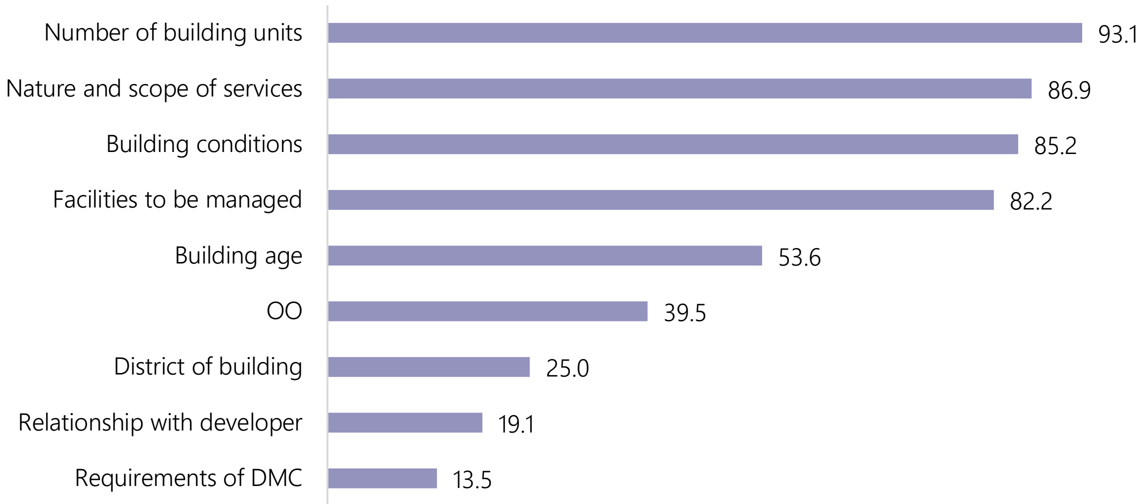
Some observations can be drawn from the above table:

- Management fee was higher for owners residing in (as marked with *):
    - buildings aged 0 – 15 years
    - buildings on Hong Kong Island
    - smaller flat size (20 – 39 sq. m.)
    - single block building
    - buildings with 21 – 100 units
    - buildings with residential clubhouse/recreational facilities/shuttle bus service
    - buildings without any OO
- For owners who considered the management fee unreasonable, the management fees they paid were generally more expensive than the overall mean, regardless of the types of factors.
- The mean differences[82] between the management fees paid by owners who considered the fee level (i) reasonable and (ii) unreasonable were relatively large (as marked with ^) for the building categories of "aged 16 – 29 years"; "on Hong Kong Island", in "smaller flat size (20 – 39 sq. m.)"; "single block"; "with less than or equal to 20 units"; "without residential clubhouse/recreational facilities/shuttle bus service"; and "with OCs". While the findings provided general indications on the factors affecting the determination of management fee level, other intricate factors specific to the same building may have to be considered.

Factors Affecting the Management Fee Level

According to the views of PMCs, there were a number of factors to be considered while determining the management fee level. Chart 29 below shows that, when setting management fees, most PMCs considered the factors of "number of building units" (93.1%), "nature and scope of services (86.9%), "building conditions" (85.2%) and "facilities to be managed" (82.2%) etc., whereas the requirements of DMC had been given the least consideration (13.5%).

Chart 29: Factors Considered by the PMCs in Determining the Level of Management Fees (%)



Base: N=22

[82] The difference between the mean values of two factors.

As shared by some industry professionals in the in-depth interviews, it was quite common for developers to offer "expensive amenities of high-end buildings" in recent years to attract property purchasers. As a result, management fees of new buildings aged 0 – 15 years tend to be higher as found in the survey. Furthermore, other aspects such as the participation and influence of owners, and capability and influence of OOs as elaborated in Sections II and IV above would also affect the ultimate level set.

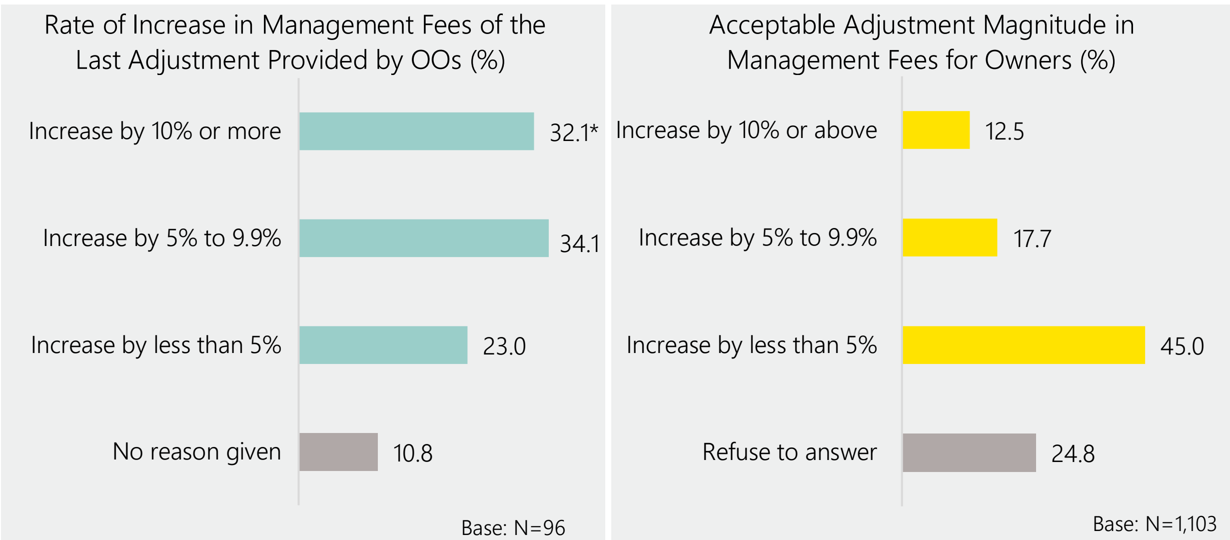
Adjustments to Management Fees

(i) Magnitude

In respect of the magnitude of the adjustment to management fee, over one third (34.1%) of the OOs recalled that the rate of increase in management fees of the last adjustment was within the range of 5% – 9.9%, followed by the range of less than 5% (23.0%), 15 % – 19.9% (12.3%), 10% – 14.9% (11.9%) and 20% or more (7.9%).

The owners were also asked about the acceptable magnitude of the adjustment to management fee. Close to half of them (45.0%) considered that the magnitude of adjustment of management fee below 5% was acceptable, followed by the range of 5% – 9.9% (17.7%), and 10% or above (12.5%). Obviously, the actual adjustment was higher than the acceptable level of owners in general (Chart 30).

Chart 30: Rate of Increase in Management Fees of the Last Adjustment Provided by OOs and Acceptable Adjustment Magnitude in Management Fees for Owners (%)

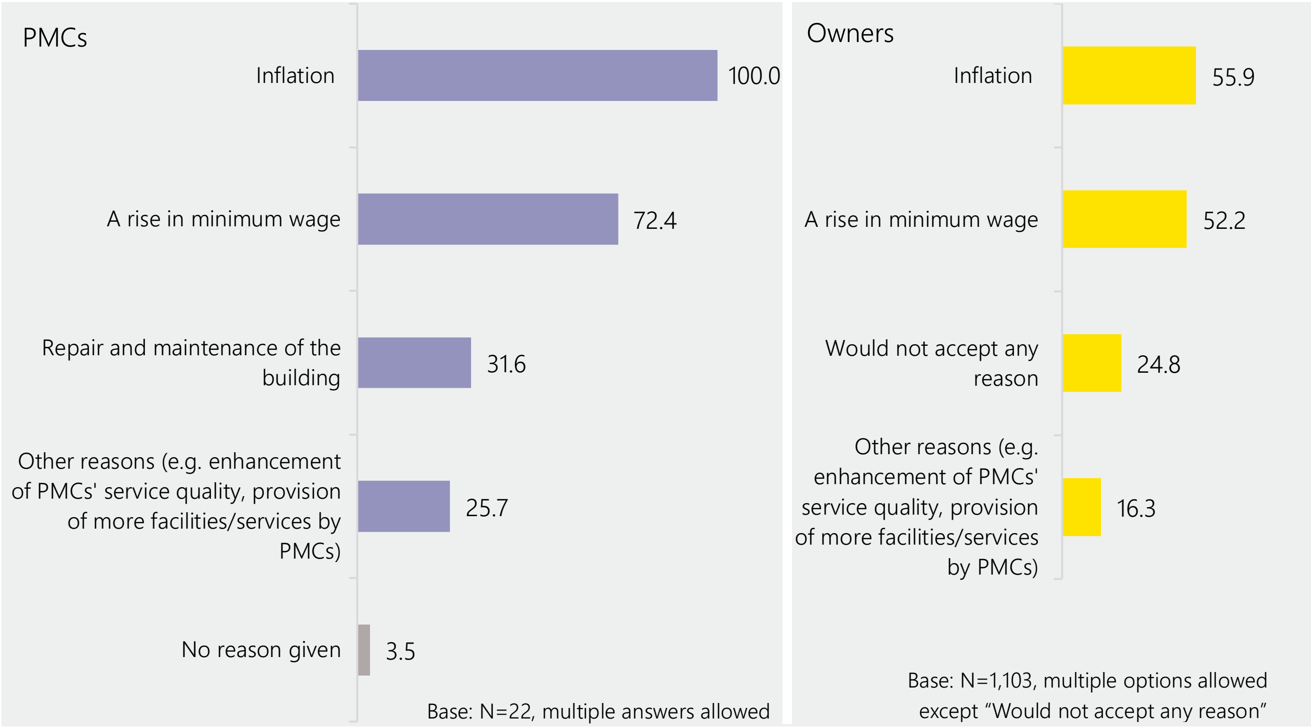


Remark: * This percentage is composed of "Increase by 10% to 14.9%" (11.9%), "Increase by 15% to 19.9%" (12.3%) and "Increase by 20% or more" (7.9%).

(ii) Reasons of Adjustments

When asked about the reasons of adjustments to management fees, the views from PMCs and owners differed (Chart 31). For PMCs, "inflation" (100%) and "a rise in minimum wages" (72.4%) topped the chart. "Repair and maintenance of the building" and "other reasons" such as the enhancement of PMCs' service quality, the provision of more facilities or services accounted for 31.6% and 25.7% respectively. As for the views of the owners, more than half of them tended to accept the reasons of "inflation" (55.9%) and "a rise in minimum wage" (52.2%). About one-fourth (24.8%) indicated that they "would not accept any reason".

Chart 31: Reasons for Adjustments to Management Fee (%)



Other Publicly Available Data on Management Fees in Hong Kong

According to the Household Expenditure Survey conducted by the Census and Statistics Department (C&SD) between October 2019 and September 2020,[83] the average monthly expenditure on "Management fees and other housing charges" among private housing households was HK$1,452, accounting for 3.8% of their total household expenditure. "Management fees and other housing charges" covers building management and maintenance fees; repair and maintenance costs of dwellings (including materials); and home insurance. The Government's information in 2020 also showed that the management fee level of the newly completed private residential buildings was around HK$4 – HK$5 per sq. ft. in general.[84]

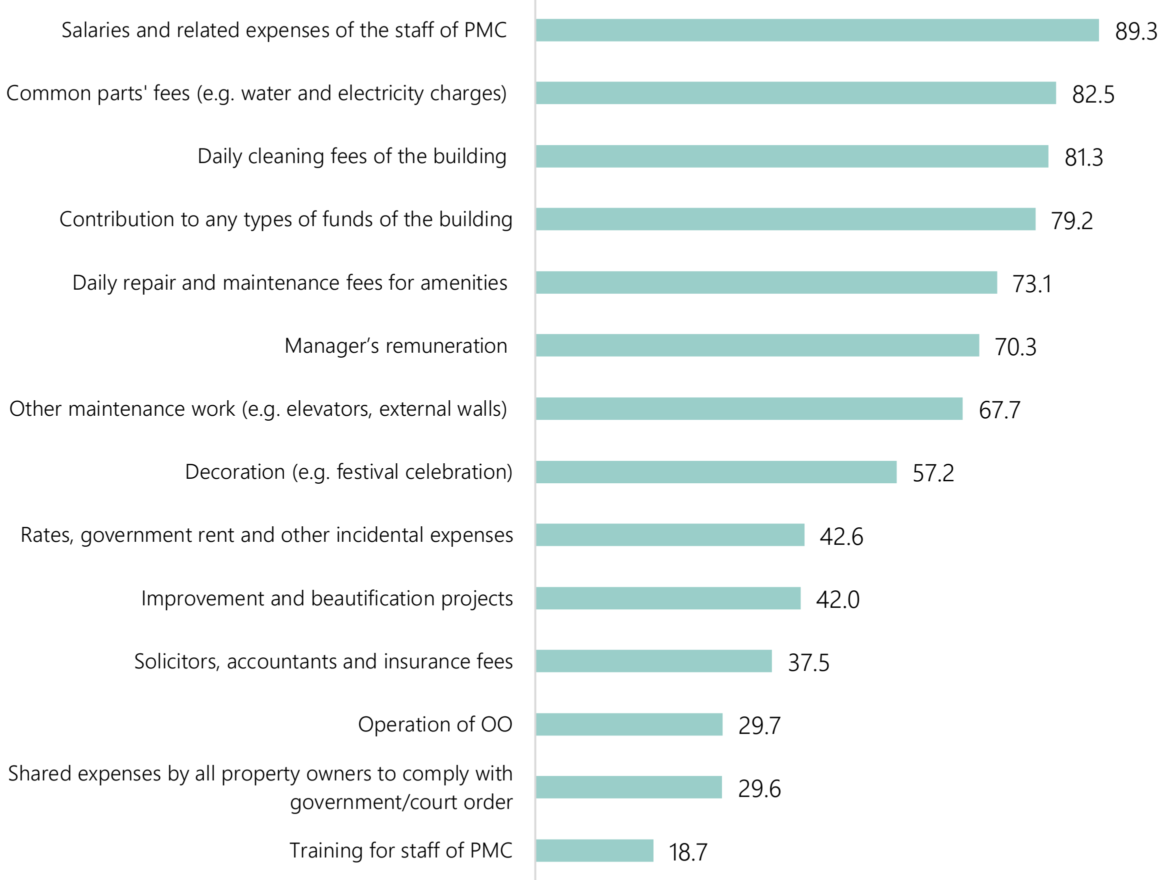
VI. Components of Management Fee

Different Types of Expenditure Items and Allocation

To understand how the management fees were expended, the OOs were asked to indicate different expenses covered by the management fees of their respective buildings. A majority of them indicated "salaries and related expenses of the staff of PMC" (89.3%), "common parts' fees (e.g. water and electricity charges)" (82.5%), and "daily cleaning fees of the building" (81.3%) as the major components (Chart 32).

[83] C&SD. (2021) 2019/20 Household Expenditure Survey.
[84] Legislative Council Press Releases. (2020 June 17) LCQ 5: Management fees of housing courts under the Starter Homes pilot projects for Hong Kong Residents.

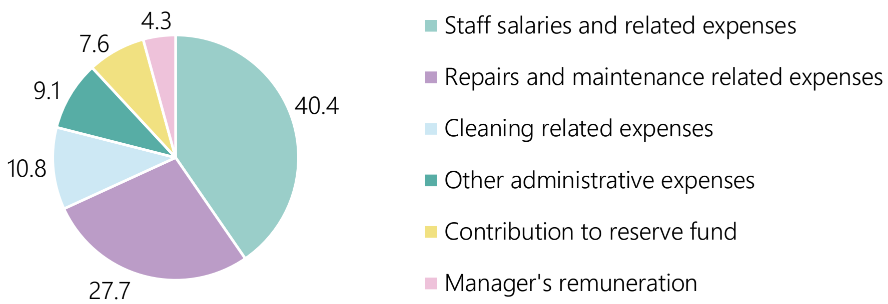
Chart 32: Types of Expenses Items Covered by the Management Fees (%)



Base: N=96, multiple answers allowed

OOs were further asked about the proportion of management fee budget spent on the aforementioned items. It is noted that "staff salaries and related expenses" took up two-fifths (40.4%) of the share; over one-fifth (27.7%) were allocated for "repairs and maintenance related expenses"; about one-tenth were allocated for "cleaning related expenses" (10.8%); "other administrative expenses" (9.1%); and 4.3% spent for "manager remuneration". In addition to the said expenses of the buildings, a portion of the fee was reserved for the "contribution to reserve funds of the buildings" (7.6%) (Chart 33).

Chart 33: Percentage Distribution of Major Expenditure Components of Management Fees Provided by OOs (%)



Base: N=96

Salaries and Related Expenses of Staff of PMCs

In relation to these expense items, the 22 PMCs from the surveys indicated that they had allocated less manpower to manage single-block building, ranging from 2 – 17 staff members, whereas more manpower was used at non-single block buildings, ranging from 6 – 111 staff members.

70.4% of the PMCs refused to reveal the proportion of salaries and related expenses of staff of PMCs in total expenditure; 14.8% of the PMCs indicated that the salaries and related expenses of their staff amounted to "20% or above" of the total expenditure on property management of the buildings under their management, followed by "5% – below 10%" (13.8%) and "10% – below 15%" (1%).

Headquarter Fees

It is quite a common practice of the property management industry to assign their headquarter staff to manage various aspects of the buildings. Over two-fifths of them (43.8%) provide general management services in the realm of finance, legal, facility and human resources, followed by the services of security (17.8%), repair and maintenance (12.5%), cleaning (11.2%), and clerical and other administrative work (6.9%).

From the in-depth interview, it was found that the headquarter fees were beneficial to owners, as the PMCs could mobilise their staff to manage different buildings rather than hiring full-time staff to be in charge of a single building, thereby reducing the manpower cost to be shared by owners.

Manager's Remuneration

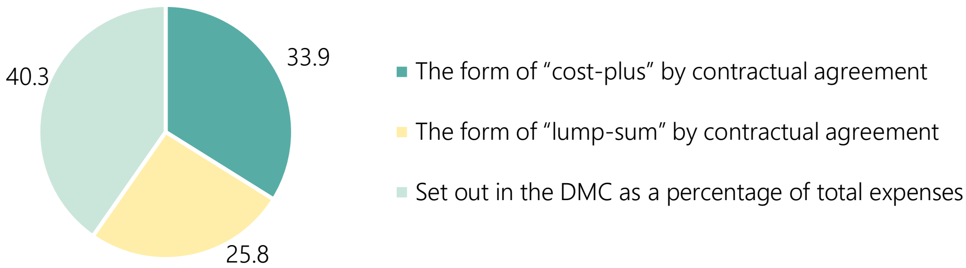
Nearly half of the OOs indicated in the surveys that the current PMCs were hired on a contractual basis (contract managers) (47.1%); whereas below one third (29.0%) were appointed by developers according to the DMC (DMC managers). The remaining OOs either refused to answer (23.2%) or was unable to answer due to the absence of a written contract (0.7%).

Owing to a reluctance of PMCs to provide information on manager's remuneration, the findings on the forms of manager's remuneration were derived from the information provided by the OOs. Yet, nearly half of the OOs (44.9%) refused to answer the forms of manager's remuneration received by PMCs. Among those who answered, more of them (40.3%) followed the percentage of manager's remuneration set out in the DMC as the base to determine manager's remuneration were DMC managers appointed by developers. Among the contract managers, 33.9% who used the form of "cost-plus" [85] contract were mostly appointed by OOs; while the rest 25.8% used the "lump-sum" [86] form were mostly appointed by owners. As most contract managers were appointed by OOs, showing that the form of cost-plus is more preferred in this group. In a way, the "cost-plus" form is easier for OOs to manage the actual expenses of different management services, while the "lump-sum" form helps simplify the financial management work of owners/OOs (Chart 34).

[85] Cost plus (成本加成制): the PMCs render property management services on a reimbursement basis, and the manger's remuneration is set out by a certain percentage of the total expenditure.

[86] Lump-sum (包薪制): the PMCs render services in accordance with the terms in the contract with a fixed amount received including the expense of the buildings and manager's remuneration.

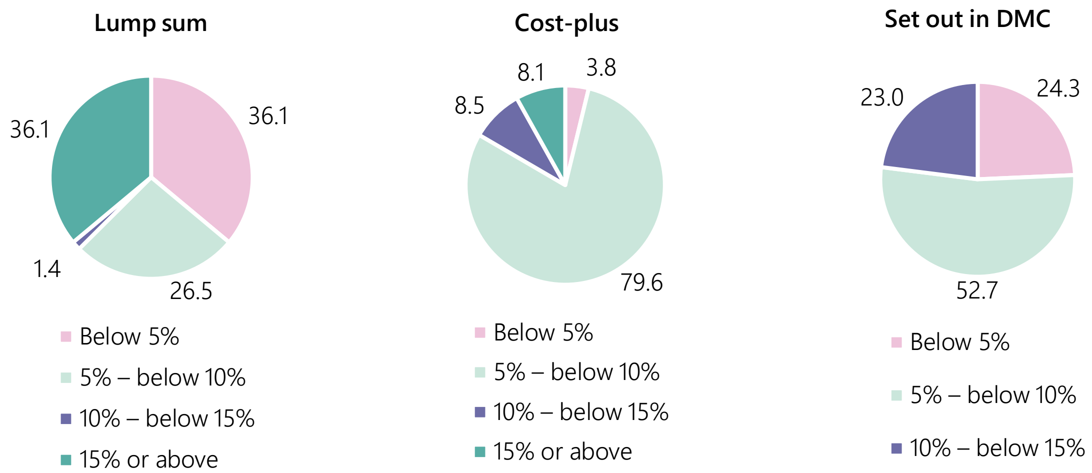
Chart 34: Forms of Manager's Remuneration Received by PMCs (%)



Base: N=46

Regarding the expenditure of manager's remuneration, OOs and PMCs were asked respectively about this type of expenditure in proportion to the total expenditure on property management of the buildings under their management. It was observed that most of the OOs which paid manager's remuneration in the form of "lump sum" fell within the two extremes, i.e. expended "below 5%" or "15% or above" of the total expenditure on manager's remuneration (36.1% for both categories). For OOs which paid manager's remuneration in the form of "cost-plus" or "in accordance with certain percentage set out in DMC", most of them expended "5% – below 10%" (79.6% and 52.7% respectively) of the total expenditure on manager's remuneration (Chart 35).

Chart 35: Percentage of Manager's Remuneration in Proportion to the Total Expenditure on Property Management (%)

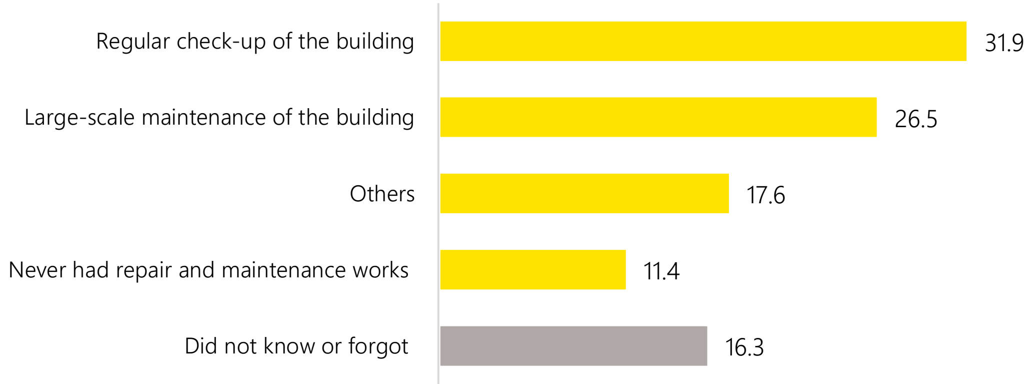


Base: N=12 (Lump Sum); N=22 (Cost-plus); N=12 (Set out in DMC)

Repair and Maintenance Related Expenses

Repair and maintenance is a basic and fundamental requirement for building management. When the owners were asked about the purpose of the last repair and maintenance projects undertaken in their buildings, 31.9% replied "regular check-up of the building"; 26.5% replied "large-scale maintenance of the building"; and 17.6% replied "others" such as the repair of elevators or water pipes. About 11.4% replied "never had repair and maintenance works", among which most were younger buildings which aged 0 – 29 years (66.4%). Around 16.3% of respondent owners claimed that they "did not know or forgot" about the last repair and maintenance of their buildings (Chart 36).

Chart 36: Last Repair and Maintenance Projects Undertaken in Buildings of Owners (%)



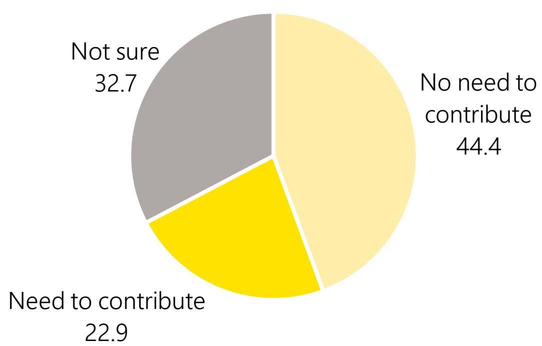
Base: N=1,103, multiple answers allowed

Owners were further asked about the amounts contributed by them to the last repair and maintenance project. A higher portion of them (44.4%) did not need to contribute additional amount of fees as relevant expenses were settled by various types of funds of the buildings or by government subsidies. Whereas close to one-fourth needed to contribute certain amount of fees (22.9%) and more than 30% were "not sure" (32.7%) about the amount they contributed (Chart 37).

In addition, among all surveyed owners, more owners living in buildings aged 50 years or above (63.0%) as well as 30 – 49 years (33.2%) needed to contribute to the last repair and maintenance project as compared with those living in buildings aged 0 – 29 years (5.6%). On the other hand, more owners living in single-block buildings (39.3%) needed to contribute as compared with those living in non-single block buildings (11.7%).

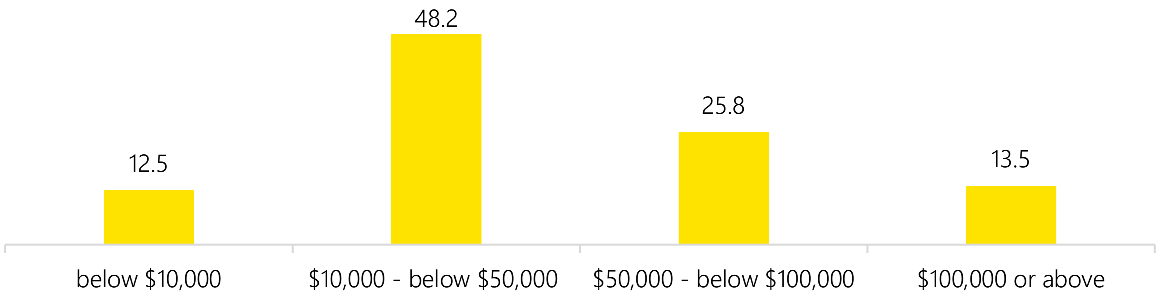
In terms of monetary amount, nearly half of the owners who needed to make relevant contributions did pay HK$10,000 – below HK$50,000 (48.2%), followed by HK$50,000 – below HK$100,000 (25.8%) (Chart 38). Among the owners who needed to make relevant contributions, more of those living in flats with saleable area of 60 sq. m. or above (74.5%) needed to contribute HK$100,000 or more as compared with those in flats with saleable area of 20 – 39 sq. m. and 40 – 59 sq. m. (12.5% and 10.3% respectively). Meanwhile, more owners living in buildings with OOs that had sufficient resources (as previously defined in Section IV) (70.8%) needed to contribute HK$10,000 – below HK$50,000 as compared with those with OOs which had average or insufficient resources (59.7% and 36.0% respectively).

Chart 37: Whether Owners Needed to Contribute Additional Amount of Fees for Repairs and Maintenance Projects of Their Buildings (%)



Base: N=988

Chart 38: Distribution of Owners Who Contributed Certain Amount of Fees for Last Repair and Maintenance Projects (%)

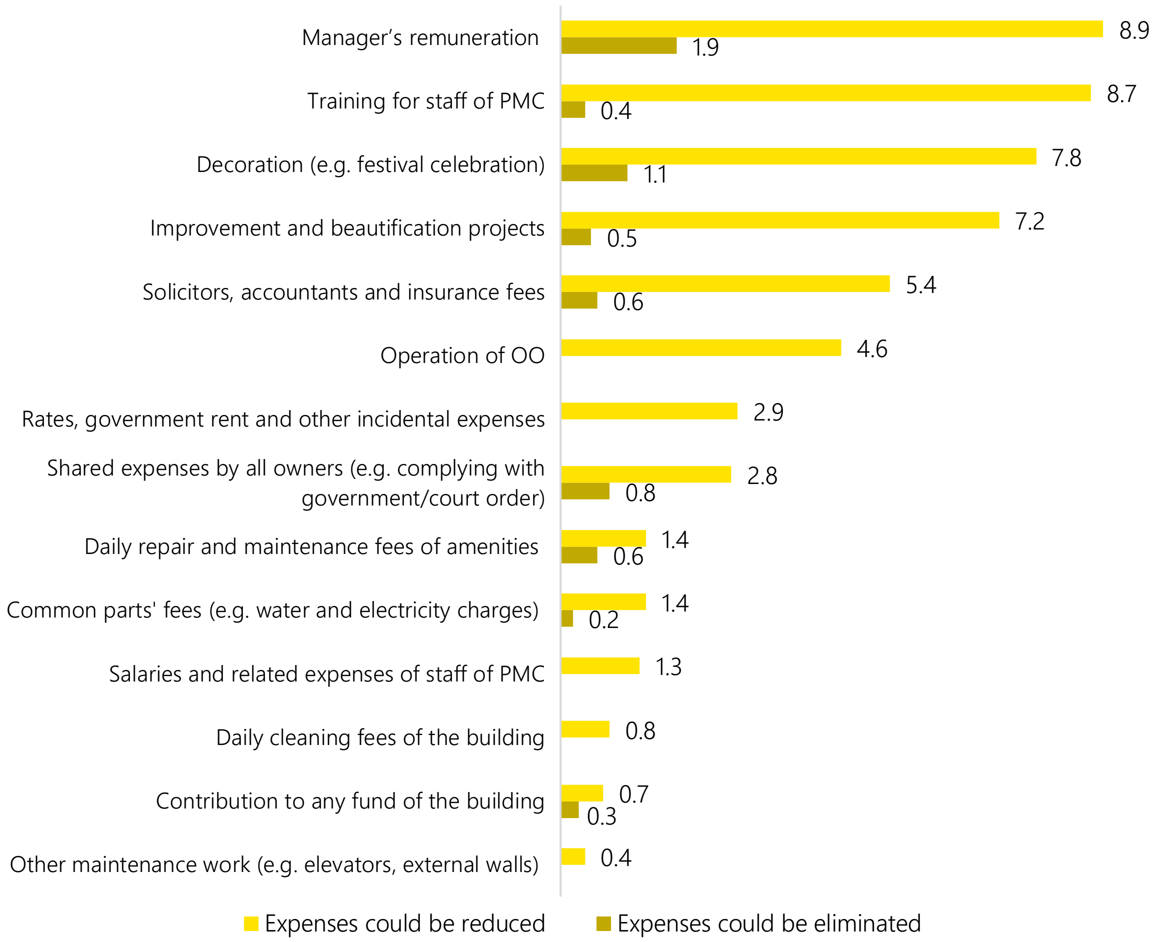


Base: N=288

Expenses can be Reduced/Eliminated in the Views of Owners

Although a larger portion of the owners considered the current management fee level borne by them were reasonable, they opined that there was room to reduce or eliminate some of the management expenses. Close to 9% of owners regard "manager's remuneration" and "training for staff of PMC" can be reduced, while 1.9% and 0.4% respectively trust they could be eliminated. Other identified expenses to be reduced and eliminated are "decoration (e.g. festival celebration) and "improvement and beautification projects". Chart 39 below shows the types of expenses which could be reduced or eliminated from the owners' perspective.

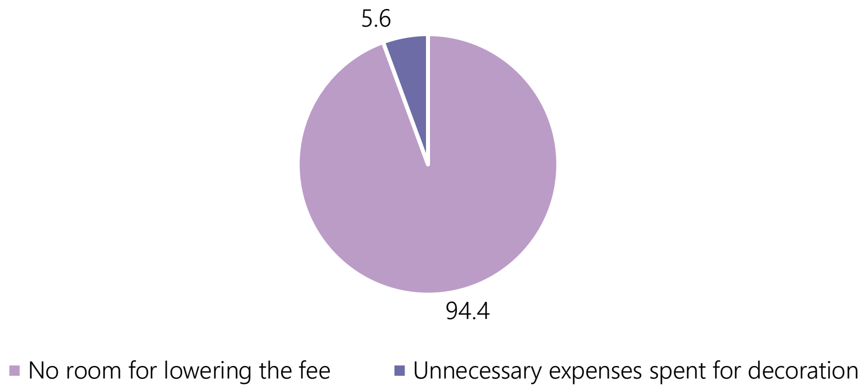
Chart 39 Expenses Which Could Be Reduced/Eliminated from the Perspective of Owners (%)



Base: N=1,103

Nonetheless, when a similar question was put to the PMCs, a vast majority (94.4%) claimed that there was "no room for lowering the fee". Only 5.6% considered the expenses spent for decoration (e.g. festival decoration or greenery decoration) were unnecessary and could be eliminated (Chart 40).

