Following is a question by the Hon Starry Lee Wai-king and an oral reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (February 11):

Question:

Last year, the Independent Commission Against Corruption received 943 corruption reports which were related to building management. The figure accounts for some 40% of the corruption reports against the private sector for the whole year and is a more than a onefold increase over the figure of 10 years ago. Moreover, a number of government departments and related organisations (including the Home Affairs Department, the Hong Kong Housing Society and the Urban Renewal Authority) are at present providing various support services to owners’ corporations (“OCs”) of private buildings, while the Small Claims Tribunal and the Lands Tribunal are responsible for handling related legal proceedings. In order to improve the management of buildings and reduce related disputes, will the Government inform this Council whether:

(a) it will consider establishing a dedicated department to provide one-stop building management advisory service to replace the current practice of providing support services to OCs through various government departments and relevant organisations; if it will, of the details; if not, the reasons for that;

(b) it will consider establishing a building affairs tribunal or arbitration centre to provide a way to resolve building management disputes professionally and expeditiously; if it will, of the details; if not, the reasons for that; and

(c) it will consider amending the law to relax the existing requirement that the consent of all owners of the building is required for any alteration to the Deed of Mutual Covenant
(“DMC”), with a view to reducing various types of building management disputes relating to DMC; if it will, of the details; if not, the reasons for that?

Reply:

President,

To assist owners and owners’ corporations (OCs) to be vigilant about and take effective preventive measures against corruption, the Home Affairs Department (HAD), the Independent Commission Against Corruption (ICAC) and the Hong Kong Housing Society (HKHS) have jointly organised education and publicity activities to widely publicise the message of integrity and quality building management and maintenance through television, radio, newspapers, websites, as well as workshops and roving exhibitions co-organised with the 18 District Councils.

My reply to Hon Starry Lee Wai-king’s question is as follows:

(a) Building management and maintenance involve different professions. Government departments have been working closely in taking enforcement actions and providing support under their respective portfolio. It is unrealistic to provide “one-stop” service by pooling different professional services under one roof. To provide advisory service to owners on building management in a more focused manner, the 18 District Offices have established District Building Management Liaison Teams to provide OCs with various services, including handling enquiries and complaints about building management and assisting in resolving disputes among owners, OCs and management companies.

Non-governmental organisations such as the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) also make use of their own resources and experience to provide support services on building management and maintenance. For example, the HKHS has set up ten Property Management Advisory Centres to render professional financial and technical support to owners and OCs in maintenance
works. Our District Offices also maintain close co-operation with the above two organisations.

(b) The Government has been encouraging owners to resolve disputes on building management by means other than litigation, such as communication or mediation, in order to attain a win-win solution and reduce the financial burden on both parties. If the disputes have to be resolved by litigation, they may be dealt with by the Lands Tribunal. For cases involving a relatively small amount of money, i.e. $50,000 or below, they may be taken to the Small Claims Tribunal as other small claim disputes.

The proposal to establish a building affairs tribunal involves a number of complicated policy and legal issues, such as the legal status of the tribunal, its institutional arrangements and its interface with the Lands Tribunal. Moreover, during the public consultation on the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme, there were views that there might be duplication of efforts between a new adjudicating mechanism and the existing mechanism. The Government will carefully consider these views in deciding the way forward.

At the same time, the Government is aware that the Judiciary has launched the Pilot Scheme on Building Management Cases in the Lands Tribunal early last year, with a view to facilitating the parties involved to seek mediation and enhance the efficiency of the Lands Tribunal in processing such cases. The Judiciary also advises that a review on the pilot scheme will be carried out early this year. The result of the pilot scheme will probably be available in the middle of this year.

(c) A deed of mutual covenant (DMC) is a private contractual agreement among the owners, manager and developer of a building, stipulating the rights and obligations of the parties to the agreement. Therefore, as in the case of any other private contracts, no party to a DMC shall unilaterally modify any provisions of the DMC without the consent of all the other parties. This is an important legal principle.
On the other hand, the Government appreciates the concern of the public about DMCs. The Government has, therefore, stipulated in newly granted land leases for non-industrial land since 1986 that the relevant DMCs have to be approved by the Lands Department (LandsD) and have to be drawn up in line with the current Guidelines for DMCs issued by the LandsD. The Guidelines for DMCs regulate the rights and obligations of the developer, owners and manager. In addition, to facilitate owners to effectively manage their buildings, some mandatory provisions applicable to all DMCs have been introduced in Part VIA and Schedule 7 of the Building Management Ordinance. These provisions override the provisions of DMCs and provide for important matters, such as financial management, appointment of property management companies and right of owners to form OCs, with a view to reducing disputes over building management in relation to DMCs.

To promote effective building management, the Government does not have objection in principle to amending the provisions of DMCs or introducing a mechanism for amending the provisions of DMCs through legislative means. However, any alteration to the DMC inevitably has an impact on the rights and responsibilities of the parties to the agreement and even the property rights of owners. We have to be careful in considering the impacts that a DMC amendment mechanism may have on property rights and how to ensure proper protection to those owners who are affected by or who oppose to such changes. We will continue to review the Building Management Ordinance with a careful balancing of the above considerations, with a view to assisting owners in effective management of their buildings.

Thank you, President.

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