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# Effectiveness of The Building Management Ordinance (Cap. 344) As A Legal Tool For Building Management



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## 1. Purpose of the Study

The purpose of this study is to analyze and evaluate the effectiveness of the Building Management Ordinance (Cap. 344) (2007) ("the BMO (2007)") as a legal tool for building management in order to strengthen its ability to improve Property management. The proposed amendments of the BMO in the 2005 Bill and the subsequent enactment of the 2007 Ordinance render a golden opportunity to conduct an overall evaluation of the BMO (2007). The study can be contributive to evaluate the effectiveness of the BMO as a legal tool for building management.

## 2. Literature Review and Data Collection Methods

The concepts of comprehensibility and comprehensiveness raised out by Hood were adopted in the study. Data for analysis were collected from sources such as government departments, legislative body/government-related agencies/other organizations, case law (from the Judiciary), works of Academics and an interview with a practitioner in the profession.

## 3. Effectiveness of the BMO (2007)

### 3.1 COMPREHENSIBILITY

#### Use of Language and Presentation Methods

Items under which Comprehensibility of the BMO significantly affected Use of complex function

expressions is commonplace and linguistically, plays a significant role in posing comprehension difficulties of the BMO (2007). The principle of *Expressio unius est exclusio alterius* (if something is not included in a list, it is thereby excluded) is commonly used. Besides, the use of the phrase "including (but not limited to)" for 4 times helps indicate the listing is non-exhaustive and add flexibility; however, the non-exhaustiveness creates problem in comprehension.

Regarding the use of diction, the word "instrument" refers to "legal document" (used for 85 times); the word "leave" has a specialist meaning of "permission" (used for 4 times). The phrases "subject to" and "without prejudice to" also appear 62 times and 7 times respectively.

At the level of sentence structure, the pursuit of precision has led to extreme caution among legal drafters in placing modifiers next to the element they are modifying, producing structure unlike everyday language. Use of concessive subordination ["if" (114 times), "whether" (37 times) and "subject to" (62 times)] and coordination ["and" (758 times) and "or" (1920 times)] are frequent. Items under which Comprehensibility of the BMO minimally affected.

Use of Archaic Deictics ("forthwith"(1), "thereafter" (3), "thereto"(2) "therewith"(2), "therefore"(5) and "thereof" (21)) is not particularly frequent. For technical terms derived directly from Latin or Norman French, the term "void" appears 9 times. The terms "voidable" and "avoid" are used twice and for three times respectively. The word "avoidance" and "avoiding" with ordinary meaning are also used; thus, leading to confusion. The technical term "prima facie" only appears once.

Use of doublets is rare ("void and of no effect" for 5 times) and none for triplets. The use of the principle of *Ejusdem Generic* (terms are used in a series and their meaning is limited or extended to things that form part of the category), for instance, in Paragraph 2(1) of Schedule 7 of the BMO (2007), can help delimiting the meaning; thus, preventing or resolving ambiguity. For presentation methods, several tools are used to improve the communicative effectiveness, such as subparagraphing, presentation in columns, illustration, etc. The most prominent one is Schedule 11.



## Vagueness of the BMO

### (a) Interpretation of the Term “Majority”

To avoid the problem in the case of *The Incorporated Owners of Tsuen Wan Garden vs Prime Light Limited* (LDBM 83-85/2003 and CACV 1/2004), a definitive interpretation of the term “majority” is provided in the BMO (2007). However, the pace is slow since the term “majority” has already existed in 1993. The said cases also reflect the general misunderstanding.

### (b) Protection of Members of Management Committee

The introduction of expression of “in good faith” (though a rather broad term) in Section 29(A) enhances the expressiveness of the provision governing the protection of MC members and their potential liabilities (if not act in good faith); thus, comprehensibility of the BMO in this regard is improved.

### (c) Management Committee formed under the BMO and DMC

There has been confusion over whether the requirements set out in the BMO or DMC are prevailing for the formation of MC. This confusion is best illustrated in the case of *Siu Siu Hing trading as Chung Shing Management Company vs The Land Registry* (HCAL77/2000).

### (d) Appointment of Management Committee

The comprehensibility of Section 3 is further questioned in counting of votes for appointment of a MC. This is reflected in the case of *Kwan & Pun Company Limited v Chan Lai Yee and others* (LDBM542/2001 and CACV234/2002) under which conflicting views were taken by Lands Tribunal and the Court of Appeal, as well as among the judges in the Court of Appeal. The comprehensibility of voting requirement for appointment of a MC has been improved under the newly amended Section 3(2).

### (e) Common Parts

Identification of common parts from a building is clearly comprehensible under Section 2 (Interpretation)

and Schedule 1 of the BMO (2007). Under Section 16, it is clearly comprehensible that the rights of owners shall be exercised by and liabilities of the owners shall be enforceable against the corporation in relation to the common parts.

However, when the ownership of common parts is considered, the interpretation of the aforesaid sections may blur. (*Charter Favour Limited v The Incorporated Owners of Million Fortune Industrial Centre & Po Shing Property Ltd.* (LDBM 133/2003)).

### (f) Views of a Practitioner in the Profession on Vagueness of the BMO

An interview was conducted with Mr C.K. Chan, Senior Estate Manager of Henderson Land Group. For comprehensibility, Mr Chan opined that the language used in the BMO is not particularly difficult to be comprehended. However, the complexity of the rules, the inter-reference between the BMO and the DMC as well as the subsequent cognitive processes make it difficult.