Chart 40: Expenses that Could Be Reduced/Eliminated from the Perspective of PMCs (%)



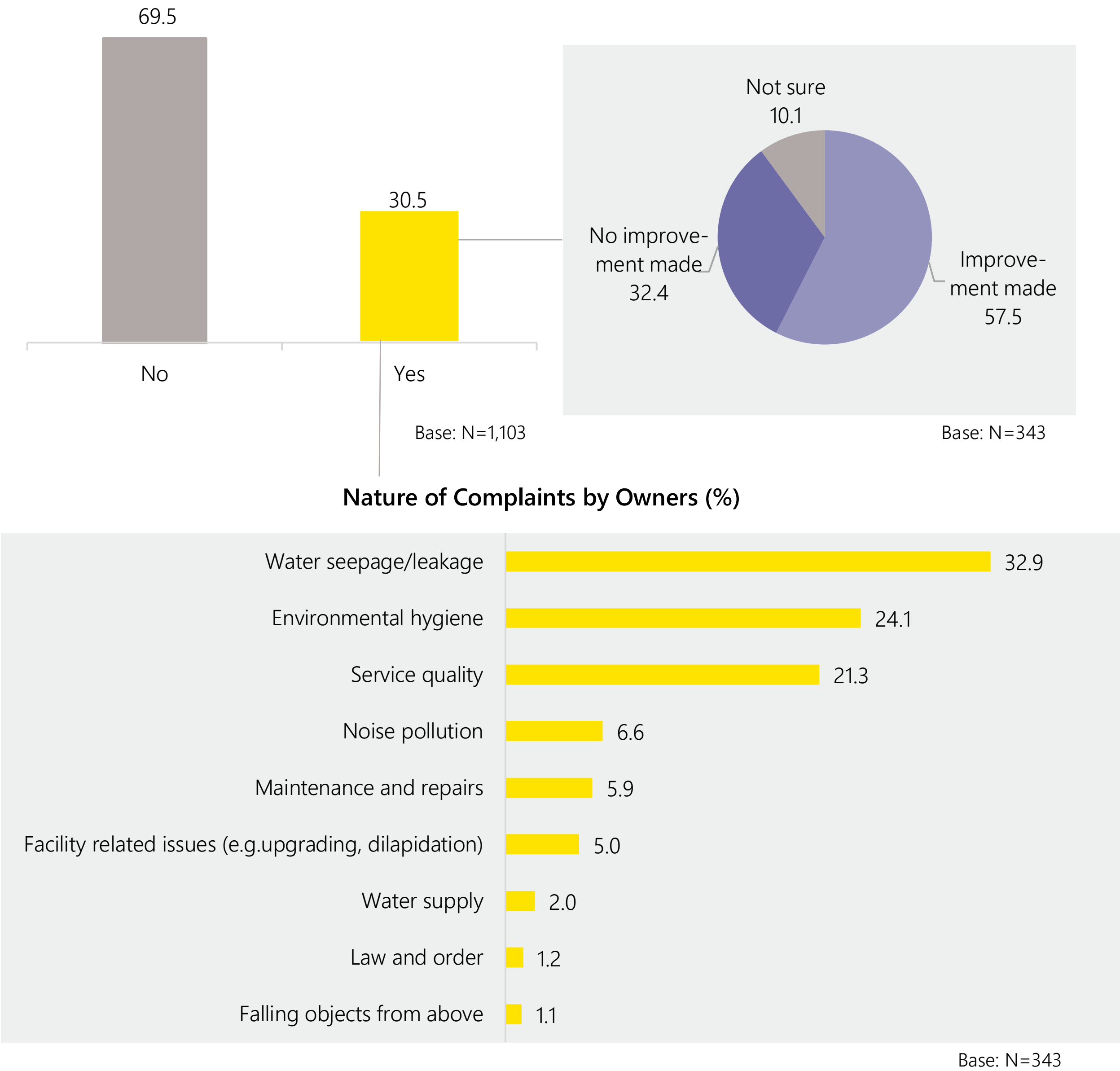
Base: N=22, multiple answers allowed

VII. Complaints and Communications

Complaints Lodged by Owners

When asked about whether they had ever reflected opinions or complained to their PMCs about property management services, only 30.5% of the respondents had done so. Among them, 57.5% indicated that the PMCs had made improvements subsequently (Chart 41). The top three issues they reflected were "water seepage or leakage" (32.9%), "environmental hygiene" (24.1%) and "service quality" (21.3%). The remaining problems (e.g. noise pollution, maintenance and repairs issues) ranged from 1.1% to 6.6% of the total complaints.

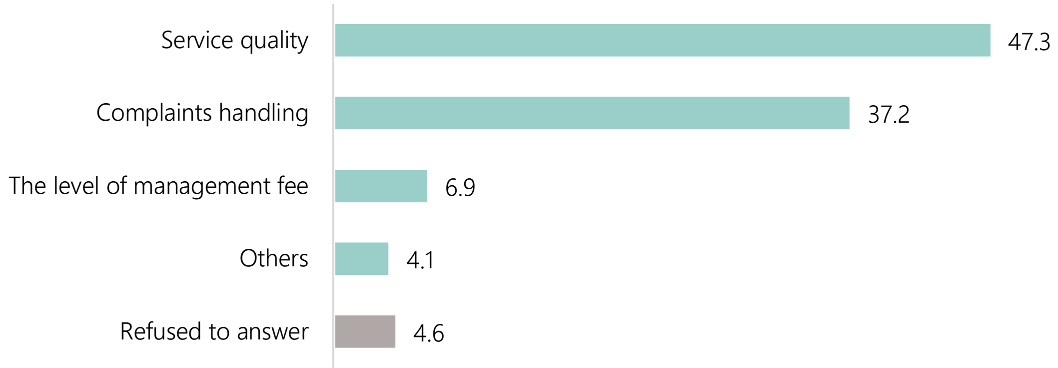
Chart 41: Whether Owners Had Ever Reflected Opinions or Lodged Complaints and if PMC Had Made Improvement after Receiving Complaints or Suggestions from Owners (%)



Actions Taken by OOs

63.0% of OOs had received complaints from owners against the PMCs of their buildings during the past two years. The number of complaints received ranged from 1 to 48 cases, with the mean being eight cases. The main categories were "service quality" (47.3%) and "complaints handling" (37.2%). Only 6.9% of the complaints were about the level of management fee (Chart 42).

Chart 42: Types of Complaints Received by OOs from Owners



Base: N=45, multiple answers allowed

Close to two-thirds of OOs (64.4%) strongly agreed or agreed with the statement that "PMCs were able to make improvements to the issues reflected by the OOs", while 28.4% of them were neutral about the statement, and only 7.2% strongly disagreed or disagreed with it.

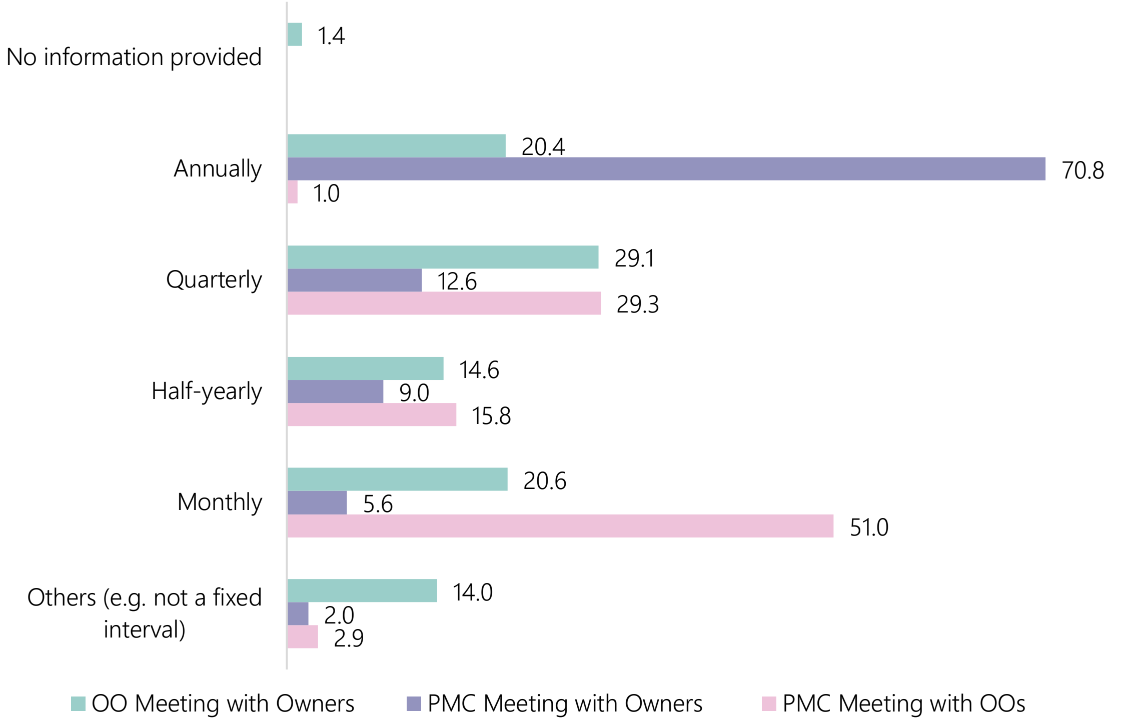
Collection of Views from Owners and OOs by OOs and by PMCs

A majority of the OOs (94.7%) collected views from owners in relation to property management services.

Most of the PMCs (72.3%) claimed that they consulted the owners or OOs about the justifiability of the management fee level regularly. Also, nearly all PMCs arranged meetings with owners (99%) and OOs (100%) to collect their views in relation to property management services regularly.

As shown in Chart 43 below, most PMCs met with owners on an annual basis (70.8%) and OOs on a monthly basis (51.0%). As for OOs' meetings with owners from monthly to annually, the frequency is highly varied among different buildings.

Chart 43: The Frequency of Collection of Views in Relation to Property Management Services from Owners and OOs (%)



Base: N= 91 (for OO meeting with owners),
Base: N= 21 (for PMC meeting with owners and OOs)

VIII. Choosing and Switching of PMCs

Factors of Choosing PMCs Among Owners, OOs and PMCs

Generally speaking, owners and OOs considered that the most important factor that influences their decisions in choosing PMCs was service quality; whereas PMCs perceived that the owners choose PMCs based on past cooperation experience as the most important factor.

Table 14: Five Highest-rated Factors of Choosing PMCs Among Owners, OOs and PMCs (1: the least important; 10: the most important)

Owners	OOs	PMCs
• Service quality (9.1) • Complaint handling (8.6) • Service scope (8.6) • Transparency of management fee (8.6) • Disclosure of information (8.5)	• Service quality (9.1) • Transparency of management fee (9) • Disclosure of information (9) • Complaint handling (8.9) • Communication channels (8.8)	• Past cooperation experience (8.7) • Complaint handling (8.6) • Service quality (8.4) • Service scope (8.3) • Transparency of management fee (8.1)

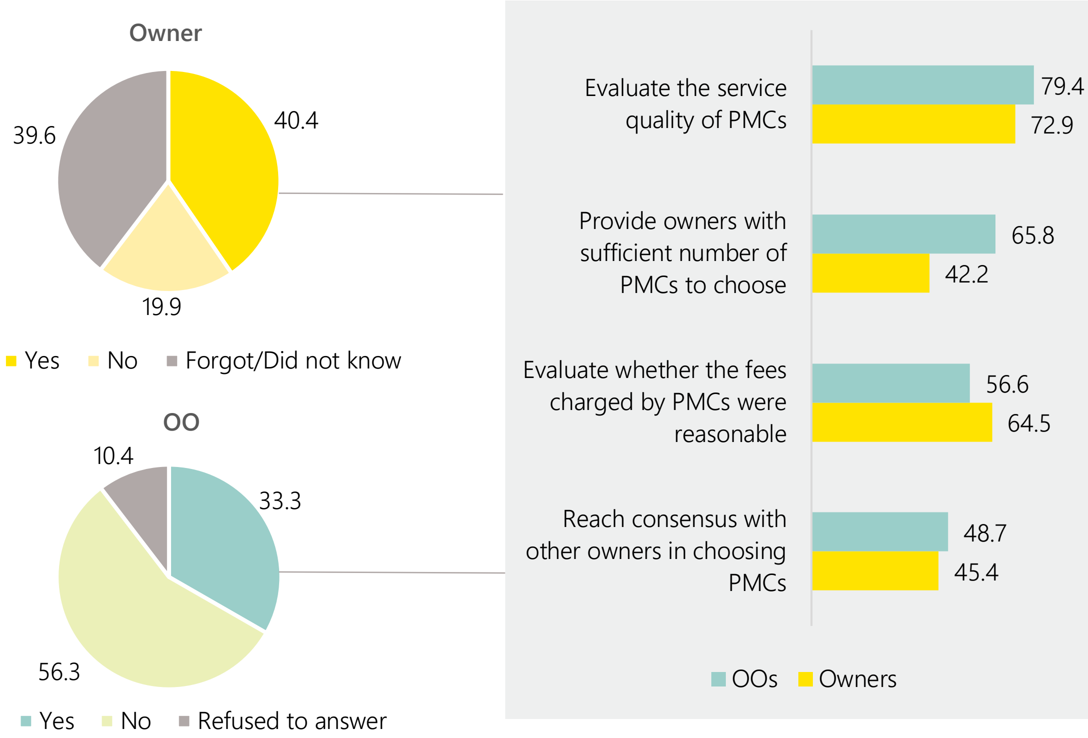
Base: N= 1,103 (Owners); N= 96 (OOs); N= 22 (PMCs)

Difficulties of Owners and OOs While Choosing PMCs

Among the owners who indicated that they had encountered difficulties while choosing PMCs (40.4%), a higher proportion of owners indicated that "it was difficult to evaluate the service quality of PMCs" (72.9%) and "it was difficult to evaluate whether the charges of PMCs were reasonable" (64.5%). It may be worth noting that about two-fifths of owners (39.6%) indicated that they "forgot/did not know" what the difficulties were in their buildings, possibly due to their low participation in the matter.

For the OOs who indicated that they had encountered difficulties while choosing PMCs (33.3%), a higher proportion of OOs indicated the difficulties to "evaluate the service quality of PMCs" (79.4%), "provide owners with sufficient number of PMCs to choose" (65.8%), and "evaluate whether the fees charged by PMCs were reasonable" (56.6%) (Chart 44).

Chart 44: Whether Owners and OOs Encountered Difficulties While Choosing PMCs



Base: N= 1,103 (Owners), N=96 (OOs)

Base: N= 419 (Owners), N=36 (OOs); multiple answers were allowed

Switching PMCs

(i) OOs

13.4% of the OOs once took action or planned to take action to switch PMCs for their buildings, in which more than half of those OOs convened meeting of owners and lodged complaints to their PMCs, while few of those OOs sought assistance from HAD (Chart 45). Yet, more than two-thirds (68.8%) of those OOs encountered difficulties in switching PMCs, with major issues like "it was difficult to reach consensus among owners" (46.5%), "difficult to assess PMCs' quality" (22.7%) and "insufficient owners of shares in aggregate" (21.1%) (Chart 46).

Chart 45: Actions Taken by OOs for Switching PMCs (%)

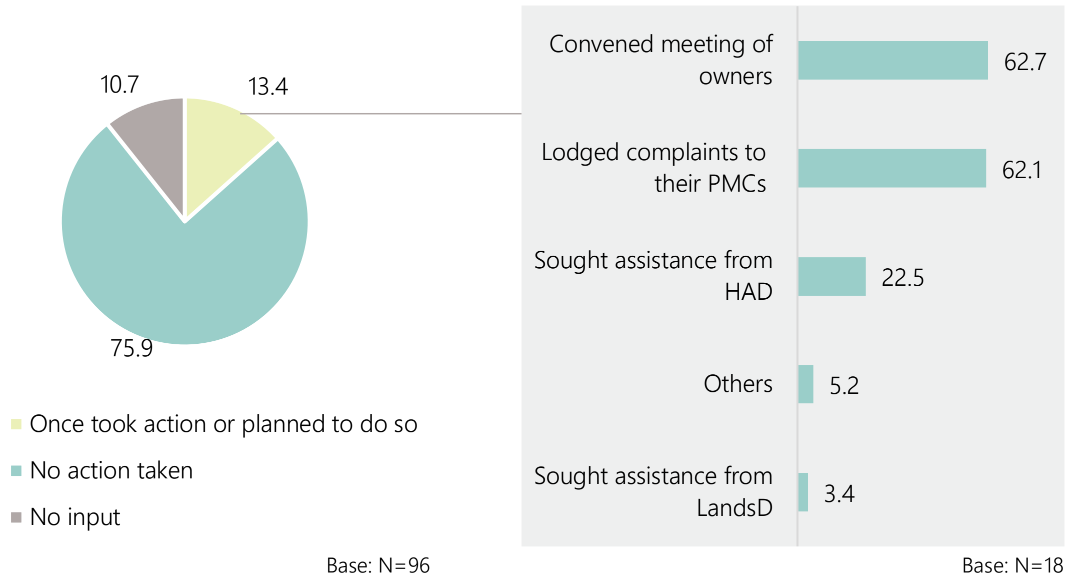
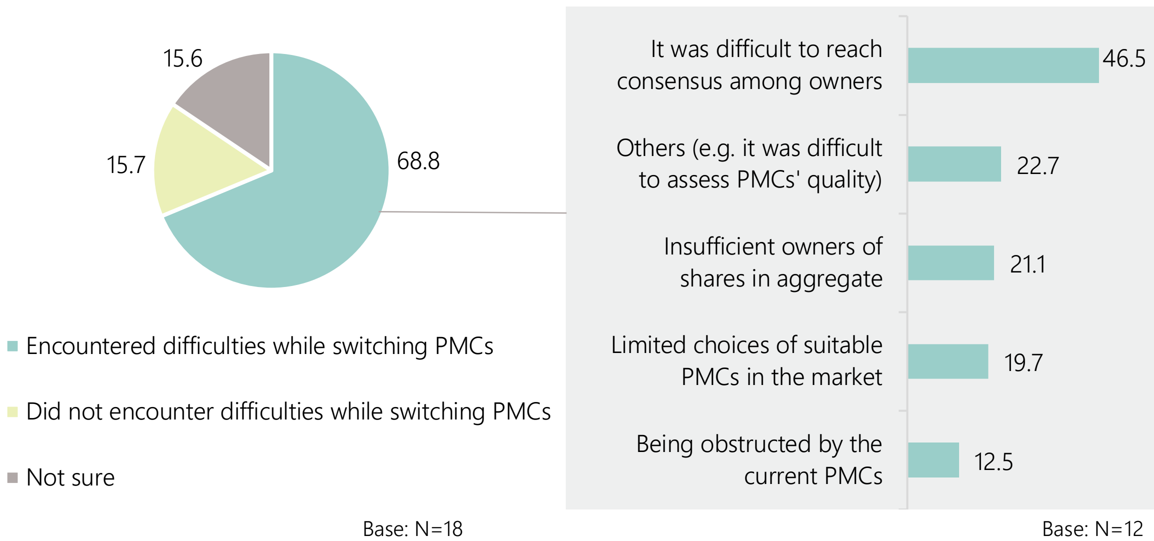


Chart 46: Difficulties Experienced by OOs for Switching PMCs (%)



(ii) Owners

More than half of the respondent owners indicated that they had never tried to switch the PMCs of their buildings (52.3%), while 25.1% had tried to do so and the rest 22.6% was not sure about that. Among the owners who had tried to switch the PMCs of their buildings, 46.5% stated that they "did not realise the reason(s) of switching PMCs", while the rest of them stated that it was due to a discontentment with the service quality of the current PMC (e.g. sloppy accounting records, overbudget/delay of maintenance projects) (30.3%), end of contract with the previous PMC (12.8%) and the management fee was expensive (5.7%).

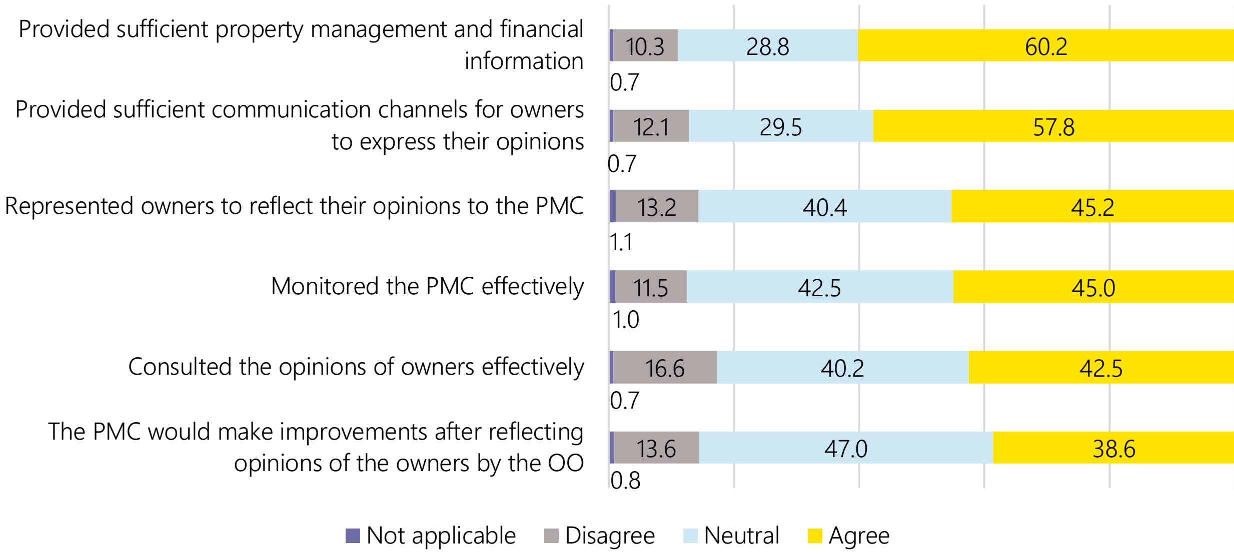
On the other hand, some owners from the in-depth interviews expressed that they did not have the ability to choose PMCs, since "the PMCs are the subsidiary company of the developers" and that they did not know how to choose PMCs, as there was no information on the performance of the PMCs.

IX. Overall Views of Owners, OOs and PMCs

Performance of OOs

More than half of the respondent owners tended to agree that their OOs "provided sufficient property management and financial information" (60.2%) and "provided sufficient communication channels for owners to express their opinions" (57.8%). Some agreed that their OOs had "represented owners to reflect their opinions to the PMC" (45.2%), "monitored the PMC effectively" (45.0%), and "consulted the opinions of owners effectively" (42.5%). A relatively higher proportion of them (47.0%) were neutral towards the statement that "the PMC would make improvements after reflecting opinions of the owners by the OO" (Chart 47).

Chart 47: Opinions of Owners towards OOs

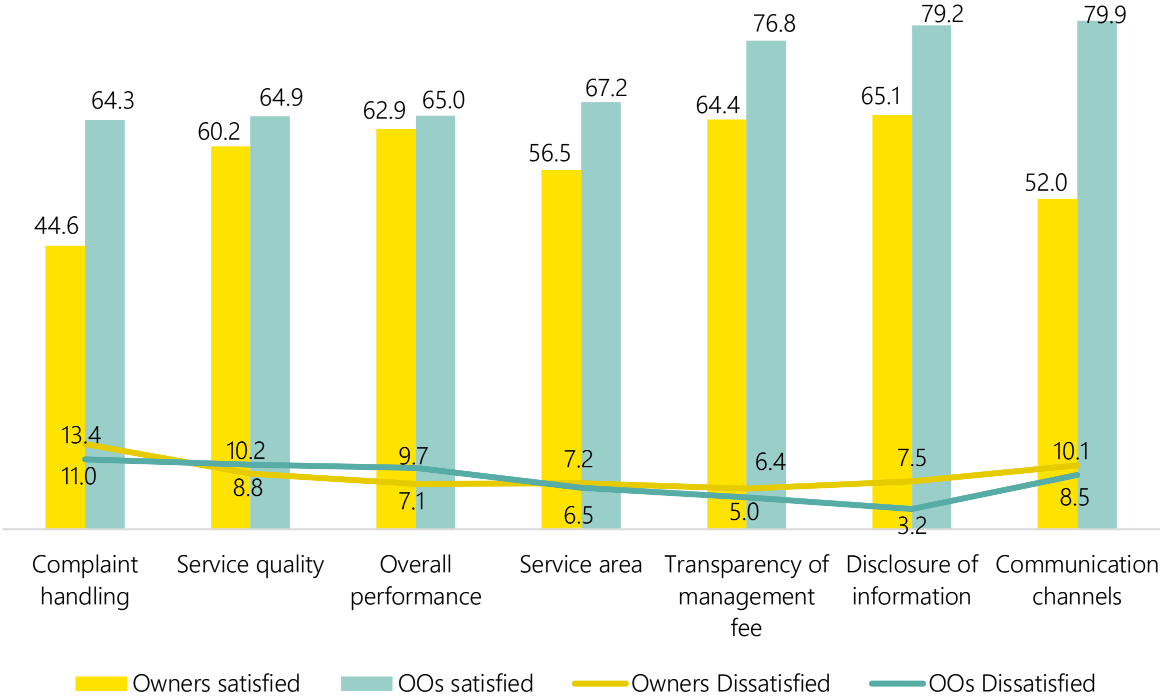


Base: N= 1,103

Owners' and OOs' Levels of Satisfaction of PMCs

Possibly due to the frequent encounters, the survey findings show that OOs tended to be more satisfied with their PMCs than owners in various aspects. For example, only less than to about half of the owners were satisfied with the performance of PMC in complaint handling (44.6%) and communication channels (52.0%); whereas over 60% of OOs were satisfied with the PMC in these regards, with 64.3% and 79.9% respectively. Other than the above, larger gaps between the satisfaction of owners and OOs in aspects like transparency of management fee (64.4% for owners and 76.8% for OOs), and disclosure of information (65.1% for owners and 79.2% for OOs) were observed. Difference in the levels of satisfaction between owners and OOs indicates that the frequency and quality of communication with PMC would affect the overall satisfaction as a result (Chart 48).

Chart 48: Owners and OOs Who Were Satisfied and Dissatisfied with the Performance of PMC by Various Aspects (%)



Base: N= 1,103 (Owners), N=96 (OOs)

Other Common Issues Among Owners, OOs and PMCs

(i) Owners' Opinions

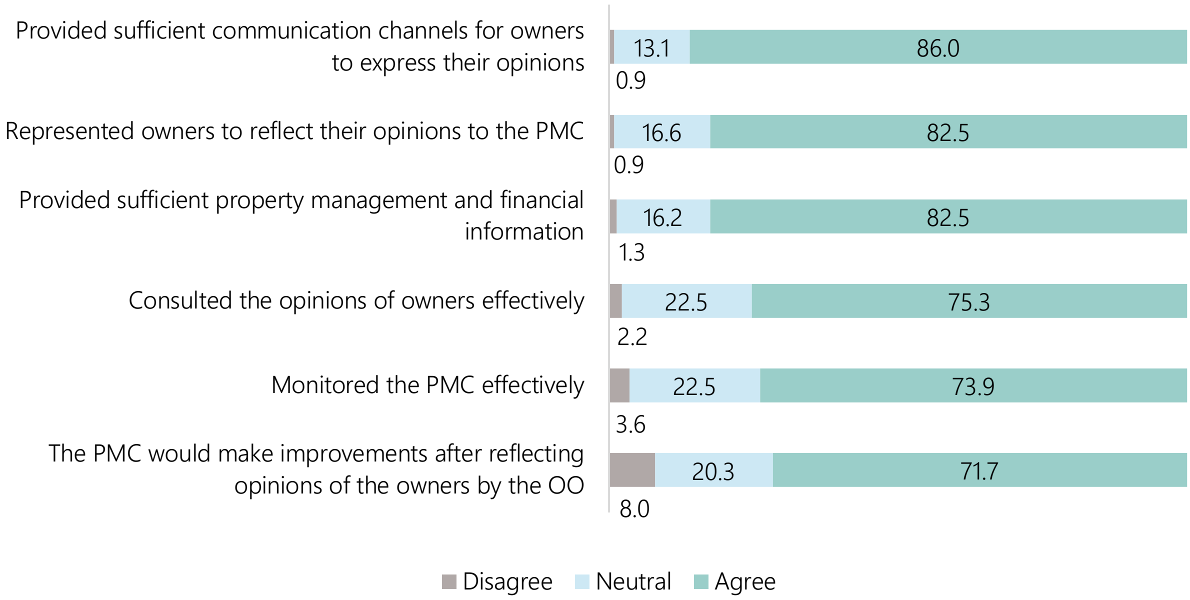
The owners opined that there were several common problems in some OOs and PMCs. One of the quoted examples from the in-depth interviews was that the personnel of OOs or PMCs sometimes ignored owners' opinions and complaints and hence might weaken owners' influence on property management matters. In this regard, when the interviewed owners were further asked to provide suggestions for the improvements of their OOs and PMCs, the following aspects were mentioned:

- Strengthening the communication and complaint channels between owners and OOs or PMCs;
- Lowering the management fee level and enhancing the transparency of their management; and
- Improving the management of their buildings (e.g. hygiene problems).

(ii) OOs' Opinions

Most surveyed OOs agreed that they were capable in certain aspects of building management such as "provided sufficient communication channels for owners to express their opinions" (86%) and "provided sufficient property management and financial information (82.5%). A high proportion of OOs (71.7%) also agreed that "the PMC would make improvements after reflecting opinions of the owners by the OO" (Chart 49).

Chart 49: OOs' Self-evaluation of their Duties in Relation to the Management of the Buildings (%)



Base: N=96

When asked about the operational issues encountered, most OOs had no opinion (67.0%). For those which encountered issues, more OOs stated the biggest issue was lack of owners to join the OO/insufficient members to attend the meetings (17.8%), followed by insufficient funding for operation (4.4%), lack of owners' understanding on the difficulties in property management (1.5%), being threatened by triad (1.5%), owners not caring about the property management matters (1.4%), and major owner took the decision-making role (1.4%) (Chart 50).

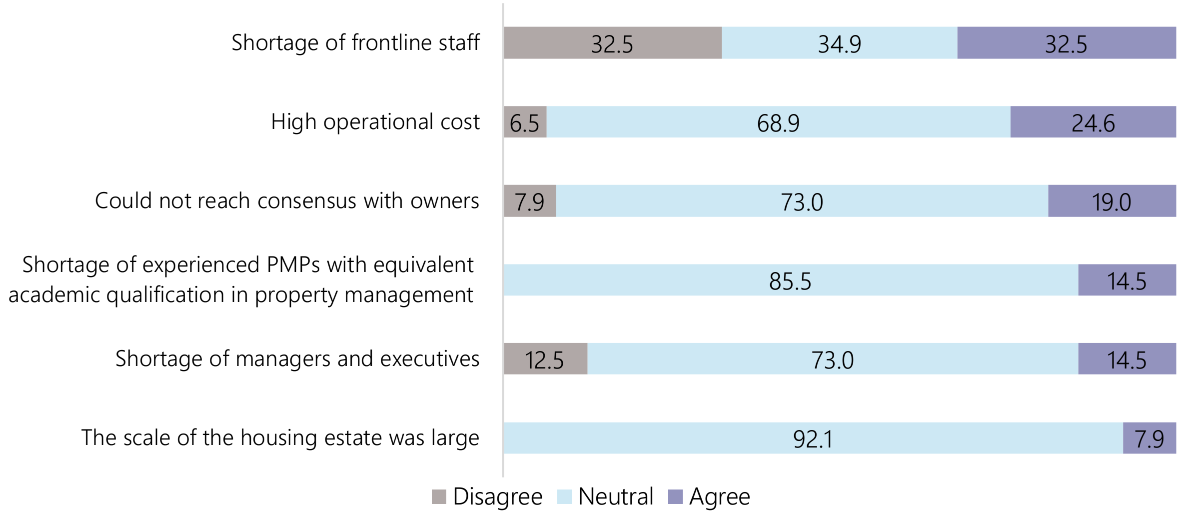
Chart 50: Issues Encountered by OOs in their Operations (%)

Base: N=96

(iii) PMCs' Opinions

When PMCs were asked about the operational difficulties encountered, most of the responses were "Neutral", from close to 70% – over 90%; 32.5% of the PMCs found "shortage of frontline staff" as having an adverse impact on their operations, whilst another 32.5% did not have such a problem (Chart 51).

