COVER STORY

主題文章

Proposed Reduction of DMC Managers' Remuneration on Review of BMO

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Introduction

The Consultation Paper on the review of the Building Management Ordinance ("**BMO**") was published in 2014, inviting the public to express their views on the proposed amendments of the BMO. Later, in 2016 and 2017 respectively, the Legislative Council Panel of Home Affairs ("**HAD Panel**") has published their up-dated views on the proposed amendments. One of the proposals is about reduction of the remuneration of DMC Managers. This article will discuss the proposal generally and the reasoning behind.

Reducing MR rates year by year

The 2014 Consultation Paper proposed to reduce the remuneration of DMC Managers in different ways. Firstly, for developments of more than 100 residential units and car-parking spaces, the ceiling of the manager's remuneration ("**MR**") will be reduced from 10% by 0.5% per year down to 8%. The reasoning in support of this proposal is not quite apparent. It was said some owners took the view that the existing mechanism of linking up the MR with the management expenses "*induces the DMC Managers to spend more so as to increase their remuneration*". However, the proposed reduction of the percentage will not induce the DMC Manager to spend less. On the contrary, if there were anyone intending to inflate their MR, they may have to spend even more to cover up the deficit caused by the reduction.

It was also mentioned in the 2014 Consultation Paper that the DMC Manager should be more familiar with the estate they manage as time goes by, and the "*service and overhead costs may decrease with accumulation of experience*". Firstly, service and overhead costs should presumably be dealt with on reimbursement basis. If the amount is reduced, the benefit will go to the owners anyway. Secondly, if it is said that the Manager's job becomes easier, and this may justify reduction of their remuneration, this will be quite contrary to the common understanding that a more experienced service-provider should be paid more. A more senior and experienced solicitor may solve a legal issue more easily and swiftly than a trainee solicitor. Nevertheless, nobody would venture to suggest that the senior solicitor should be paid less than the trainee for performing the same job. In any event, there is no scientific evidence published to justify the reduction (i.e. 0.5% annually down to 8%) which looks quite arbitrary to laymen.

It is only when there is concrete proof of firstly, widespread abuse of the mechanism by DMC Managers spending more than they ought to so as to inflate their bills, and secondly, the lack of remedies offered by the law at its present state over such mischief or real difficulty for owners to resort to the remedies available, that the Legislature should intervene by lowering the ceiling percentage. We see no such proof offered by the HAD Panel.

It should be noted that according to the DMC Guidelines ("**the DMC Guidelines**") issued by the Legal Advisory and Conveyancing Office ("**LACO**") of the Lands Department who approves most of the DMCs, there might already be a provision in the DMCs permitting the Owners' Committee (or Management Committee if an Owners' Corporation has been formed) to vary from time to time the percentage of MR. Strangely, there is no limit as to the extent and frequency of the variation. Reading the provision literally, the Owners' Committee or Management Committee would already have wide power to adjust the MR payable to the DMC Manager without any legislative intervention or

further amendment of the DMC Guidelines. The author has seen some actual cases when the Owners' Committee or Management Committee, consisting of some ten persons in an estate with hundreds of units, purported to reduce the percentage of MR drastically to an extremely low level. In those cases, the Manager may need to resort to arguments like there should be an implied term that the adjustment should be reasonable, when the DMC Guidelines do not say anything expressly to that effect. It is quite difficult to understand why there should still be further intervention by imposing a seemingly arbitrary and automatic reduction schedule universally on all DMC Managers in future.

As the DMC Guidelines' provision permitting adjustment mentioned above has been in existence since 1987, presumably buildings having their DMC drafted after then would have such a provision in place. Of course, there may well be some older buildings still managed by the DMC Manager which do not have the protection of the said adjustment provision. However, as the proposed amendments will only affect new buildings and apply during the first four years of the DMC Manager's management, these older buildings will not be better off after the amendment in any event.

Items of Expenditure with no "Value-added Services"

Another amendment proposed in the 2014 Consultation Paper is to exclude some expenditure items from calculating the MR of the DMC Manager. It was said that expenditure like electricity charges and water bills of common parts and facilities do not involve any "value-added services" of Managers who therefore should not charge on them. According to the 2014 Consultation Paper, "*only those items which genuinely involve management supervision (e.g. payments for garbage disposal, security services etc.) should be counted as the total expenses, costs and charges necessarily and reasonably incurred in the management of the development*".

Firstly, it seems the ceiling percentage prescribed by LACO is for a package deal applying to all management expenditure. For many years, the property management industry works on such basis with the building owners. If that ceiling is too high, and there is convincing evidence to support that, the problem may be dealt with simply and directly by adjustment of the ceiling, which is what the HAD Panel is suggesting to do as discussed above.

More importantly, the issue may well bring in uncertainties and arguments in the interpretation of future DMCs as to the meaning of "value-added services" and services which "genuinely involve management supervision" of the Manager. If the Manager receives an electricity bill, writes a cheque, arranges it to be signed and sends it out, and records the payment in the ledger, will he be providing management services on that item? If not, what is the minimum level of services which entitles him to remuneration? In the 2014 Consultation Paper, it was said that arranging for garbage disposal or security services would be regarded as providing management services (presumably even if these are to be done through contractors and not the Manager's staff as no such distinction was drawn in the Consultation Paper). The reasoning seems to be that the Manager would need to arrange for the tendering of the jobs and oversee the contractors' performance. On the other hand, if the Manager has to ensure that the wires, the pipes, the light bulbs and the water taps etc. used in connection with electricity and water supply of the common parts and facilities of the building are in good repair and condition, so

that at the end those supplies and services will not be interrupted, which eventually lead to electricity charges and water bills being payable, it may be arguable whether the Manager is providing some services relating to the electricity and water charges. If the DMC Guidelines and the DMC simply adopt what the Consultation Paper said without due and careful elaborations, this may well invite litigation for the owners and the property management industry. At the end, one will ask this simple question after considering all these complicated issues, "why should we make simple things complicated?"

HOO and Transparency

The 2014 Consultation Paper also mentioned the need for transparency of certain kinds of expenditure, like those incurred by "*the headquarters or parent company of DMC Manager (e.g. services provided by the DMC Manager's accountants who serve more than one development)*". It was proposed that "*the DMC Manager should provide the owners with a detailed breakdown on how the service fee of the headquarters/parent company is apportioned among the developments they serve*".