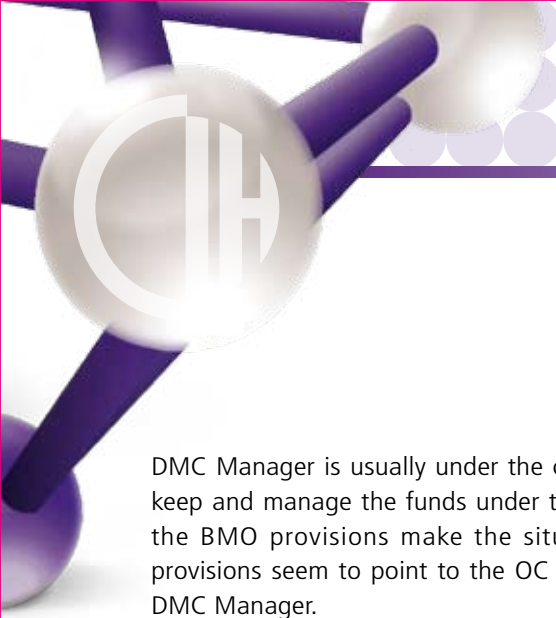
### (g) Meeting Procedures

As the criteria for enumeration of owners differs among “the point of activation” (5% to convene meeting), quorum and passing of a resolution in Schedule 3, there would be confusion. In addition, there are various exceptions and complications, such as the “first past the post” voting system, change of name of the OC requirement (resolution of not less than 75% of the votes of the owners), special treatment in enumeration of owners in Schedule 11, etc.

### (h) Financial Management

Under the BMO, there are three funds, namely, general fund, contingency fund and special fund. DMCs probably also provides for establishment of different funds, for example, a sinking fund.

In the BMO, no further sub-division of the said three funds is mentioned. However, the requirement for preparation of separate budgets for different types of common areas in a building is common place under DMCs.



DMC Manager is usually under the contractual duty to keep and manage the funds under the DMC. However, the BMO provisions make the situation blur. Some provisions seem to point to the OC while some to the DMC Manager.

Paragraph 1 of Schedule 5 and paragraph 1 of Schedule 7 do not expressly cater for separate budgets situation under DMCs for the composite development consisting of residential blocks, shopping arcade and/or carpark, which is common place in the Territory.

### Summary

Even the practitioners in the profession always have different understandings to the same provision of the BMO. Different lawyers may have different interpretations. They usually fail to give a clear answer which is subject to the decision of the court.

### Role of Home Affairs Department

Home Affairs Department plays an influential role in improving the comprehensibility of the BMO, including facilitation of BMO amendment, issue of Codes of Practice, operation of District Building Management Liaison Teams as well as publicity and education.

## 3.2 COMPREHENSIVENESS

### Types of Buildings under Governance of the BMO

#### (a) Wholly-owned Buildings vs Multi-owned Buildings

The BMO governs the buildings with multi-ownership but not the wholly owned buildings.

#### (b) Buildings without DMCs vs Buildings with DMCs

Save and except the buildings without DMC but with the OC and/or a manager, the BMO does not provide for regulation of buildings without DMC. Buildings with DMCs are under the governance of the BMO with the incorporation of terms under Schedule 7 and 8.

#### (c) Buildings with IO vs Buildings without IO

Buildings with IO are undoubtedly fall under the

ambit of the BMO. For buildings without IO, firstly, they have the potential to fall within the protection by appointment of a MC under Section 3, 3A, 4 or 40C of the BMO. Secondly, if there is a DMC, the incorporation of terms in DMCs applies. Thirdly, if there is a DMC and a manager, the incorporation of terms in DMCs in relation to managers further applies. Accordingly, the worst scenario of all is for buildings without IO, a DMC and a manager.

#### (d) Buildings with a Manager vs Buildings without a Manager

Similar logic in (b) and (c) applies in this sub-section. Assuming other factors being constant (such as with/without IO, with/without DMC), the degree of comprehensiveness of the BMO as a legal tool for building management is greater for those buildings with a manager than those without one.

#### (e) House Developments

Despite of multi-ownership, they are outside the ambit of the BMO (2007).

#### (f) Applicability to Different Forms of Buildings

Buildings can be varied greatly in height, magnitude, design and features. A single set of quantitative criteria applied to different buildings leads to different consequences.

#### (g) Type of Buildings with the most Comprehensive Protection under the BMO

Multi-owned buildings (non-house development) with a DMC, the IO and a manager are under the most comprehensive protection. Nevertheless, the identification and comprehension of the rules for this type of buildings is not an easy task.

### Types of Management Tasks covered by the BMO

#### (a) Operational Level

The BMO does not comprehensively specify the rules in governing all the management tasks in details. The governance is general and incomprehensive, largely in the form of financial/accounting requirements and



procurement requirements. More comprehensive, in-depth regulation is in the form of Codes of Practice, which are derived from the BMO and can be regarded as an indirect coverage of management tasks by the BMO. Reference to other ordinances in the Codes of Practice also indicates the incomprehensiveness of the BMO. Nevertheless, it is justifiable for such under-inclusion of the BMO as it will become unmanageable and too complicated if included. Besides, the general governance of management tasks under the BMO allows more freedom, flexibility and discretion.

#### **(b) Regulatory Level**

Mandatory incorporation is absent under the BMO (2007). Licensing regime for Property management companies has still not been dealt with. Penalty system is also incomprehensive. Basic dispute settling mechanism is provided but not a comprehensive one.

#### **Coverage of Stakeholders' Interests, Rights and Obligations**

The most comprehensive coverage is in relation to OC and the MC, a vehicle for the operation of the OC. The rights and interests of owners are relatively comprehensive as they are the target of protection. There are various aspects of incomprehensiveness, but with no severe criticism, which include the obligations of owners, rights of DMC Managers/management companies/developers as well as rights, interests and obligations of tenants/occupiers. There are various aspects of incomprehensiveness, which may be the subject of criticism, including the rights and obligations of owners committees formed under the DMCs and the Authority as well as obligations of DMC managers/management companies/developers. The ones under severe criticism are the obligations of DMC Managers/management companies/developers in the form of threat of termination of appointment (i.e. also the rights of the owners to exercise the termination) and the obligations of the Authority in relation to enforcement effort.