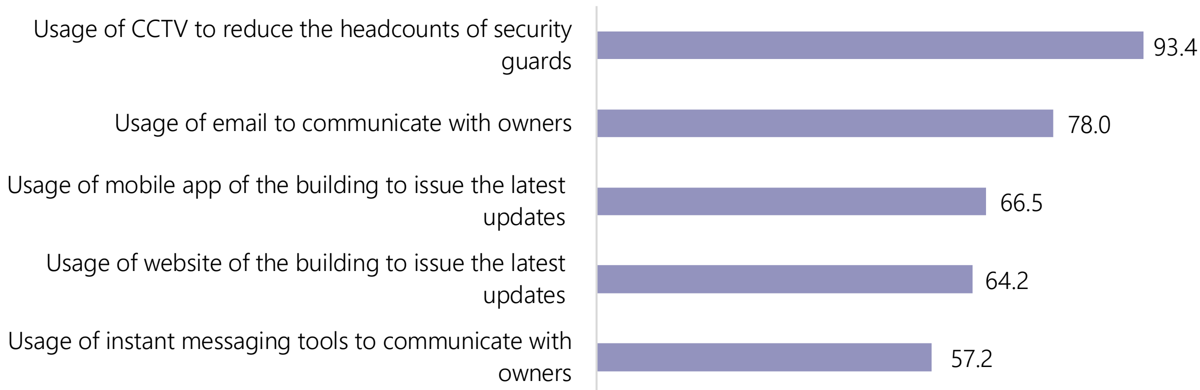
Chart 51: Difficulties Encountered by PMC in Their Operations (%)



Base: N=22

With regard to whether there was room for improvement in their operations, PMCs indicated in the in-depth interviews that the usage of technology to automate labour-intensive tasks might enhance work efficiency and reduce manpower cost. A similar question was asked in the survey where most PMCs indicated they had devoted resources in the "usage of CCTV to reduce the headcounts of security guards" (93.4%), followed by "usage of email to communicate with owners" (78.0%) and "usage of the mobile app of the building to issue the latest updates" (66.5%), to enhance the efficiency of their services (Chart 52).

Chart 52: Means to Enhance Work Efficiency of PMCs



Base: N=22, multiple answers allowed

The major challenges encountered by the PMCs as reflected in the in-depth interviews were as follows:

- Difficult to maintain the service quality for the buildings under several limitations such as the difficulty in hiring security guards and raising management fee among the elderly owners in older buildings;
- Difficult to mediate the disputes between owners about their private properties as some claimed the PMCs were only responsible for the common parts; and
- OOs with limited legal knowledge could not make pragmatic decisions for their buildings.

Overall Views Towards the Property Management Industry

(1) Opinions of Owners and OOs

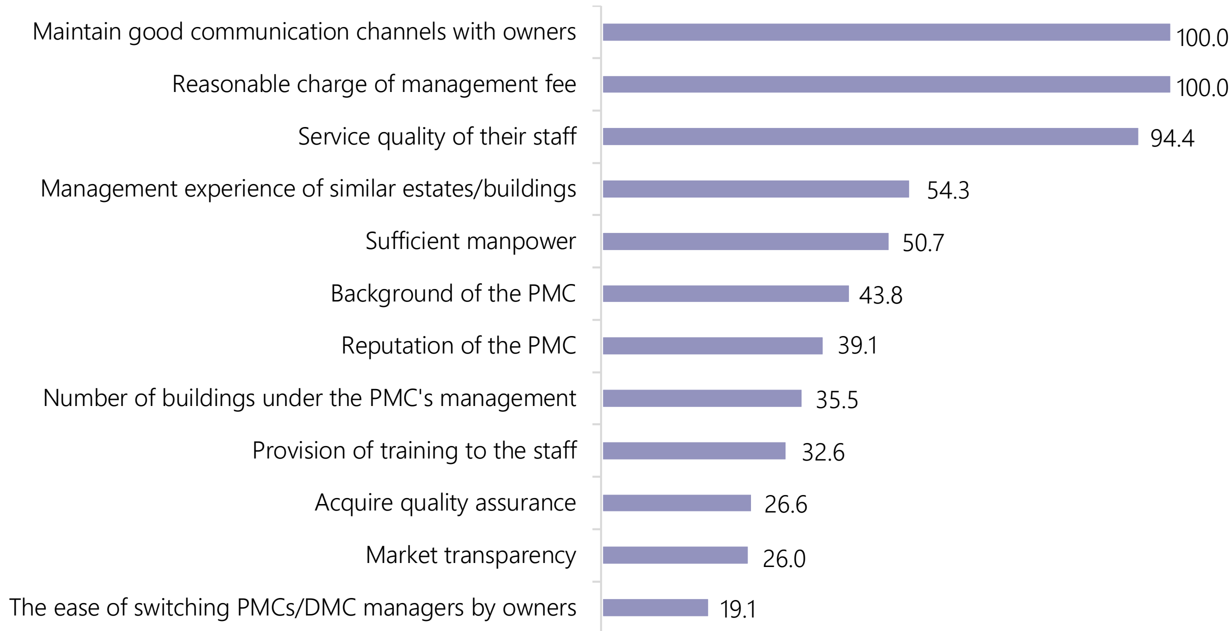
Owners and OOs during the in-depth interviews shared a common opinion that there was room for reducing management fee level and enhancing the fee transparency. However, no further information was provided as to the types of fees and the amount of reduction referred to.

Besides, the owners and OOs mentioned that the lack of information (e.g. the fee levels, service scopes) on PMCs in the market has hindered owners or OOs in comparing the services of different PMCs. Some OOs suggested establishing a grading system for the public's evaluation of PMCs' quality of service. They were of the view that the Government should monitor the service quality of PMCs, especially for buildings without OCs which might have less bargaining power over building management matters.

(2) Opinions of PMCs

Despite the fact that most PMCs (91.5% of the 22 PMCs under surveyed) considered that market is highly matured, there were still factors which affected their competitiveness in the market. All the PMCs agreed that ability to "maintain good communication channels with owners" and "reasonable charge of management fee" affected their competitiveness the most, followed by "service quality of their staff" (94.4%) (Chart 53). However, it appeared that the ease of switching PMCs/DMC managers (19.1%) was not a concern to PMCs in competing for building management contracts.

Chart 53: Factors Affecting the Competitiveness of PMCs (%)



Base: N=22, multiple answers allowed

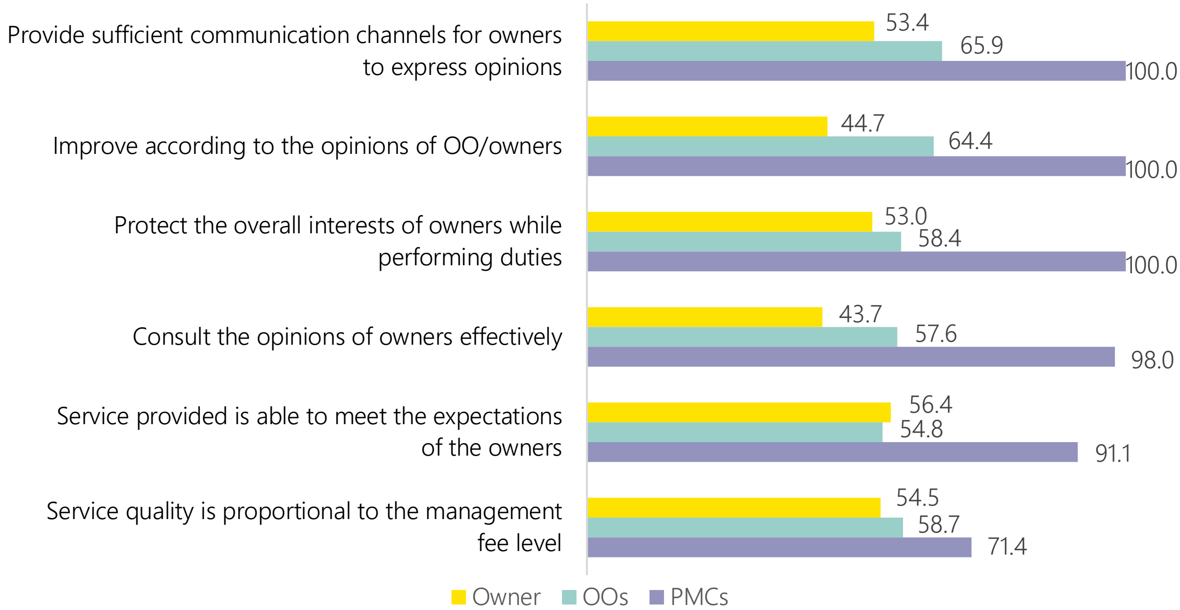
From the in-depth interviews with PMCs, it was revealed that some PMCs lowered their price to secure management contracts of buildings and thus caused degradation in the service quality of the industry. The most extreme case was a PMC which assigned only one employee to manage 10 to 20 blocks of building at the same time.

It is worth noting that there was possibly a mismatch of service expectation from the demand and supply perspectives. Findings from owners' opinions clearly stated that they considered that enhancing "market transparency" is necessary in view of the difficulty in evaluating PMCs' service quality/fees, limited choice in the market; whereas the PMCs considered this to have the least impact on their competitiveness.

(3) Opinions of Owners, OOs and PMCs on PMCs' Performance

It may be of interest to note that the PMCs in general were more satisfied with their performance in various aspects as compared with the views of owners and OOs. The gaps between PMCs, OOs and owners were much wider for other aspects like "protect the overall interests of owners while performing duties" (100.0% for PMCs, 53.0% for owners and 58.4% for OOs), "improve according to the opinion of OO/owners" (100.0%, 44.7% and 64.4%), "provide sufficient communication channels for owners to express opinions (100.0%, 53.4% and 65.9%), "consult the opinion of owners effectively" (98.0%, 43.7% and 57.6%) and "service provided was able to meet the expectations of the owners" (91.1%, 56.4% and 54.8%). This indicates that expectations among the PMCs are not quite aligned with owners and OOs (Chart 54).

Chart 54: Percentage of Owners, OOs and PMCs Agreed with Statements Related to the Performance of PMCs (%)



Base: N=1,103 (Owners); N=96 (OOs); N=22 (PMCs)

Diverging Views and Challenges Faced by Property Management Companies

Owners

Challenges

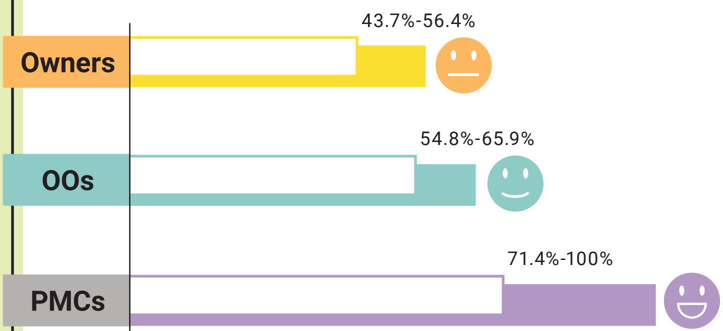
- **No time, no knowledge to participate in property management matters,** especially at the owners' meetings.
- **Lack of understanding** on related regulations.
- **Owners' opinions and complaints** on property management-related matters **were sometimes ignored**.

Owners' organisations

Challenges

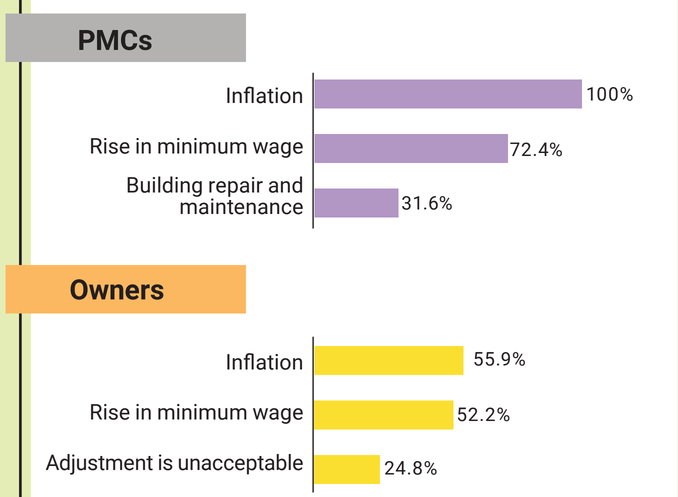
- **Lack of participation of owners** in OOs' and owners' meetings.
- **Difficulty in reaching consensus among owners** on property management-related matters.
- **Lack of market information** has limited their choice of PMCs.

1. Is PMCs' performance satisfactory in different aspects*?



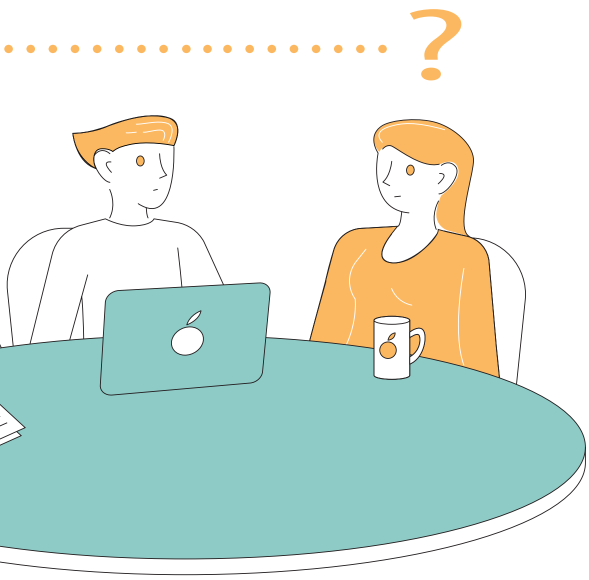
* Examples:
- Protect the overall interests of owners.
- Improve according to the opinion of OO/owners.
- Consult the opinion of owners effectively.
- Service provided was able to meet the owners' expectations.

2. Key reasons for management fee adjustments



Owners, Owners' Organisations and

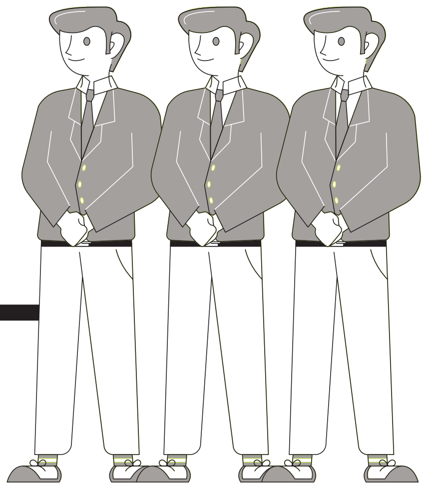
(OOs)



Property management companies (PMCs)

Challenges

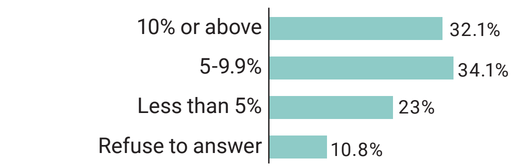
- **Difficulty in maintaining the service quality** due to shortage of frontline staff.
- **OOs with limited legal knowledge** could not make pragmatic decisions.
- **Difficulty in mediating disputes** between owners which are unrelated to common parts.



3. Actual vs acceptable rate of adjustment

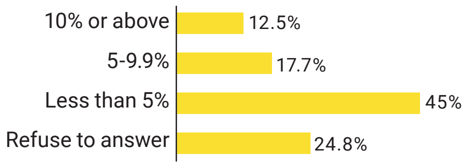
Provided by OOs

Actual rate of last adjustment



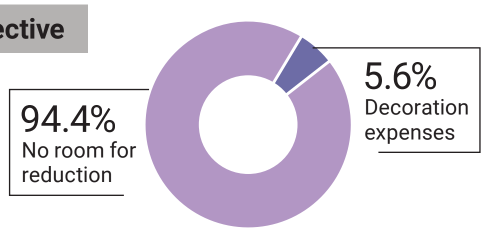
Owners

Acceptable rate of adjustment

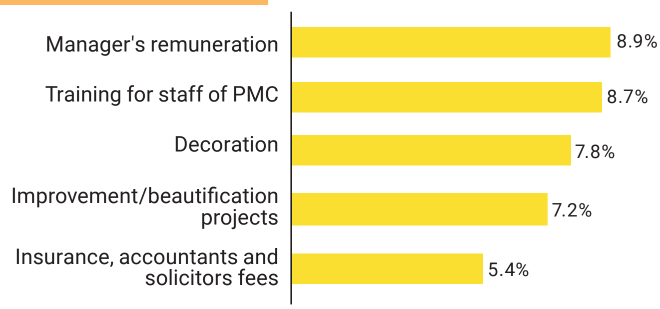


4. Reducible expenses

PMCs' perspective



Owners' perspective



4.4 Summary

This Chapter outlines the different standpoints and voices of owners, OOs and PMCs in relation to property management fee matters in Hong Kong. It is observed that owners and OOs differ with PMCs on the satisfactory level of PMCs' performance. Such differences may well form the basis for misunderstandings and disputes between these parties.

Owners in general lack knowledge on property management matters while, at the same time, are passive in participating in property management matters. Yet, property management requires the collective effort of owners to bring about a positive impact. The unwillingness of owners to join OOs to manage the property, and insufficient voting by owners in owners' meetings posed the greatest challenges for OOs when managing the property. Owners' active participation in property matters is essential to facilitate better communication between the parties and to ensure proper management of the property.

On the other hand, response rates of PMCs in the survey were low and many of them refused to answer finance-related questions which they might consider sensitive. Meanwhile, owners and OOs faced various difficulties when appointing new property managers such as accessing market information on service quality, charge levels, as well as the available list of PMCs. These findings point to a low level of transparency of the property management market. As an important step to bridge the gap, transparency and availability of information to owners and OOs require enhancement.

The survey and in-depth interview findings reflect that more efforts from different parties are necessary, so as to remove the hurdles in the market and to promote a healthy and informed market environment.

Unique Conveyancing System in Hong Kong and A Review on Building Management in Five Selected Markets

5.1 Introduction

This Chapter presents the unique conveyancing system of ownership and possession in multi-owned buildings in Hong Kong and a review of building management in selected markets. In carrying out the review, the Council aimed to find markets meeting the following criteria like Hong Kong, including (i) where multi-storey buildings are held under co-ownership, with each owner holding undivided shares in the building as tenant-in-common with each other; and (ii) where the deed of mutual covenant (DMC) of a building marks out which parts of the building are to be exclusively used, enjoyed and possessed by which co-owners. Other factors such as their geographical proximity or their similarities to Hong Kong in terms of legal systems and economic situation were also considered. As a result, five selected markets, namely Victoria of Australia,[87] Mainland China (the Mainland) or Shenzhen of the Mainland,[88] Singapore, Taiwan, and the United Kingdom (UK) have been covered.

Noting that each market has its distinctive characteristics, the review is not meant for direct comparison of markets but to serve as learnings on their legislative approaches and administrative measures, so as to draw insights for improving the system in Hong Kong. Review of information across all the selected markets was not always possible owing to a paucity of publicly available information in a consistent manner. Nevertheless, their market structure, regulatory regimes, consumer protection measures and major issues of concern were obtained from the respective authorities (see Section 5.3) in these markets. The Council also conducted further desktop research to keep abreast of their latest development. Table 15 at the end of the Chapter provides an overall review of the framework for multiple ownership property management in the selected markets.

[87] Victoria was used as the primary state for reference in Chapter 5 of the Report. For specific sections i.e. the charge basis of property management fees and the requirements for the establishment of a maintenance plan, New South Wales and Queensland of Australia have also been cited in Chapter 5.

[88] Shenzhen was used as a reference in scopes when its legal regulations were found more appropriate than the national versions from the Mainland for comparison with other selected markets.

5.2 Hong Kong's Unique Land Holding and Conveyancing System

Under the Basic Law, all land in Hong Kong shall be "State property" and the Government is responsible for its management, use and development, and lease or grant to individuals, legal persons or organisations for use or development. When a Government lessee wishes to use the land to construct a multi-storey building, the lot is to be divided by way of allocation of undivided shares. Generally, the shareholding of undivided shares is described in a DMC. The undivided shares are assigned to each purchaser as co-owner with all other co-owners as tenants-in-common of the Government lease.[89] In other words, a person who considers himself or herself the "owner of a flat" is actually a "tenant in common" of the whole building. When he or she wishes to sell his or her flat, he or she does so by selling his or her undivided shares.

There are other unique features in Hong Kong's land and property related arrangements. The Building Management Ordinance (Cap. 344) (BMO) provides a legal framework to facilitate the property management in multi-storey buildings, while the DMC of a building governs the rights, interests and obligations of its owners. More details can be found in Appendix 1 and Chapter 2 of this Report.

5.3 Building Management in Selected Markets

Although Hong Kong's land holding and conveyancing system is unique, it is beneficial to consider how other markets resolve common problems related to property management fees.

Australia is the pioneer in strata titles or condominium type of ownership. Many of its states have spent years or so researching into measures and solutions that are designed to tackle the issues and problems found in strata titles form of ownership. In addition to Victoria as the primary state for reference, New South Wales and Queensland of Australia have been cited for the requirements for the establishment of a maintenance plan. The various states' provision of the obligations of developers and managers over the life cycle of the strata development in statutes, rather than reliance on common laws, serves to enhance protection of owners.

It was also noted that, in England and Wales in the UK, commonhold was introduced as a new way of owning properties through communal facilities in 2002.[90] However, commonhold did not take off well in England and Wales. Instead, systems similar to commonhold were already in existence and working well in other parts of the world, e.g. condominium in Canada and the United States, strata in Australia and Singapore, residential estate (住宅小區) in the Mainland, and apartment building (公寓大廈) in Taiwan.

I. Regulatory Framework

Laws and Authorities

In all the five selected markets, there are property management laws for buildings where multiple ownership exists and management of common area is required. For instance, the Owners Corporation Act 2006 in Victoria governs the role of owners' corporations (OCs). In the Mainland, Shenzhen is the pioneer and promoter of the property management industry. It promulgated the country's first local property management regulation, the Shenzhen Special

[89] Judith Sihombing and Michael Wilkinson. (2023) Hong Kong Conveyancing Law Vol. 1. Chapter III Introduction.
[90] Commonhold and Leasehold Reform Act 2002.

Economic Zone Property Management Regulations in 1994 (深圳經濟特區物業管理條例 1994). Shenzhen's property management practice formed the domestic property management model with many pioneering features and became a reference for the country, and contributed to the consolidation stage of the industry, during which the first nation-wide regulation in property management in the Mainland (i.e. Property Management Regulations 2003 (物業管理條例 2003) was launched. Both regulations lay down the procedures for appointment of property management companies (PMCs) in accordance with property service contracts. The Building Maintenance and Strata Management Act (BMSMA) 1982[91] in Singapore empowers each property's management corporation (i.e. a type of owners' organisation (OO)) to control and manage the common property. In Taiwan, the Condominium Administration Act Building Administration Division (公寓大廈管理條例) (1995) was formulated to strengthen the management and maintenance of apartment buildings with focus on the rights and obligations of residents, management organisations and management service providers; and the Landlord and Tenant Act 1954 in the UK sets out legal rights and responsibilities of landlords and tenants.

In addition, there are regulatory authorities for the property management laws in these selected markets. For instance, there is the Consumer Affairs Victoria in Victoria; the Shenzhen Housing and Construction Bureau in Shenzhen, as well as the State Council of the People's Republic of China in the Mainland; the Building and Construction Authority in Singapore; the Ministry of the Interior in Taiwan; and the Department for Levelling Up, Housing and Communities (formerly the Ministry for Housing, Communities and Local Government) in the UK.

Licensing Regimes

In Victoria and Taiwan, a licensing/registration regime is in place to regulate PMCs and property management practitioner (PMPs), whereas such an official regime is not in place in other selected markets:

- In Victoria, an eligible person or incorporation must register with the Business Licensing Authority under the Victorian Government in order to carry out functions as a property manager of an OC.[92] Registrants must hold professional indemnity insurance with a minimum coverage of AUD2 million (equivalent to HK$10.8 million) and renew registration annually to continue the business.

- In Taiwan, a licensing regime under the Ministry of the Interior governs the minimum capital requirements of PMCs (i.e. TWD10 million, equivalent to HK$2.6 million) and the education and technical qualifications of PMPs.[93] The license for PMCs must be renewed every three years whilst for PMPs every five years.

Guidelines, Model Rules and Standard Contract

In Victoria, the Mainland, Singapore, Taiwan, and the UK, detailed guidelines have been published based on the relevant legislations to provide guidance on property management matters.

[91] Prior to 2005, it was known as Buildings and Common Property (Maintenance and Management) Act.

[92] In Victoria, there are two types of property managers, namely professional and volunteer managers. A professional manager must be registered and have professional indemnity insurance. For volunteer managers, they do not have to be registered or insured.

[93] PMPs are categorised into managerial staff and technical staff. A PMC should have at least four managerial staff and four technical staff. Also, apartment building management service staff should i) participate in the training organised by competent authority and pass test for accreditation certificate; ii) provide proof of training for over 20 hours in last five years when renewing accreditation certificate.

In Victoria, the authority provides some model rules[94] for OCs.

In the Mainland, different cities have issued model contracts of owners and model management contracts according to the local circumstances. For instance, in Beijing, Management Protocol of Owners in Residential Areas of Beijing Municipality (Model Text) came into force in September 2022 to guide owners over their rights and obligations over the use and maintenance of the property.[95] In Shenzhen, the Property Service Contract of Shenzhen Municipality (Model Text) was revised and published in 2020 to regulate property management in Shenzhen.[96]

While in Singapore, a set of Strata Management Guides[97] are published to provide a more in-depth focus on key areas of the strata legislations and share examples of good practices on strata management.

In Taiwan, the authority issued a template of standard contract for reference purpose.[98]

In England of the UK, the article of association of a Right to Manage Company (RTMCo) must take the form of and include the provisions prescribed in the Schedule of the RTM Companies (Model Articles) (England) Regulations 2009.[99]

Amendment of DMC

DMC is known as "plan of a subdivision" in Victoria; "terms of the lease" in the UK;[100] "by-laws" in Singapore;[101] "規約" in Taiwan;[102] and "管理規約" in the Mainland.[103] For convenience and consistency, they are referred to as DMC in the following parts.

In Victoria,[104] similar to Hong Kong, a unanimous resolution of owners is required to amend DMC terms and conditions.

In Shenzhen and the Mainland in general, amendment needs to be passed in an OC meeting participated by owners of more than half of the exclusive parts in aggregate of the property area as well as more than half in aggregate of the numbers of owners.

In Singapore, a management corporation (akin to OC in Hong Kong) pursuant to a special resolution may make by-laws, or amend, add to or repeal any by-laws.[105] Different types of resolutions are required depending on the importance of the matters to be decided. For matter of higher importance, more votes or even owners' consensus are needed. For example, to

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94 Owners Corporations Regulations 2018. Model Rules for Owners Corporations.

95 Beijing Municipal Commission of Housing and Urban-Rural Development. (2022) 北京市住宅區業主管理規約（示範文本）.

96 Housing and Construction Bureau of Shenzhen Municipality. (2020) 深圳市物業服務合同（示範文本）.

97 Building Construction Authority. (2019, 2022) Management Corporation Strata Title (MCST) – Strata Management Guides.

98 公寓大廈規約範本.

99 The RTM Companies (Model Articles) (England) Regulations 2009. Regulation 2 and Schedule.

100 Shelter England. (2022) Terms of a lease agreement.

101 Building Construction Authority. (2005) Strata Living in Singapore – A General Guide. By-laws are the set of by-laws in the BMSMA that every management corporation (MC) is required to comply with (the Prescribed By-laws). In addition to the Prescribed By-laws, a MC can make by-laws that are not in conflict with the Prescribed By-laws or any laws in Singapore.

102 Ministry of Culture. (2010) 公寓大廈社區經營：認識社區規約. 社區規約是公寓大廈管理組織成立與運作的依據，也是規範住戶權利義務關係的重要依據。

103 管理規約是全體區分所有權人就建築物與基地之管理、使用及所有關係，以書面形式所為之自治規則。管理規約在香港被稱為樓宇公契。

104 Subdivision Act 1988. Sections 32 and 33.

105 BMSMA. Sections 32 and 33.

make by-law to confer on subsidiary proprietor the exclusive use of common property for a period that exceeds three years, at least 90% of the share value of all valid votes cast at the meeting is required.

II. Property Management Fees and Related Parties

Property Management Fees

(1) Composition and Scope

The composition of property management fees for the selected markets is more or less the same as follows:

- Costs to be incurred on a regular basis to maintain the common parts of the development are put into a general fund;
- Costs to be incurred on a non-regular basis to maintain the common parts of the development are put into a contingency fund; and
- An amount of money which is set aside to cover any major maintenance work on the property needed in the future is put into a special fund.[106]

(2) Charge Basis

Similar to Hong Kong, in Singapore and Taiwan, property management fees are allocated on the basis of the shares allocated to the owners. In the other markets, namely, Queensland and Victoria, the UK and Shenzhen, different approaches and bases are adopted.

Australia

Queensland mandates two lot entitlement schedules, namely the contribution schedule (akin to the schedule of management shares in Hong Kong) and the interest schedule (akin to the schedule of undivided shares). While in Victoria, a plan (akin to DMC) providing for the creation of an OC or for the merger of OCs must specify details of lot entitlement (akin to undivided shares) and lot liability (akin to management shares).

- **The Contribution Schedule (Queensland)**

  The contribution schedule lot entitlement determines the proportion of levies payable by a lot owner. The principles for deciding contribution schedule lot entitlements are the equality principle and the relativity principle. Lot entitlements must be equal under the equality principle (except to the extent that it is just and equitable for them not to be equal). For example, if there is a commercial community titles scheme where the owner of one lot uses more water or runs a more dangerous or higher risk activity than the other lot owners, it may be just and equitable for that lot to have a higher contribution schedule lot entitlement. Under the relativity principle, the relationship between the lots according to a number of factors must be taken into consideration, which include: (i) how the scheme is structured; (ii) the nature, features and characteristics of the lots; (iii) what the lots are used for; (iv) how each lot affects the costs of maintaining the common property; and (v) the market value of each lot.

[106] Special fund is called annual fees and special fees in Victoria; service and administration charge and sinking fund in the UK; management fund and sinking fund in Singapore; management fee and public fund (公共基金) in Taiwan; and property management fees and special maintenance fund (物業專項維修資金) in Shenzhen.

- ***The Interest Schedule (Queensland) and the Lot Entitlement (Victoria)***

  The interest schedule lot entitlement determines the lot owner's share of common property, their interest on termination of the body corporate, and the value of the lot for any particular tax.

  The principle for deciding interest schedule lot entitlements is the market value principle except to the extent that it is just and equitable not to reflect the market value. In Queensland, the community management statement[107] must state whether the market value principle applies and if not, the reason(s) why.[108] In Victoria, the plan that specifies details of lot entitlement must have the allocation based on the market value of the lot and the proportion that value bears to the total market value of the lots.

- ***Lot Liability (Victoria)***

  Lot liability in the plan must be allocated equally between the lots unless (i) there is a substantial size differences between the lots; or (ii) different lots have a different bearing on the consumption or use of common utilities or the cost of maintaining the common property; or (iii) the number of occupiers in each lot has a greater bearing on the consumption or use of the common utilities or the cost of maintaining the common property than the size of the lot.

  Annual fees must be set based on lot liability, but an OC may levy an additional annual fee[109] on a lot owner if (i) the OC has incurred additional costs arising from the use of the lot by the lot owner; and (ii) an annual fee set on the basis of the lot liability of the lot owner would not adequately take account of those additional costs. Any additional annual fees must be levied on the basis that the lot owner who benefits more from the use of the lot pays more. [110]

Shenzhen

In Shenzhen, the charge basis of property management fees is different between buildings that have and those that have not yet formed an OC. For buildings that have not yet formed an OC, the property management fees as in early stages are charged based on government-guided price (政府指導價) while market-regulated price (市場調節價)[111] is implemented for property with an OC. For property service fees subject to government-guided prices, the amount is negotiated and determined by the property construction unit (the developer) and the PMC selected by it in accordance with the "Guiding Standards" [112] and agreed with the property buyer in the house purchase contract. The highest charging levels stipulated in the "Guiding Standards" are RMB3.9 (equivalent to HK$4.4) per sq. m. per month for high-rise buildings and RMB1.3 (equivalent to HK$1.5) per sq. m. per month for multi-storey buildings.[113]

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[107] This is like a statutory disclosure statement which serves as a reference guide for living in a body corporate property.
[108] Queensland Government. (2018) Setting Lot Entitlements.
[109] Owners Corporations Act 2006. Section 23.
[110] The application of the benefit principle as an adjustment mechanism to levy annual fees was introduced in Victoria in late 2021. It requires an OC to identify prospective work, allocate an appropriate proportion of the annual fees to those work, and identify who will benefit more by those work and by how much.
[111] Market-regulated price refers to the price determined independently by the operator and formed through market competition.
[112] 深圳市發展和改革委員會. 關於印發我市住宅物業服務收費指導標準的通知.
[113] In the Mainland, multi-storey buildings (多層) refer to residential buildings with a total of four to six floors (including six floors), whereas high-rise buildings refer to residential buildings with a total of more than 12 floors.

Singapore

Similar to Hong Kong, Singapore allots share value to strata units based on floor area. However, there are some variations between two types of development.[114] For a single-use residential development, which is a wholly residential development, the share value allotted to strata units shall be based on floor area groupings of 50 m^2 interval in an ascending order as follows:

Floor Area (m^2)	Share value in Whole Number
50 and below	5
51 to 100	6
101 to 150	7
and so on	8+

For a mixed-use development, which comprises different user groups such as residential, shop, office, etc., allotment of share value is to be made based on floor area of the strata units and the use of weight factors for each type of strata units. The computation of weight factors for each user group is based on the share of the maintenance costs proportionate to the expected use or benefit each user group will derive from or the risk it will contribute to the common property. If there is income to be derived from the common property e.g. carpark fees, they could be considered in a similar manner like for expenses. Any of the following factors may be considered in determining the weight factors: (i) total area; (ii) common area; (iii) strata area; (iv) frequency of usage; (v) human traffic; and (vi) risk factor.