It is well-known to experienced property managers that "Head-Office Overhead" (sometimes known as "**HOO**") is included in the management expenses which attract MR. It is not the mere fact of inclusion of the HOO which arouses queries and attacks. As quite rightly said in the Consultation Paper, it is the lack of the transparency which has caused some disputes. Both the CEO of a property management company serving 100 housing estates working in his spacious office in the headquarters, and a caretaker working in a small and congested management office in one of those estates are directing their care and attention to serving the owners. In the CEO's case, however, his salary may require apportionment amongst all the 100 estates. The property management company may be reluctant to disclose how much he (or each of the other staffs in the head office who serve those estates) earns, how many estates require whose attendance, and how the apportionment is made amongst various estates. Some of such information may well be regarded as confidential from the perspective of the property management company. However, even without the proposed amendments of the DMC Guidelines, if the owners are required to pay HOO and MR on HOO, they may be entitled to proof of the sums concerned. It is doubtful whether the Manager could simply come up with a lump sum and force it upon the heads of the owners without further particulars and proof.

2016 and 2017 Consultation Papers

It is not surprising that the above proposals were not well received by the building management profession. In the 2016 Consultation Paper, it was said that "*over 70% respondents objected to the proposals of reducing the ceiling on the remuneration rates of DMC Manager by a specified percentage each year and excluding payments for and on behalf of owners from the formula for calculating DMC managers' remuneration*". However, it was also said that the objections largely came from the property management industry, and the majority of the District Council members and the public endorsed the proposal. Therefore, the HAD Panel said it would propose to the Lands Department to amend the DMC Guidelines to implement the above proposals. If that is the case, it will not be a matter of amending the BMO, but the DMC Guidelines which will only apply to new DMCs of future developments. This also brings out the interesting question of what if the Lands Department refuses to implement these recommendations after all these studies and efforts.

In the 2017 Consultation Paper, it was added that the above proposal of gradual reduction of MR rate by 0.5% per year would also apply to new small developments, when the 2014 Consultation Paper left open the position for developments with 100 units (residential units and carparks) or less. For developments of 20 residential units or less (including carparks), the MR rate would be reduced from the present ceiling of 20% to 16% by 0.5% per year, and for developments with 21 to 100 units (including carparks), the reduction would be from 15% to 12% also at 0.5% yearly.

Other Proposed Amendments

In the 2014 Consultation Paper, it was suggested that the threshold for terminating the appointment of DMC Managers should be lowered. According to the 2016 Consultation Paper, this proposal will, however, no longer be pursued. Instead, the HAD Panel proposed that the term of appointment of DMC managers would be automatically terminated five years after the formation of OC, when the OC may enter into a new contract with the existing DMC manager or engage a new manager/service provider through open tender.

There are various other proposed amendments which would affect Managers (whether DMC or Contract Managers). These include: —

(i) specifying in the BMO that the Manager should make a declaration on conflict of interest in procurement processes which should cover any business, pecuniary or other relationship between the Manager and any of the members of the management committee as well as the two with any tenderers etc.;

(ii) imposing criminal liability on Managers for failing to produce, keep and handle audited accounts, minutes of meetings and tender documents; and

(iii) requiring the chairman of the management committee and the DMC Manager to sign a checklist confirming compliance with the procedure for convening a meeting and disclosure of information relating to proxies.

The above list may not be exhaustive. Members of the building management profession should pay proper attention to the development of the proposed amendments, and the precise contents and effects of the new ordinance when it comes into operation.

Although the amendments about remuneration of DMC Managers, if implemented, may only apply to DMC Managers of new developments, it is not known whether this may lead to any significant reduction of the revenue of the building management profession, and if so the extent. Any adverse impact on the size of the cake, if substantial, may at the end affect individual members of the profession and contract managers, although it seems the impact may not be that great when they have no application to existing developments.

也是資產管理：物業範圍內樹木的有效管理

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樹木功能的老生常談，及被忽略的二三事

或許是老掉牙的題目 — 樹木對我們的好處 — 在不同的分享、課堂或研討會上我都喜歡問與會者這個問題。很多朋友即時的答案是樹蔭、改善空氣質素；當我再追問「如何改善空氣質素？」接著便幾乎是「光合作用製造氧氣」之類，然後場內便開始靜了下來。似乎是簡單的問題，但可以得到準確的答案卻是少得可憐，到底是樹木的實際功能太少，還是我們習慣Take it for granted(老奉)呢？

都市人最為「老奉」的，就是喜愛在樹木提供的林蔭下活動，卻不知道樹木正在為樹蔭下面的人們有效地降低達十度或更多的氣溫。另一方面，樹木固然是氧氣的製造者，但它們改善市區空氣的能力更在於其潮濕的葉面不斷地過濾著空氣中的懸浮粒子(即塵埃)，不信的話可以徒手觸摸一下馬路邊的樹葉便會知道。

還有更多的功能是更容易被忽略的，包括減低都市排洪系統在大雨期間的壓力、支持在城市內野生動物的生活、降低精神病的病發率等等。更多的資訊可以到以下網址，在此不贅：www.treesaregood.org

以上的好處不是其他植物也可以辦到的嗎？市區的環境狹窄，「人都唔夠住，仲要種樹？種其他植物不是一樣嗎？」

大體上其他植物也有相似的功能，但以每平方地面面積計算的效益大概沒有其他植物可以超越樹木。試想像一棵種植於路邊一平方米樹穴(地下泥土不只一立方米)，高6米寬5米的樹，它的樹冠表面面積便可達78.5平方米，若仔細計算其總葉面面積則更大了(可以說是「地積比」相當高)。葉片越多其降溫除塵功能則越大，因此，樹木所佔的地面空間很多時並不多，但為人類可提供的服務並不少，可見效益是很高的。因此，空間越見不足的地方，越應該至少提供到足夠樹木生長的環境以達到我們希望的效果，這樣相比種植其他植物對附近的用家效益大得多了。