#### **Relationship and Compatibility of the BMO with other Related Building Management Contracts or Regulations**

#### **(a) Codes of Practice**

Statute is a statute. The BMO does not cover detailed guidelines and regulations for daily building management at operational level but provides for the derivation of detailed guidelines and regulations under Section 44.

#### **(b) Deeds of Mutual Covenant**


The comprehensiveness of the BMO is discredited due to the pre-existence of DMCs governing the rights, interests and obligations among owners and between owners and the manager.

The counteracting effect is realised under the BMO in Schedule 7 and 8. The effect is particularly striking against those DMCs created before the introduction of the LACO's DMC guidelines. The overriding effect under Schedule 7 effectively mitigates the unfairness of the DMCs. However, as to Schedule 8, the comprehensiveness of the BMO depends on the issue of consistency. If it is consistent with the provisions in the DMC, the provisions in Schedule 8 can be incorporated in the DMC and the comprehensiveness of the BMO has improved, and vice versa.

Besides, the issue of consistency also brings another problem in the issue of comprehensiveness. The BMO, as a single legislation, has to fit in different DMCs. As a result, there is no uniformity in the rules and remedies, posing obstacles for the BMO to promote effective building management.

As defined in the BMO, "deed of mutual covenant" (公契) means a document which defines the rights, interests and obligations of owners among themselves; and is registered in the Land Registry. The implication is three-folded. Firstly, the BMO admitted to the existence of the effect of DMCs. Secondly, the role of the DMCs is even more important as it has the power of defining the rights, interests and obligations of owners. Thirdly, it is a document registered in the Land Registry, with protection under the Land Registration Ordinance (Cap. 128).

The BMO is to supplement the DMC. Unless the BMO



specifically provides otherwise, even if there is any inconsistency between BMO and DMC, the DMC will prevail. (Pearl Island Hotel Ltd. v. Li Ka-yu [1988] 2 HKLR 87.)

There is no statutory mechanism for modification and extinguishment of covenants under DMCs. Consent of all owners shall be sought. Legitimacy of all other forms of consent, such as passing a resolution at an owners' /MC/owners committee meeting, written agreement, verbal agreement of the MC/owners committee/the manager, estoppel or acquiescence are under challenge. Agreement by passing a resolution is further complicated by the overriding effect of resolution(s) of subsequent meeting(s).

#### **(c) "Derivatives" of DMCs**

As there is a standing for DMC in the BMO, it is doubtful if the Sub-DMC(s) should be read in conjunction with the DMC and the BMO to determine the exact meaning (comprehensibility) and scope (comprehensiveness) of the BMO. For instance, for City One Shatin, consisting of one principal DMC, 36 Sub-DMCs and a Deed Poll. It was held in *Rightop Investment Ltd. & anor v. Yu Tsui Sheung & anor* HCA 2691/01 (10/3/05) that a sub-DMC regulating only a certain portion of a building, does not fall within any limb of the definition of "building" in Section 2 of the Ordinance. Owners of a particular portion can only enforce the Sub-DMC indirectly via the principal DMC to reach the BMO's protection. And the protection is limited – only the right to terminate the contract of the main manager.

Identification of "common parts" is a prerequisite for effective building management. Apart from Section 2 and Schedule 1, the definitions of various kinds of common areas/facilities as provided in the relevant DMC and the colour-zoning plans should be referred to.

Government Lease is usually referred to in the DMC. Since 1987, all DMCs must contain a covenant requiring compliance with the terms of the Government Lease. There may be various plans annexed to or required by the Government Lease which may affect the delineation of the common areas, like master layout plan, carpark layout plan, advertising plan, control

drawings, etc. Recently, there are public concerns over the provision and management of facilities and/or open space for use by the public in private developments. Metro Harbour Views in Tai Kok Tsui and Times Square in Causeway Bay are examples of such.

If ambiguity arises in delineation of common areas/facilities (after both the DMC and the BMO are referred to), the intent of the Authorised Person may be referred to. Besides, the compliance of certain Conditions of the Government Lease in relation to management is also reflected in the approved building plans, such as the provision of pedestrian walkways, footbridges etc.

#### **(d) Guidelines for DMCs issued by the Legal Advisory and Conveyancing Office of Lands Department (LACO)**

The BMO does not contain provisions setting guidelines for the DMC. Instead, it is done by administrative means through the Consent Scheme. The purpose of the DMC Guidelines is to provide a system of building management. It is ironical as this reveals the BMO fails to provide one. The comprehensiveness of the BMO is underchallenge.

#### **(e) Other Ordinances**

The BMO (2007) (Cap. 344) is incomprehensive in regulating building management since it is not an exhaustive legislation governing the same. Other ordinances also play a part, such as Buildings Ordinance (Cap.123), Fire Services Ordinance (Cap.95), Lifts and Escalators (Safety) Ordinance (Cap.327), etc.

#### **(f) Overlapping System**

Common law and legislation are separate sources of law, but they may conflict.

#### **(g) Summary**

Among the building management contracts or regulations, their degree of compatibility with the BMO differs. The higher the degree of compatibility; the more effective the BMO would be as a legal tool for building management and vice versa. The most compatible one is the Codes of Practice derived from the BMO. The DMC Guidelines, as compared with DMCs, are relatively



more compatible with the BMO since they are intended to be brought in line with the BMO. Other ordinances are also compatible as they usually govern different regimes. The compatibility of DMCs and Common Law with the BMO is relatively low as combined rules of DMC/its derivatives and the BMO are difficult to be identified and comprehended while Common Law is a separate source of law.