Taiwan

In Taiwan, section 10 of the Condominium Administration Act Building Administration Division states that the repair, management, and maintenance costs of the common parts shall be paid by public funds or shared by the owners in proportion to their share of the common parts.

The UK

In the UK, property management fees can be charged to owners if they are reasonable. The reasonableness test is case-specific but in general involves the following questions:

- Was it a reasonable decision to incur costs?
- Are the costs reasonable considering quality of work and/or services?
- Were the works necessary?[115]

(3) Establishment of Reserve Fund for Future Maintenance

The selected markets below require owners to set up a reserve fund for future repair and maintenance need of the properties. Of the five markets, Australia and Shenzhen have the budget and timeframe specified for the reserve fund for property maintenance purpose.

Australia

In New South Wales, an OC must establish a capital works fund and pay into it the contributions levied on and paid by owners. A plan of anticipated major expenditure to be met from the

[114] BMSMA. Guidelines for filing schedule of share values.
[115] The Leasehold Advisory Service. See https://www.lease-advice.org/files/2021/12/Service-Charges-Dispute-Resolution-Flowchart.pdf.

capital works fund for a 10-year period commencing on the first annual general meeting (AGM) of the OC has to be prepared. Besides, the OC may, by resolution at a general meeting, review, revise or replace the 10-year plan and must review the plan at least once every five years.[116]

In Queensland, a body corporate must prepare a sinking fund budget which must allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the sinking fund for the financial year, and also to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next nine years after the financial year.[117]

In Victoria, an OC falls within one of five tiers.[118] For property with larger number of occupier lots (i.e. Tier 1 or 2), their OCs must prepare and approve a maintenance plan for the property for which it is responsible, whereas for property with smaller number of occupier lots (i.e. from Tier 3 to 5), the OC may prepare and approve a maintenance plan for the property for which it is responsible on a voluntary basis, but it is not compulsory. The maintenance plan must set out various items including any major capital items anticipated to require repair and replacement within the next 10 years. An OC that has an approved maintenance plan must establish a maintenance fund in the name of the OC. If an OC has established a maintenance fund, "any part of the annual fees that is designated as being for the purpose of the approved maintenance plan", which are fees that are set by the OC to cover general administration, maintenance and repairs and insurance and other recurrent obligations to the OC, must be paid into that fund.[119]

Shenzhen

The Shenzhen Property Special Maintenance Fund Management Regulation 2020 (深圳市物業專項維修資金管理規定 2020) stipulates the set up and operation procedures of the fund.[120] The first-phase maintenance fee of the special maintenance fund account should be established by the construction unit (the developer) being 2% of the total cost of the construction and installation project of the property before initial registration of the property project. The owner shall, from the date of moving in, pay the day-to-day maintenance fee on a monthly basis. If the balance of the special property maintenance fund is less than 30% of the first-phase maintenance fee, the owners' committee shall prepare a proposal indicating a total amount to be raised, which then has to be approved in an owners' meeting by owners of more than two-thirds in aggregate of (i) the exclusive parts of the total area; and (ii) the total number of owners.

Taiwan

According to Article 18, Condominium Administration Act Building Administration Division (公寓大廈管理條例) (1995) , the building should set up a public fund[121] with sources of fund from (i) the developer who should pay a certain percentage of the project costs for the maintenance

[116] Strata Schemes Management Act 2015 No 50. Sections 74 and 80.
[117] Body Corporate and Community Management (Standard Module) Regulation 2020. Section 160.
[118] (i) A Tier 1 OC consists of more than 100 occupiable lots; (ii) A Tier 2 OC consists of 51 to 100 occupiable lots; (iii) A Tier 3 OC consists of 10 to 50 occupiable lots; (iv) A Tier 4 OC consists of three to nine occupiable lots; and (v) a Tier 5 OC is an OC for a 2-lot subdivision or a service-only OC.
[119] Owners Corporation Act 2006. Sections 7, 36, 37, 40 and 42.
[120] 深圳市物業專項維修資金管理規定. 第 8 及 13 條.
[121] 公寓大廈管理條例. Section 18.

of the building in the first year after obtaining the licence; and (ii) owners who decide the amount to be paid according to the resolution passed at owners' meeting.

OC and OC Committee

(1) Formation of OC and OC Committee

In four selected markets (Victoria, Singapore, Taiwan and the Mainland) an OC must be formed according to their respective regulatory requirements.

Australia, Singapore and Taiwan

In Victoria[122] and Singapore,[123] an OC is automatically formed when the plan of subdivision that contains how undivided shares are allocated is registered or applied for registration by the developers. In Victoria, an OC committee[124] or an elected OC chairperson for properties without OC committee can make decisions on all matters delegated to it by the OC. Similarly, in Singapore, section 53 of the BMSMA states that the elected members of a council of the OC is required to make decisions on behalf of the OC.

In Taiwan, either an OC needs to be formed by a certain number of owners, or an owners' representative must be elected amongst the owners to act as the key contact person, for the implementation of the owners' meeting resolutions and the management and maintenance of the building.

The Mainland

As a general guideline in the Mainland, when the area of the delivered exclusive part exceeds 50% of the total area of the property, a general meeting of owners under the guidance of the "street office" (i.e. administrative department of the district people's government) shall be convened to form the owners' association and elect an owner's committee of five to eleven members. If there is only one owner, or if the number of owners is small, all owners shall upon a unanimous consent jointly perform the duties of the owners' committee.[125]

(2) Financial Management of OC Committee

While the power and duties of OC committees vary, it is observed that financial management (e.g. keeping accounts and documents and preparing financial statement) is one of the core responsibilities of an OC and/or OC committee in Hong Kong and the five selected markets.

In Victoria,[126] and Shenzhen,[127] Singapore,[128] and Taiwan,[129] regulatory requirement is imposed to require OCs to keep financial records. In Singapore, records must be kept for not less than five years from the end of the financial year.

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[122] Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/housing/owners-corporations/buying-into-an-owners-corporation/what-is-an-owners-corporation.
[123] BMSMA. Section 24.
[124] Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/housing/owners-corporations/meetings-and-committees/committees.
[125] 國家住房和城鄉建設部業主大會和業主委員會指導規則.
[126] Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/housing/owners-corporations/finance-insurance-and-record-keeping/financial-management.
[127] 深圳經濟特區物業管理條例. 第 72 條.
[128] BMSMA. Section 48 (2).
[129] 公寓大廈管理條例. 第 36 (8) 條.

In addition to keeping records, preparation and auditing of the annual financial statements/records is required by law in Victoria,[130] Singapore,[131] and the UK (if RTMCo is formed),[132] with some exemptions.[133]

As for Shenzhen,[134] it should be noted that while other matters such as amendment of DMC requires the reaching of specific percentage thresholds in terms of number of owners or exclusive parts in aggregate of the property area, the auditing of annual financial statements/records operates differently, as the income and expense summary of the owners' funds should be audited if requested by 20% or more of total number of owners or owners with 20% or more of the total shares in aggregate.

Property Manager

A property manager, or a PMC, is usually employed to handle the day-to-day property management matters of the building.

(1) Entity In-charge before OC is Formed

In Shenzhen,[135] the in-charge of property management before an OC is formed is the PMC whom the developer entered a contract with on behalf of the owners; whereas in Victoria, Singapore and Taiwan, it is the developer; in the UK, the landlord.

Regardless of who the in-charge is, the timing when owners can take back control of the development or building is highly dependent on when the first owners' meeting or first AGM is held, except for Shenzhen, where the owners can replace the PMC even before the first owners' meeting for formation of the owners' association. While in Victoria,[136] Singapore[137] and Taiwan,[138] the developer is required to convene and hold the first AGM.

- In Victoria, the developer must convene the first meeting of the OC within six months of registering the plan of subdivision which provides for the creation of an OC.
- In Singapore, the first AGM must be convened within one month after the end of the initial period (maximum duration of initial period is 12 months) or six weeks after the developer receives a written request from the subsidiary proprietors (purchasers to whom the developer has transferred ownership of units) of at least 10% of the total number of lots in the development.
- In Taiwan, the developer must convene the first owners' meeting within three months after both the ownership percentage and total number of owners of the building have reached over 50%.

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[130] Owners Corporations Regulations 2018.
[131] BMSMA. Section 17.
[132] Competition and Markets Authority. (2014) Residential property management services – A market study.
[133] In Victoria, if the OC is not prescribed, owners can decide at AGM whether to have the financial statements audited. In the UK, if a RTMCo is a company in nature, it must prepare an annual audited financial statement unless an exemption under the Companies Act applies.
[134] 深圳經濟特區物業管理條例. 第 74 條.
[135] 深圳經濟特區物業管理條例. 第 49 條.
[136] Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/housing/owners-corporations/meetings-and-committees/annual-general-meeting.
[137] BMSMA. Section 26(1).
[138] 公寓大廈管理條例. 第 28 條.

Appointment and Termination

In all five selected markets, owners have the right to collectively decide on the appointment and termination of manager, subject to fulfilling the pre-requisite to hold the first AGM or first owners' meeting in order to pass a resolution at the general meeting of an OC.[139, 140, 141, 142] Except for the Mainland where the appointment of a new manager is by open tender, all other markets require majority votes of owners in order to appoint or terminate an existing manager and appoint a new one.

(2) Legal Liability

Owners delegate authority for financial matters involving their properties to managers, including the collection of management fees and the costs of repairs or maintenance. In three of the selected markets, legal liability is imposed on managers for specific matters:

- In Singapore, Section 68(1)(a) of the BMSMA states that a manager cannot canvass for proxy votes relating to any election of members of the council of a management corporation or the executive committee of a subsidiary management corporation (as the case may be) or else the managing agent shall be guilty of an offence.
- The Mainland in general adopts the Property Management Regulations, in which Chapter 6 states that whenever the regulations are violated under various specified situations, the relevant local government authority shall recover the misappropriated fund (if applicable) or order corrections to be made within a time limit, give a warning, confiscate the illegal gains (if applicable), and may concurrently impose a fine of certain amount depending on the type of violation. If a crime is committed, the responsible supervisors and other directly related persons would be subjected to investigation.
- In Taiwan, sections 50 and 51 of the Condominium Administration Act Building Administration Division states that if the manager or its staff violates any licensing requirements, the authority may at any time terminate its employment and impose a penalty ranging from TWD3,000 (equivalent to HK$773) to TWD200,000 (equivalent to HK$51,560).

Developer

(1) Duties to Owners

In three of the selected markets, namely Victoria, Singapore and Taiwan, developers have the following duties to owners:

- To convene the first owners' meeting; and
- To take care of property management matters for a limited time. In Victoria,[143] the developer as the initial owner must act honestly, in good faith and with due care and diligence in the interests of the OC, and take all reasonable steps to enforce any domestic building contract that affects the OC for a period of 10 years from the registration of the

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[139] Australia: RESI Body Corporate. See Steps to Change Body Corporate Managers.
[140] Shenzhen: 深圳經濟特區物業管理條例. 第 49 條.
[141] Taiwan: 公寓大廈管理條例. 第 3 條.
[142] The UK: Competition & Markets Authority. (2014) Residential property management services: A market study.
[143] Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/housing/owners-corporations/property-maintenance/developers-obligations.

plan of subdivision. In Singapore,[144] the timing of such duty is up to when the first owners' meeting is convened and an OC committee is elected, whereas in Taiwan,[145] before the OC committee or the management in-charge person is elected.

Furthermore, in Victoria[146] and Singapore,[147] the developer must also keep proper books of accounts, have it audited and present it to the owners at the first owners' meeting. In Taiwan,[148] developer must also collect from owners based on the development cost as the first contribution into the public fund.

(2) Conflicts of Interest

To address the potential concern that developers might intervene excessively on property management issues where their interest conflict with that of the owners of the housing estates, Victoria and the Mainland have implemented provisions to limit their involvement on certain activities, such as the selection of PMCs.

Australia

In Victoria, the Owners Corporations and Other Acts Amendment Act 2021 imposed further obligations on developers as follows:

A developer's obligation to act honestly, in good faith, with due care and diligently in the interests of an OC apply for 10 years following the registration of the plan of subdivision. A developer must not:

- Propose an OC annual budget that is unreasonable or unsustainable;
- Vote on OC resolutions relating to defects in or on a building on the plan of subdivision;
- Designate as a private lot what normally would be common property or services; or
- Receive any payment from an owners corporation manager (akin to PMC in Hong Kong) in relation to that manager's contract of appointment.

At the first meeting of an OC, the developer must disclose any relationship with the owners corporation manager, any immediate or future financial transactions that will foreseeably arise out of the relationship with the owners corporation manager and any benefits that may flow to the developer as a result of that relationship.

The developer must also provide to the first meeting of the OC a maintenance plan, the building maintenance manual, an asset register, copies (or details) of any warranties, and copies of any specifications, reports, certificates, permits, notices or orders in relation to the plan of subdivision.

A developer must not appoint themselves or their associate as owners corporation manager.

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144 BMSMA. Section 23.

145 公寓大廈管理條例. 第 28(3) 條.

146 Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/housing/owners-corporations/buying-into-an-owners-corporation/activating-your-owners-corporation.

147 BMSMA. Sections 17(5)-(6), 23(1), (5) and (7).

148 公寓大廈管理條例. 第 18(1) 條.

The Mainland

In the Mainland, in the Property Management Regulations implemented in 2003 by the Central People's Government, Article 24 states that:

- In accordance with the principle of separating real estate development and property management, the state advocates that developers should select and hire property management companies with corresponding qualifications through bidding. If there are less than three bidders or the residential scale is relatively small, with the approval of the real estate administrative department of the district or county levels of government where the property is located, a property management company with corresponding qualifications can be selected and hired by agreement.

III. Provision of Property Management Financial Related Information

Information relating to property management fees can be found in different documents, such as income and expenditure summary, books or records of accounts, financial statements, etc. The requirements of disclosure of such information vary in the five selected markets.

Income and Expenditure

In all five selected markets, the requirement on information disclosure of income and expenditure is imposed as follows:

Disclosure of financial statements of OC are mandatory in Victoria,[149] Singapore[150] and the UK.[151] However, this requirement is subject to exemptions in Victoria and the UK. In Victoria, two lot subdivisions are exempted from the legal requirements placed on larger owners' corporations, one of which is the legal requirement for financial reporting and financial statements. In the UK, the requirement only applies to buildings with Right to Manage (RTM) or RTMCo already formed. Where the right to manage the building remains in individual landlord instead of RTMCo, there are conditions to meet to obtain the property management fees summary.

In the UK,[152] an owner may require the landlord in writing to supply him with a written summary of the property management fees incurred and may also within six months of obtaining the summary require the landlord in writing to afford him/her reasonable facilities for taking copies or extracts from them with a charge.

In Shenzhen[153] where the property management fees are spent, apportionment of fees charged to each owner and the owners' funds balance must be disclosed to all owners on an online platform every quarter.

In Singapore, under BMSMA, upon a written application from the owner, mortgagee, their representatives or prospective owner, the management corporation is required to provide its records to the requesting party.

[149] Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/licensing-and-registration/owners-corporation-managers/running-your-business/financial-information.
[150] Building Construction Authority. (2022) Strata Management Guide 8: Maintaining MC's Records.
[151] The Landlord and Tenant Act 1985. Section 21(4).
[152] The Landlord and Tenant Act 1985. Section 22(2), (5) and (6).
[153] 深圳經濟特區物業管理條例. 第 73 條.

In Taiwan,[154] apportionment of fees charged to each owner and the owners' funds balance must be disclosed. However, the regulation did not define how regularly the information shall be provided.

In summary, in the selected markets reviewed, Singapore and Shenzhen have the strictest requirements on information disclosure, followed by Taiwan where non-compliance can lead to legal consequences. Victoria and the UK on the other hand have clear guidelines for the OCs and landlords to follow although compliance is subject to exemptions.

Right to Inspect Books and Records

In all the reviewed markets except Shenzhen, the books and records of income and expenditure such as bills, invoices and other documents can be inspected upon request.

However, the persons who are allowed to inspect the books and records of income and expenditure in the five selected markets are quite diverse. Victoria, Singapore[155] and Taiwan[156] allow inspection by persons other than the owners including mortgagees or their representatives who could be future owners and any relevant stakeholders, while in the UK, Section 22(2), (5) and (6) of the Landlord and Tenant Act 1985 states that owners are allowed to inspect the books and records of income and expenditure, while.

In addition, in Victoria, an OC certificate is available for inspection by owner, mortgagee, buyer or their representatives upon written request and payment of the relevant fee. An OC certificate must contain information such as past and current fees charged to owners, existing liabilities, manager and legal proceedings of the OC that can assist potential property buyers make informed purchase decisions or existing owners to assess their OC.

IV. Dispute Handling/Redress Mechanism

Redress mechanism is available to owners to resolve the disputes arising from property management matters in the five selected markets. In general, the tribunal or court is the last resort for dispute resolution in all markets, except for Shenzhen where disputes are handled through complaint hotline/OC committee/government administrative department.

In Victoria, Singapore and the UK, a three-step redress mechanism is applied in accordance with the level of dispute handling party or authority. In both Victoria and Singapore, only after an attempt to solve the dispute internally having failed in step 1, may owners proceed to step 2 which involves seeking help from the authorities to provide mediation service to settle the issue officially. However, in the UK, step 1 is to file complaint to the managers' trade and professional association it belongs to instead of handling internally. This may be effective because a large number of managers in the UK (300 out of 870) belong to a leading property management association which manages a quarter of private residential units.[157]

5.4 Latest Developments

It is observed that in recent years, the five selected markets under review have made or are in the progress of making legislative changes and introducing administrative measures to

[154] 公寓大廈管理條例. 第 20(1) 條.

[155] BMSMA. Section 47(1).

[156] 公寓大廈管理條例. 第 35 條.

[157] The Association of Residential Managing Agents Limited. (2019) An Overview of the Residential Block Property Management Sector in England and Wales.

enhance transparency, accountability and professionalism in the property management market and to reduce the hurdles for owners to participate in property management matters.

Victoria

The Owners Corporations and Other Acts Amendment Bill 2019 contains a package of 36 reforms concerning manager, audited financial statements of OC, etc. Key aspects of the reforms include:

- Termination of the owners corporation manager appointed by the developer prior to the first OC meeting at the first AGM;
- A maximum term of three years of appointment of the owners corporation manager; and
- The duration of the developer's fiduciary duties owed to the owners is extended from five years to 10 years.

The Mainland

With the implementation of the Property Law (物權法) in October 2007, Article 11 and 12 of the Property Management Regulations was revised in 2019. The amendment brought about three major changes in voting on matters involving the common interests of owners:

- Strictly stipulating conditions for the use of special maintenance funds, such as the restructuring and reconstruction of buildings and their ancillary facilities. The amendment clarifies that in the Property Law, owners' voting right at owners' meeting is based on "property area" plus "number of owners," whereas previously, the right to vote was only based on property area owned by the voting owners. This is because the developer or any other person may be an owner occupying a relatively large area that affects the result of the voting. With the new provision adding the number of voters as an additional criterion, the regulations became more stringent and fairer.
- Regarding the formulation and revision of the Owners' Convention and the Rules of Procedure for the Owners' Meeting, as well as the election of the owners' committee, the revised Property Management Regulations stipulates "50% decision", which was based only on property area, in place of the previous "majority decision", that is, resolution now has to be passed with more owners of more than half of the total building area and more than half of the total number of owners.
- The revised Property Management Regulations, with reference to the Property Law, stipulates that restructuring and reconstruction of buildings is also a major matter which require votes from 2/3 of owners in terms of both area and owner number.

Singapore

The Building Management and Strata Management (Amendment) Bill was passed on 7 August 2017 and the amended provisions became effective on 1 February 2019. One key amendment reframes the requirement for the developers to seek the authority's (i.e. Commissioner of Buildings) approval of the maximum rate for the property management fees prior to the sale of a unit.[158] The effective date of this clause is however yet to be announced.

[158] Building Maintenance and Strata Management (Amendment) Bill. Paragraph 15.

Taiwan

Two key amendments of the Regulations on the Management of Apartment Buildings[159] on 11 May 2022 specified that any apartment buildings that are identified as dangerous have to establish a management committee or elect a management person in charge within a time limit. Non-compliance will attract a maximum fine of TWD200,000 (equivalent to HK$51,560) for every exclusive part of the building on a per-time basis.

The revisions aimed at improving the self-governance management of those old and dangerous apartment buildings with high public safety risks. This achieved through mandatory establishment of a management committee within a time limit to conduct regular monitoring of the building, coupled with government intervention and guidance measures to ensure public safety.

The UK

The UK government proposed revolutionary reforms, which were presented to its parliament in July 2019.[160] Some key points were proposed on the following issues:

- Transparency on charges: the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge. It should be clearly identified where commission has been paid to the managing agent or freeholder and the proportion of the cost this constitutes;
- High one-off bills for major works: a threshold of £10,000 per unit owner should be established above which major works should only proceed with the explicit consent of a majority of leaseholders in the building; and
- Informed decisions by consumers: the leasehold property particulars prepared by estate agents must state the current level of the property management fees. Such requirement is included in the Property Ombudsman's Code of Practice for Residential Estate Agent.

5.5 Key Learnings from Selected Markets

The following Section summarises the learnings from the selected markets, shedding light on further improvements on the issues encountered in Hong Kong.

I. Transparency on Property Management Fees and Related Books and Records

In Hong Kong, information on property management fee is exclusive to owners. To inspect the related bills, invoices, vouchers, receipts and other financial documents, an owner has to go through a tedious process.

In contrast, in other markets, persons other than the owners may have the right to inspect. For instance, potential property buyers in Victoria can, upon payment of a fee, inspect the OC certificates which contain various information of the development including past and current fees charged to the owners, existing liabilities, manager and legal proceedings of the OC to assist potential property buyers make informed purchase decisions or existing owners assess their OC. In Singapore, the books and records of the property development are open to

[159] 公寓大廈管理條例. 第 29-1 及 49-1 條.

[160] Ministry of Housing, Communities and Local Government. (2019) Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform.

potential property buyers upon request, either free-of-charge or at a prescribed fee set forth by the legislation. The same applies to relevant property stakeholders such as in Taiwan, although the applicable regulations did not specify whether inspection is at a fee or not.

Furthermore, it is observed that two legal amendments related to information disclosure are in progress, including the requirement of approval of the maximum rate of property management fees in Singapore and the requirement of disclosure of the current level of property management fees by property agents in the UK. The amendments will enhance information transparency of the property management fees and facilitate a more informed decision by the consumers prior to purchase of a property.

Nonetheless, industry stakeholders engaged by the Council expressed concerns about the disclosure of financial information to persons other than the owners, such as releasing sensitive financial or expenditure details, misuse of information for marketing and sales activities, exposing economic status or privacy of the owners to a certain level, etc. Thus, implementation of disclosure going beyond owners was considered to be difficult.

II. Ease of Appointment and Termination of Property Manager

In Hong Kong, it is current market practice that developers could appoint the first property manager (DMC manager refers) on behalf of all subsequent owners. The term of office of the first assigned property manager for recent developments is two years but may be extended if the owners do not reappoint a new one. To terminate an existing property manager's appointment, resolution must be passed by a majority vote and supported by the owners of not less than 50% of the shares in aggregate. This means that in the absence of an OC, termination of the current property manager (or DMC manager) might not be easy to achieve.

In Victoria and Singapore, a property manager may be appointed or terminated at a general meeting of the OC by simple majority of votes. Further, in Singapore, the performance of the property manager must be reviewed at every AGM.

III. Legal Liability and Duties of Property Manager and Developer

In Singapore, Shenzhen and Taiwan, legal provisions, statutory and administrative, are in place to specify the duties and obligations of the property manager, such as proxy votes of election of OC committee members and licensing requirements. Whereas in Hong Kong, similar duties are imposed by the Codes of Conducts of the PMSA.

In addition, it is observed that the developers in Victoria, Singapore and Taiwan have specified duties to the owners, which include holding the first owners' meeting and automatic discharge on handling property management matters after the first owners' meeting or an OC committee was elected. The developers in the Mainland and Taiwan are also required to contribute the initial amount into the reserve maintenance fund for the related properties. In Taiwan, developers have to deposit a certain percentage or amount of the project cost into the public fund.[161] The Mainland requests the developer to transfer the first-phase maintenance fee to the special property maintenance fund account set up by the municipal management agency before the first registration of the real estate of the property project by reference to 2% of the

[161] 公寓大廈管理條例. 第 18 條.

total cost of the construction and installation project of the property project.[162] However, there are no such duties on developers in Hong Kong.

IV. Clear Redress Mechanism

In Victoria,[163] Singapore and the UK[164], a two or three-step approach is clearly set out to address property management disputes as follows:

1. Start by solving it internally/directly between related parties (i.e. Victoria and Singapore) or filing a complaint to the professional association which the property manager belongs to (i.e. the UK);
2. Seek help through designated government mediation service centre in general or in the neighborhoods;
3. Finally apply to the tribunal for a ruling.

In Shenzhen,[165] besides contacting the property manager's complaint hotline, owners can lodge a complaint to the Housing and Construction Bureau of the District and Street Office (for buildings without OC Committee) or lodge a complaint to the OC Committee (for buildings with OC Committee). In Taiwan,[166] the management committee will facilitate coordination work as the first step, failing which an application could be made to a district court.

In Hong Kong, dissatisfied parties can have different ways of solving their disputes. For example, they can choose to approach multiple channels such as the Consumer Council, HAD and the PMSA to file complaints on property management issues. Details of other options can be found in the last Section of Appendix 2.

5.6 Summary

This Chapter sets out upfront the unique local conditions and then relevant practices in other five selected markets. Despite the differences in the nature, structure, and types of buildings between Hong Kong and the selected markets, there are shared issues in property management and governance, as well as active strengthening of relevant laws and regulations. It is noted that some markets impose more stringent regulations on specific aspects of property management, while others have more control over other areas. For example, there are varying degrees of requirements over the sharing of financial information with owners and non-owners, appointment and termination of property managers, legal duties of the property manager and developer, clarity of the redress mechanisms, etc. In general, these selected markets have relatively well-established regulatory framework in place.

All in all, despite the differences in the local situation of the selected markets, the selected markets' practices and regulatory requirements provide good reference for Hong Kong to further develop the property management industry towards sustainability and mutual benefits between PMCs and owners.

[162] 深圳市物業專項維修資金管理規定. 第 8 條.

[163] Consumer Affairs Victoria. See https://www.consumer.vic.gov.au/licensing-and-registration/owners-corporation-managers/running-your-business/complaint-handling-and-dispute-resolution.

[164] LEASE. See Redress Scheme and The Association of Residential Managing Agents. See Leaseholders – Complaints about a member.

[165] 深圳經濟特區物業管理條例. 第 34(8)、61(1) 及 124 條.

[166] 公寓大廈規約範本. 第 25 條.

Table 15: Regulatory Framework for Multiple Ownership Property Management in Hong Kong and Selected Markets

	Hong Kong	Australia (Victoria)	The Mainland (Shenzhen)	Singapore	Taiwan	The UK
Regulatory Framework						
Law (Year of 1st enactment)	• Building Management Ordinance (Cap. 344) (BMO) (1970), entitled then the Multi-storey Buildings (Owners Incorporation) Ordinance) • Property Management Service Ordinance (Cap. 626) (PMSO) (2016)	• Subdivision Act 1988 • Owners Corporations Act 2006	Shenzhen Special Economic Zone Property Management Regulations (1994)	Building Maintenance and Strata Management Act (1982)	Condominium Administration Act Building Administration Division (1995)	• The Landlord and Tenant Act 1985, 1987 (1954) • The Leasehold Reform, Housing and Urban Development Act 1993 • The Common-hold and Leasehold Reform Act 2002 • The Companies Act 2006
Authority	Home Affairs Department of Home and Youth Affairs Bureau (for the BMO) Property Management Services Authority (for the PMSO)	Consumer Affairs Victoria of the Minister for Consumer Affairs	Shenzhen Housing and Construction Bureau	Building and Construction Authority of the Ministry of National Development	Ministry of the Interior	Department for Levelling Up, Housing and Communities (formerly the Ministry for Housing, Communities and Local Government)
Licensing	Property Management Services Authority	Business Licensing Authority	No official licensing requirements/ system	No official licensing requirements/ system	Ministry of the Interior	Information not available

	Hong Kong	Australia (Victoria)	The Mainland (Shenzhen)	Singapore	Taiwan	The UK
Guidelines/ Model Rule/Standard Contract on Property Management	• DMC Guidelines • Codes of Conduct issued by PMSA (Compulsory adoption) • Best Practice Guides issued by PMSA (Not compulsory adoption)	Model rules for owners corporations (Not Compulsory adoption)	Property Service Contract of Shenzhen Municipality (Model Text) (Compulsory adoption)	Strata Management Guides (Not compulsory adoption)	• Template of Standard Contract for Apartment Building (公寓大廈規約範本) • Template of Standard Contract for Appointment of Apartment Building's Management Company (公寓大廈管理維護公司受任管理維護業務之契約範本) (Compulsory adoption)	RTM Companies (Model Articles) (England) Regulations 2009 (Compulsory adoption)
Property Management Fees and Related Parties						
Calculation and Charge Basis (Approving Authority)	Based on undivided shares, GFA and service contract with PMC (for the first PMC only) (LACO of the LandsD)	In a manner acceptable to the Registrar of Titles; Based on undivided shares, benefit principle and service contract with PMC (Victoria Council)	• No OC: Government-guided price • With OC: Market-regulated price (Nil)	Unit floor area; Based on undivided shares and service contract with PMC (Building and Construction Authority)	Unit floor area; Based on shares of ownership and service contract with PMC (Department of Land Administration)	Set by the landlord or a PMC assigned by the landlord and must be reasonable (Nil)
Reserve Fund for Future Repair Need	Budget and timeframe not specified	Budget and timeframe specified by law	Budget and timeframe specified by law; Government supervised	Owners' committee to decide annual budget	Budget and timeframe not specified	Voluntary; Landlord to raise
Formation of OC	Voluntary; Owners to decide	Regulatory requirement – automatically formed	Regulatory requirements	Regulatory requirement – automatically formed	Regulatory requirements	Voluntary
Initiating Party to form an OC	PMC/Owner	Developer to support	Owner	Developer to support	Developer to support	Owner/Developer (Subject to the type of OC to form)

	Hong Kong	Australia (Victoria)	The Mainland (Shenzhen)	Singapore	Taiwan	The UK
Power and Duties of OC	Housekeeping of the property; convening AGM; keeping accounts and documents; and preparing financial statement, etc.	Housekeeping of the property; convening AGM; keeping accounts and documents; and preparing financial statement	Housekeeping of the property; convening AGM, keeping accounts and documents; and preparing financial statement	Housekeeping of the property; convening AGM; keeping accounts and documents; and preparing financial statement	Housekeeping of the property; convening AGM; keeping accounts and documents; and preparing financial statement	Depending on whether Recognised Tenants' Association (RTA), Residents' Management Company (RMC), Right to Manage Company (RTMCo) was formed
Provision of Property Management Financial Related Information						
Audit of Financial Records	Regulatory requirements	Regulatory requirements	Upon request of ≥20% of total number of owners or owners' share in aggregate	Regulatory requirements	Not specified	RTM/RTMCo can qualify for audit exemption if it has (at least 2): • Annual turnover of <£6.5 million; • Assets worth <£3.26 million; or • ≤50 employees on average
Appointment and Termination of Manager	Subject to DMC terms, appointment and termination of DMC Manager may include passing a resolution at the general meeting of an OC or owners' committee by a majority of the votes of the owners; and supported by the owners of not less than 50% of the shares in aggregate (First manager is appointed by the developer until termination by owners)	Passing a resolution at the general meeting of an OC by simple majority	No owners' committee: Open tender and passing a resolution by simple majority of owners or over 50% of owners' voting rights With owners' committee: The committee could engage the PMC themselves	Through an ordinary resolution (i.e. means a resolution passed by a simple majority of the votes) at a general meeting	Passing a resolution at owners' meeting and: • Attended by more than 2/3 of owners and owners who hold more than 2/3 of the undivided shares in aggregate • Agreed by more than 3/4 of owners and owners who hold more than 3/4 of the undivided shares in aggregate	Passing a resolution at the general meeting of an OC by simple majority

	Hong Kong	Australia (Victoria)	The Mainland (Shenzhen)	Singapore	Taiwan	The UK
Duties to Owners/Legal Liability of PMCs/PMPs	Have duties to owners and legal liability	Have duties to owners but not legal liability	Have duties to owners and legal liability	Have duties to owners and legal liability	Have duties to owners and legal liability	Have duties to owners and legal liability
Information Disclosure • **Income and Expenditure**	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory	RTM/RTMCo: Compulsory
• **Books and Records of Income and Expenditure**	Upon request	Upon request	Disclosed periodically on an information platform	Upon request	Upon request	Upon request
Persons entitled to inspection of Books and Records of Income and Expenditure	Owner, mortgagee, their representatives or tenants' representatives	Owner, mortgagee, buyer or their representatives	Owner	Owner, mortgagee, their representatives or prospective owner	Any relevant stakeholder	Owner (leaseholder)
• **Inspection Fee**	Reasonable copying fee set by the OC/manager	Within maximum prescribed fee set by the legislation	Accounting records displayed in an information platform for owners	At a prescribed fee set by the legislation	Not specified by regulation	Free of charge for inspection. If copies are needed, reasonable copying fee set by the OC or landlord
Dispute Handling/Redress Mechanism						
Redress Mechanism	• Apply to the Lands Tribunal for a ruling • Submission of complaints against licensees under the PMSO Support Services • Free Mediation Service Scheme for Building Management • Building Management Dispute Resolution Services	Three-step process: Step 1: Internal dispute resolution of the OC Step 2: Dispute resolution through Dispute Settlement Centre of Victoria Step 3: Victorian Civil and Administrative Tribunal	• Without OC Committee: Housing and Construction Bureau of the District and Street Office • With OC Committee: OC Committee • Property manager's complaint hotline	Step-by-step process: Step 1: Discuss with the other dispute party Step 2: Seek help from Community Mediation Centre (for various disputes) or Neighbourhood Committees (for neighbourly disputes) Step 3: Apply to the Strata Titles Boards for a ruling	Two-step process: Step 1: Coordinate by management committee Step 2: Apply to the District Court where apartment building is located	Three-step process: Step 1: File complaint to the managers' trade and professional association it belongs to Step 2: Seek help from external redress schemes • Property Ombudsman • Property Redress Scheme Step 3: Apply to the First-tier Tribunal (Property Chamber) for a ruling

Issues Related to Property Management Fees in Hong Kong

6.1 Introduction

This Chapter provides a summary of the issues related to property management fees in Hong Kong that have been identified in previous Chapters from multiple sources including the pre- and post-study stakeholders' consultations, complaints received by the Council, review exercise of sales brochures, Deeds of Mutual Covenants (DMCs) and statutory declarations (SDs) of recent property developments, survey findings on owners, owners' organisations (OOs) and property management companies (PMCs), as well as desktop research on laws, news and practices in five selected markets.