所以，對物業本身來說，樹木是一項重要的資產，若有人傷害樹木，業主／管理人其實是可以向對方提出索償的！

天生天養，為何要管起樹來？

既然如此，在我們周邊種更多和更大的樹不是就更好嗎？邏輯上沒錯，但前題之一是必須有基本樹木所需的地下(土壤，不是地面)空間。若地下空間足夠大，縱使地面的空間小如一平方米也能長得大樹。可是，在擠迫的都市 — 尤其是屋苑有限的地方(平台花園、天台為甚)，單單是泥土的深度已非常不足，這樣我們就不能期望種下的樹可以長得像在郊外那麼大。更重要的是，除了地下，地上的空間亦可能相當有限，樹木稍稍高一點、 一點便有機會阻礙到居民的正常活動或設施。地下的情況亦如是，部份樹木喜水的根部甚至會穿越排水管或結構，對設施造成很大的破壞。對樹木來說，只要根部找到水源(可能是出乎我們意料之外的地方)，地方淺窄，它們還是有能力長得很大的。

因此，在擠迫的人工環境，我們不應讓樹木「天生天養」，無止境的長大，反而應提供周全的管理和護養(如修剪)，使它們既可提供人們所期望的功能，其生長又不會為周邊的使用者構成妨礙。

物管的責任和法規的要求

政府發展局在2016年推出了一份*《樹木管理手冊》，當中列明業主及其委託的管理人對樹木管理的責任。當中著墨很重的部份在於樹木風險管理，以致不少業主及管理公司聞樹色變，大概覺得物業範圍內種植有樹木便是埋了一個計時炸彈似的。筆者對這推廣的方向不以為然，反而覺得有點違背「人樹共融」的原則。

* https://www.greening.gov.hk/tc/tree_care/Handbook_on_Tree_Management.html

然而，讓業主及管理人了解其法規上的責任並無不妥，但我反而希望用資產管理的角度讓各位更積極的去回應這份文件。在此分享兩個重要的概念：

(1) 很多地契條款內，都列明土地上的樹木是受到保護的，不可受不必要的干擾(如傷害或砍伐)。

(2) 任何人都要妥善管理好自己的財物及資產(如樹木)，以免對他人構成不便或危害。這概念可套用在衣食住行的各方面，就是民事上的謹慎責任；

其實，按地契的原則，物業範圍內的樹木(不論是野生的還是任何人種植的 — 包括住戶私下種植的果樹)其實是公眾(整個社會)的資產，政府是在土地契約期內將樹木交由業主去照顧。當然，樹木改善環境、甚至舒適的園林令物業升值，業主其實也直接或間接地受惠於這安排。對業主來說，照顧好樹木就好像照顧好自己的窗戶一樣 — 它為室內擋風擋雨，業主當然也不希望有一天窗戶會飛墜樓下，就算不傷及途人也需重新安裝吧。

以上的闡釋應該令問題變得簡單很多了。但應當如何照顧(管理)好樹木這重要的資產？根據謹慎責任的概念，物業管理方面應該按社會或行業的普遍標準／做法去管理物業範圍內的樹木。至於甚麼是普遍標準／做法，則需要按照當時的行業要求或指引文件作參考。因此，既然政府發表了《樹木管理手冊》，則其內容就是最基本的處理方法，當然亦可參照業界或國際上的慣常做法。

做好各項工作的分工

樹木是很特別的植物—特別之處在於它們生長期很長(正常來說大多比我們的壽命都長)，而且可以很高很重。照顧樹木因此就有別於其他花草—死了換了便算。首先，樹木枯萎了要再重新種植一棵在很多時候並不是想像中的容易，尤其是種植在屋苑平台或天台的位置，既可能要動用大型機械(建築期過後有時不大可能)，又可能在起挖樹頭時傷及建築物結構或設施；另一方面，保養樹木也不能像保養其他植物一樣有人有剪便成，胡亂的修剪對樹木的結構是極為不利的。灌木的結構我們不會太過在乎(不喜歡也可以更換)，但結構不良的樹木就有可能構成公眾不便或危險。

因此，管理樹木我們需要三類專業人員：(一)檢查樹木健康和結構並提供可行建議的**樹藝師**；(二)負責將樹藝師建議付諸實行而且執行正確的**技術人員**；(三)負責編定合適的樹木管理對策、制定妥善的聘用條件及作出合理決策的**管理人**(很多時候亦即物業管理從業員)。緊記，三者缺一不可。

樹藝師應該是對樹木有非常深入認識的專業人士，他們要清楚各種常見樹木的特性、常見的問題和病徵，才可以準確了解樹木的狀態，不至誤判。另外，他們要為管理人提供專業的建議，有時按情況可能需要提供多個方案以供選擇，並清楚地以書面形式紀錄在案。

技術人員(或合資格的樹木工人)則是受過足夠而專業訓練的樹藝工人，他們必須正確地將樹藝師的建議執行，修剪樹木的位置及方法必須嚴謹，工作期間更需顧及自身和週邊人物的安全。除了去除枯枝等簡單工作外，物業範圍內大多數的樹藝工作(如修剪、拉纜等)都涉及很高的技術，且要因地制夷，因此經常需要在樹藝師和技術人員一同協調下進行，並非單憑報告上的三言兩語或圖片便可以辦妥。

不要將未處理的報告放入抽屜

管理人是在樹木管理上的第三個重要的角色，而且極為重要。他們的專業(如物業／設施管理)未必是在樹藝方面，但能否作出明智的管理決策就顯示到他們的專業「功架」。筆者的客戶不少是物業管理人員，在我的經驗裡專業的管理人員都有以下的特質：

(1) 不單是問題出現了或在年度末有預算剩餘時才聘用樹藝師或技術人員，而是將樹木管理放於必須定期進行的項目之內；懂得做預防性保養工作的更是值得尊敬；

(2) 對制定物業範圍內的樹木管理方案／相關標書不會只抄襲公司的Template(範本)，遇到疑問會諮詢樹藝師，使資源用得其所；

(3) 不會只在意業主的想法，更會將其難處坦誠的跟樹藝師討論，找出一個妥善而高效益的方案；

(4) 不會把樹藝師的報告當作完成的功課放進抽屜，而是用心了解其建議再按緩急決定行動的次序，有效地降低各方面(包括他的管理公司)的風險；

(5) 懂得選擇高質素的樹藝師作為其顧問，並欣賞樹藝技術人員的專業操作。

縱使樹木估值在香港並不如西方地區般流行，但樹木作為物業內的重要資產這一點是不容置疑的，有時更需要物業管理人員向業主進行這方面的教育(管理「人」才是更大的學問)。實際上，專業的樹藝和物業管理從業是很緊密的伙伴關係，能夠把樹木管理得好，不單管理人員可以放心，為樹藝從業來說，更是非常大的滿足感。