## **4. Recommendations and Conclusion**

### **4.1 Problems unresolved and Recommended Remedies**

#### **(a) No Remedies in the BMO (2007)**

Firstly, the BMO remains an incoherent, incomprehensive legislation. The amendment in 2007 is again a piece-meal one. The most effective remedy is re-drafting of the legislation into a wholly new ordinance. However, this is a radical and significant move.

The second problem is the unfairness and/or deficiencies of the terms of DMCs. The most effective remedy is the extinguishment of DMCs. If this cannot be done universally, at least, those DMCs created before introduction of DMC guidelines should be extinguished.

Alternatively, it is suggested setting up of mechanism for DMC rectification. The fundamental questions are to what extent should we authorize owners (presumably the majority owners) to make changes to a DMC and the level of protection to the minority owners. The mechanism can be activated first where the covenant has become obsolete; second where the covenant unreasonably restricts the use of the covenantor's land without providing any practical benefit to the covenantee; third where the parties entitled to the benefit of the covenant have expressly or implicitly agreed to its modification or extinguishment; and last where the proposed change will not substantially injure the land of the covenantee. Mechanism should be set up for amending the provisions of a DMC by a resolution of an OC and with the approval of Secretary for Home Affairs or the Court; or amending BMO to the

effect that a DMC might be amended by a resolution of owners of not less than a certain percentage of the shares (equity-oriented, say 80%,) at an OC meeting.

Alternatively, incorporation of terms into DMC pursuant to Schedule 7 and 8 should be extended. The overriding provisions in the said Schedules annul certain unreasonable provisions of DMCs. The DMC guidelines should be given a statutory basis because they are currently applicable to Consent Scheme Properties only.

The third problem is fragmentation of policy and division of responsibilities as observed from limited powers and obligations of the Secretary for Home Affairs. The Government should consider designating one single bureau to coordinate policy formulation on building management. This necessitates substantial amendments to and extension of the scope of the BMO.


The fourth problem is that the coverage and depth of governance of the BMO differs among different buildings. Study should be done to extend the BMO for regulating all buildings and with same depth of governance.

The fifth problem is the generality of the BMO. Generality favours flexibility; however, vagueness may be created. A more sophisticated design of regulations is desirable.

There are six problems expressly excluded from the 2005 Bill and thus, the BMO(2007). They are in relation to compensation for third parties, liabilities of OCs, borrowing power of OCs, termination of the appointment of DMC manager, Formation of OCs in house developments as well as mandatory management and maintenance of buildings.

Furthermore, there are other problems not addressed in the BMO. At operational level, no provision is found in regulating the contribution towards the legal costs arising from litigations between the OC and owner(s). An express provision to clarify the same in the BMO is desirable.

At regulatory level, apart from the proposed mandatory formation of OCs, engagement of Property



management companies and building inspection, there are various problems which remain unresolved. They are lack of mandatory regulation of management companies/DMC managers by licensing regime, absence of effective dispute-settling mechanism, lack of penalty system and reactive (if not inactive) role of the Authority.

For dispute-settling mechanism, a mandatory establishment of a special mediation forum, similar to Labour Tribunal is recommended. The establishment of a Building Affairs Tribunal is also worth considering. The jurisdiction of Lands Tribunal should be expressly stated in the BMO (2007). If the Legislative intention is for the Lands Tribunal and the High Court to have concurrent jurisdiction, it is suggested that S.34A(1)(a) and S.34B should be amended to tally with the situation. Regarding the penalty system, civil penalties should be introduced in the BMO. This is primarily sought to compensate the government for harm done to it, rather than to punish for the wrongful conduct.

For the reactive role of the Authority, it is recommended that the obligations of the Secretary for Home Affairs be strengthened and extended. Firstly, to include rules and guidelines for invoking its powers in the BMO. Secondly, the investigatory power and executive power be separated and thus can be strengthened. Thirdly, setting up of a mechanism to amend DMCs, the power of such approval can be vested in the Secretary for Home Affairs.

#### **(b) Insufficient Remedies in the BMO (2007)**

At operational level, the sum insured (not less than \$10 million) under mandatory procurement of insurance policy may not suffice. Compensation exceeded \$25 million in Albert House case. This can be resolved by setting different thresholds for large and small buildings so as to maximize the protection.

At regulatory level, there is a deficiency in quorum requirement in meetings as it fails to appreciate the rationale behind adopting 10%/20% of owners (by reference to the “number of owners” rather than “owners’ shares”) for determining the quorum. To improve the chance of success to convene such meetings, it is recommended that the quorum

requirements may either be calculated by reference to the number of owners or by undivided shares.

#### **4.2 Potential Problems created and Recommended Remedies**

At operational level, the procurement requirements under Section 20A impinges on the flexibility of management through the forced use of unnecessary restrictions. Section 21 of the BMO already has a requirement for approval via general meetings for any budget increase greater than 50%. This should be rationalized by removing the imposition of dual restrictions.

At regulatory level, the first problem is that the strengthening of MC members protection against personal liabilities under Section 29A reciprocally leads to the relaxation of governance regarding MC members’ liabilities. It is recommended that the governance should also be strengthened in situation as acting ultra virus or intortious manner or with willful negligence. Taking out a Directors and Officers Liability Insurance coverage, similar to Professional Indemnity Insurance, can be a remedy to the situations.

The second problem created is in relation to the use of standard, statutory form for the instrument of proxy for meeting of owners under the newly added Schedule 1A (i.e. Form 1). More specific rules are desirable.

#### **4.3 Conclusion**

The study revealed that both in terms of comprehensibility and comprehensiveness, the BMO (2007) to a large extent fails to serve as an effective legal tool for building management while comprehensiveness poses more obstacles. This revelation large systems from the pre-existence of DMCs. The most effective resolution is re-drafting of the BMO into a wholly new ordinance and extinguishment of DMCs while the most viable and effective means (but not as effective as the aforesaid) are the setting up of a mechanism for DMC rectification and extension of the BMO regarding incorporation of terms into DMC.