6.2 Lack of Transparency in the Basis of Allocation of Shares

As aforementioned in Chapters 2 and 3, the DMC of a building specifies the ownership in terms of the number of undivided shares assigned to the units of the building. Generally speaking, the number of undivided shares is determined according to the size of each unit. Where the management shares are specified in the DMCs, the owners will be required to pay management expenses based on the management shares instead of undivided shares. As such, undivided shares and management shares (where applicable) define ownership as well as the sharing of property management and maintenance expenses that the owners should bear in managing common areas and facilities from the moment they take ownership of the property.

It should be noted that DMC is drafted by the developer in accordance with the Guidelines for Deeds of Mutual Covenant (DMC Guidelines) but without the involvement of the prospective purchasers. Once the undivided shares and management shares for the units are determined at the time the developer draws up the DMC, they can hardly be changed in the future. Prospective purchasers who have not taken the share allocation, common areas and facilities and maintenance fees into adequate consideration before purchasing the property may later find the expenses exceed their household budget. In practice, the general public may seldom review or understand those details from the sales materials when making purchase decisions. As a result, disputes concerning management fee were reported from time to time, involving questions of apportionment of undivided shares and management shares, whether certain parts of the building were common parts, if the common facilities or open spaces were for public use, or the expenses to be shared among or by the owners was fair.[167] Furthermore, the allocation of management fees between owners of residential and non-residential (e.g. commercial) portions of a building was also put into question. Members of the Legislative Council had previously expressed a concern that in some older DMCs, undivided shares and management fees were allocated on different bases such as market value and Gross Floor Area (GFA), resulting in owners of the residential portion bearing higher management expenses but

[167] Legislative Council Press Releases. (2010) LC Paper No. CB(1)930/09-10(03). Public Open Space Provided in Private Developments.

having less voting rights than those of the non-residential portion.[168] Therefore, access to clear and comprehensive information on the key terms of the DMC is essential for consumers to make an informed choice before purchasing the property.

The Residential Properties (First-hand Sales) Ordinance (Cap. 621) (RPO) requires the disclosure of the number of undivided shares in the sales brochures under the section of summary of DMC. Yet, the calculation breakdown of the undivided shares and management shares for each unit of the residential development are not disclosed in the sales materials for general public. Such details can be found in the SD of uncompleted residential developments that fall under the Lands Department Consent Scheme (Consent Scheme). For uncompleted residential developments that do not fall under the Consent Scheme, if the developer's solicitors act for both the developer and purchaser in the sales and purchase of a unit, the solicitors will also be required to deposit in the Land Registry (LR) a SD approved by the Law Society of Hong Kong.

From the Council's findings and analysis in Chapter 3, although the requirement of the RPO was fulfilled, the sales brochures do not contain information on the calculation and formula that are used to determine the allocation of the shares. Prospective purchasers may need to look at other documents such as SD for uncompleted residential developments that fall under the Consent Scheme in order to ascertain how these numbers are actually derived, and judge if it is a fair allocation. However, as the SD is not a sales document offered for general public's reference, consumers might not be aware of its existence or know how to access such information.

Furthermore, although prospective purchasers are reminded to check the information relating to facilities or open spaces for public use, maintenance responsibility for slopes, and the basis on which management fees are shared by the "Notes to Purchasers of First-hand Residential Properties" (Notes) booklet issued by SRPA which is also reproduced at the beginning of sales brochures, prospective purchasers may fail to notice such information as such booklet also contain many other important details regarding the property.

In short, increasing the transparency and accessibility of key terms in the DMC, especially the calculation leading to allocation of management and/or undivided shares, will allow consumers to understand their obligation before purchasing the property and to minimise possible disputes in future.

6.3 Difficulty in Obtaining Unanimous Owners' Consent to Amend Unfair Terms in DMCs

In as early as 1985, a condition would be imposed under the land grant which required approval of the DMC by the Registrar General (Land Officer) who served as a gatekeeper guarding against the allocation of management shares in an unreasonable and arbitrary manner. The validity and enforceability of DMC among the owners of a multi-storey building is governed by the Conveyancing and Property Ordinance (Cap. 219) (CPO). Section 41(9) of the CPO expressly provides that the DMC, after being registered with the LR, shall bind the successors in title of the covenantor and the persons deriving title from them, whether or not they have actual notice of the DMC.[169] No party should unilaterally modify any provisions in DMC without the consent

[168] Legislative Council Secretariat. (2003) LC Paper No. CB(2)422/03-04. Report of the Subcommittee on review of the BMO.
[169] Estate Agent Authority. (2013) A Study Guide to Estate Agency Law and Practice. Part 5: Introduction to Building-related Knowledge, Property Classification and Property Management.

of all other parties.[170] For Non-Consent Scheme, solicitors are required to observe the DMC Guidelines issued by the Law Society of Hong Kong which offers similar protection to purchasers under the Consent Scheme. Failure to observe the requirement may result in professional misconduct on the part of the solicitors involved.

The above stipulations are meant to provide a legal framework as a governing basis for the drafting of the terms in the DMC. In case of conflicts relating to the interpretation and enforcement of the terms of a DMC, or the use, occupation, enjoyment, possession and ownership of common parts of a building, or the calculation or apportionment of payment associated with the terms under the DMC, owners can refer to section 45 of Part III and Schedule 10 of the Building Management Ordinance (Cap. 344) (BMO) which provide for settling such building management disputes through adjudication at the Lands Tribunal.

However, for situations where the implementation of DMC terms and conditions seriously jeopardises the rights and interests of the owners, under the current legal setting there may not be other options but to obtain the owners' unanimous agreement to amend these terms in the DMC. This approach would apply to controversial situations arising from the terms and conditions in the DMC that were initially drawn up by the developer, but might no longer fit the prevailing interests and benefits of owners.

Some stakeholders commented that most problematic terms were found in old DMCs. The Legislative Council's Panel of Home Affairs also expressed concerns years ago that there were unfair terms and conditions in some old DMCs, and urged the Government to consider setting up a mechanism for amending the unfair provisions in a DMC by a resolution of less than 100% of all the owners and with the approval of the then Secretary of Home Affairs or the Court.[171] The basis for this request stems from the fact it would be extremely difficult to meet the unanimous consent requirement especially for those large-scale housing estates, or housing estates with vacant or deserted units owned by untraceable owners, or where there are indifferent or uninformed owners who will not likely respond in any way. Yet, the Government, regarding a DMC as a private deed among the parties who entered into it, expressed reservations about the proposal as it could affect the property rights of private parties. One of the Government's key considerations was to what extent it should authorise owners (presumably the majority owners) to seek to make changes to a DMC and at the same time, the level of protection to be offered to the minority owners who would be affected by or oppose such changes. Some stakeholders expressed similar concerns as the power to vary or override existing provisions of a DMC could face the risk of abuse. The problem continues and unanimous owners' consent has to be reached in order to amend terms in a DMC.

6.4 Potential Influence of the Developer or Major Owner or Management Committee (MC) Members on Property Management Matters

After the completion of a residential development, and prior to the sale of any unit, the developer owns every unsold unit and all the undivided shares of the residential development. As the sale of units proceeds, the developer runs down its holding of undivided shares in the residential development. At the same time, it should be noted that any party holding a

[170] Legislative Council Secretariat. (2017) LC Paper No. CB(2)1038/16-17(04). Review of the Building Management Ordinance (Cap. 344).
[171] Legislative Council Bills Committee on Building Management (Amendment) Bill 2005. (2006) LC Paper No. CB(2)3038/05-06(03). Apportionment of Management Fees.

substantial amount of undivided shares of a development might have the voting rights to control the establishment of owners' corporation (OC) at the owners' general meeting or the power to vote down other proposals. For example, at least 30% of undivided shares is required to pass a proposal to appoint an MC during the owners' meeting. That means any major owner with 30% or more undivided shares would have enough votes to appoint an MC of his/her choice or to vote down the proposal. Although there are other options under the BMO for owners with lesser undivided shares to set up an OC, as indicated in Section 2.5 of Chapter 2, these options are uncommon and more challenging for owners to apply for. Likewise, when other owners would like to terminate a PMC that is substandard in performance but affiliated with the major owner (which can be the developer or the owner with major shares), it might not be feasible if the major owner who holds over 50% of the aggregate shares vetoes the termination proposal. Therefore, if the developer prefers to remain as a major owner with substantial undivided shares, it may induce conflict of interest with other residential owners and a potential risk of being over-engaged with the property management matters.

There have been cases where the residential portions of large-scale housing estates were allocated a low percentage of undivided shares, making it difficult for the residential owners to gather a sufficient number of undivided shares to meet the threshold required under the BMO to pass resolutions such as forming OCs, terminating PMCs, or exerting their influence on property management matters. The DMC analysis in Chapter 3 found that five out of the total 249 reviewed developments for which residential owners held below 50% undivided shares in aggregate. These developments were phases of different multi-phase developments, with the percentage of undivided shares allocated to residential owners in each respective phase being rather low, and often accompanied by a certain percentage of undivided shares assigned to other types of owners, such as commercial owners and parking space owners.

In addition, the DMC analysis also revealed that affiliation of DMC manager with the developer is a common practice in the market. From the analysis, the Council has identified 85 DMC managers from the 249 reviewed developments, of which around 75% were affiliated with the developers of the respective developments. At the same time, the top 10 DMC managers managed 47% (116 developments) of the reviewed developments, demonstrating a high level of market concentration, and 76% (88 developments) of these 116 developments were run by DMC managers which were subsidiaries of the developers.

When a developer decides to allocate undivided shares at a level below 50% in aggregate to the residential owners and simultaneously appoints its affiliate as the DMC manager, it could lead to concerns of potential or perceived conflict of interest, especially when the DMC manager acts in favour of the developer over or against the benefits and interests of the OOs or owners, while these owners cannot terminate the DMC manager due to insufficient votes.

Besides the developers, as remarked by some stakeholders, concern about conflict of interest may also appear in respect of major owners and MC members of the property, for instance, during the appointment and termination of affiliated PMC as well as other service providers to the development. When these parties exercise their influence to push for specific property management projects or activities, it may result in significant expenses that have to be borne by all residential owners.

6.5 Service Quality Issues of PMCs

The scope of property management nowadays involves a wide range of professional knowledge, including general management services, management of the environment, repair, maintenance and improvement, finance and asset management, facility management, human resources management and legal services relating to a property (see Section 2.7 of Chapter 2).

I. Potential/Reported Financial Risks of PMCs

Among different daily responsibilities of PMCs and property management practitioners (PMPs), disputes related to the improper handling of financial related issues were reported from time to time. From the 342 cases (around 50%) out of total 694 complaints received by the Council from 2012-2022 that related to price/charge disputes, most concerned the PMCs' misapplication of the management fees. Other allegations in these 342 complaints included the PMC's failure to provide owners with the requested income and expenditure records and accounting books, wrongful allocation of the management expenses for common areas to owners. In the years from 2018 to 2022, among the complaints and queries received by the Competition Commission, the real estate and property management sector took up the top three ranks among all sectors involved in the Competition Commission's ongoing initial assessment and investigation cases (see Section 2.8 of Chapter 2).

To curb these financial related risks, cautious measures have been imposed in different ordinances to prevent PMC or PMPs from receiving illegal benefits and involving in bid-rigging of large-scale building maintenance projects, etc.[172] For instance, Schedule 7 of the BMO contains mandatory terms in relation to a PMC's obligations,[173] among which six out of the total nine clauses focus on financial related matters, including guidelines to regulate the way of handling management expenses, budget preparation, account keeping, money processing, special fund (SF), contract amount limits and handover transition for PMP replacement. Still, cases were reported from time to time regarding the PMCs having handled accounts indiscriminately and used management fees improperly, as reflected in the 34 complaints received by the Property Management Services Authority (PMSA) on finance and asset management issues in 2021-2022, which were related to incorrect or unclear budgeting and accounts, or hindering requests for inspection of financial records, etc.

It is challenging for the owners to address these issues, as it is difficult for them to get to know the financial and internal operations of the PMCs. Although the BMO and DMC Guidelines stated that PMCs should account for their financial operations on a regular basis, and that owners have the right to access financial information related to management, including details of expenditures and contract details, some PMCs were reported to have refused to disclose such financial and operational information in the complaint cases received by the Council. The last resort for the owners is to file an application with the Lands Tribunal to seek access to the information. However, this is highly undesirable for both parties as it is time consuming and stressful.

With the establishment of the PMSA in 2016, the launch of the licensing regime in 2020, and the Codes of Conduct issued by the PMSA, which are to provide practical guidance to the PMCs and PMPs, it is believed that serious misconduct or conflict of interest issues with PMCs and

[172] Legislative Council Secretariat. (2017) LC Paper No. CB(2)1038/16-17(04). Review of the BMO.
[173] Legislative Council Panel on Home Affairs. (2013) LC Paper No. CB(2)1459/12-13(01). Provisions Relating to the DMC in the BMO (Cap. 344).

PMPs would be greatly reduced in days to come. Starting from 1 August 2023, all the PMCs and PMPs must be licensed. Under section 4 of the PMSO, any license holder who commits a disciplinary offence may be subjected to verbal warning or written reprimand, fine, imposition or variation of a condition on or of the licence, suspension of the licence, or even licence revocation.[174]

II. Dissatisfaction over PMCs' Performance

In addition to the disputes on financial management, owners also complained about PMCs' unsatisfactory performance in different property management service aspects, such as the organisation of owners' meetings, the speed and approach with which complaints are handled, environmental hygiene, maintenance and repair issues, and non-attendance at times, etc. The share of complaints on the quality of services received by both the Council (42.7%, 296 out of a total 694 cases from 2012-2022) and the PMSA (50%, 200 out of total 400 cases in 2021-2022) is high. The survey findings in Chapter 4 showed that 21.3% of the complaints made by surveyed owners were purely on "service quality" of PMCs. Other service-related complaints covering water seepage/leakage (32.9%), environmental hygiene (24.1%), noise pollution (6.6%) and maintenance and repair (5.9%) added up to 69.5%. The sum of all these service-related complaints would reach over 90% of the total share.

As discussed in Chapter 4, while there are numerous reasons causing the above dissatisfaction or disputes to take place, "difficulties encountered by PMCs in their operations", which include a shortage of frontline staff and high operation costs, may be the leading causes. According to a news report,[175] the Hong Kong Institute of Housing estimated that there would be about a 10% shortage of personnel at various levels of the PMCs at the end of 2022. Meanwhile, the difficulty in recruiting young and qualified staff for day-to-day property management service work in residential buildings would unavoidably undermine the service quality and further push up the labour costs. In addition, the survey identified an expectation gap between PMCs and owners/OOs on the level of PMCs' performance. As illustrated in Chapter 4, among other items, only 43.7% – 56.4% of the owners and 54.8% – 65.9% of the OOs agreed that the performance of PMCs was up to their expectation under the parameters of "service provided is able to meet the expectations of the property owners", "provide sufficient communication channels for property owners to express opinions", "consult the opinions of property owners effectively", "improve according to the opinions of owners' organization/property owners" and "service quality is proportional to the management fee level". In contrast, 71.4% – 100% of the PMCs surveyed considered that their performance was up to expectation under the aforesaid parameters.

Despite the two-year term initial appointment of the first DMC manager as specified in the DMC Guidelines,[176] owners and OOs, as aforementioned in Chapter 4, still encounter problems in terminating and switching the DMC managers or appointing new PMCs. In addition to a finding of over 87% of owners not knowing the procedures for terminating PMCs, the survey further revealed that both owners (40.4%) and OOs (33.3%) found it difficult to choose new PMCs, due to a lack of sufficient market information to facilitate the evaluation on potential PMCs' service quality (72.9% for owners and 79.4% for OOs) and charges (64.5% and 56.6%

[174] PMSA. See PMSA Regulatory Framework – Regulating licensees: Disciplinary Offences.

[175] Ming Pao. (2022) 房屋經理學會：物業管理人員流失至少 10% 涵蓋各職級人員 料未來人手需求上升.

[176] If the related DMC does not expressly provide for the reappointment of the same DMC manager, the DMC manager may remain in office after the first two years. The OC may, however, terminate the appointment of the DMC manager through a resolution consent by owners with more than 50% undivided shares and payment of management expenses of the shares, in accordance with paragraph 7 of Schedule 7 to the BMO.

respectively), and to provide the available choice of appropriate PMCs in the market (42.2% and 65.8% respectively). At the same time, about two-thirds of those OOs which once took action or planned to take action to switch PMCs for their buildings (68.8%) encountered difficulties in switching PMCs due to varied opinion of owners (46.5%), difficulty in assessing PMCs' quality (22.7%), and insufficient owners of shares in aggregate (21.1%).

Nevertheless, with the PMSA now in place as the official governing body imposing the licensing and regulatory regime in the industry, and the setting of the minimum qualification requirements for licensed PMCs and PMPs, the quality of property management services and professionalism of the property management sector can be enhanced. In addition, the two-tier licensing regime for PMPs provides a development path for PMPs, in particular the youth with lower level of qualifications, to join the property management industry as a career. The licensing regime for the property management sector should also be able to narrow the expectation gaps between PMCs and owners/OOs. It would not only act as a bridge to help coordinate the interests of owners and PMCs, thereby reducing disputes between them, but also increase the transparency and professional image of the industry to the public.

6.6 Passive Owners' Participation in Property Management Matters and Insufficient Communication between OO/OC, PMC and Owners

The Council's survey found that owners were in general passive to attend general meetings (63.0%), opine (62.7%) or vote (58.0%) on building management-related matters. The findings also showed the majority of owners (over 78%) lacked an understanding of building management and related regulations, which might be the reason for their low participation in the management of their buildings. Such attitude and mindset would increase the exposure of their properties to the risk of being mismanaged or manipulated, and eventually harm their own rights and interests.

In reality, managing a property entails decision-making on a wide range of issues, from daily cleaning arrangements to overseeing major building maintenance works. Hence, a certain form of OO is needed to be in place to facilitate the collective decision-making of owners on property management matters. Owners can consider forming an OC which is the body corporate empowered by the BMO with an MC appointed to handle its day-to-day business, or going for another form of OO such as the owners' committee which acts as an advisory organisation only. Such an OO, no matter in which form, should be established to deal with property management matters on behalf of all the owners. Yet, statistics from the Research Office of the Legislative Council revealed that only 47% of the private buildings (including residential, mixed-use, commercial and industrial buildings) in Hong Kong had formed OCs as at the end of 2021.[177] Although HAD has been dedicating efforts to assist owners to form OCs, providing support to OCs, and providing education on building management for owners, the said percentage remained at a similar level for years. Some stakeholders pointed out that the key obstacle for setting up OCs was the unwillingness of the owners. It is reflected in the Council's survey that although owners expressed a clear understanding of their rights and obligations and looked for improvement in property management operations, in general over

[177] Research Office of the Legislative Council Secretariat. (2022) IN09/2022. Policies on improving building management and operation of owners' corporations in selected markets.

97% of them were not willing to join OOs as chairpersons or members with reasons such as "no spare time", "no interest", "too old to participate" or did not even provide relevant reasons.

Furthermore, the lack of knowledge and experience about property management of both owners and OOs may be another reason for their inactive attitude in property management matters. Given that MCs are normally staffed by amateurs and part-timers who may only dedicate a limited amount of their time to their operation, the MCs will, in reality, heavily rely on the PMCs to manage the buildings. Such a phenomenon may provide opportunities for dishonest PMCs to build up their power over time and abuse the position of trust afforded to them by the owners, and, malfeasance, if any, may go undetected.

Besides the various issues mentioned, owners' inactive involvement in property management activities might further deprive the rights of owners of the same property as a whole and create additional communication blocks with other parties. For instance, their absence at owners' meetings will make it difficult for other owners to get enough votes to pass important resolutions. Owners' indifference and lack of involvement in daily property management matters may also easily result in the receipt of one-sided and fragmented information, which may lead to misunderstandings or distorted interpretations of the subject. Indeed, most disputes between owners, OOs, and PMCs were found to be caused by a lack of adequate communication. Owners also mentioned during the in-depth interview that the member of OOs or the staff of PMCs were strong minded and sometimes ignored owners' opinions and complaints and hence might weaken owners' influence on property management-related matters. Therefore, when the owners were further asked to provide suggestions for the improvements of their OOs and PMCs, they raised "strengthening the communication and complaint channels between owners and OOs or PMCs" as one of the key aspects to be addressed.

On the other hand, it should be noted that when OCs were formed and took over the management of the property and control of financial resources from PMCs, the financial related risks associated with PMCs as mentioned in the above Section could also be transferred at the same time to OCs. Indeed, owner complaints or court cases against OCs were found to be very similar in nature to those of PMCs, which include allegations of refusal to share information with owners, collusion with service providers, misappropriation of funds, etc. In case such malfeasance by OCs does take place, it can cause serious detriment to the interests of owners, for which owners need to seek solutions from owners' meetings and legal assistance.

6.7 Substantial Rises in Management Fees Especially for Maintenance Costs

Findings from the Council's survey indicated that the leading reasons for increases in management fees and maintenance costs were "inflation" (100%), "a rise in minimum wages" (72.4%) and "repair and maintenance of the building" (31.6%). In reality and ironically, the expenditure needed for repair and maintenance usually increase with the age of the building, as it demands for more renovation and maintenance related services. As such, as mentioned in Chapter 2, besides guiding the setup of the general fund (GF) and contingency fund (CF) to cover the routine and ad hoc costs in the daily operation of the property management activities, the DMC Guidelines also specify that a special fund (SF) must be established and maintained to meet the irregular expenses needed for the renovation, improvement, and repair of the common areas and other related costs to be incurred. This SF will be held by the property manager as trustee for all owners, whereas the amount to be contributed every year and the time period involved will be determined by a resolution of owners at an owners' meeting.

The establishment of the SF helps reduce the financial burden on owners when their properties reach the point where they need large-scale maintenance work. From the survey, those owners who had repair and maintenance projects undertaken in their buildings were asked about the amounts they contributed. Over half of them (50.1%) stated that they did not need to contribute additional fees because relevant expenses were covered by funds from the buildings or government subsidies. However, among those who had to contribute a certain amount of fees, about half of them (48.1%) contributed below HK$50,000 per unit, the other 40% above HK$50,000 per unit, and 13.5% at HK$100,000 or above per unit. Such an additional amount to be paid at once would be a rather substantial expenditure for some owners.

To further explore the prevailing status of the building maintenance in Hong Kong, the Urban Renewal Authority (URA)'s "Building Rehabilitation Strategy" study (樓宇復修策略研究) in 2017 provides an in-depth overview which shows that only one-third of the buildings surveyed had actually set up a SF, and the remaining buildings did not have reserves for major maintenance work. Even for buildings that had the SF in place, the level of contributions was low, and the contributions were not regular, making the balance of the fund inadequate to cover the expenses of major maintenance works. The main reason is that, in accordance with the DMC Guidelines and the BMO, the amount and timing of contributions to the SF are determined by a resolution at the owners' meeting. Lacking professional knowledge to determine the level of reserves to be set aside for the expenditure involved in the maintenance work, owners may underestimate the actual amount needed. As remarked by some stakeholders, owners in general are unwilling to contribute to the reserve fund. Among different reasons, some may be due to the non-transferrable restriction of the amount when owners move out of the property, while others may be due to the conservative way of depositing the fund into an interest-bearing account, which is perceived as leading to depreciation of the amount over time. When the building reaches the age that demands maintenance work, the owners without sufficient reserves in the SF may have to bear millions or even tens of millions of dollars of project costs, when the need for major renovation arises. For owners who have low financial ability, especially retirees and the elderly, raising a large amount of maintenance funds would be a major burden. In the worst case, the maintenance work may be put on hold, rendering the building in a state of disrepair, ultimately causing safety risks to the occupants of the building as well as the surrounding environment. Therefore, an affordable and sustainable mechanism to accumulate funds for maintenance and repair of the building shall be a key protection for owners.

Box 5: URA's "Periodic Repair and Maintenance Plan"

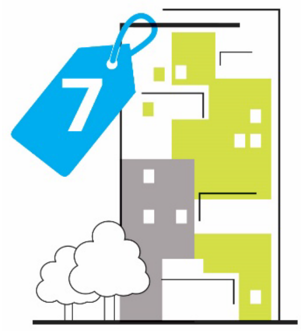
The Council is given to understand that the URA plans to issue a set of reference documents on "Periodic Repair and Maintenance Plan" (「定期維修保養方案」參考文件) in the second half of 2023. This set of documents, which is based on URA's experience in promoting building rehabilitation, aims to assist PMCs and owners in formulating a maintenance plan for the structure and facilities of common areas, preparing corresponding financial budgets, and making contributions on a 10-year cycle. As for new buildings, URA plans to roll out a new model of "preventive maintenance". Taking a first-home project as a pilot in the third quarter of 2023, the URA will introduce clauses in the DMC of the property to require owners and the DMC manager to formulate a periodic maintenance plan and a related financial reserve scheme from the moment the property is occupied. The DMC manager will be required to advise on the contribution arrangement for owners to discuss at owners' meeting.

6.8 Summary

Through reviewing the various issues on property management and property management fees, this Chapter sheds light on the areas where protection to consumers is insufficient. Despite the provisions of the BMO and DMC in setting out the scope and framework of owners' rights and the basis on which management fees are allocated from the outset, cases of conflict of interest are still reported from time to time which often involve owners holding a large portion of the undivided shares or engaging heavily in property management matters.

The lack of transparency in information such as detailed calculation of share allocation, clarity on the scope of management and maintenance expenses, etc. prevents consumers from obtaining a clear picture on his/her financial exposure to management expenses. Having passively accepted all pre-set terms in the DMC, the owners are practically bound throughout their ownership of the property. Even if an owner subsequently finds the terms unreasonable, the owner by himself/herself is effectively powerless in changing the situation as any amendment of the terms of the DMC has to be made unanimously.

Given the nature of the services and the requirements of the regulatory regime, it is virtually impossible for any owner alone to influence the management of the property as well as the management fee structure and arrangement, as important decisions concerning the development as a whole are required to be made collectively by the owners. Therefore, in order to take control of the situation, owners need to change their passive attitude and stop avoiding involvement in property management affairs. Only through collective and active actions can owners exercise their joint-power to strive for better management of their properties, and to foster sustainable, transparent, and healthy development of the property management market.



Recommendations

7.1 Introduction

In Hong Kong, owners' contribution to the management expenses of their property usually takes the form of property management fee collected by the property management company (PMC) on a recurrent basis. The Study found that property management fees are made up of a broad range of charge items of varying amounts, with the levels of fee varying from building to building and affected by different factors including location of property, amenities available to owners, building age and state of repairs, size of the staff employed, etc.

With budget planning and expense management being undertaken by PMCs and under the supervision of owners' corporations (OCs) (if any), the charging of property management fee is subject to the governance of the Building Management Ordinance (Cap. 344) (BMO) and Guidelines for Deeds of Mutual Covenant (DMC Guidelines), while the property management industry is regulated by the Property Management Services Ordinance (Cap. 626) (PMSO). Notwithstanding the aforesaid statutory framework, disputes among owners, owners' organisations (OOs) and PMCs continued to occur as a result of the common issues as identified in Chapter 6.

To address those issues, the Council puts forward the following eight recommendations for consideration and discussion by stakeholders. This Chapter provides a detailed account of the recommendations and the rationales behind.

7.2 Enhancing Market Transparency, Fairness and Efficiency

Recommendation 1: To Boost Transparency on the Basis upon Which Property Management Fees Are Shared between Owners

As undivided shares and management shares define ownership as well as the sharing of property management and maintenance expenses by owners, providing such information to prospective purchasers prior to their making of purchase decisions is crucial to minimising future misunderstanding and disputes. However, at present, neither the DMC Guidelines nor the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (RPO) require developers to publish information in the deed of mutual covenants (DMCs) or the sales materials to explain the calculation leading to the allocation of undivided shares and management shares. Further, since the RPO does not mandate the disclosure of management fees, such critical information for prospective purchasers is not always available in the official sales materials during the sales process. As discussed in Section 6.2 of Chapter 6, details of the calculation are available in the statutory declarations (SDs) which, however, are not sale documents readily accessible by prospective purchasers.

Against the above background, the Council proposes that the disclosure of the calculation and the basis upon which undivided shares and management shares are allocated should be made by developers in first-hand sales of residential properties, as a good corporate practice to satisfy consumers' right to know. It is recommended that developers should present the information in salient points in the sales brochures, with the detailed calculation of the share allocation to property units uploaded on the development's website, and a link to that particular webpage specified in the sales brochures.

To enhance consumers' ease of reference, it is also recommended that different categories of expense items which are to be shared by residential owners be shown in the sales brochure. When the allocation of undivided shares differs from that for the management shares, a clear explanation for the difference should be given.

Examples of the recommended format of disclosure and the information to be included in the sales brochure and development's website are given below for illustration purposes:

Example: To Present the Specified Share Allocation Basis in Salient Points in the Summary of DMC where the Share Information is Provided

- The undivided shares and management shares are allocated by reference to the Gross Floor Area (GFA) of a unit in proportion to the GFA of the development. [*Please specify if different basis is adopted]*
- For the residential portion of the development, undivided shares and management shares are allocated to the flat (excluding flat roof, roof, garden and stairhood) and other spaces (such as flat roof, roof, garden and stairhood) by reference to the GFA in the ratio as: one undivided share and one management share are allocated to each sq. m. of GFA of the flat and one undivided share and one management share will be allocated to each 10 sq. m. of other spaces. *[Please specify if different ratio is adopted]*
- For the commercial portion of the development, one undivided share and one management share will be allocated to each sq. m. of GFA. *[Please specify if different ratio is adopted]*
- For car parking spaces, one undivided share and one management share will be allocated to each sq. m. of GFA. *[Please specify if different ratio is adopted]*
- For the detail breakdown of the share allocation, please refer to the development's website at *[link to the specific page]*.

Example: To Present Different Categories of Expense Items to be Shared Among Residential Owners in a Consolidated Form, and Referring to Specific Sections of the Sales Brochure for Details

- Based on a separate management budget prepared by the manager, owners of residential units will be responsible to contribute to the management and maintenance costs of the "Residential Common Areas and Facilities", including *[e.g. entrances, lobbies, lift lobbies, staircases, canopies, flat roofs, gondola system(s), mail box(es), drain(s), pipe(s), etc]*. For details, please refer to *[Summary of Deed of Mutual Covenant section X "Residential Common Areas" and section Y "Residential Common Facilities"*.