我不清楚其他行業是否一樣，但很多樹藝師和樹藝技術人員都有一個習慣 — 就是當完成一項滿意的工作後都會很自豪的四處跟別人分享：「那個盆(物業)的樹是我主理的啦！」

《競爭條例》是否對付物業維修招標被「圍標」的靈丹妙藥！？

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對樓宇維修的影響

1. 香港法例第619章《競爭條例》(「競爭法」)

立法目的：禁止妨礙、限制或扭曲競爭行為，令每個人能享有更佳的價格，更優質的產品，更多樣的選擇。

2. 樓宇管理、保養及維修

物業管理業從業員的基本職能是為建築物的眾多業主提供良好的樓宇管理、保養、維修、設施更新，令業主有一個環境舒適及安全的居所。

同時，盡力協助業主在最佳經濟效益之下能得到最好的效果於維修、保養的項目，尤其是關於樓宇復修(大維修)的工程。眾所周知，業主們備受「圍標」的困擾。

無奈地，雖然競爭法已於2015年全面實施，在建築物大維修的招標過程中，「圍標」的出現，似仍是無日無之。怎樣杜絕，恐怕路途艱難遙遠，但可否減少，相信不難，需要各持份者配合。既然是無法杜絕，各方惟有在預防被圍標方面多做工夫，令圍標行為變得不吸引。政府與公營機構提供支援及適當介入是不可缺少的。

3. 物業管理業從業員(「經理人」)

經理人作為物管專業人士是有責任在大維修過程中協助及提供意見給業主立案法團(「法團」)。如是公契經理人，更直接面對業主，盡力做好可以避免或減少被圍標的可能性，與及懷疑已被圍標，減少其傷害性。建議經理人考慮以下各點：—

(1) 確保符合建築物管理條例(344章)有關取得供應品或服務的20A條款及44條款下所發出的「工作守規」；

(2) 跟隨廉政公署及競爭委員會發出有關於誠信反圍標的指引；

(3) 參加市區重建局提供的「招標妥」— 樓宇復修促進服務計劃(下稱「招標妥」)。招標妥的服務包括協助法團聘請獨立專業人士提供一般樓宇維修事項的專業及技術意見，並作出復修工程的估價；審閱由認可人士的勘察報告、招標文件及標書分析報告；及提供招標平台，委任會計師或獨立專業人士以處理招標程序。

(4) 避免與擬投標的維修顧問公司(「維修顧問」)或承判商非公事上必須的接觸，包括款待；

(5) 不可向擬投標的維修顧問或承判商提供招標文件以外而涉及大維修的敏感資料以防不自覺地作出涉嫌協助及教唆圍標行為；

(6) 經理人應向法團申報利益衝突事宜；

(7) 如發現有可疑圍標行為，應與經理人公司高層人士研究對策；適當時向競爭委員會或其他相關政府部門舉報；

(8) 法團與維修顧問簽署的顧問合約乃一份重要的文件，其重要性往往被忽視。現在的做法是法團或管理人在報章刊登廣告，招聘維修顧問，從承投眾多顧問公司中，由管理委員會或經理人或如費用可能超過管理費年度支出的20%，則需經過業主大會議決揀選維修顧問。被選中的維修顧問負責起稿提供給管委會一份顧問合約，經管委會批准後由主席或指定的委員與維修顧問簽署。看似簡單，實則很多法團的管委會對此份合約的條文表面了解，但深度不足，令維修顧問的代理人身份權力過大等，對法團保障不足，導致該份合約「出賣」了法團及業主。甚至合約並無清晰訂明維修顧問要確保政府發出的維修命令所涉及的工程未能完成至政府部門批核滿意，完成證明及令業主可獲市區重建局／房屋協會的補助。很多訴訟出現在於法團發覺工程進度、工程質量、更換物料、完工證明

等重要事項上有極大爭議，但法團站在極不利的地位，時間及金錢上，損失巨大。如申請加入招標妥計劃，最好等市區重建局批准加入計劃後，才進行招聘維修顧問，因該計劃包括提供對合約的意見。

(9) 獨立法律顧問的重要性

(a) 再談上述第(8)項，管委會當發現維修顧問合約有問題想諮詢律師的意見，坊間的手法是維修顧問預早安排免費提供或推薦一位法律從業員以象徵式代價作為法團大維修的法律顧問。管委會對該法律顧問的職責是否包括對維修顧問合約的內容或隨後的工程承判商的合約作出檢閱全不關心。管委會基於已投入了信任亦沒有考慮其獨立性及存在的利益衝突，效果及後果可想而知。

(b) 工程顧問的職責包括協助法團招聘工程承判商。在招標文件中，其中一份文件應該是法團與承判商將來簽署工程合約的草稿本。該草稿本應分開兩部份：一部份是法律條款，另一部份是工程項目細則及工料規格等。別小看這份草稿本，因承判商以它為基礎作出整個工程的評估及計價，作出投標。從法律角度看(有法庭判例支持)這份草稿於投標的承判商被通知成功中標那刻(連同在招標過程各方的書面查詢與回應)，即成為法團與該承判商的有效合約，不容修改，雙方同意者例外。其實，除非招標文件另有規定，正式簽約只不過是形式上的手續。這份草稿的法律條款部份，應與顧問合約互相呼應或制衡。法團管委會往往亦忽視此份草稿的重要性，及至出現問題，亦已經太遲(例如：糧單的批核，工作進度，物料的改變，後加工程的處理，完工檢驗等)。此份草稿理應由律師或其它專業人士預先審核後才作為招標的工程合約草稿較妥。