# A Study of Gated Communities and Neighborliness In Hong Kong



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## INTRODUCTION

### Background of The Study

Housing development and community building are closely interrelated and have long been the hot topics in many academic researches and studies. Both concepts directly relate to our living environment and thus are indivisible to our everyday lives. Their relationship is easy to understand as the mode of housing would affect the nature, such as proximity, diversity, frequency of contact, etc. of the neighborhood, while the neighborhood network can be regarded as the fundamental building blocks of the wider community. By studying the trend of housing development, it would be useful in predicting the variation of neighborhood attachment, as well as the cohesiveness of our living community. Relatively, through examination of the changing conditions of social networking within our community, it would also be meaningful in understanding people's housing needs, patterns and choices.

Basically, both concepts are dynamic in nature and are changing over times. In recent decades, gating of residential areas has become a continuous trend of housing development spreading worldwide. The housing sectors in Hong Kong are also transforming in the same direction of this trend. Most of the existing Properties in Hong Kong have experienced different degrees of gatedness, and more importantly, gating of Properties is foreseen to be one of the most significant indicators of the future housing design. As gated community is

an unavoidable trend of housing development in Hong Kong, it is significant to have more exploration in this subject area of housing studies.

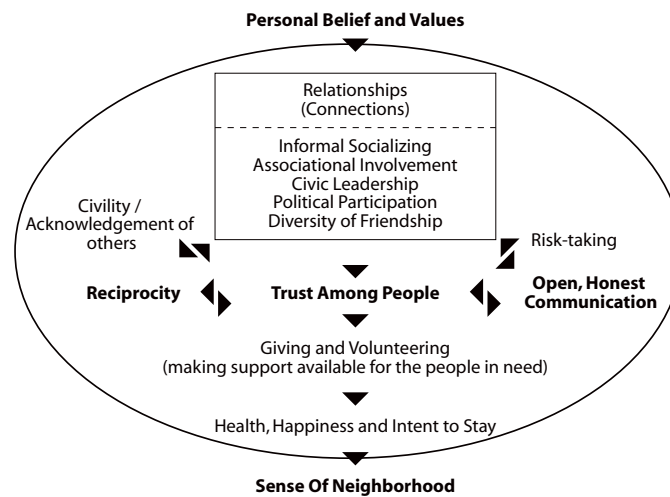
### Concepts of Gated Communities

The definition of Gated communities is different from its different functions or styles. The most direct one comes from Blakely and Snyder (1997) who define gated communities as "residential areas with restricted access in which normally public spaces are privatized. They are security developments with designated perimeters, usually walls or fences, and controlled entrances that are intended to prevent penetration by nonresidents". Manzi & Bowers (2006) introduce a concept namely "Gatedness" to formulate a classification of gated community in terms of the openness of home and public space to its outer and inner boundaries is developed. They believe that gated communities should be differentiated based on the degree of gatedness, though most of them share some similar observable features.

### Concepts of Neighborliness

"Neighborhood", in sociological term, can be said as a kind of locally based relationships. It represents a place where people socialize with their neighbors, form ties, develop relations and establish trust (Filipovic, 2006). Sense of neighborhood is created when people share beliefs and values in a community, resulting in a creation of bonds amongst them. Bruhn (2005) believes that trustworthiness among people is "a constant reaffirmation of the common beliefs and values" of people. With trust, people will interact cooperatively and honestly to do something that are beneficial to the whole community, helping each of them reach a consensus about the way of valuing the resources which exist in friendships, subcultures, organizations, and institutions. People having good networking or strong relationship with others are more likely to share resources amongst others than those with relatively poor relationships. As a consequence, a cohesive community is a supportive community where people are willing to help others with "unconditional acts of sharing as they experience the good and bad effects of life events", making support available to those in need (Please refer to Figure 1 below).

Figure 1  
How Community Create Sense of Neighborhood



Edited from Bruhn (2005), *The Sociology of Community Connections*, Chapter 8

## Objectives of The Study

Due to the interrelatedness between housing development and community building, the trend of gated community should have certain impacts on the formation of social capital in Hong Kong as well. Many studies and researches from overseas literatures have found that the phenomenon of gating is affecting the community building process both within community and across communities. All these provide a theoretical foundation to further explore the situations in Hong Kong. In this research, the study focus is on the situation of intra-community bonding in communities with different degree of gatedness in Hong Kong. In addition, in-depth analysis on different dimensions of social connections which affecting the people's sense of neighborhood to their community has also been analyzed. Precisely, the objectives of the study are:

- To examine the level of neighborliness in target communities with reference to different degree of gatedness in Hong Kong
- To explore different social dimensions of neighborliness in target communities with reference to different degree of gatedness in Hong Kong
- To identify if there is any relationship between gatedness and neighborliness in Hong Kong

## METHODOLOGY

Two popular large-scaled private residential

communities were selected in this study. Except the physical environment of different degree of gatedness, both communities are comparable in terms of self-sufficiency, size, and population composition. Besides, residents of both communities have similar demographic features, such as owner-occupation rate, age group, social class, education level, and family compositions. To examine the sense of neighborliness of their residents and to compare the impact of gatedness on their attachment, quantitative questionnaire by random on-site survey and mail delivery was conducted in Spring 2008, in which there are totally forty-eight questions under eleven different aspects, namely (i) Informal Socializing, (ii) Associational Involvement, (iii) Civic Leadership, (iv) Political Participation, (v) Diversity of Friendship, (vi) Trust among People, (vii) Giving and Volunteering, (viii) Health, Happiness and Intent to Stay, (ix) Obstacles to Community Life, and (x) Sense of Community or Feeling of Belonging. Respondents are requested to rate these questions on a five-point scale, that are "Always", "Often", "Sometimes", "Seldom" and "Never", with scoring weight assigned from 5 to 1 respectively.