1. Additional expenses *[payable by owners of special units only, e.g. open kitchen unit]* are to be included (if any) in the above budget for *[e.g. fire safety management plan]*. [178] For details,

[178] Additional expense items for special units such as open kitchen incurs budgeted expenses for the carrying out and implementation of the plans of the fire safety management and the fire services system.

please refer to *[the DMC/Sub-DMC section X clause X of the Development]*

- All residential owners shall contribute to the expenses incurred in or for the "Development Common Areas and Facilities" or "Estate Common Areas and Facilities", including:

  1. Expenses and costs of maintenance and management of areas and facilities of the lot intended for the common use and benefit of the development/ estate as a whole *[e.g. pedestrian links, private streets, roads, driveways, footpaths, sewage treatment rooms, machine rooms, pipes and ducts; pumps, tanks and sanitary fittings, etc]*. For details, please refer to *[Summary of Deed of Mutual Covenant section X clause X of this sales brochure]*

  2. Expenses and costs of items to be managed, operated or maintained for public use at the expense of the owners of the development/estate (if any) *[e.g. 24 hour walkway, covered pedestrian walkway, future footbridge associated structures, etc]*. For details, please refer to *[Information on Public Facilities and Public Open Spaces section X clause X of this sales brochure]*

  3. Expenses and costs of maintaining the slope(s) as required by the Land Grant (if any). For details, please refer to *[Maintenance of Slope(s) section X of this sales brochure]*

Example: Calculation of GFA and Undivided Shares or Management Shares of Residential Units (sq. m.)

<table>
<tr><th rowspan="3">Floor Level</th><th rowspan="3">Flat</th><th colspan="4">GFA (sq. m.)</th><th rowspan="3">Total Undivided Shares</th><th rowspan="3">Total Management Shares</th></tr>
<tr><th>Flat
[1]</th><th>Balcony, Utility Platform and Verandah
[2]</th><th>Flat Roof, Garden, Roof, Stairhood
[3]</th><th rowspan="2">Total
[1] + [2] + [3] = [4]</th></tr>
<tr><th colspan="2">1 share per sq.m.</th><th>0.1 share per sq.m.</th></tr>
<tr><td rowspan="3">5/F</td><td>A</td><td>94.693</td><td>4.884</td><td>0</td><td>99.577</td><td>100</td><td>100</td></tr>
<tr><td>B</td><td>75.08</td><td>4.29</td><td>0</td><td>79.37</td><td>79</td><td>79</td></tr>
<tr><td>C</td><td>66.66</td><td>3.94</td><td>0</td><td>70.6</td><td>71</td><td>71</td></tr>
</table>

Recommendation 2: To Make Available Updated Property Management Information to Promote the General Public's Understanding and Knowledge of the Industry

As reflected in the survey results, when trying to appoint a new PMC, the owners and OOs often faced the problems of inadequate information in the market, which made it difficult for them to assess the service quality and charge level of different PMCs and hindered them from identifying a sufficient number of suitable PMCs for consideration.

With the launch of the licensing regime for PMCs and property management practitioners (PMPs) in August 2020, the Property Management Services Authority (PMSA) now maintains an updated list of PMCs and PMPs on its website which can be accessed by the general public.

This information as a basic tool allows owners and OCs to get hold of the name list of PMCs and PMPs in times of need.

In addition to this basic tool, consumers when selecting new PMCs would also like to get an idea on the level of management fee for buildings with similar conditions as their own. However, such valuable information in the present market is not transparent and scattered, posing a great challenge for owners to make use of it. The Council therefore considers that while governing the mandatory licensing of PMC and PMP which the transitional period will expire on 31 July 2023, the PMSA in the long run may consider developing a reference database for the general public, by collating information on the levels of management fees across Hong Kong. To this end, reference can be made to the Electrical and Mechanical Services Department's (EMSD) release of maintenance price information on lifts in private residential premises for public reference, which served to facilitate the selection of registered lift contractors for provision of lift maintenance services. Another reference is extracted from the Mandatory Provident Fund Schemes Authority's MPF Fund Platform, which allows users to make side-by-side comparisons across different MPF constituent funds and schemes.

Box 6: Published Databases as Reference for the Establishment of the Database of Management Fees

Example: EMSD's Maintenance Price Information on Lifts in Private Residential Premises[179]

The EMSD has released the maintenance price information on the lifts in private residential premises for public reference, which aims at facilitating responsible persons of lifts to choose among registered lift contractors for provision of lift maintenance services through provision of related price information as reference. The information is updated by the EMSD on a half-yearly basis.

Lift travel 1 to 15 levels

Rated Speed ≤ 1.0 m/s			Rated Speed > 1.0 m/s		
Average No. of Landings	Average Monthly Maintenance Fee ($)	Change as Compared with Last Survey	Average No. of Landings	Average Monthly Maintenance Fee ($)	Change as Compared with Last Survey
8	4,751	2.0%	9	5,430	2.7%

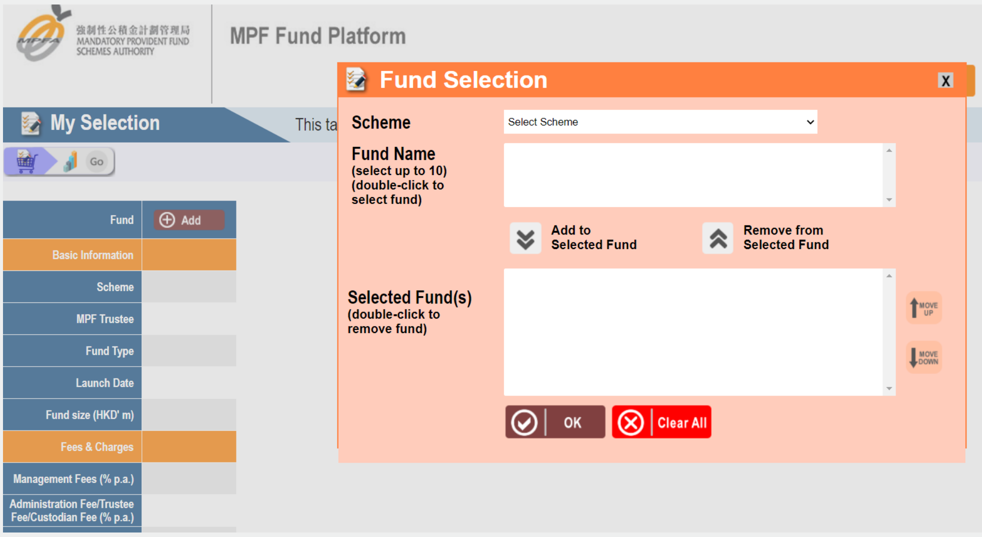
Lift travel 16 to 25 levels

Rated Speed ≤ 1.5 m/s			Rated Speed > 1.5 m/s		
Average No. of Landings	Average Monthly Maintenance Fee ($)	Change as Compared with Last Survey	Average No. of Landings	Average Monthly Maintenance Fee ($)	Change as Compared with Last Survey
15	5,078	1.3%	19	6,980	3.9%

179 See https://www.emsd.gov.hk/en/lifts_and_escalators_safety/responsible_persons_corner/maintenance_price_figures_for_lifts_at_private_res/

Example: Mandatory Provident Fund Schemes Authority's MPF Fund Platform[180]

The Mandatory Provident Fund Schemes Authority provides the "MPF Fund Platform", which allows users to make side-by-side comparisons across different MPF constituent funds and schemes. For instance, users may compare different MPF constituent funds and schemes, by various factors such as the fund size and the management fee of the funds and/or scheme.



To ensure that the database for management fees will serve its intended purpose, it should contain key information such as building age, number of building units, building location, facilities and services provided, area of horticulture, number of property management staff employed, etc. for owners' reference. Having said that, in order to reduce the risk of the proposed database being used in a manner to facilitate price-fixing or other anti-competitive conduct, competitively sensitive information such as the names of the PMCs and the buildings would be anonymised before aggregating the information for publication and take a progressive arrangement in the scale of information provision.

During the discussion with stakeholders from industry associations, they in general expressed support to the recommendation of sharing the data of management fee level for general public's reference.

The Council fully understands that it would be a time-consuming and challenging project to develop and maintain such a comprehensive database. Yet, from a consumer protection point of view, the database, if available, would be valuable to the public and strengthen their confidence in the industry.

Recommendation 3: To Promote Fairness through Allowing Amendment of the Terms of DMC (Other Than Those on Undivided Shares) with Majority Consent

DMC is a private deed that binds the successors in title of the covenantor and the persons deriving title from them, whether or not they have actual notice of the DMC. As elaborated in Section 6.3 of Chapter 6, terms in some old DMCs were observed to be problematic and might no longer fit the prevailing interests and benefits of owners. Yet, to amend any terms in the DMC, owners' unanimous consent is required, which is extremely difficult to obtain especially for large-scale housing estates, housing estates with vacant or deserted units or where some

[180] See https://mfp.mpfa.org.hk/

of the owners are indifferent.

To address the aforesaid issues, the Council calls for a relaxation of the requirement of unanimous consent, such as by amending the BMO to allow amendment of the terms in a DMC (other than those terms relating to the allocation of undivided shares) by majority consent of owners. Indeed, stakeholders opined that the adoption of majority consent instead of unanimous consent to amend the terms in a DMC would be especially helpful to solve the knotty problems of some old DMCs, although there was a divergence of opinion over the percentage of shareholding required to form such a majority consent. In this connection, Hong Kong may draw reference from the experience in the Mainland and Singapore as set out in Chapter 5. In addition, reference could be made to the Companies Ordinance (Cap. 622) which allows amendment of the articles of association of a company by a majority of at least 75% of the number (not shareholding) of the members who vote in person or by proxy. While further review and discussion by stakeholders are necessary, the Council proposes in reference to the Companies Ordinance, which allows by a majority of at least 75% of the number (not shareholding) of the members who vote in person or by proxy, to take 75% of undivided shares as reference point in determining what should amount to a majority consent for the purpose of amending the terms of a DMC.

To address the concerns of stakeholders on the potential abuse of the power to vary or override existing terms in a DMC for personal benefits, as well as the need to protect minority interests, the Council considers that certain safeguards are necessary:

- To avoid premature amendment before other viable solutions are explored, amendment of terms by majority consent of owners should only be available to buildings of not less than 10 years of age.
- Stringent procedures should be put in place and followed by all relevant parties when a change of the DMC terms is proposed:
    1. All parties involved (including parties to the DMC and all persons or companies to be affected by the amendment) must be invited for thorough discussion at the owners' meeting;
    2. The process must be transparent and rigorous; and
    3. The mechanism has to be monitored by the Home Affairs Department (HAD).
- An appeal mechanism should be established for any owner who disputes the decision reached by majority consent to apply to, say, the Lands Tribunal for review.

Recommendation 4: To Avoid Conflict of Interest from Over-engagement in Property Management Decisions

It is common that some developers may retain certain portions of undivided shares allocated to unsold units, shops, and facilities like car parks and club houses, etc. If the undivided shares held by the developer are substantial, it is possible for it to exercise its voting power to dominate the results and decisions at owners' meetings.

Another common practice of developers that raises consumer protection concern is their appointment of affiliated companies as PMCs. At the same time, contracts for various types of services such as security, cleaning, repair and maintenance, etc. might also be awarded to companies designated by or affiliated to the developers. While a "one-stop" service package could facilitate smooth operation and management of the development, it could also result in domination by the developer in the property management affairs and conflict of interests with other owners. In addition, such domination would stifle healthy and fair competition in the market not just over the quality of service, but also the level of property management fees charged to owners.

Drawing reference from the measures adopted in Australia and the Mainland, the Council recommends the introduction of the following provisions in the RPO and/or DMC Guidelines to address the issue of potential conflict of interests between developers and owners, and to foster healthy competition among service providers. In addition to developers, the recommended provisions should also apply to major owners with 30% or more undivided shares[181] and management committee (MC) members for check and balance purposes;

- Relationships of the following persons should be disclosed in a timely manner to increase transparency, in order to deal with potential conflicts of interest:
    1. Relationship between the developer and the DMC manager: Disclosure should be made in the sales brochure. If the DMC manager has yet to be appointed at the time of publication of the sales brochure, the sales brochure should have a clear indication on when and how the disclosure will be available, e.g. in the latest version of the sales brochure or on the development's website;
    2. Relationship between any major owner with 30% or more undivided shares or any MC members and the PMCs, PMPs or service providers (if any): Disclosure should be made as soon as a PMC, PMP or other service provider is proposed for selection.
- Declaration of interest should be made by the developer, any major owner with 30% or more undivided shares and any MC members when a conflict-of-interest situation arises. Where appropriate, he/she should withdraw from the meeting and abstain from voting on the specific agenda item(s), including but not limited to:
    1. Termination of PMCs or personnel or PMPs who are affiliated with the developer, major owner or MC member.
    2. Appointment and termination of suppliers for property management services who are affiliates and subsidiaries of the developer, major owner or MC member, or associate with him or her in some way (e.g. relatives, friends, staff, directors etc.).
- Bidding practice should be adopted for the procurement of services from PMCs (after completion of the appointment of the first DMC manager) as well as other service providers for substantial scale projects and where nature of the service is critical.

Recommendation 5: To Improve Performance Efficiency of Property Management Services with New Technologies and Intelligent Solutions

As shown in Chapter 4, owners considered "service quality" to be the most important consideration in choosing PMCs. The most common reasons for complaints from owners against property managers, as collected from different sources covered in Chapter 2 and Chapter 4, relate to the following issues:

[181] An owner with 30% or more of undivided shares of a development might have the voting power to veto the appointment of a MC.

- Poor service quality.
- Delay and lack of response to the complaints of residential owners.
- Insufficient communication channels.

Among the various factors affecting the quality of services provided by PMCs, the leading challenges faced by them are shortage of frontline staff and high operation costs. To tackle these persistent challenges, some PMCs indicated in the survey that they had been using technological tools like CCTV, e-mail, and mobile apps to enhance work efficiency and reduce manpower costs. The adoption of technology to automate labour-intensive tasks has accelerated in the past three years due to the social distancing measures during the COVID-19 pandemic.

Despite the advantages of technology in enhancing the cost-efficiency of property management, stakeholders shared the observation that some owners still prefer direct contact with the staff of PMCs over automated services. For instance, some owners rejected the proposal of installing biometric identification solutions to reduce the number of security guards due to privacy concerns and distrust of technology. To some owners, especially elderly residents who prefer direct conversation with familiar people, the lobby management stand is a place for effective communication and information sharing which cannot be dispensed with.

Given the advantages of technology in reducing costs and improving efficiency, the Council believes that the industry should, with the aforesaid concerns of owners in mind, continue to adopt more proven and effective technological and intelligent solutions to improve their services, so as to lead into the direction of easing the challenges of the industry while ensuring quality delivery of the services. Below are a few suggestions for the consideration of the industry:

- Roll out new intelligent solutions for property management services, such as cleaning, sanitising, security, communication, etc. As different buildings are subject to their own situation and availability of resources, the priority and speed of adoption of the solutions should be subject to the assessment of owners.
- Enhance communication and sharing of information through social media and property website. For instance, in addition or alternative to the conventional way of displaying circulars in lobbies and on notice boards, PMCs can reach out to owners through social media, communication tools and/or dedicated mobile apps or websites to disseminate various types of information, such as ad hoc notices, project progress, opinion collection, meeting documents and news updates, etc.
- Strengthen owners' confidence in and understanding of the adoption of the new solutions by involving them and gathering their feedback in all key project milestones. For instance, owners should be consulted at the initial stage for improvement suggestions and selection of new solutions during the evaluation process. They should also be involved in the testing of the solution applications and be consulted for feedbacks after the launching of the applications.
- Explore the feasibility of bespoke software, apps, platforms or templates for PMCs through synerigising effort of the industry to facilitate cost management and proper handling of the personal details and data. To this end, collaboration of the industry, the PMSA and the innovation and technology sector should be considered.

7.3 Encouraging Participation of Owners

Recommendation 6: To Promote Active Participation of Owners with More Effective Communication in Property Management Activities

The common features of potential purchasers and residential owners in relation to property management as identified by this Study can be summarised as follows:

- Purchasers of properties might not have duly considered the ongoing costs of maintaining a flat when they made the purchase decision;
- Some complaints about management expenses arose from owners' lack of understanding of the DMCs, limited knowledge on building management, and limited understanding of the relevant laws and regulations;
- Owners from time to time misunderstand the roles and obligations of OOs, MCs and property managers;
- A large proportion of owners claimed that they were busy and barely spent time on the management of their buildings; and
- There is a significant disparity between owners and PMCs on service expectations.

Against the above findings and with a view to preparing owners to take up their responsibilities, the Council suggests enhancing their engagement and participation in property management matters in a progressive manner. For example, an "information pack for owners" may be prepared and provided to every purchaser upon completion of the purchase through different channels. The information can be extracted from the building management materials prepared by HAD, for introducing the nature of property co-ownership, the rights and obligations of owners in property management, the importance and procedure to form an OC, the available building management support services, etc. in a handy booklet for the new property owners' quick reference. When the owners move into the property, they should be introduced to the management of the property as soon as possible, and the PMCs may display direct communication information (e.g. phone number, email address) for owners in conspicuous spots of the building. PMCs can organise events such as welcome gatherings or other periodic workshops to enhance owners' knowledge and understanding of the daily property management work. It would also be an opportune occasion for the PMC and owners to build rapport and promote mutual communication and understanding. During the course of their ownership, owners should continue to be informed of and engaged in the management of the property. HAD may consider stepping up its public education efforts by developing interactive learning kits or holding regular workshops about property management and regulatory requirements.

To further engage the owners, the increased use of social media and websites by PMCs to strengthen mutual communication with owners as mentioned in Recommendation 5 would augment owners' exposure to the property management matters, which in turn will help enhance their involvement accordingly. In the long run, it may be helpful to explore the practicality of holding virtual owners' meetings as a means to facilitate participation of owners in view of their busy schedule.

The Council also calls for owners to play their part in property management and get involved from the beginning of their ownership. Apart from always reviewing relevant documents carefully to understand the details of the property management expenses, owners should also attend owners' meetings more regularly and keep track of the progress of any ongoing property management projects. Besides raising interest in participating, such progressive approach in education and engagement could help the owners equip the required knowledge and present their opinion more confidently before major decisions are made, instead of doing so only after their interests or rights have been compromised.

Recommendation 7: To Facilitate the Early Set-Up of OCs or Join Forces of Owners to Address Property Management Issues

As managing and maintaining a building entail collective decision-making of owners, the BMO provides a mechanism for the establishment of an OC to handle property management matters on behalf of all the owners. Nonetheless, the Council's survey found that over half of the respondent owners did not know the procedure to form an OC, and a majority (97.3%) of them indicated that they would not consider joining any OOs. Although HAD with its District Building Management Liaison Teams have been devoting efforts to facilitate the incorporation of OCs, there is a persistent lack of incentive for owners to do so. The Council believes that more education and publicity programmes could be launched to instill understanding among the general public of the importance of OC, how it relates to every owner's rights and interests, the roles and responsibilities of the MC members, and so on, in order to further increase owners' interest and willingness in forming OCs.

In addition to more education and publicity programmes, the Council is of the view that the first owners meeting should take place as soon as possible. Under the current DMC Guidelines, the manager must call the first meeting of owners not later than nine months after the date of the DMC, for which one of the key objectives is to appoint an MC for the purpose of forming an OC under the BMO. The Council is of the view that this 9-month period may require a review, especially having regard to the fact that owners' eagerness and interest in the management of their property usually decrease with time after completion of the purchase. In this connection, the Council explored another reasonable threshold to trigger the first owners' meeting through a review analysis on the sales speed of first-hand residential property developments from 2018 to 2021 (see Chapter 3). The analysis findings support the introduction of a requirement that, on top of the current 9-month period, the first owners' meeting should be convened once the residential owners together holding over 50% of the undivided shares in aggregate, so as to safeguard their reasonable need to convene the first owners' meeting as early as possible to voice their concerns and to facilitate the earlier set-up of an OC. Although some owners may not be ready to form the OC at the first meeting, it can still serve as a platform for owners to join forces to address concerns over the management of their buildings and set the foundation for the formation of OC.

Separately, for buildings without OCs or other forms of OOs in place yet, the PMCs can consider holding the general meeting of owners at least twice per year to increase frequency of engagement with owners, instead of following the current arrangement of once every 12 to 15 months, in order to maximise the chance for owners to get involved with the property management activities and review the PMC's performance directly.

Besides the formation of OCs, the Study also revealed a general lack of motivation among owners to join an MC. To provide motivation to owners to join the MC, HAD may consider introducing an award scheme to recognise the efforts, commitment and achievements of MCs or individual members of MCs in promoting good property management. It is believed that the award scheme can increase public awareness of property management, motivate owners to oversee and even take part in the management of their buildings, and raise the standard of services of the property management industry as a whole. In addition, the amounts of the maximum allowances payable to certain members of an MC under the BMO may require a review in order to better reflect the value of their contribution to the management of the property.

7.4 Enabling Safe and Sustainable Buildings

Recommendation 8: To Maintain Building Sustainability for Expected Repair and Maintenance Expenditures with Reasonably Sufficient Reserve in the Special Fund (SF)

Currently, only new owners of first-hand residential building are required by the DMC Guidelines to pay the equivalent of two months' management fee into the SF as a start-up reserve for future building improvement or major maintenance projects. The amount to be contributed and the time when those contributions shall be payable are subject to the discretion of the OCs or PMCs. Yet, the fund is often insufficient to fulfil its purpose, as reflected in the survey conducted by Urban Renewal Authority (URA) titled "New Strategy on Building Rehabilitation".

The worst scenario is where there is no planning by the owners at all. It is observed that some private residential buildings underwent major maintenance only at the last minute or after the occurrence of an accident. As such, owners of these buildings had to pay substantial one-off contributions and suffered from financial strain. The Council thus recommends that owners should plan ahead with sufficient financial resources through regular and reasonable contributions to the SF. OCs or PMCs should conduct timely maintenance and repair work for the building, and engage the owners to set up of a SF at an early stage.

To determine the right level of contribution and the time of commencement for the SF is always a debate and thus, can turn out to be a long dragging process and become an outstanding item. In order to provide a viable guideline for setting up a feasible SF, the Council identified examples from Australia, the Mainland and Taiwan as basic reference and put forward to stakeholders for discussion. After consolidating views and comments of various stakeholders, the Council comes up with the below proposed approach.

To establish a capital works fund with a maintenance plan covering a duration of 10 years for the property, the following factors should be considered when planning for such a fund:

1. Option 1: To have qualified professionals assess the total maintenance budget of the property, based on the amount of contribution would be apportioned to the owners according to their shares. The key concerns of this option include whether the professionals can perform a realistic assessment on the maintenance needs of different properties, the affordability of owners, and the impact of cost variation over the years.

2. Option 2: To adopt certain percentage of the annual budget of property management fees as the amount to be contributed to the fund. The key concerns are how the percentage to be adopted should be determined and whether the contribution would actually be sufficient to cover future maintenance needs.

3. Option 3: To introduce a hybrid model with the developer of the property contributing a seed fund into the reserve fund, plus owners' paying two months'

management fee into the fund as a start-up reserve, followed by the owners' monthly contribution according to the set budget. This option, with reference to the practice in the Mainland and Taiwan, provides an incentive for the developers to adopt high quality materials in the development so as to slow down the deterioration of the building, as it may have direct impact on the amount of the seed fund. Incorporating developers as part of the property preservation system not only helps to justify the infamously high property prices in Hong Kong, but also provides a good reference to keep up the prestigious brand names of developers. The key concern here would be the need to avoid causing further uplift in property prices.

4. Option 4: To follow the existing provision to have PMCs or OCs (if available), who are perceived as being most familiar with the respective properties, responsible for the determination of the budget. The key concern would be the need to ensure reasonable fund contribution from time to time.

- Below are suggestions on the appropriate timing for owners to start depositing money for repair and maintenance purpose:

    1. In view of the 6-month Defects Liability Period (DLP) for first-hand properties, and the time required to work out the SF budget, the Council recommends that owners should start contributing to the fund in the second year to cover the expected maintenance needs of first-hand properties for the coming 10 years.

    2. While buildings over 10 years may face major repair and maintenance needs and should seek advice from professionals for the required expenses, the Council also suggests buildings at or below 10 years of age should set up a reserve fund to prepare for the forthcoming repair needs. Subject to the condition of their buildings, owners should decide the timing for contribution according to the respective maintenance needs.

- Other governance principles or features of the SF are set out below for consideration:

    1. To prevent abuse of the fund, the current approach of having the manager maintain an interest-bearing account designated for the purposes of the SF should remain unchanged.

        - A list of major maintenance project items for which the fund can be spent should be specified with reference to the experience from URA and Housing Department in order to define its proper usage. OOs, owners and PMCs can also refer to the “Smart Tender” (「招標妥」) platform established by the URA for information or assistance regarding the building rehabilitation work, such as the list of qualified contractors and reference price levels for different maintenance works. They can also refer to a set of reference documents on “Periodic Repair and Maintenance Plan” (「定期維修保養方案」參考文件) which is expected to be published by the URA in the second half of 2023. This set of reference documents is compiled to help owners or OOs systematically improve the effectiveness of building maintenance in terms of formulating the building maintenance manual to systematise the project scope, working out maintenance plans for various facilities with simplified document templates, and calculating the required contributions for the maintenance plan.

    2. The contribution paid into the SF should not be transferable as it is designated for maintaining the condition of the building as a whole instead of tied to each property unit.

3. The fund should be mandated through legislation and all owners should be required by law to contribute to the fund on a monthly basis.

4. Except in a situation considered by the manager to be an emergency, no money shall be paid out of the SF unless it is for a purpose approved by a resolution of the owners' committee (if any).

- With a view to enhancing owners' understanding of the importance in setting up and maintaining the SF, PMCs and OCs are recommended to take the following steps:

  1. To strengthen communication between the PMC/OC and owners about the background and rationale for the fund's establishment.

  2. To advise owners on the basis of calculation and contribution to the SF.

  3. To inform owners periodically of the status of the fund was and how it will be used.

Another reason for the setting up of a SF is to ensure compliance with statutory requirements related to building maintenance, such as requirements under the Mandatory Building Inspection Scheme (MBIS)[182] and Mandatory Window Inspection Scheme (MWIS),[183] all of which aim to keep buildings in good condition.

7.5 The Way Forward

Throughout the years, Hong Kong has had legislation in place to govern property management fees and set out guidelines for the operation of allocation of management expenses. As property management all over the world have distinctive characteristics, this Report has reviewed some selected markets from which good practices could be identified for Hong Kong's reference. At the same time, like all these selected markets that keep revising their regulatory regimes to strengthen and optimise their provisions to enhance protection for property owners, further legislative amendments in Hong Kong are also underway.

To advance effective property management services in Hong Kong, it is important to promote the general public's right to know through enhancing the transparency of information disclosure in publicly available sources before and after property purchases, protecting the consumer rights of owners through ensuring fairness of expenses and charge allocations, as well as quality of services justifies the charge. Owners also need to play a proactive role in property management activities, and in properly supervising the use of property management fee to ensure good value for money for their joint property. The Council understands its role as consumer advocate to inform and educate the public on property management matters, including but not limited to disseminating consumer tips about owners' rights and obligations. Last but not least, through effective and efficient communication, it is hoped that disputes between owners, OOs and PMCs can be minimised, contributing to the development of a sustainable property management services market in Hong Kong.

[182] Under the MBIS, owners of buildings aged 30 years or above (except domestic buildings not exceeding three storeys) and served with statutory notices are required to appoint a Registered Inspector to carry out the prescribed inspection on various building elements.

[183] Under the MWIS, owners of buildings aged 10 years or above (except domestic buildings not exceeding three storeys) and served with statutory notices are required to appoint a Qualified Person to carry out the prescribed inspection on all windows of the building.

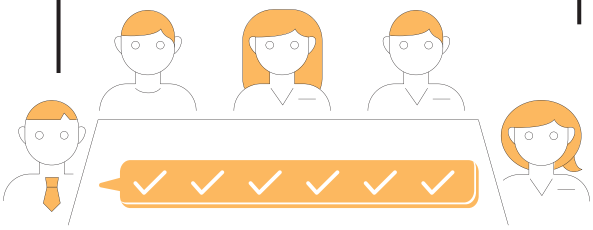
Consumer Tips on Property Management

Owners' rights

1 Convene a meeting of owners

A meeting of owners can be convened by:

- ➤ Property manager; or
- ➤ Person authorised by the Deed of Mutual Covenant (DMC)#; or
- ➤ An owner appointed by owners of not less than 5% of shares in aggregate

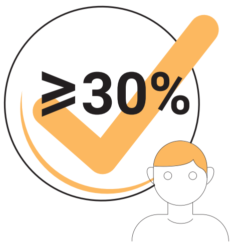


The DMC is drafted by the developer in accordance with the DMC Guidelines. Once the terms of the DMC are determined by the developer, they can hardly be changed in the future.

2 Appoint a management committee (nominate & elect members)

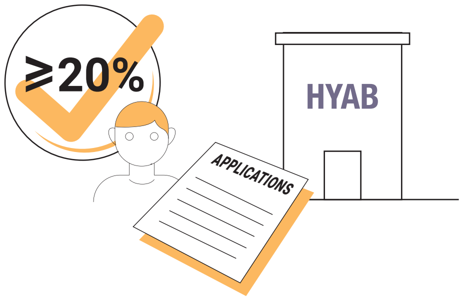
Option 1

At a meeting of owners, by a resolution (i) passed by a majority of votes of owners; and (ii) supported by owners of not less than 30% of shares in aggregate.

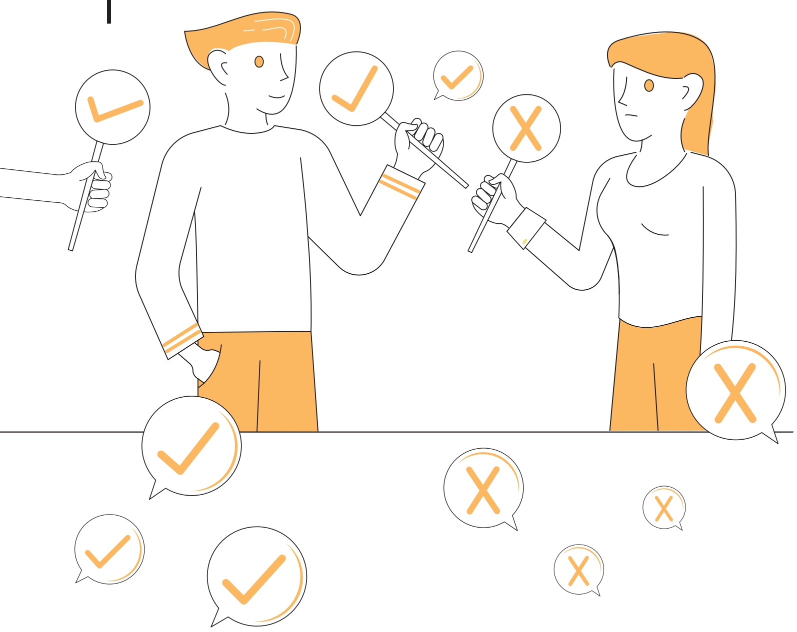


Option 2

Owners of not less than 20% of shares in aggregate may apply to the Home and Youth Affairs Bureau (HYAB) to convene a meeting of owners.*



4 Vote personally/by proxy at meeting of owners



5 Terminate property management company

DMC manager

OC may at a general meeting terminate a DMC manager by a resolution (i) passed by a majority of votes of the owners; and (ii) supported by the owners of not less than 50% of shares in aggregate.

Contract manager

The same mechanism of terminating a DMC manager is also applicable to a contract manager where the contract of appointment contains no provision for the termination of its appointment. However, if the contract of appointment contains provisions for its termination, those provisions shall prevail.

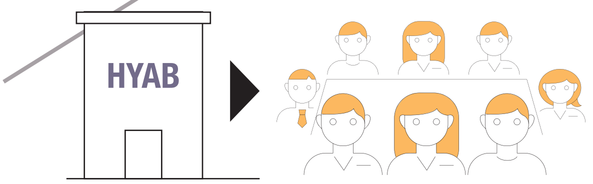
Where to seek help/ lodge complaint

- Home Affairs Department
- Property Management Services Authority
- Lands Tribunal
- Consumer Council

✻ The resolution may be passed by a majority of votes of the owners at the meeting.

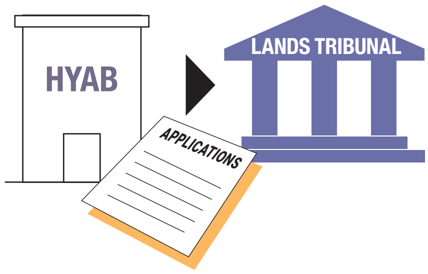
Option 3

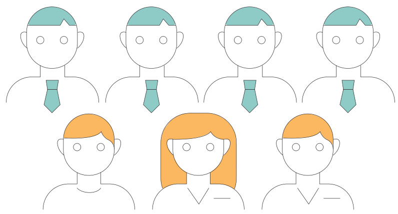
The Lands Tribunal may, upon application by owners of not less than 10% of shares in aggregate or the HYAB, order that a meeting of owners be convened. ✻



Option 4

Where no person is managing the building, the Lands Tribunal may, upon application by the HYAB, order that a meeting of owners be convened.✻





3 Form and participate in an owners' corporation (OC)

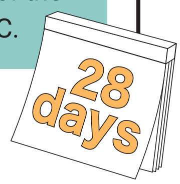
Appoint a management committee (MC)

▼

Appoint MC members

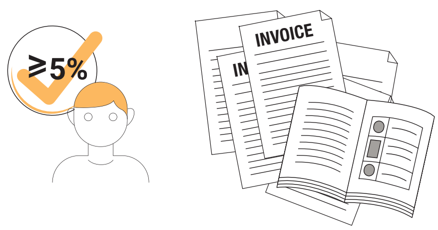
▼

The MC shall within 28 days of such appointment apply to the Land Registry for the registration of the owners as an OC.