(10) 遇到法團與維修顧問或工程承判商在工程進程中產生嚴重意見分歧時，經理人應向法團建議從速找另一獨立的相關專業人士提供協助，較有保障。

(11) 「圍標」不外乎是投標者合謀及串通而令其中一位投標者中標，並且操縱價格。根據坊間資料，很多時被圍標的個案，最低標的價格都可能比市場合理價高出大比數或以倍數計。如對投標者的投標價懷疑相對市場合理價是太高或太低，經理人可向法團建議聘請工料測量師或相關專業人士對價或由法團業主大會議決重新招標。政府或公營機構能提供對價服務給所有法團，應是一項「德政」，「招標妥」正是其中之一。

4. 很多業主對現有招標的制度很有微言，就是究竟現行的投標制度是否最佳？如是最佳為何會產生如目前在市場出現圍標情況的普及？有人提議在招聘維修顧問及承判商時可考慮下列做法：

(1) 由維修顧問回應政府發出的維修令不論驗樓驗窗及／或改善工程作出報告及相關工程項目及細則及預算工程費用；

(2) 由另一專業人士作出工程費用的覆核評估或對價；

(3) 招聘工程承判商時，以上述兩項工程預算費用的平均價作為招標工程價格的基礎，競投的對象並非工程(連工包料)的總費用，而是上述已評定了的工程總費的一個百份比，即利潤率(例如5%，8%或10%)或該總費的一個折扣率，例如：總費用為$10,000,000.00，有投標者的折扣率為總價的10%，即他願意以$9,000,000.00承造此工程；如15%，即$8,500,000.00。投石問路，行得通與否有待商確；及

(4) 怎樣防止顧問及承判商合謀式的合作，「偷工減料」或「轉換物料」，如工程款項達至某一數額(例如：3千萬以上)，倡擬及鼓勵法團另外聘請獨立工程監督或優化「招標妥」代法團安排招標工程監督，向法團直接負責。政府舉辦若干課程，灌輸監察工程進度及物料使用的基本知識予法團委員，管委會委任的「工程監察小組」及經理人加强知悉怎樣監察，減低合謀的可能性，發揮「正能量」。

《競爭條例》於2015年全面實施，競委會在有限的資源下，已盡其最大努力廣泛宣傳，展開調查及執法。當然我們不能祈望短期帶來驚喜的效果，據悉競委會已收集很多可進

一步調查的個案及已首次引用該條中的瓜分市場及合謀定價條文，向競爭事務審裁處，檢控一批業務實體機構。如被判違反競爭條例，最高懲罰為業務實體全年營業額的10%或更高，受損害人士可透過「後續訴訟」追討賠償。長遠而言，違反競爭法是否需刑事化可能尚言之過早，將來有考慮的必要，因事實上偵查很大困難，通常有賴受害者或合謀者內閧，但很多合謀的行為在香港境外進行，令執法部門更難追查。

5. 「招標妥」優化版

上文3(3)段的招標妥計劃是因應原先「樓宇更新大行動」資助計劃由房屋協會及市區重建局推出的服務演變而來。招標妥是一個甚受歡迎的計劃，其服務對象包括非單一業主的私人住用樓宇或綜合用途樓宇(商住用途)，但不包括樓3層或以下的樓宇或新界豁免管制屋宇。服務費用依樓宇住用單位的差餉的平均數計算，約為$25,000.00至$160,000.00不等，在政府財政預算津貼下，還有特惠減半。服務範圍包括但不限於上文3(3)段所提及的各項，減少圍標的可能性。

招標妥是否能夠 對避免大維修被圍標，答案是言之尚早。經集合各方意見，招標妥可以優化令其功效更大：—

(1) 招標妥計劃在協助招聘維修顧問及承判商時，只是以公開形式招標，並沒有經由市區重建局評定認為具誠信商譽的維修顧問及承判商的名單，故此法團及經理人收到的投標書，明眼看可能是信譽不佳或有傳媒早前廣泛報導曾涉嫌參與大廈被圍標的工程或有很多與法團的工程官司。能否訂出參與投標公司的較高的門檻，相信有助於避免被圍標，如：年資、經驗、專長、財政實力、信譽等，才可具投標資格，或是否會就大維修顧問及承判商設立一套登記制度。

(2) 招標妥安排法團及經理人聘請的獨立專業人士為相關維修項目作出市場估算價格。既如此，可否以此估算價格作為招標聘用維修顧問或承判商的價格基礎(該基礎價)。承投的維修顧問或承判商只可就該基礎價給予一個折扣率discounted rate，作為其承投的工程價格。如此，相信圍標的可能性會大減。上文4(3)段已有論述。

(3) 如：大維修工程款達到一個相當大的款額(如3千萬以上)如上文4(4)提及是否應協助法團管理人招聘一位有資歷的監工，向法團、經理人負責，監察工程進度及物料符合規定的要求。此外，教育及灌輸法團管委會成員(或其監察委員會(如有))基本知識，以監察維修顧問、承判商的工作。令「偷工減料」或「貨不對辦」的情況減少，增加業主對圍標的警覺，減少被圍標的風險，令其不能靠偷工減料或貨不對辦，瞞天過海以賺取暴利。

6. 政府的態度

(1) 目前，「圍標」是不可能被杜絕，且變成一個社會的疾病，不單剝奪業主的財富資源，更將政府及公營機構給予法團及業主用以補助業主維修其物業的金錢落入合謀圍標者的袋裡，令物業維修的安全效果，打了很大的折扣，更有可能令預期需下一次維修的時距縮短，浪費社會資源。

(2) 這十年來，政府已用了不少公帑補貼，透過屋宇署、民政署、市區重建局及房屋協會等機構以協助法團及建築物業主們處理有關物業管理、維修等問題，鼓勵樓宇復修，加强樓宇的結構安全及提升居住環境衞生，是值得讚賞的。

相信本年度立法會議將會完成《建築物管理條例》的修訂及在《物業管理服務條例》下設立監管局，物業管理業從業員及管理公司的發牌制度得以開展，並提升他們的專業水平，更好地服務所有物業的業主及使用人。

(3) 打擊圍標行為，政府是責無旁貸，值得用更多資源。

業主擁有物業應該有責任及可以獨自處理他擁有的單位，現在出現的問題正是個別業主難以解決有關屋苑的公用部份的復修。立案法團，作為一個業主的群體，亦無辦法妥善解決，非不為也。事由是缺乏技術及專業知識，他們想做亦做不到，應由政府幫一把。一個地區有眾多屋苑，屋苑有眾多業主群體，居民及商戶使用者，產生的問題變成了一個社會民生問題及安居樂業的問題，處理得宜，民怨會減少，政府的民望自然會高，相反亦然，是不可少睹的。