## FINDINGS AND ANALYSIS

### Comparison of Various Social Connections

#### Informal Socializing

People's connections with others in a community



are usually through informal relations and networks. Compared with those formal and structured activities, informal interpersonal connection is much crucial in establishing closer social ties. A higher frequency of informal interactions among neighbors is expected to facilitate the formation of neighborhood bonding. In this study, the degree of informal socializing is measured by perceived frequency of the respondents' involvement in such informal interactions as visit, chat and contact with their neighbors within the communities. The findings show that the residents in the gated community are much more active in engaging in informal interactions with neighbors than those in the non-gated community. This phenomenon signifies that informal socializing is not merely determined by convenience of contact, but also the willingness of residents to commence and to continue their interactions with their neighbors. As in most of the gated communities, features of households are likely to be homogenous; people would ordinarily have higher preferences to maintain friendly relationship with others who belong to similar background and have similar living style. Thus, this characteristic of homogeneity facilitates informal interactions inside the gated community.

### **Associational Involvement**

Associational involvement refers to one's engagement and participation in activities held by different types of community organizations, where participants usually share similar themes and interests that are essential for the establishment of closer neighborhood bonding. The degree of associational involvement is a computation of the respondents' perceived frequency of participation in functions held within their communities and the corresponding participation activeness. The findings indicate that the resident involvement rate of gated community is higher than that of the non-gated. Based on the results obtained, some implications are projected. Firstly, information can be favorably circulated inside the gated community such that the residents sufficiently know what activities are to be held. Secondly, the residents in the gated community possess considerable level of awareness towards the associational activities. Thirdly, as the gated communities are likely to consist most of the characteristics and facilities as a lifestyle community,


residents are comparatively much resorted to leisure enjoyment than those living in the non-gated communities.

### **Civic Leadership**

In connection with associational involvement, civic leadership further measures the situation of how people actively take leading roles in their community. The presence of community leaders is somehow significant for mobilizing human resources and has positive effect in cohering different voices and interests within the community. The degree of civic leadership is a computation of the respondents' perceived frequency, willingness and activeness of being civic leaders. In general, the level of civic leadership is low in both gated and non-gated communities. In the non-gated community, given the low respondents' activeness in other dimensions of social connections, it is not surprising that such kind of community is hard to nourish civic leaders with loosely-tied bonds among residents. However, in the gated community, the low level of civic leadership is unexpectedly inconsistent with the relatively high degree attained from other social dimensions. There are several possible explanations to this interesting phenomenon. Firstly, the presence of owners' association and professional Property management agent performing most of the essential tasks for the communities would greatly reduce the residents' concern towards community issues. Secondly, residents may not find their way to take part in local issues due to different constrains; for instance, one may not be able to spare time from busy work and family.

### **Political Participation**

Political participation measures the extent to which residents are politically involving in their community. It can be an important channel for those who share similar interests, goals and perspectives to establish chains of social connections. The degree of political participation is a computation of respondents' perceived eagerness in participating in various types of political activities. The findings show that residents from both the gated and non-gated communities are not active in political participation. The result is not beyond expectations as it is a common phenomenon



as witnessed by persistently low voter turnout rate and participation rate in election and protesting political activities respectively. Nevertheless, based on the survey results, comparatively speaking, the degree in the gated community is still higher than that of the non-gated.

### **Diversity of Friendship**

Diversity of friendship refers to the degree of how diverse people's social networks are. By examining the degree of friendship diversity, people's activeness in developing their social networks and their eagerness in producing community solidarity with others can be reflected. The degree of friendship diversity is a computation of the respondents' perceived eagerness in developing friendship in different occasions and with heterogeneous others. The findings show that residents in the gated community are more likely to develop diversified social networks. One possible explanation is that the degree of gatedness is closely related to the degree of homogeneity. Gated communities induces a great desire for their residents to know more heterogeneous others so as to enrich their daily lives. In addition, friendship building is an interpersonal cognitive process while both intrinsic factors (e.g. personal values, past experience) and extrinsic factors (e.g. safety of the place, comfort of the environment) have significant influences on the outcome. Given that the residents in the gated community have developed cohesion through various social connections and that high degree of gatedness provides a comparatively safer environment, the result of more residents having diversified friendship is beyond suspicion.

### **Comparison of Trust And Volunteering**

#### **Trust among People**

Trust is valuable to a community, especially when neighbors are not tied to close interactions, because it helps extend to other residents within the community that they do not know intimately. Residents develop their sense of trust from a variety of daily experiences. This study measures trust from respondents' perception about their friends, neighbors and government. In both gated and non-gated communities, their residents tend to trust their personal friends than their neighbors and the government. Specifically, although the non-

gated residents generally indicate a satisfactory level of trustfulness with their personal friends, they on the whole do not trust their neighbors and the government. It is noteworthy that they somehow behave cautiously with each others such that they are unable to establish a close relationship.

#### **Giving and Volunteering**

Giving and volunteering is a product resulted from the transformation of collective sense of mutual obligation and trust with neighbors in a community, and it can therefore act as a behavioral indication of residents' sense of community. The degree of giving and volunteering is a computation of respondents' perceived generosity to volunteer their time and money to others. The findings reveal that residents in gated community are relatively generous with their time and money than those in non-gated community. Nevertheless, the overall degrees of both communities are not satisfying. One interesting thing is that the results are beyond expectations, where generosity is assumed to be tied with the residents' personal background, instead of physical environment. However, given the similar demographic features, the significant difference in the degree witnesses residents in gated community have higher degree of willingness to donate, of likeliness to response others' appeal, and of acceptance to lower class of people than those in non-gated community. This highlights the effect of gating on higher cohesion in response to collective activities such as collection of used materials for charity. Moreover, gating provides higher sense of security, protecting residents from outside threats and therefore they are more likely to accept such unwelcome establishments as Rehabilitation Centre or Sheltered Workshop near their community.