6 Review financial statements and budgets

7 Inspect bills, invoices and receipts referred to in the books and records of account at the request of ⩾5% of the owners



Owners' obligations

- Share and pay the management fees and any types of funds of the building on time (including the maintenance fee of common parts)
- Pay attention to property management matters (e.g. attending meeting of owners)
- Follow building rules and policies, and decide on property management matters.

Appendix 1: Historical Development of Building Management Regulations in Hong Kong

Introduction

In Hong Kong where the supply of land is limited, real estate development is usually in the form of multi-storey buildings. In general, each owner is given exclusive use of his own unit, while the use and maintenance of common parts are shared by all owners. The scope of the common parts in a building is determined by the deed of mutual covenant (DMC) registered in the Land Registry (LR).

In 1970, the Government promulgated the Multi-storey Buildings (Owners Incorporation) Ordinance (MSBO) to provide a legal framework for owners to form owners' corporation (OC) to manage their own buildings. The MSBO was substantially amended in 1993 and retitled as the Building Management Ordinance (Cap. 344) (BMO). However, over the years, disputes between owners, OCs and property managers arose from time to time. In light of changing circumstances and to address public concerns, the BMO was further amended in 2000 and 2007.

Despite all these amendments, there are still public concerns on a number of matters including developers' influence over building management, formation of OCs, decision making in large-scale maintenance projects, as well as remuneration and termination of DMC managers which, depending on circumstances, may have bearing on the determination of management fees and management of the buildings.

A public consultation was conducted by the Government in 2014 on proposed legislative changes (e.g. to raise the quorum of the meeting and percentage of shares of votes for the passage of the resolution relating to large-scale maintenance projects, to minimise improper or abusive use of proxies at the OC meetings,[184] to reduce the remuneration rate of DMC managers and to improve the transparency in computation of remuneration) to address public concerns. In view of a lack of consensus reached on the proposed amendments, the Government further revised its proposals. As of the date of this Report, the Government has put forward the legislative amendment proposals to the BMO for discussion at the meeting of the Legislative Council Panel on Home Affairs, Culture and Sports in April 2023.

The following extracts from the Legislative Council and Home Affairs Department's (HAD's) papers provide a broad overview of the historical development of the laws in Hong Kong which relate to the issues of property management fee covered in this Report.

[184] The issue of "use of proxy at the OC meetings" was not covered by the Study which focused on property management fees.

1970

The MSBO was enacted to provide a legal framework for property owners to form OCs to manage their own buildings.

1985

As early as 1985, DMCs have to be approved by the Registrar General (Land Officer). In 1987, the Guidelines for Deeds of Mutual Covenant (DMC Guidelines) were drawn up.

1993

The MSBO was substantially amended and renamed as the BMO to facilitate the incorporation of owners and to provide them with specific powers and responsibilities regarding management of common parts of the buildings.

1999

The DMC Guidelines were amended to clarify voting rights and liabilities in relation to common parts.

2000

- Para 7 of Schedule 7 in the BMO was amended to clarify voting rights in relation to termination of manager's appointment by OC.
- Section 3 of the BMO was amended to lower the threshold for appointing an MC from 50% to 30%.

2006

- The DMC Guidelines were revised to specify the allocation of undivided and management shares on a GFA basis.
- The Guidelines introduced provisions on special fund (SF) and maintenance work and installations.

2007

Section 3 of the BMO was further amended for the appointment procedures of MCs.

2013

The RPO came into effect and Section 19 of the RPO required the DMC and property management information to be set out in the contents of sales brochure.

2014-2015

The HAD had conducted a public consultation on the review of the BMO.

2016

The PMSO came into force to regulate the provision of property management services and the PMSA was also established.

2018

The DMC Guidelines were revised in relation to capital expenditure and maintenance manual.

2020

After gathering opinions from both the property management industry and the public, the Government had refined its proposals on amendments to BMO.

2023 (April)

The Government has put forward the legislative amendment proposals to the BMO at the Legislative Council.

Building Management Ordinance (BMO) related

Guidelines for Deeds of Mutual Covenant (DMC Guidelines) related

Property Management Services Ordinance (PMSO) related

Residential Properties (First-hand Sales) Ordinance (RPO) related

1970: MSBO

The MSBO was promulgated in June 1970, with the aim "to facilitate the incorporation of owners of flats in multi-storey buildings" and "to provide for the management of such buildings and for matters incidental thereto or connected therewith".

The MSBO provided for the legal authority of an OC to manage a building. It also prescribed an OC's structure and operation.

"Common parts" of a building, as defined in the MSBO and carried through to the BMO, means "(a) the whole of a building, except such parts as have been specified or designated in an instrument registered in the Land Office as being for the exclusive use, occupation or enjoyment of an owner; and (b) unless so specified or designated, those parts specified in the First Schedule". The First Schedule of the MSBO covered a range of common parts, including external walls, foundations, passageways, corridors, staircases, roofs, chimneys, water tanks, cellars, lifts, escalators, air conditioning apparatus, etc.

Since 1985: Requirement of Approval of DMCs[185]

For newly granted leases for non-industrial land, the relevant DMCs had to be approved by the Registrar General (Land Officer). In 1987, the Guidelines for Deeds of Mutual Covenant (DMC Guidelines) were drawn up. Subsequent versions of the DMC Guidelines were revised by the Legal Advisory and Conveyancing Office (LACO).

1993: BMO

The MSBO was substantially amended and renamed as the BMO to "facilitate the incorporation of owners of flats" to manage "buildings or groups of buildings" as stated in its preamble. Some important amendments are explained below:

- Section 20 – Establishment of fund & Section 21 – Contributions to funds

  Under section 20, an OC shall establish and maintain a general fund (GF) to defray the cost of the exercise of its powers and the performance of its duties under the DMC and the BMO, as well as to meet the daily general expenses (including any outgoings in relation to any maintenance or repair work) of the building. An OC may also establish and maintain a contingency fund (CF) for use in emergencies or when the GF is insufficient.

  Under section 21(1), a management committee (MC) has power to determine the amount to be contributed by the owners to the funds established and maintained under section 20. According to section 21(3), an MC may increase the amount required to be contributed by the owners to the extent to which the funds so established and maintained are insufficient to meet any payment due by the OC in respect of the cost of complying with an order of the Lands Tribunal or any notice, order or other document served upon the OC in relation to the common parts by a public officer or public body under any ordinance.

  Under section 21(1A), any amount determined to be contributed by owners to the GF after the first such amount "shall not exceed a sum equivalent to 150% of the preceding amount unless that subsequent amount is approved by the OC by a resolution passed at a general meeting".

[185] Legislative Council Secretariat. (2002) LC Paper No. CB(2)1371/01-02. Meeting Minutes of Subcommittee on review of the Building Management Ordinance (Cap. 344).

- Section 34 – Liability of owners on winding up

  In the winding up of an OC under section 33, section 34 provides that "the owners shall be liable, both jointly and severally, to contribute, according to their respective shares" to the assets of the OC "to an amount sufficient to discharge its debts and liabilities".

- Section 34C – DMCs

  Section 34C provides that in the event of any inconsistency between Part VIA of the BMO and the terms of a DMC or any other agreement, Part VIA shall prevail.

- Section 34E – Mandatory terms impliedly incorporated into DMCs & Section 34F – Terms added if consistent with DMCs

  Some DMCs contain terms which are favorable to the developers and property managers affiliated with the developers. To redress this situation, the BMO provides that certain provisions are to be incorporated into all DMCs to ensure fairness between the parties.

  Under section 34E, the provisions in Schedule 7 are impliedly incorporated into every DMC and they prevail over any other provision in the DMC which is inconsistent with them.

  Under section 34F, the provisions in Schedule 8 are impliedly incorporated into every DMC but only so far as they are consistent with the terms of the DMC.

- Section 34G – Management expenses of unsold property

  Section 34G was added to make an owner of unsold property (e.g. the developer) liable to "pay management expenses relating to the share as if he had purchased that share" subject to the DMC.

- Section 34H – Duty to maintain property

  Section 34H was introduced to specify a person who "owns any part of a building, has the right to the exclusive possession of any part of a building or has the exclusive right to the use, occupation or enjoyment of that part" shall maintain that part notwithstanding that the DMC does not impose such an obligation.

- Section 34I – Common parts

  Under section 34I, no person may convert any part of the common parts of a building to his own use unless such conversion is approved by a resolution of the owners' committee (if any), or use or permit to be used the common parts of a building in such manner as to unreasonably interfere with the use and enjoyment of those parts by any owner or occupier; or to cause a nuisance or hazard to any person lawfully in the building.

- Section 34K – Management Committee to replace owners' committee

  According to section 34K, where an MC in respect of a building is or has been appointed under sections 3, 3A, 4 or 40C, the members of the MC shall be deemed to be the owners' committee for the purposes of the DMC in respect of that building.

Schedule 5 – Annual Budget

Schedule 5 to the BMO stipulates that the MC of an OC shall draw up an annual budget for the OC in which the estimates of each expenditure item, whether paid by the GF or CF, shall be included.

Schedule 7 – Mandatory Terms in DMC

- Paragraph 1 of Schedule 7 – Determination of total amount of management expenses

  Paragraph 1(2)(b) of Schedule 7 provides that, in respect of each financial year, "the manager shall send a copy of the draft budget to the owners' committee or, where there is no owners' committee, display a copy of the draft budget in a prominent place in the building, and cause it to remain so displayed for at least seven consecutive days".

  According to Paragraph 1(1), subject to certain provisions in this schedule, "the total amount of management expenses payable by the owners" during a financial year "shall be the total proposed expenditure during that year as specified by the manager" in paragraph 1(2).

- Paragraph 4 of Schedule 7 – SF

  The manager is required under paragraph 4 of Schedule 7 to establish and maintain a SF to provide for expenditure of a kind not expected by him to be incurred annually. If there is an OC, the OC shall determine, by a resolution of the owners, the amount to be contributed to the SF by the owners.

- Paragraph 7 of Schedule 7 – Termination of manager's appointment by OC

  Paragraph 7 of Schedule 7 provides that, at a general meeting convened for the purpose, an OC may, by a resolution "passed by a majority of the votes of the owners voting either personally or by proxy; and supported by the owners of not less than 50% of the shares in aggregate, terminate by notice the manager's appointment without compensation". The mechanism provided here is applicable to both the DMC manager and the property manager whose employment contract contains no provision for the termination of the property manager's appointment.

1999: Amendment to the DMC Guidelines to Clarify Voting Rights and Liabilities in relation to Common Parts

In 1999, the LACO of the Lands Department (LandsD) revised the DMC Guidelines to the effect that undivided shares allocated to common areas shall not carry any voting rights or liabilities to pay fees under the DMC.

2000: Amendment of Paragraph 7 of Schedule 7 to the BMO to Clarify Voting Rights in relation to Termination of Property Manager's Appointment by OC

An amendment was made in 2000 to require "only the owners of shares who pay or who are liable to pay the management expenses relating to those shares shall be entitled to vote" for determining the termination of a manager's appointment at an OC meeting.

2000 and 2007: Amendment of Section 3 of the BMO to Lower Threshold for Appointment of MC

To make it easier to form an OC, an amendment was made to section 3 of the BMO in 2000 such that, at a meeting convened under this section, the owners may, by a resolution "supported by the owners of not less than 30% of the shares in aggregate" appoint an MC, thereby lowering the threshold for appointing an MC from 50% to 30%.

Further amendment was made to Section 3 in 2007 to require that an MC could only be appointed if the resolution is "passed by a majority of the votes of the owners voting either personally or by proxy" and "supported by the owners of not less than 30% of the shares in aggregate".

2006: DMC Guidelines in relation to Allocation of Undivided and Management Shares on GFA Basis, Capital Expenditure and Maintenance Manual

To address the problems that developers could control the management of buildings by being granted a large proportion of shares with greater voting power but would be required to pay less management fees using a "value" basis under the DMCs, the LACO specified in 2006[186] that "the allocation of undivided shares and management shares will be calculated by reference to the GFA of a unit in proportion to the GFA of the development as certified by the Authorised Person (AP)". This basis of share allocation was stipulated in DMC Guidelines No. 6, but it does not require the basis to be stated in the DMC.

DMC Guidelines Nos. 21 and 36 first introduced provisions governing the setup of a SF for meeting capital expenditure, the incorporation of a schedule of works and installations in the DMC, and the requirement for the developer to compile a maintenance manual for works and installations.

2007: Amendment of Section 40C of the BMO to Remove the Required Quorum for Appointment of MC or Building Management Agent by Order of Tribunal

The amendment to section 40C was no longer to require the resolution of the appointment of MC or building management agent by order of tribunal to be passed by a quorum of not less than 10% of the owners at the meeting of owners. However, it should be noted that section 40C of the BMO only caters for very exceptional circumstances, i.e. where there is a danger or risk of danger to the occupiers or owners of the buildings.

2013: Section 19 of the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (RPO) – Contents of Sales Brochure: DMC and Property Management Information Required to Be Set Out

With a view to further enhancing the transparency, fairness and consumer protection of the sales of first-hand residential properties, the RPO came into effect in 2013. The RPO is to "set out detailed requirements for vendors of first-hand residential properties to comply with in

[186] LACO. (2006) LACO Circular Memorandum No. 56 – Revised Guidelines for Deeds of Mutual Covenant.

relation to sales brochures, price lists, show flats, disclosure of transaction information, advertisements, sales arrangements, and the mandatory provisions for the Preliminary Agreement for Sale and Purchase and Agreement for Sale and Purchase for the sales of first-hand residential properties".[187]

The RPO mandates that every sales brochure of both uncompleted and completed first-hand residential properties shall include a summary of "the latest draft of every DMC in respect of the specified residential property as at the date on which the sales brochure is printed," or otherwise "every deed of mutual covenant in respect of the specified residential property that has been executed" (this would be applied to completed developments only).

Section 14(2) of Schedule 1 of the RPO requires the sales brochure to contain a summary of the provisions of the draft DMC or the DMC, as applicable, that deal with the following matters:

(a) the common parts of the development;

(b) the number of undivided shares assigned to each residential property in the development;

(c) the term of years for which the manager of the development is appointed;

(d) the basis on which the management expenses are shared among the owners of the residential properties in the development;

(e) the basis on which the management fee deposit is fixed; and

(f) the area (if any) in the development retained by the owner for that owner's own use.

For the sale of completed first-hand residential property, developers must provide, in addition to the sales brochure, a Vendor's Information Form (VIF) which must set out the amount of management fee payable for a specified residential property.[188] For uncompleted property, prospective purchasers may ask the developer or the estate agents on the availability of information on the amount of management fee per square foot of the residential property.

2014 – 2015: Public Consultation on Review of the BMO

The HAD conducted a public consultation during 2014 and 2015 to gauge public views on issues regarding building management including but not limited to large-scale maintenance projects, the formation of OCs, appointment of DMC managers and their remuneration rate adjustments.

Given significant financial implications in large-scale maintenance projects, it is important that such projects are properly discussed and endorsed by the majority of owners at OC's meetings. In this regard, the quorum of the meeting was suggested to be raised from 10% to, say 20%, of the total number of owners, or the required percentage of shares of votes for the passage of the resolution was suggested to be raised from 50% to, say 75%.

The thresholds for OCs formation and termination of the appointment of DMC mangers were proposed to be lowered from 30% to 20% and from 50% to 30% of owners of shares respectively. Furthermore, it was suggested to limit the appointment of DMC managers to up to five years.

[187] Sales of First-hand Residential Properties Authority (SRPA). SRPA-FAQ-Purchasers.
[188] RPO. Schedule 8 section 1(a).

With regard to a call for the review of the remuneration level of DMC managers as specified in the DMC Guidelines, several proposals were made, namely by

- Reducing the ceiling on the remuneration rate of DMC manager for large scale developments (i.e. more than 100 residential units and parking spaces) by a specified percentage (e.g. 0.5%) each year, so as to go from 10% to 8% ultimately;
- Increasing the number of tiers of ceiling on the DMC manager's remuneration with the ceilings to be set below 10%;
- Excluding a specified list of expenditure items which do not involve any value-added services by the DMC manager (e.g. electricity charges, water bills, etc.) from the formula for calculating the remuneration of the DMC manager; and
- Providing the owners with a detailed breakdown on how the service fee of the headquarters/parent company would be apportioned among the developments they serve.

Some further refinements to the proposals were made as a result of the public engagement exercise conducted in 2017.[189]

2016: Establishment of the Property Management Services Authority (PMSA) under the Property Management Services Ordinance (Cap. 626) (PMSO)

In 2016, the PMSO came into force to regulate and control the provision of property management services via a mandatory licensing regime of PMCs and property management practitioners (PMPs). The PMSA was also established in 2016 under the PMSO to regulate the provision of property management services and to promote the professional development of the property management industry.

2020: Proposals on Amendments to BMO and Manager Remuneration in DMC Guidelines

After gathering opinions from both the property management industry and the public, the Government has put forward a summary of the legislative amendment proposals and administrative measures in 2020: [190]

Large-scale Maintenance Projects

Apart from raising the quorum of OC meeting from 10% to 20% of the owners, it was suggested that a resolution for a large-scale maintenance project shall only be passed if at least 10% of the owners or 400 owners, whichever is the lesser, have voted in person.

Formation of OCs

The Government will no longer pursue lowering the percentage of shares from 30% to 20% in aggregate required for the formation of OCs. In other words, the percentages of shares in

[189] Home Affairs Bureau, HAD. (2017) LC Paper No. CB(2)378/17-18(03). Review of the BMO-Proposed Enhancements 2017.
[190] HAD. (2020) LC Paper No. CB(2)913/19-20(03). Progress of the Review of the BMO & Related Administrative Measures.

aggregate required for the formation of OCs stipulated under sections 3, 3A and 4 of the existing BMO will remain unchanged.[191]

Termination of the Appointment of DMC Managers

The existing threshold of a resolution passed by owners holding 50% of the shares as provided in paragraph 7 of Schedule 7 to the BMO will be retained.

Remuneration of DMC Managers

Instead of amending the BMO, the Government also proposed to amend the DMC Guidelines to increase the transparency of DMC managers' remuneration in the following aspects:

- Breakdown of expenditure items
  - To provide a detailed breakdown on how the DMC manager apportioned the service fee of its headquarters among the developments it serves;
  - To exclude expenditure items which do not involve any value-added services by the DMC manager (e.g. electricity and water charges) from the computation of its remuneration.
- Ceiling on the remuneration rate
  - To reduce the ceiling.

While some technical fine-tuning of the amendment proposals for the BMO amendment exercise were put forward for discussion at the Legislative Council in 2020, the amendment proposals were not proceeded further.

2023: Latest Development

On 3 April 2023, the Home and Youth Affairs Bureau presented a paper for discussion at the meeting of the Legislative Council Panel on Home Affairs, Culture and Sports, proposing the amendment bill on the BMO featured on the following four areas:

- Large-scale maintenance projects and procurement in general, e.g. the lowering of the quorum and voting-in-person requirements, so as to increase owners' participation;
- Keeping of minutes, e.g. delivering copies of the minutes of meetings on "large-scale maintenance projects" to owners within 28 days from the date of meetings;
- Accounts and financial statements, e.g. if the annual income or annual expenditure is or is likely to be more than HK$500,000, the financial statements of the building must be audited regardless of the number of flats; and
- Criminal sanctions, i.e. criminal sanctions shall be imposed against non-compliance with the requirements in relation to the keeping of meeting minutes, tender documents and proxy instruments.

[191] Home Affairs Bureau, HAD. (2016) LC Paper No. CB(2)1502/15-16(03). Review of the Building Management Ordinance (Cap. 344). The respondents of the public consultation generally considered the percentages of shares in aggregate required for the formation of OCs stipulated under the existing BMO appropriate and operate effectively. There is no need to further lower the threshold for formation of OCs under the BMO so as not to affect their representativeness.

Appendix 2: How are Management Fees Determined?

Introduction

This Appendix outlines the legal requirements under which the expenses of managing a multi-owned building in Hong Kong are budgeted, calculated and apportioned between the owners of the building to work out the level of management fees required to be paid by each owner.

As background information, an owners' corporation (OC) is required to (a) maintain the common parts and the property of the OC in a state of good and serviceable repair and clean condition; (b) carry out such work as may be ordered or required in respect of the common parts by any public officer or public body in exercise of the powers conferred by any ordinance; (c) do all things reasonably necessary for the enforcement of the obligations contained in the deed of mutual covenant (DMC) (if any) for the control, management and administration of the building.

The level of management fees payable by owners varies depending on the location, amenities available, the age and state of repairs, the size of staff provided for managing common areas and facilities of the building. From time to time, disputes arise as to whether certain parts of the building are common parts, the maintenance cost of which is to be shared amongst the owners. To resolve the disputes, the court ascertains the facts regarding the circumstances of a particular building and makes a purposive interpretation of the relevant clauses of the DMC.

Preparation of Budget by Property Manager

Under the Building Management Ordinance (Cap. 344) (BMO), the appointed property manager, in determining the management expenses, is required to:[192]

(a) Prepare a draft budget setting out the proposed expenditure during the financial year;

(b) Send a copy of the draft budget to the owners' committee or, where there is no owners' committee, display a copy of the draft budget in a prominent place in the building, and cause it to remain so displayed for at least seven consecutive days;

(c) Send or display, as the case may be, with the copy of the draft budget a notice inviting each owner to send his comments on the draft budget to the property manager within a period of 14 days from the date the draft budget was sent or first displayed;

(d) After the end of that period, prepare a budget specifying the total proposed expenditure during the financial year; and

(e) Send a copy of the budget to the owners' committee or, where there is no owners' committee, display a copy of the budget in a prominent place in the building, and cause it to remain so displayed for at least seven consecutive days.

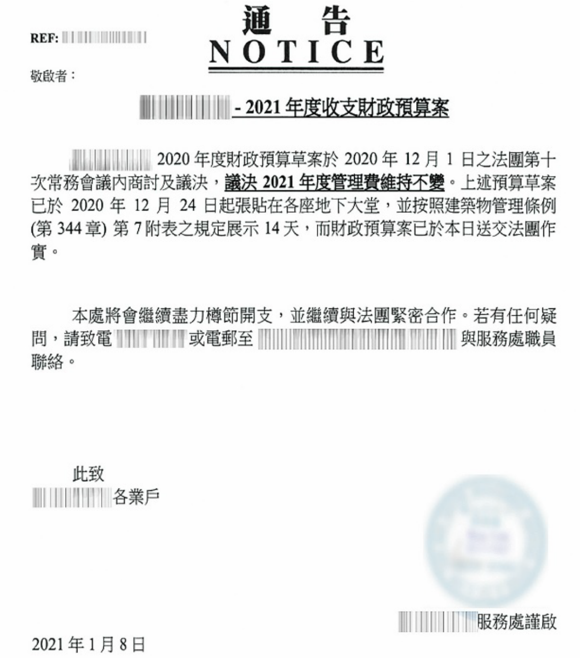
Where a budget is prepared, the total amount of management expenses payable by the owners during the financial year shall be the total proposed expenditure during that year as specified by the property manager in the budget.[193] Expenditure is defined to include all costs, charges

[192] BMO. Paragraph 1(2) of Schedule 7.
[193] BMO. Paragraph 1(1) of Schedule 7.

and expenses to be borne by the owners, including the remuneration of the property manager.[194]

It is observed that the budget notices prepared by property managers are in a variety of different formats. Two samples are set out below:

Sample 1:



REF: [redacted]

通　告

NOTICE

敬啟者：

[redacted] - 2021 年度收支財政預算案

[redacted] 2020 年度財政預算草案於 2020 年 12 月 1 日之法團第十次常務會議內商討及議決，**議決 2021 年度管理費維持不變**。上述預算草案已於 2020 年 12 月 24 日起張貼在各座地下大堂，並按照建築物管理條例 (第 344 章) 第 7 附表之規定展示 14 天，而財政預算案已於本日送交法團作實。

本處將會繼續盡力樽節開支，並繼續與法團緊密合作。若有任何疑問，請致電 [redacted] 或電郵至 [redacted] 與服務處職員聯絡。

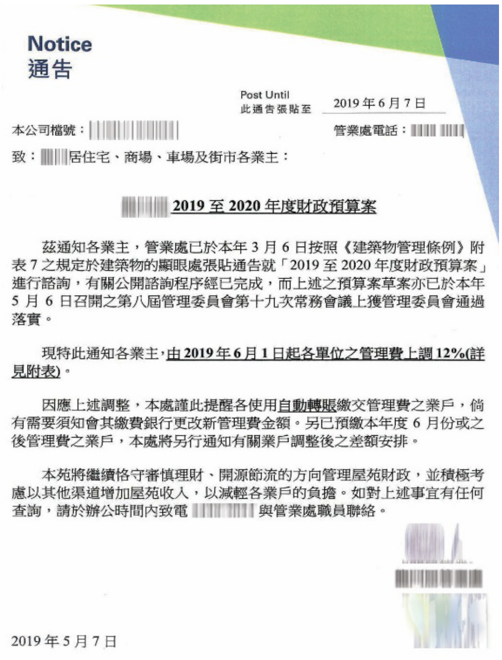
此致

[redacted] 各業戶

[redacted] 服務處謹啟

2021 年 1 月 8 日

Sample 2:



Notice

通告

Post Until 此通告張貼至 2019 年 6 月 7 日

本公司檔號：[redacted]

管業處電話：[redacted]

致：[redacted] 居住宅、商場、車場及街市各業主：

[redacted] 2019 至 2020 年度財政預算案

茲通知各業主，管業處已於本年 3 月 6 日按照《建築物管理條例》附表 7 之規定於建築物的顯眼處張貼通告就「2019 至 2020 年度財政預算案」進行諮詢，有關公開諮詢程序經已完成，而上述之預算案草案亦已於本年 5 月 6 日召開之第八屆管理委員會第十九次常務會議上獲管理委員會通過落實。

現特此通知各業主，**由 2019 年 6 月 1 日起各單位之管理費上調 12%(詳見附表)**。

因應上述調整，本處謹此提醒各使用自動轉賬繳交管理費之業戶，倘有需要須知會其繳費銀行更改新管理費金額。另已預繳本年度 6 月份或之後管理費之業戶，本處將另行通知有關業戶調整後之差額安排。

本苑將繼續恪守審慎理財、開源節流的方向管理屋苑財政，並積極考慮以其他渠道增加屋苑收入，以減輕各業戶的負擔。如對上述事宜有任何查詢，請於辦公時間內致電 [redacted] 與管業處職員聯絡。

2019 年 5 月 7 日

Where the property manager has not prepared the budget as required before the start of the financial year, the total amount of the management expenses for that year shall, until the requirements have been complied with, deemed to be the same as the total amount of management expenses for the previous financial year.[195]

If the property manager revises the budget, the amount that owners shall contribute towards management expenses shall be adjusted according to the revised budget.[196]

If there is an OC and, within a period of one month from the date that a budget or revised budget for a financial year is sent or first displayed, the OC decides, by a resolution of the owners, to reject the budget or revised budget, as the case may be, the total amount of management expenses for the financial year shall, until another budget or revised budget is sent or displayed and is not so rejected, be deemed to be the same as the total amount of management expenses (if any) for the previous financial year, together with an amount not exceeding 10% of that total amount as the property manager may determine.[197]

194 BMO. Paragraph 1(8) of Schedule 7.
195 BMO. Paragraph 1(3)(a) of Schedule 7.
196 BMO. Paragraph 1(5) of Schedule 7.
197 BMO. Paragraph 1(6) of Schedule 7.

If any owner requests in writing the manager to supply him with a copy of any draft budget, budget or revised budget, the manager shall, on payment of a reasonable copying charge, supply a copy to that person.[198]

Preparation of Budget (Where There Is No Manager Appointed)

Where there is no manager acting under the DMC and the OC manages the building, Part IV of the BMO applies.[199] An OC shall establish and maintain a general fund to defray the cost of the exercise of its powers and the performance of its duties under the DMC and the BMO (such as for employing security guards and paying cleansing fee) and other outgoings (including any outgoings in relation to any maintenance or repair work).[200] The management committee ("MC") of the OC shall determine the amount to be contributed by the owners to the general fund. The OC may also establish and maintain a contingency fund to provide for any expenditure of an unexpected or urgent nature and to meet any payments if the general fund establish is insufficient to meet them. The amount to be determined by the MC shall be based upon the annual budget prepared by the MC. In addition, if the amount subsequently determined by the MC increases by over 50% of the preceding amount, the subsequent amount should be approved by the OC by a resolution passed at a general meeting.[201] Given the objectives of the Study as set out in Chapter 1, the Council's efforts are dedicated to private residential buildings that engage property management companies (PMCs).

Disputes over Management Fees

If owners suspect that there is excessive charging of management fees, they could review the management expenses through the following means:

- Owners may try to resolve the disputes by presenting their case to the MC without involving other parties. Where necessary, provided that the threshold required under the BMO is met, the owners may request to inspect any bills, invoices, vouchers, receipts or other documents.[202]

- Owners may request that an owners' meeting be convened to discuss the issue. Where an OC is formed, the MC chairman shall convene a general meeting at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request, and hold the general meeting within 45 days of receiving such request.

[198] BMO. Paragraph 1(7) of Schedule 7.
[199] The Hong Kong Legal Information Institute. WONG PUN MAN v. THE INCORPORATED OWNERS OF TUNG FAT BUILDING [1996] HKLdT 1; (LDBM 113/1995).
[200] BMO. Section 20. See also Government Press Release. (11 May 2011) LCQ17: Adjustment of private building management fees.
[201] BMO. Section 21(1), Section 21(1A) and paragraph 1 of Schedule 5.
[202] Under paragraph 1A(a) of Schedule 6 of the BMO, at the request of at least 5% of the owners, MC should permit those owners or their appointees to inspect any bills, invoices, vouchers, receipts or other documents referred to in paragraph 1 of Schedule 6 at any reasonable time.

Steps to Determine Owners' Contribution to

Step 1: Preparation of budget on expenditure

The Deed of Mutual Covenant (DMC) governs the owners' obligation, subject to a budget on proposed expenditure prepared by the property manager under the Building Management Ordinance (BMO).

Where an owners' corporation (OC) has been formed, monthly management fees are collected as contributions to the general fund and contigency fund under the BMO.