Housing in Vietnam: Development and Future Trend

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Introduction

Because of the war, Vietnam was economically backward before its unification in 1975. During 1950 to 1973, GDP in Vietnam only grew on an average by 2 percent and trade deficit (both the North and the South) was high. Yet even after the war ended, series of political turmoil (e.g. thewar in Cambodia and with China in late 1970s) and the consequential impacts on the economy (e.g. trade embargo by the United States), has seriously hampered the reconstruction of the country. Even when Vietnam embarked on the economic reform, called Doi Moi (literally means renovation) as early as in 1986, it did not create immediate improvement on the economy but instead led to economic chaos with inflation rate as high as 774% in 1988. Despite the economy was pacified in the early 1990s, economic growth was still sluggish. Between 1973 and 1996, GDP only grew on an average of 2.8 percent which was much slower than that of China (5.4%) and South Korea (6.8%) in the same period (Tran 2002). When Vietnam opens up to the world and particularly after the normalisation of trade relation with the United States in 2000, economic growth of Vietnam picked up quickly and it becomes one of the fastest growing country in the world with an average GDP growth of 6.19% during 2000 to 2017. The latest figures of economic growth in the third quarter of 2017 was 7.46%.

Housing reform in Vietnam, which is at the centre of the economic reform, in fact started at the same time as the economic reform. Measures which are similar to those introduced by other transitional economies like China and countries in East Europe, like privatizing state housing, creating a housing market as well as reliance on the private sector in new housing construction, did not seem to produce a fundamental change to the housing system. Instead, housing outside the formal housing system plays an important role. Not only does it exist for long time, it also plays a vital role in the provision of housing which is particularly significant for housing for the poor. The paper will introduce the development of housing in Vietnam and discusses its current development and prospects in the near future. The roles of the formal housing sector, the informal sector as well as the social housing sector will be covered.

Housing Reform

Before Doi Moi, housing in cities was "de-commodified" in which state employees (i.e. most of the workers in cities) were allocated housing at low rent with life-long secure tenancy which could be inherited by the offspring. Yet, both the priority of allocation and space provision was based on political merits and status in the state organisation (Tran and Dalholm 2005). Yet there was diversity among different work units and hence weaker work units did not have the capacity to provide housing for all of their employees (Tran and Dalholm 2005). This was made worse by the weak economy during the war period and economic turmoil in the aftermath of the war. Housing supply lagged far behind demand. It is estimated that in the early 1990s, only 30 per cent of government employees were able to stay in state housing and hence the majority of urban dwellers had to solve their housing need by their own means (Trinh and Nguyen 2001). Such impacts accumulated after the economic reform and led to acute housing (Evertsz 2000). For instance, in Hanoi, the average living space per capita was only 5.8 sq m and as a result (Geertman 2007, Tran and Dalholm 2005).

Doi Moi changes the way housing was provided. State employees could no longer receive state-developed housing from 1992 and even for those who rented from the state, rents were substantially raised and rent subsidies as a component of the salaries was also terminated. The government was no longer the main provider of housing and private developers (builders) were encouraged to build and sold directly to households. Yet many of such private developers were in fact privatised state organisations.

The Formal Housing Sector

The housing reform aims at creating a housing market which facilitates the private sector to construct and allocate housing. New laws which legalized private ownership of both land and housing was introduced together with the rules on the transaction of housing and building materials. The Government's new directive is to develop urban housing, like other developed countries, with reference to a master plan approved by the central (and city) authorities and with government decrees targeting at "planned, synchronous urban areas with technical infrastructure, social infrastructure, residential areas and other services, large scale projects, of at least 20 hectors and preferably 50 hectors and are preferred" (Government of Vietnam, 2006). This would help to achieve an economy of scale the government has been thriving for as well as to match with the country's long term vision of building Hanoi as a mega-city (Tran, 1999) with 10 million inhabitants by the year 2050 (Master Plan 2030 of Hanoi, 2011).

High-rise apartments are encouraged with legal support and financial incentives to attract big real estate corporations and foreign investment in pursuing high-end housing. The housing reform in Vietnam since the early 1990s has largely been successful in setting up a vibrant housing market as well as to boost housing production. For instance, in Hanoi, more than 1 million square meters of floor area were added to the housing stock each year after 2003 and more than 70 large housing projects were completed by the end of 2004, most of them by state and municipal housing companies. Yet whilst this leads to a big increased in the average floor area per person in the last two decades (The World Bank 2015), housing inequality has also been exacerbated.

Housing that have been developed according to government plans and been formally authorised are termed formal sector housing. Despite a large amount of floor areas have been added to the housing stock and substantial governmental supports to the formal housing sector, housing that have been produced by the corporate (formal) sector has been just the minority, a merely 15 % of the housing stock after doi moi (UNHabitat 2014) and it constitutes just a quarter of all housing stock in Hanoi. In fact, three quarters of the urban housing stock by 2015 has been produced outside of the formal housing and it was the informal housing sector that has been the main provider of affordable housing for the urban poor (The World bank, 2015).

The Informal Housing Sector

In fact, state provision of housing was already inadequate in the socialist era and the majority of state workers at that time had to solve their housing problem by their own means. As there was already a need to intensify housing space in the pre-reform era to accommodate the increased population, it is not surprising to find these extension and subdivision of the housing space would be even more wide-spread in the reform era (Geertman, 2007; Tran & Dalholm, 2005) when such newly created space can generate income (figure 1). Extensive existence of illegal construction, which has been a serious problem and visible features in big cities like Hanoi, has grown to a degree that can be described as out of control (Koh 2004). For instance, in 1988, 1768 cases of illegal construction were reported in the four inner city areas of Hanoi reported which is twice the number of licensed constructions (Koh 2006).