#### **Comparison of Neighborliness**

##### **Health, Happiness and Intent to Stay**

The findings indicate that happiness with neighbors is somehow connected with the level of social connectedness and trust, as evidenced by the residents in the gated community, who have relatively frequent social connections, enjoying greater personal happiness than those in non-gated community. In general,



residents of both gated and non-gated communities believe that their own community is a good place to live. Moreover, when considering the relatively weak social connections in non-gated community, the result is encouraging and acceptable. However, it is too early to draw a conclusion that residents' intent to stay is not related to their satisfaction derived from various social connections. This is because these connections are apparently not the sufficient condition; instead, there should be exogenous factors other than context of neighborliness. Personal values and beliefs, such as locality, environment, etc may be the ones that residents would take into consideration, which are not the emphasis of this study. Comparatively, the residents in gated community are perceived to be having much positive perception towards their community than those in the non-gated community. The former are more likely to live in their community in a longer term.

### **Sense of Community and Feeling of Belonging**

Concerning the sense of community and feeling of belonging, the residents of gated community generally think much positive towards their community than those in non-gated community. The significant difference suggests that neighboring relationship among residents of non-gated community is not very good because not many residents like their neighbors. Besides, the results show that residents in the non-gated community do not like to stay in the community. More importantly, non-gated community seems to be failing in developing their residents a sense of community and feeling of belonging. One interesting thing derived from the findings is that residents in the non-gated community are unlikely to shape their place to be the one living with all walks of life; instead, they desire to have a homogenous community which can be explained by their lack of security for low degree of gatedness. On the contrary, residents in the gated community are comparatively good in social connections, by means of participation and involvement in various community activities. Gating is therefore instrumental in cohering and gathering residents within the community, enhancing sense of community and feeling of belonging.

Residents vary in their desire for social connections and perception of neighborliness, especially true for people

living in metropolitan city characterized by busyness and hurry life. They unsurprisingly seldom talk with their neighbors and are unlikely to spare some time to participate in community activities; there is no exception for the two sample communities. The question lies on the extent to which it appears. Based on the findings, one can see that social bonds in non-gated community appear to be weaker than that of the gated community. Theoretically, sense of community is positively related to social connections. Practically, it may not be the case in this study because inadequate social connections are still witnessed by a "relatively high" level of sense of community, as in the case of the non-gated community. Taking a closer look on the results, both gated and non-gated communities reflect some privilege that they come to the major component of neighborliness – trust, which is deemed as a strong and ultimate force in cohering residents. Trust levels in both gated and non-gated communities are unexpectedly encouraging in the sense that they are not commensurately low with social connections. Together with the relatively high degree of associational involvement and diversity of friendship, residents are able to maintain a reasonable level of trust within their communities, despite of unhealthy record of other dimensions. They are living in communities with certain level of courtesy, honesty and reciprocity. This study suggests that both gated and non-gated sample communities have untapped the potential and valuable asset - trust - for solving community and neighboring conflicts and problems.

Having studied individually the various dimensions of the neighborliness, it is found that the gated community is perceived to be having higher degree of social connectedness and neighborliness than non-gated community. However, the extent to which the differences in mean score vary significantly from one dimension to another. The following figure presents graphically how each dimension of neighborliness is perceived by the residents in both gated and non-gated communities. As illustrated, every dimension with respect to the gated community has higher mean score than that of the non-gated community. Besides, compared with the gated community, neighborliness in the non-gated community is badly perceived by their residents as mean scores of all dimensions are below 3. The differences in mean score of dimensions also have some implications on the neighborliness of both

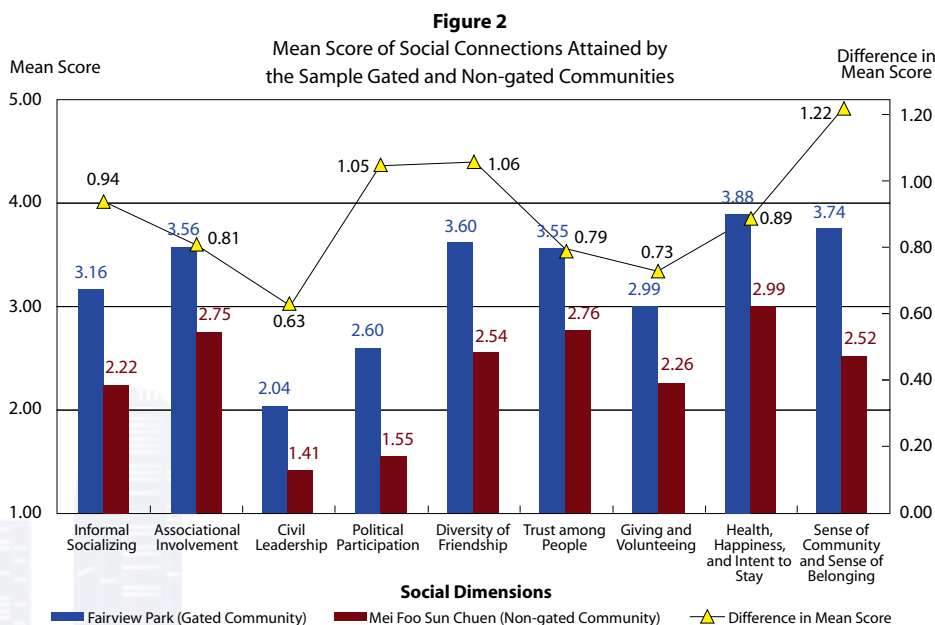


communities. The dimension, "Sense of Community and Sense of Belonging", as an indicator of neighborliness, is recorded as having the highest difference in mean score. The difference may be attributed to such social

connections as diversity of friendship and informal socializing, both of which are also recorded having relatively high difference (Please refer to Figure 2 below).