Budget on proposed expenditure

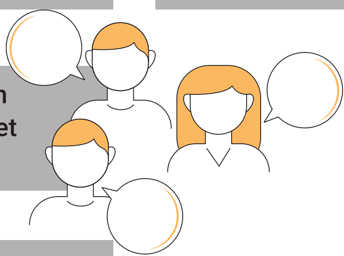
Whether the property manager has prepared the draft budget

YES

Send the draft budget to the owners' committee or if there is no owners' committee, display the draft budget for at least 7 days

↓

Invite comments from owners within 14 days from the date the draft budget was sent/displayed



↓

After collecting comments from owners, the property manager shall prepare a budget specifying total proposed expenditure during the financial year

↓

Send the budget to the owners' committee or if there is no owners' committee, display the budget for at least 7 days

↓

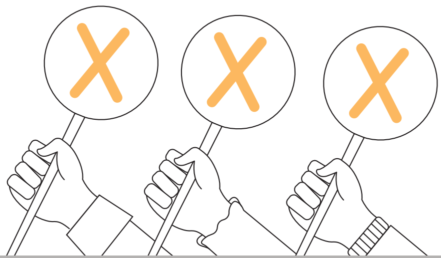
If the budget is **not rejected** by a resolution of owners within 1 month from the date the budget was sent/first displayed

↓

Total management expenses = Total proposed expenditure

NO

Total management expenses = Total management expenses for the previous financial year



If there is an OC, and the budget **is rejected** by a resolution of owners within 1 month from the date the budget was sent/first displayed

↓

Total management expenses = Total management expenses for the previous financial year + An amount not exceeding 10% of that total amount

Property Management Fees

Step 2: Calculation of contribution amount

The amount to be collected from all owners shall be determined by the management committee (MC) or the owners' committee if OC is not formed, subject to the following control/safeguards to owners under BMO:

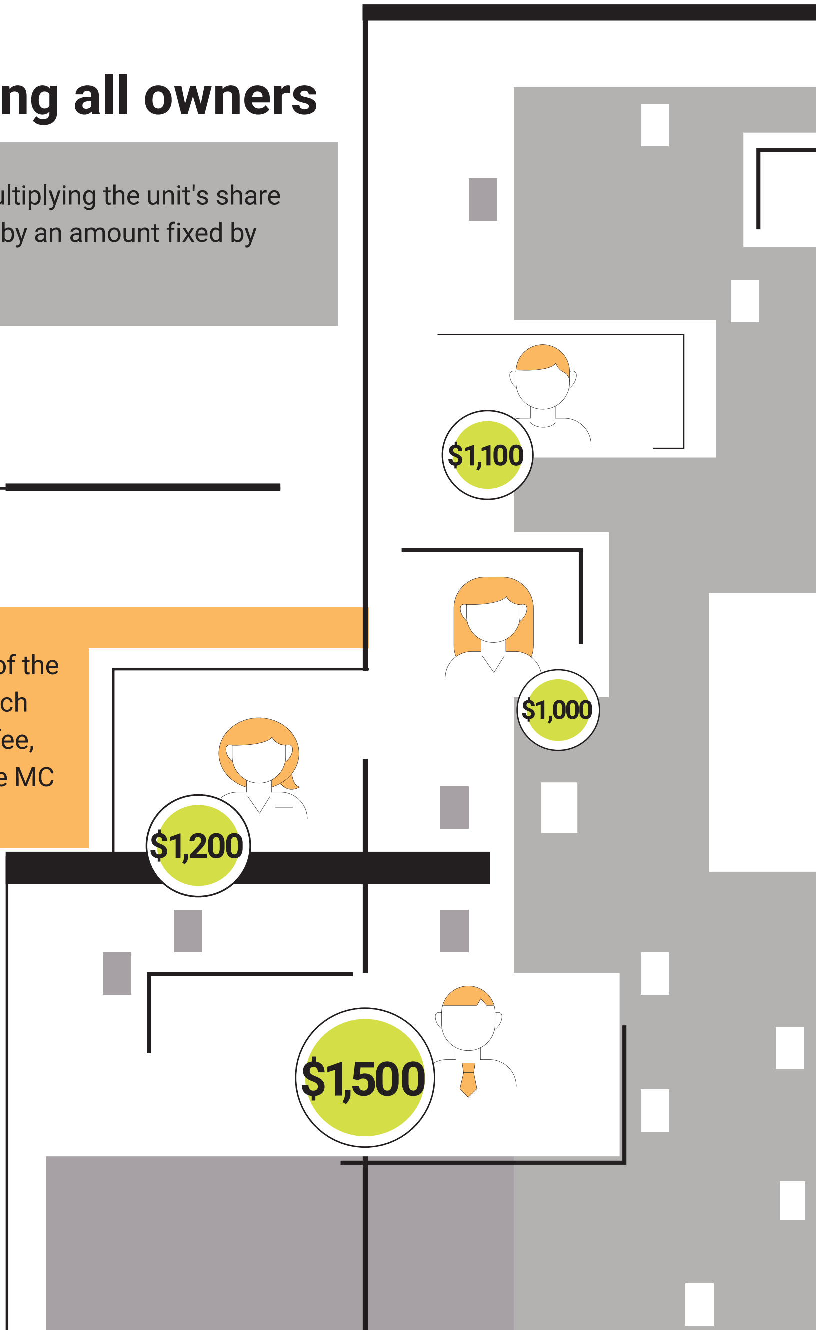
- Must be based on an annual budget prepared by the MC
- The sums in the annual budget must be, in the opinion of the MC, reasonably necessary to meet payments
- If the increase is 50% or more than that of the year before, the sum has to be approved by owners by resolution at a general meeting

Step 3: Apportionment among all owners

Share for each unit is calculated by multiplying the unit's share (undivided share/management share) by an amount fixed by the MC in accordance with the DMC

Step 4: Billing

Owners are billed for their share of the total management expenses, which cover the monthly management fee, and in the form determined by the MC



- Where necessary, owners may wish to avail themselves of the mediation services available in Hong Kong.

  - The Home Affairs Department has set up in the 18 District Offices, District Building Management Liaison Teams to assist owners and OCs on building management matters. Such Teams may arrange the provision of voluntary professional mediation service for them where necessary. The HAD has launched in collaboration with the Hong Kong Mediation Centre and the Hong Kong Mediation Council the Free Mediation Service Scheme for Building Management and the HAD will arrange for professional mediators for parties such as owners, tenants, OCs and PMCs, which intended to resolve their disputes over building management through mediation.

  - Furthermore, the HAD has also launched a free Building Management Dispute Resolution Service, steered by a retired Judge/Judicial Officer serving as the Convenor, which assists the parties in disputes in the form of a mediation service, in identifying issues in the dispute, exploring and generating options, and reaching settlement of the dispute.

- Owners can apply to the Lands Tribunal for a ruling on any building management matters specified in Schedule 10 of the BMO.[203] Amongst other things, the tribunal has jurisdiction to hear and determine proceedings relating to the calculation or apportionment of any management expenses or charges.[204]

[203] BMO. Section 45.
[204] BMO. Paragraph 4(c) of Schedule 10.

Appendix 3: Respondent Profiles of Property Management Surveys and Interviews

This appendix expounds on the profiles of the respondents in the face-to-face surveys and in-depth interviews, as well as profile of owners at different level of participation in property management activities.

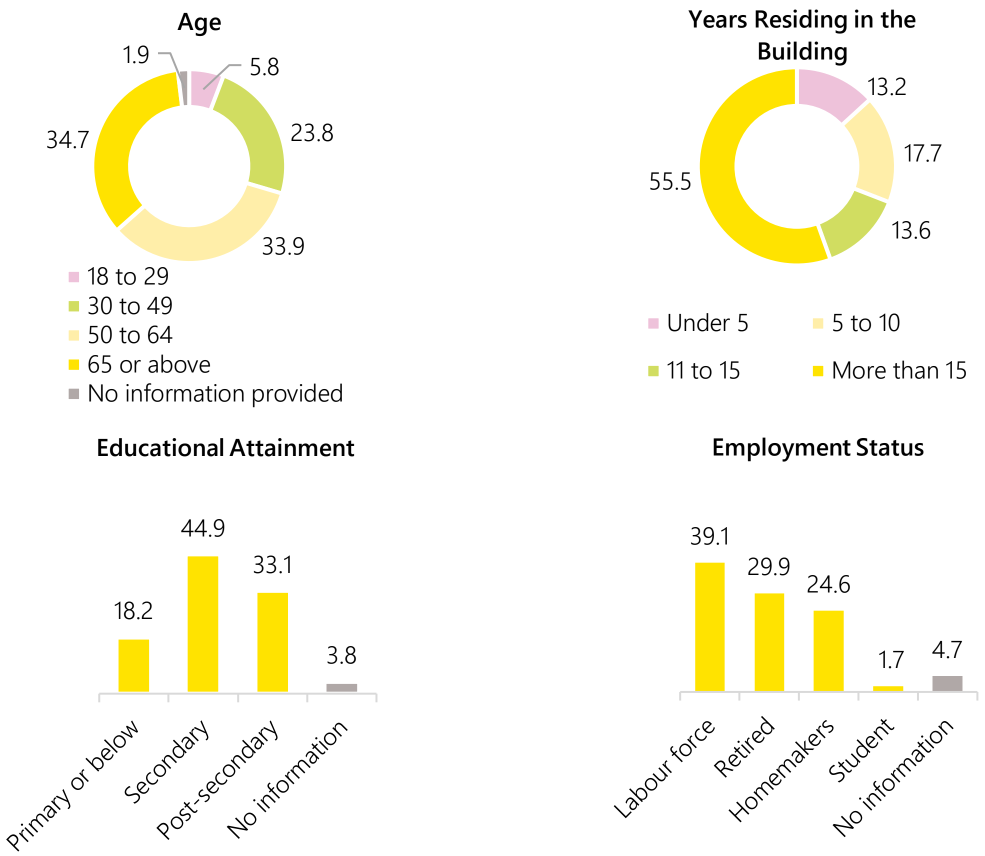
1. Face-to-face Surveys

Owners

The 1,103 owners enumerated in the survey have the following key distributed elements (Chart 55):

- Aged 50 years old or above (68.6%)
- Residing in the buildings for more than 10 years (69.1%)
- Educational attainment was secondary or above (78.0%)
- Within the labour force (39.1%)

Chart 55: Distribution of Owners (%)

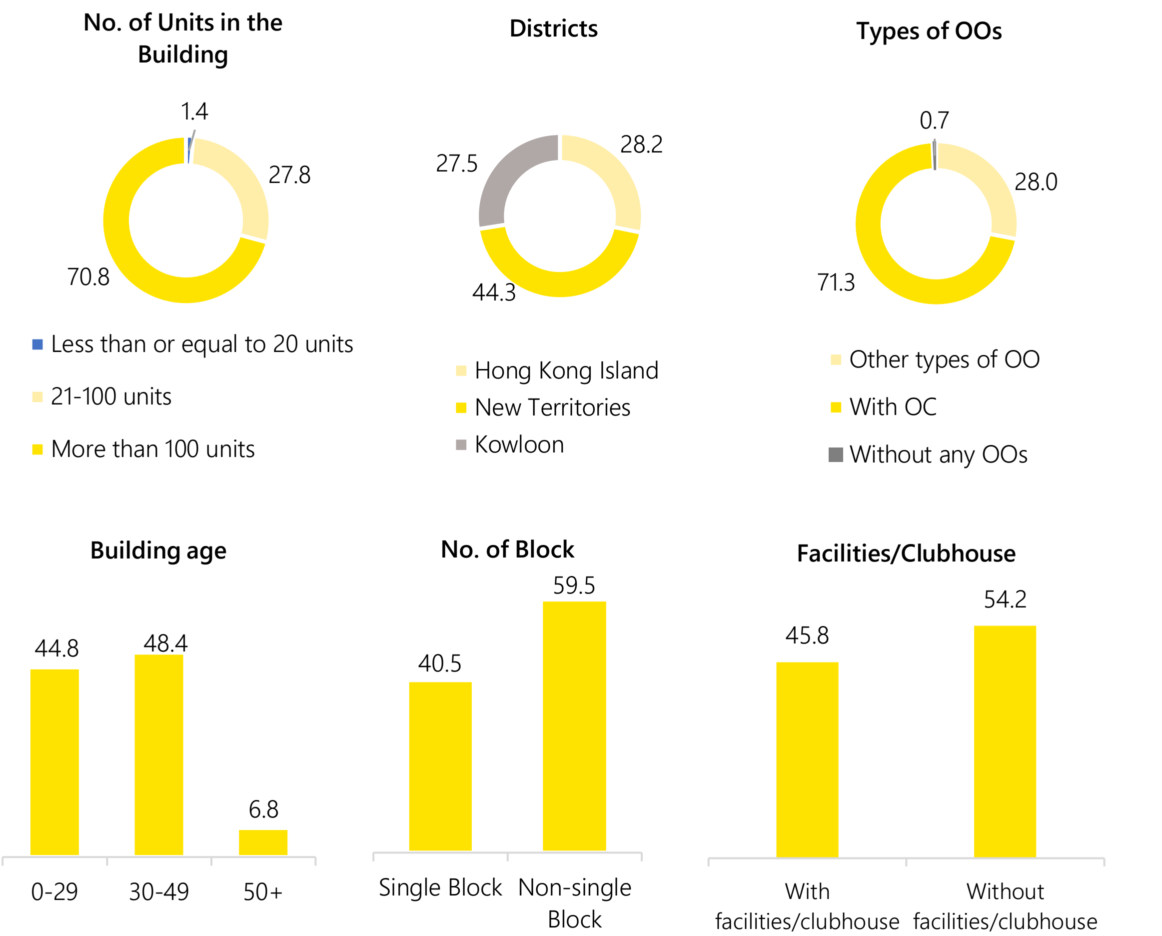


Base: N=1,103

The distribution of buildings where owners resided is as follows (Chart 56):

- Buildings with more than 100 units (70.8%)
- Buildings located in New Territories (44.3%)
- Buildings with owners' corporations (OCs) formed (71.3%)
- Buildings aged below 50 years (93.2%)
- Non-single block buildings (59.5%)
- Buildings without facilities or clubhouse (54.2%)

Chart 56: Distribution of Buildings where Owners Resided (%)



Base: N=1,103

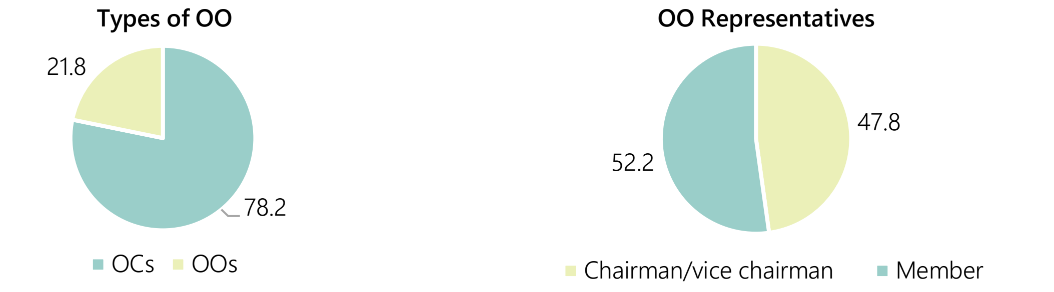
Owners' Organisations (OOs)

The 96 OOs enumerated in the survey were distributed as follows (Chart 57):

- Around 78.2% were OCs and 21.8% were other forms of OOs.[205]
- Around 52.2% of the respondents were members of OOs and 47.8% were chairmen/vice chairmen of OOs.

[205] Other forms of OOs include Owners Committee and others.

Chart 57: Distribution of OOs (%)



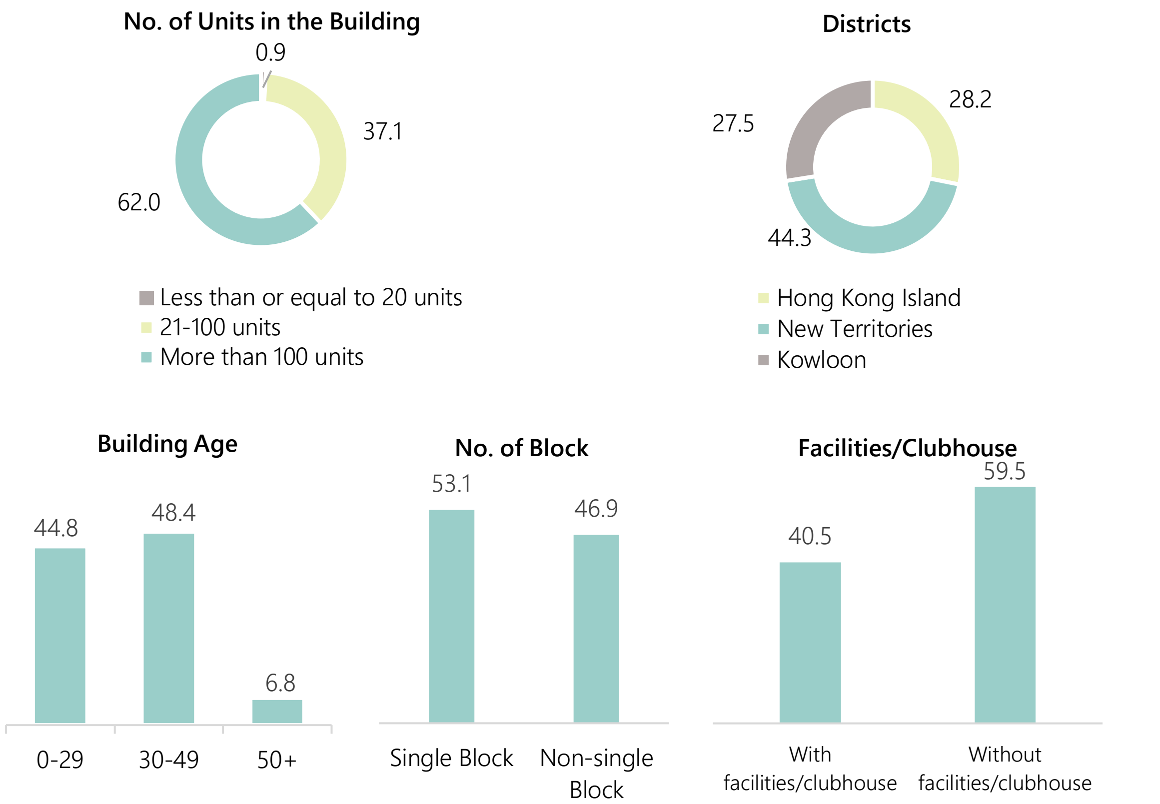
Base: N=96

Among the OOs, the oldest one was established in 1960 and the latest was in 2016. On average, the respondent OOs were in operation for about 28 years.

The distribution of buildings managed by OOs is as follows (Chart 58):

- Buildings with more than 100 units (62.0%)
- Buildings located in the New Territories (44.3%)
- Buildings aged below 50 years (93.2%)
- Single block buildings (53.1%)
- Buildings without facilities or clubhouse (59.5%)

Chart 58: Distribution of Buildings Managed by OOs (%)



Base: N=96

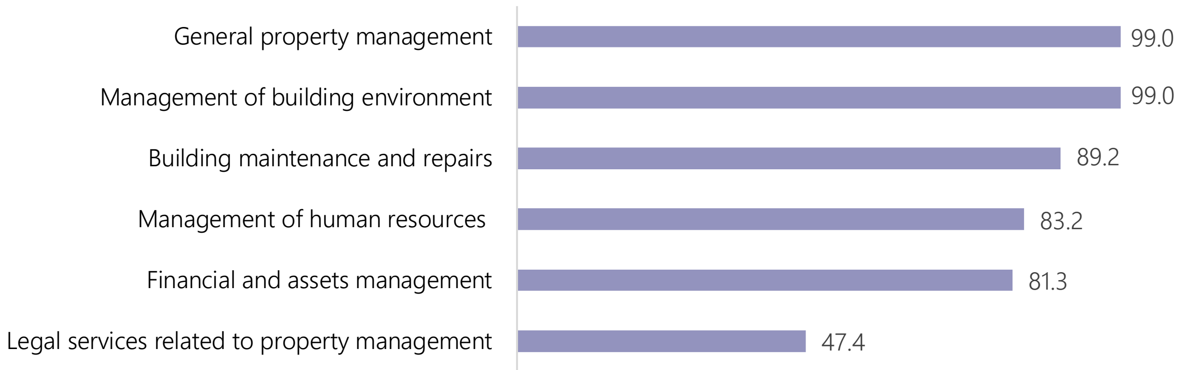
Property Management Companies (PMCs)

The 22 PMCs enumerated in the survey were distributed as follows:

- 66.4% PMCs were not affiliated with the developers of the buildings.
- 92.1% PMCs planned to apply for licences for both PMCs and property management practitioners (PMPs).
- Managers and executives of the PMCs were required to attain at least tertiary education or above (50.3%) with property management experience required (26.3%).
- Frontline staff of the PMCs were required to attain at least secondary education (63.8%) but no property management experience was needed (64.2%).

As regards the types of services provided by the PMCs, a great majority of PMCs provided general property management such as caretaking and cleaning (99.0%) and management of the building environment (99.0%). A slightly lower proportion also rendered services on building maintenance and repairs (89.2%), management of human resources (83.2%), and financial and assets management (81.3%). Less than half provided legal services related to property management (47.4%) (Chart 59).

Chart 59: Types of Property Management Services Provided by the PMCs (%)



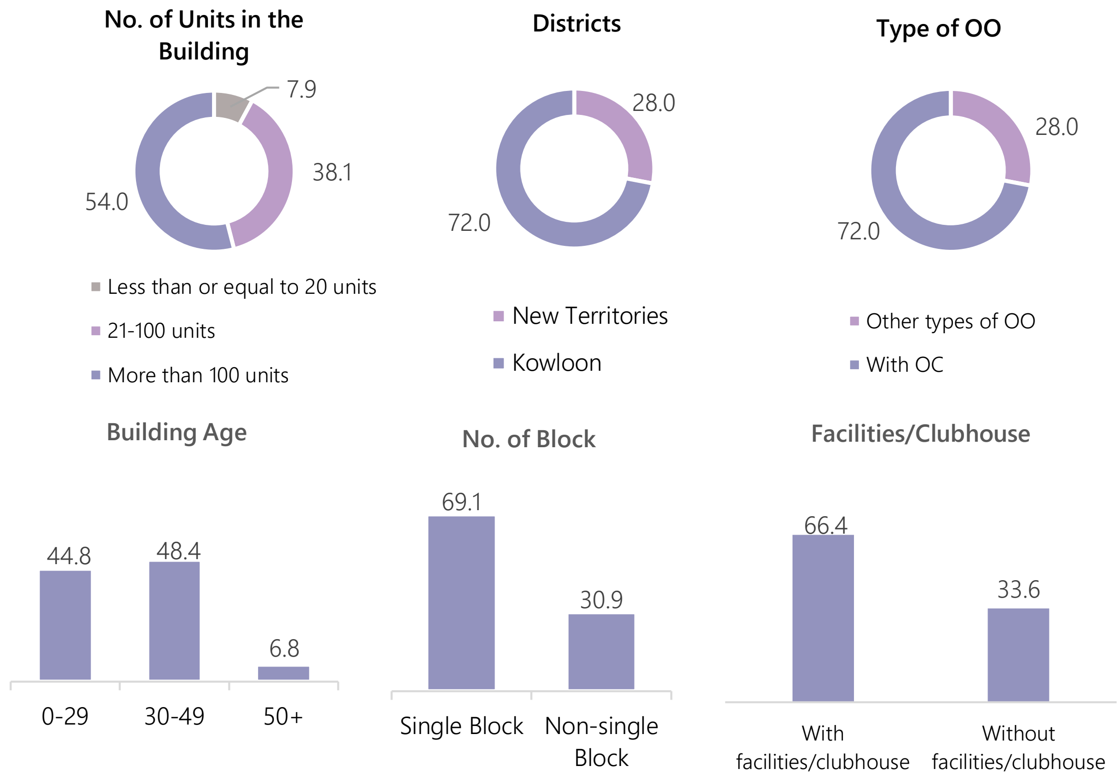
Base: N=22, multiple options allowed

Among the PMCs, the oldest one was founded in 1967 and the latest was in 2017. On average, the respondent PMCs had provided residential property management services for about 26 years in 2020/2021.

The distribution of buildings where managed by PMCs (Chart 60):

- Buildings with more than 100 units (54.0%)
- Buildings located in Kowloon (72.0%)
- Buildings with OCs formed (72.0%)
- Buildings aged 30 – 49 years (48.4%)
- Single block buildings (69.1%)
- Buildings with facilities or clubhouse (66.4%)

Chart 60: Distribution of Buildings Managed by the PMCs (%)



Base: N=22

2. In-depth Interviews

The distribution of the buildings in the in-depth interviews is as follows:

Table 16: Profiles of Owners, OOs and PMCs by Categories

	Number of Respondents		
	Owner	**OO**	**PMC**
Total number of respondents	**20**	**20**	**2**
By building age			
0 – 29 years	6	6	1
30 – 49 years	13	10	1
50 years or above	1	4	-
By flat size			
20 – 39 square metre (sq. m.)	7	-	-
40 – 59 sq. m.	10	-	-
60 sq. m. and above	3	-	-
By number of blocks			
Single-block buildings	6	9	1
Non-single block buildings	14	11	1
By number of units			
Buildings with ≤ 20 units	1	-	1
Buildings with 21 – 100 units	6	8	1
Buildings with > 100 units	13	12	
By type of OO			
Buildings with OCs	13	15	2
Buildings with Owners’ Committees/MACs	7	5	-

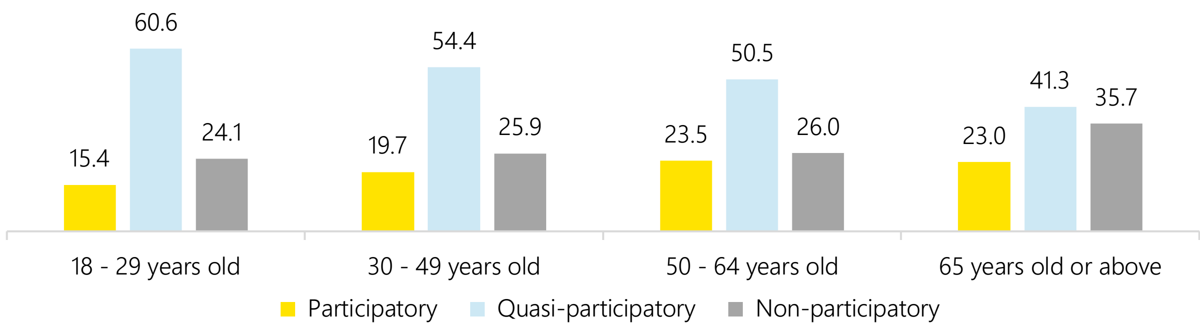
3. Profile of Owners at Different Level of Participation

The analyses below further look into the distribution of owners at different levels of participation based on their age, education level, employment status, years of residence at the property, and the building age. Some observations are as follows:

I. Distribution within Each Age Group

- In general, most owners were not actively involved in the property management matters across all age groups as shown by the high "quasi-participatory" rates (41.3% – 60.6%) and "non-participatory" rates (24.1% – 35.7%).
- Across the board, the younger the owners' age, the higher was the "quasi-participatory" rates, ranging from 60.6% for the group "18 – 29 years old" to 41.3% for the group "65 years old or above".
- The age groups "50 – 64 years old" and "65 years old or above" had higher proportion of owners who were classified as "participatory" (23.5% and 23.0% respectively). It can be interpreted as these veteran groups having more knowledge, experience, and time (especially for retirees) would be more willing to involve in the day-to-day property management matters.
- It is worth noting that the group "65 years old or above" had the highest portion of both "non-participatory" and "participatory" owners among all the age groups. This implies that this group of elderlies who have more autonomy to choose how to spend their time is comparatively more likely to go for either of the two extremes (Chart 61).

Chart 61: Distribution of owners with different level of participation within each age group (%)



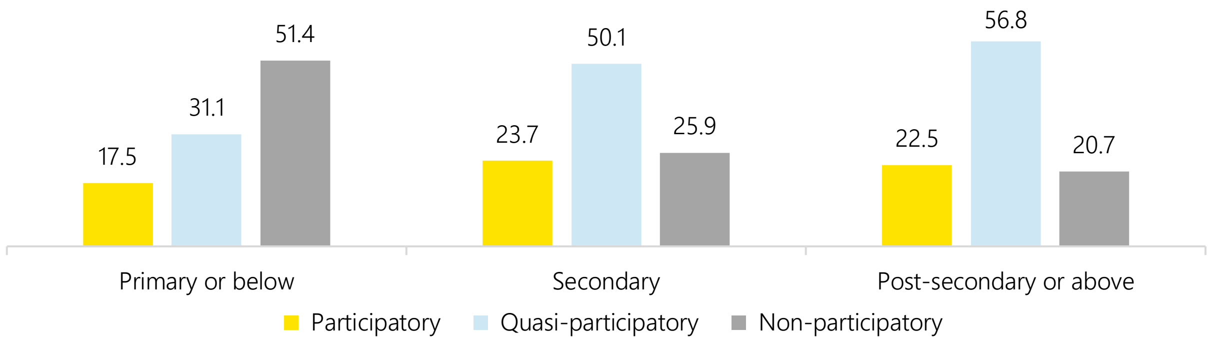
Base: N=1,103

II. Distribution within Each Segment of Educational Attainment

- The higher the education level, the higher was the "quasi-participatory" rates, ranging from 56.8% for the group "post-secondary education or above" to 31.1% for the group "primary education or below". In contrast, the "non-participatory" category was made up mainly of owners with "primary education or below" (51.4%) to "post-secondary education or above" (20.7%). It might indicate that owners with higher education level involve in property management activities which concerned their rights and benefits, whilst owners with lower education level might not have the knowledge and time to handle property management activities.

- The groups with "secondary education" and "post-secondary education or above" had higher proportion of owners classified as "participatory" (23.7% and 22.5%), as compared with owners with "primary education or below" (17.5%) (Chart 62).

Chart 62: Distribution of owners with different level of participation within each education level group (%)

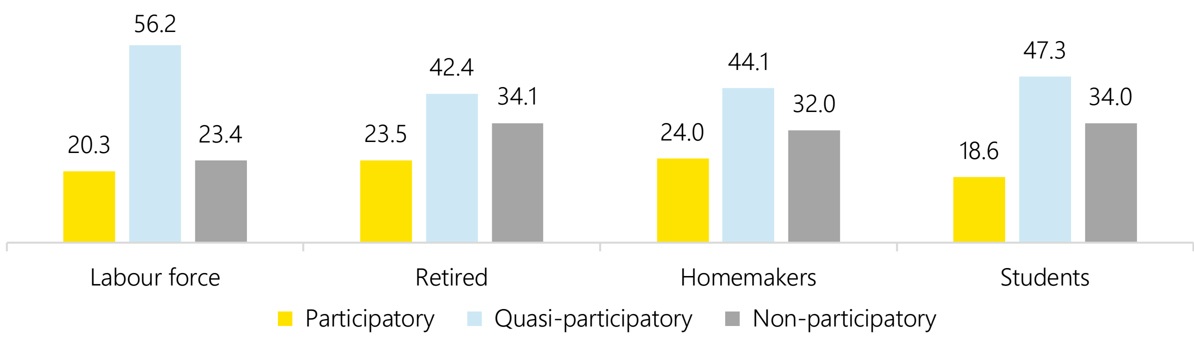


Base: N=1,103

III. Distribution within Each Employment Status Group

- In general, all groups of economic activity status showed the same pattern with high "quasi-participatory" rates (42.4% – 56.2%), followed by "non-participatory" (23.4% - 34.1%), but low "participatory" (18.6% – 24.0%).
- The group "labour force" had the highest proportion of owners classified as "quasi-participatory" (56.2%). Being engaged with work, this group might not have spare time for active participation in property management activities.
- Compared to other groups, owners in the "retired" and "homemakers" groups had higher proportion classified as "participatory" (23.5% and 24.0%), which might be due to the fact they had more chances to come across the day-to-day issues in the property, as well as more time to voice their opinion to the PMCs (Chart 63).

Chart 63: Distribution of Owners with Different Level of Participation within each Employment Status Group (%)



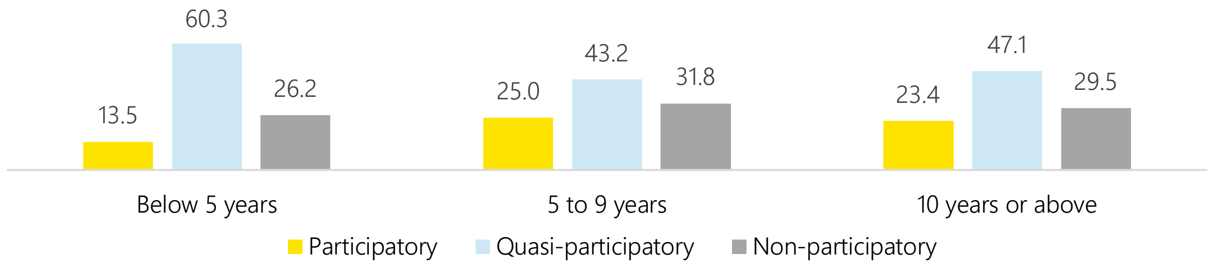
Base: N=1,103

IV. Distribution within Each Segment of Years Residing in the Building

- A similar pattern with high share of "quasi-participatory" category (43.2% – 60.3%), followed by "non-participatory" (26.2% – 31.8%), and relatively low "participatory" (13.5% – 25.0%) was found across all residing years.

- The proportion of owners classified as "participatory" generally rose with years of residing in the buildings from 13.5% (< 5 years) to 25.0% (5 years or longer).
- The proportions of owners who were classified as "non-participatory" among all year groups were very similar at around 26.2% to 31.8% (Chart 64).

Chart 64: Distribution of Owners with Different Level of Participation within each Residing Year Group (%)

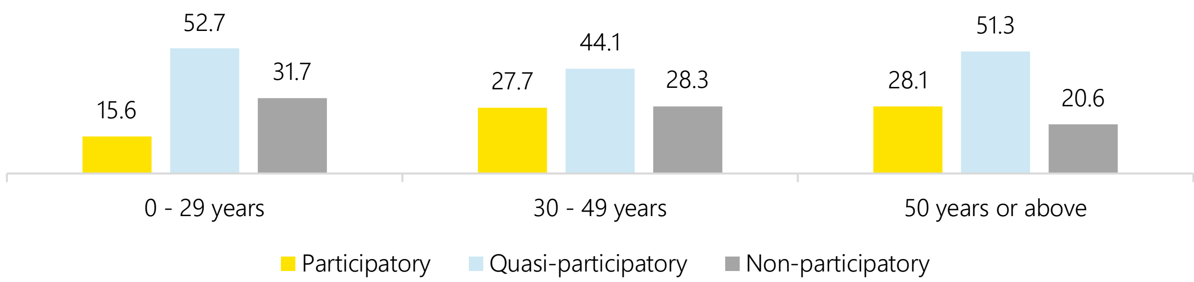


Base: N=1,103

V. Distribution within Each Segment of Building Age

- Owners from all building age groups again were more likely to be "quasi-participatory" (44.1% – 52.7%).
- Owners' level of participation increased with the age of the building. Much fewer "participatory" owners were found in buildings with 0 - 29 years of age (15.6%), while owners were more "participatory" in buildings aged 30 – 49 years (27.7%) and 50 years or above (28.1%). Such trend could be due to the increasing need for repair and maintenance expenses from owners when the buildings age.
- Similarly, the portion of "non-participatory" owners decreased with increasing building age, from 31.7% for buildings aged 0 – 29 years to 20.6% for 50 years or above (Chart 65).

Chart 65: Distribution of Owners with Different Level of Participation within Each Segment of Building Age (%)



Base: N=1,103

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