Self-built activities can be traced back to the pre-reform era when there was still no formal recognition of private property rights. In the early

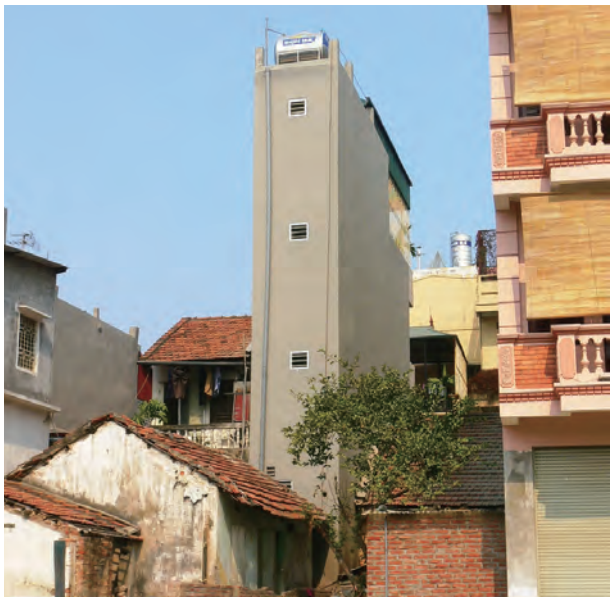
years of the housing reform, state work units which had excess of land but no capital to develop housing for their employees, began to distribute land to their employees to build their own housing. The economic reform further triggered a sprout of self-built housing, termed popular housing, in all forms and shapes. In-fill activities were intensified when the control on private ownership of housing has been released and restrictions on building materials transaction have been lifted.Empty lots in-between buildings have been quickly fill up (Evertsz, 2000) and old houses were demolished and being replaced by much higher buildings.

Such popular housing is self-initiated and self-organised (Geertman 2007), being financed and constructed by individual households outside the official framework. They have not been authorized by the city authorities and hence have not followed the land use and building codes as well as not complied with the city's planning regulations. One characteristics of such popular housing is its long and narrow shape. This is a result of the construction of self-contained walk-up housing units on subdivided lands with each house trying to get access to the ground level for entrance or as street-facing shop front (figure 2). Such popular housing also contributes to the bulk of urban housing provision in the 1990s, with an average of 70% share of the new housing stock in Hanoi between 1995 and 2000 (Geertman 2007). Yet despite their informality, most of the popular sector housing is of high quality and by no means slums. However, illegal extension and subdivision are perhaps the exception.

Illegal Extension and Tube Housing

(illegal extension)

Unathorised building extension and addition existed even in the socialist era. When such problems became worse after the economic reform, enhanced enforcement of regulations seems not to be effective to contain the growth of such irregularities. Radical policies have been introduced in late 1990s which attempted to legalize then existing illegal constructions with the hope to reduce the burden of law enforcing whilst concentrating the scares administrative resources to stop new addition of illegal structure. Yet such mesure ended up in failure (Koh 2006). Rapid market liberalization in the early 1990s made the financial incentives of additional space too tempting to resist. In fact, difficulties in enforcing the rules were partly attributed to the impractical rules and complicated license application procedures which indirectly forced people not to seek for legal procedure but to resort to 'fence-breaking' actions. Ward officials found themselves torn between moral obligation, personal empathy and practical consideration of their own personal benefit. Not only they have to struggle on whether they should discharge their duties in law enforcement or to exercise their discretion and allow them to extend their homes to enjoy a more decent living environment or whether they should turn a blind eye to tolerate the extension to give people a personal favour in exchange for either immediate monetary benefits in form of bribery or future favour when they need their compliance in the future (Koh, 2004).



(Tube housing in the popular sector)

Note: Photos taken by the author (left) and Dr Tran Hoai Anh (right)

Affordable and Social Housing

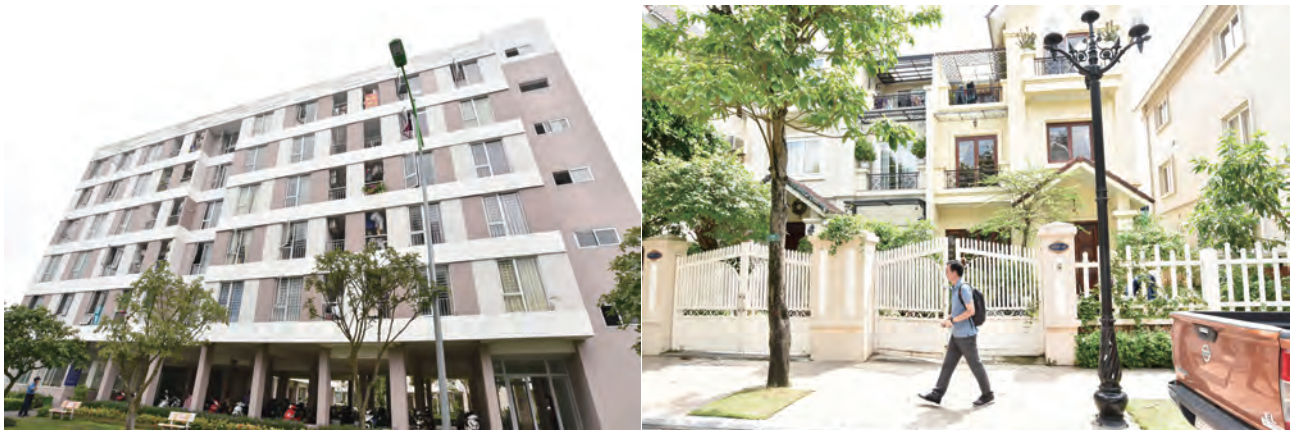
State provided housing has been stopped from the early 1990s and since then the private sector is the sole provider of housing. Yet this leaves low income households little alternatives to look for housing within their means. The concern of the government on hosing problem for the poor revitaliase in the first decade of the 21th century, after more than a decade of housing reform. Priority housing schemes have been setup to facilitate developers to develop housing "for sale and for rent" to state employees, workers, and students who are "in need of housing" (Government of Vietnam 2001) with financial incentives from the state. Such schemes were formally adopted in the Housing Law in 2005. Recent revision of the housing Law in 2014 further extends the coverage of social housing to include poor urban households living on social welfare, single elderly people, relocated households, as well as poor households in rural areas.