The following table summarizes the empirical results of the study:

Overall Mean Scores of Survey Results with respect to Gated and Non-gated Communities		
Social Dimensions	Gated Community	Non-gated Community
Informal Socializing	3.16	2.22
Associational Involvement	3.56	2.75
Social Dimensions	Gated Community	Non-gated Community
Civic Leadership	2.04	1.41
Political Participation	2.60	1.55
Diversity of Friendship	3.60	2.54
Trust and Volunteering	Gated Community	Non-gated Community
Trust among People	3.55	2.76
Giving and Volunteering	2.99	2.26
Neighborliness	Gated Community	Non-gated Community
Health, Happiness and Intent to Stay	3.88	2.99
Sense of Community and Feeling of Belonging	3.74	2.52





## Obstacles Encountered By Residents

According to the findings, about one-tenth of residents in gated community face obstacles in community involvement, compared with nearly one-third of residents in the non-gated community. "An inflexible or demanding work schedule" is the greatest concern for the residents in gated community, followed by "feeling cannot make a difference". As to the non-gated community, these two obstacles are also the most important ones for their residents; however, most of them believe that developing social ties or bonds in their community makes no difference to their life, which may have explained the reason for weak social connections. Besides, nearly half of the residents feel unwelcome in and do not know how to begin with community activities, which does not happen in gated community.

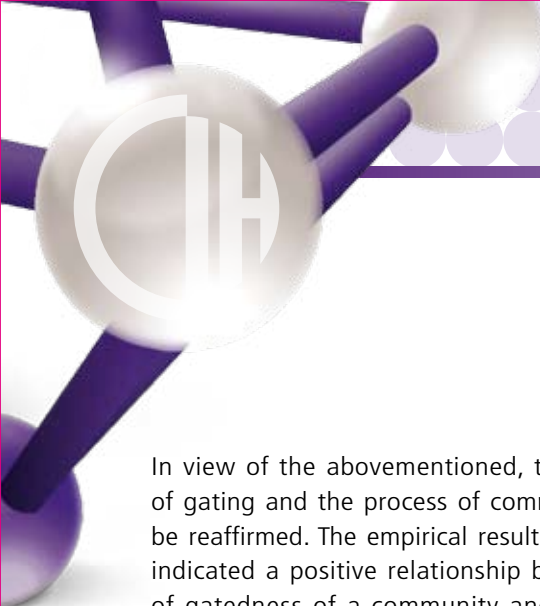
## CONCLUSION

While there is much concern and so a lot of researches were conducted for the impacts of gated community on the community bonding in foreign countries, very little have been undertaken in the context of Hong Kong. This study is, under the rising awareness of community bonding and neighborliness in Hong Kong, undertook for examining the relationship between the gated community and the neighborliness with reference to the situation of Hong Kong where condominium prevails. It aims to provide an insight into the policy formulation for community building for the concerned authorities and urban planners for the sake of having effective community building strategies developed and applied to cope with different degree of gatedness of the communities.

The empirical results suggest that the residents in gated community have higher degree of social connectedness with each others, which enhances their level of trust, in turn resulting in a higher level of neighborliness compared with the non-gated community. For example, there is a more informal socialization and associational involvement in gated community than in non-gated community. Notwithstanding some dimensions of neighborliness, such as civic leadership, are recorded low in both communities, the difference between the

gated community and non-gated community is always significant. And because of closeness, the residents in gated community are more active in participating in local issues and are more eager to diverse their friendship. All these results logically bring to a higher level of trust among neighbors in the gated community as the high level of gatedness brings them closer, and more social connections and communication through higher level of participation and involvement of mutual co-operation in managing community affairs. The higher level of trust and security enhance neighborhood relationship, making the residents in gated community have stronger sense of belongings and more intention to stay in the community than those in non-gated community. Given that the primary objective of community policy is to keep residents loyal to their community, gated community not only has impact on safety and prestige brought by its physical design, but is also instrumental in building up sense of community and cohesiveness of residents living within the community.

In this connection, the relationship between the degree of gatedness and neighborliness is positive. It somehow contradicts what some scholars argue that privatization of community space would undermine the sharing among neighbors and the degree of apathy. People's non-involvement in community activities is indifferent between gated and non-gated community and is subject to enlarged social differences and social restrictions. The empirical results are not in line with what some opponents that gated community cannot enhance community involvement and sense of belongings. On the contrary, a high degree of gatedness can lead to more political participation and community involvement as well as tighten social ties within the community than that of non-gated community. However, this study cannot justify the incorrectness and inaccuracy of foreign researches as the result may be varied with different social classes, evolution and rationales of emergence of gated communities. For example, in some prestige gated communities, the lack of involvement and mutual co-operation may be the same or even higher than non-gated community as residents tend to have little time or inclination to be neighbored.



In view of the abovementioned, the interrelatedness of gating and the process of community building can be reaffirmed. The empirical results of this study have indicated a positive relationship between the degree of gatedness of a community and its neighborhood bonding. Nevertheless, there is still a long way to conclude that "gating" is a strategic mean to achieve high neighborliness. For instance, the impacts of different types of gated communities and different physical designs of the gates are not being examined thoroughly in this study, while all these factors may have potential and even influential effects to the outcome of the neighborhood connections.

In addition, although gatedness is observed in this study to have an encouraging effect towards neighborliness, the merits of "gating" in the formation of social capital are still debatable. In this study, only intra-community bonding is observed, but the impacts of gating between and across communities are out of the study's focus. The empirical results show the benefits of gatedness in inducing more intra-community connections, but in reality, gating of a place may on the other hand hinder the possibility of interactions between the insiders and outsiders. By the same token, gatedness promotes homogeneity and intra-community trust, but it may on the other hand lower the confidence of residents towards outsiders and the government.

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