However, whilst the target groups have expanded, eligibility criteria have been tightening up. Initially, only housing need was considered, i.e. not owning any properties and lived in over-crowded housing (of less than 5 m^2/person). Income was added later to allow only households who earned below the average income in the city. In addition, permanent urban registration and formal verification of income were required. This essentially excludes most migrant workers and workers in the informal sector who are in need of the low income housing. All such housing schemes for low income households require participants to buy the property after a period of renting and a prerequisite of a 20% down payment. This imposes a serious hurdle for those who have genuine housing need from affordable housing.

So far, all housing scheme for low income households are either for sale or "for rent and sale" (first rent then buy). The only rental housing schemes target the industrial workers and student and also been built in small quantity. More attention has been given to the development of rental housing in recent policies, merely on paper, such as the Housing Strategies towards 2020 and a vision to 2050 as well as the new Housing Law 2015. The need to further develop rental housing is acknowledged and state budget and state supported private efforts will be mobilised. Yet whether such policies will eventually be materialized is still highly uncertain.

Whilst the formal housing sector, with the full backup and financial support by the state, has not been able to offer substantial amount of affordable housing, it is the informal housing which is more effective in solving the housing need of the poor households which include migrant workers, students and those households who are on low income. To cope with increasing demand and the rising cost, subdividing an apartment for renting has recently become a thriving business. Yet relative cost of such small rental rooms is not cheap. For instance, a small rental room without toilet may cost 1.2m VND (HK$400) per month for rent which takes up a substantial proportion of the monthly income of ordinary workers. Rents would be higher for units with its own toilet facilities. Another even more popular form of low cost housing is the mini apartment blocks (chung cu mini) which are walk up apartment blocks of 5-6 floors with 2 to 6 rooms each floor built on small plots of land of just 200 – 300 m^2, often in back-lanes. With monthly rents at 7 to 10m VND (HKD2400-3500) for an apartment at convenient location, they are popular among migrants, students, or young couples.

Social Housing



[Mixed Development in Hanoi — Public rental housing (left) Private housing (right)
Note: Photo Taken by Mr PY Fung

The New Urban Area Initiatives and Foreign Capital in Real Estate

New urban areas (NUA) initiative is a move of the Vietnam government to develop areas with advanced and comprehensive technical and social infrastructure. This helps to implement the ambitious plan in creating modern, orderly and civilised cities in Vietnam. It is also an attempt for the state to reinforce control on urban and housing development. Central to such strategy is the mobilisation of private capital to supplement the meagre resources from state. The state is able to get, at minimal cost, the necessary physical infrastructure like road network, public transport, sewage and water system as well as social infrastructure like schools, recreation facilities, healthcare centres, hospitals, grocery shops and markets etc. Incentives to developers include the exemption of land premium and tax breaks as well as financial support for infrastructure investment and site clearance. Foreign developers even get additional incentives like favourable land lease terms, further tax breaks and more autonomy in running the projects (Tran & Yip, 2008).

Such projects also enable the government to build more public housing. Private developers of NUA have to surrender 20% of the developed land with infrastructure or 30% of newly constructed housing units to the municipal authority to serve as public housing. This creates a seemingly win-win situation. Local governments are able to save on capital investment in as well as in reducing the time needed for infrastructure construction whilst the developers can get access to big pieces of inexpensive land in boosting their profits (The World Bank, 2011).

Despite most of the NUA projects are developed by local developers, there is sign of an increasing trend in foreign capital involvement in NUA projects. Such projects also tend to be high end housing as well as in much bigger scale. Most of the foreign investor in real estates in Vietnam are from Asia. Those from Singapore and Japan are more active. The first large scale foreign invested NUAs in Vietnam were Phu My Hung (Saigon South) in HCM City and Ciputra International in Hanoi. Occupying respectively a sites as big as 3300 ha and 400 ha. South Korean developers such as Posco E&C, Daewoo E&C, Booyoung Company Limited, etc., were among the early developers of NUA. Posco E&C teams up with one of the largest local developer, Vinaconnex, to develop the US$2.57 billon project Splendora. Daewoo E&C, on the other hand, single-handedly develops of the 183 ha Starlake Tay Ho (Westlake) in Hanoi. A strong presence of Malaysian developers, represented by Perdana Parkcity in its new 77 ha ParkCity Hanoi Town and Gamuda Land, invested in two NUAs projects, Celadon City in HCM City and Gamuda City in Hanoi.

Other new comers to NUA development include Capital Land form Singapore, Hong Kong Land from Hong Kong and Creed Group from Japan which mainly invested in small scale luxurious condominiums in prime location in the past. In 2015, Singapore's Keppel Land Ltd and the Hong Kong based Gaw Capital Partners, in join venture with two Vietnamese companies (The Thien Phuoc Real Estate and Tran Thai Real Estate) signed an investment agreement to build a US$1.2 billion project at waterfront site in Thu Thiem NUAs in HCM city. Japan's Becamex-Tokyu joint venture with a local developer to develop the US$1.2 billion new township in southern Binh Duong province. In early 2016, the Tokyo-based investment fund Creed Group joined hand with two domestic developers on a US$500 million residential project in Ho Chi Minh City's District 7.

These international developers, with their rich experience in developing luxurious condominiums in Vietnam, have definite advantage in bringing in, not just another ordinary residential space but exclusive services in private management, high security and lifestyle packages that target the upper middle class (as well as the expatriate community). Residents are able to pursue a leisure and luxurious life even without the need to leave the neigbhourhood. These resort-like ways of living is in sharp contrast to local ways of living and local community life and arguably has transformed the character of urban and public life in Vietnamese cities.

New Urban Area

Ciputra

My Dinh

Note: Photos taken by Dr Tran Haoi Anh (left) and Ms Nguyen Thuy Dung (right)

Conclusion

Like other transitional economies which are moving from the old socialist system to a capitalist market system, Vietnam expresses a dual housing system. On the one hand, there is a relatively poorly performed formal sector which has full state supports but unable to demonstrate efficiency and is also ineffective in solving the country's housing problem. On the other hand, there is a huge informal sector, not getting much state support and not even being recognised as a performing sector, produces the majority of new housing which contribute to filling the gap in housing provision of the formal housing sector.

In Vietnam, it is the simultaneous top down and bottom up process that shape the housing system. The socialist state, with its formal channels of political mobilization and decision-making, paints a grand plan of a modern and prosperous country in the making. Yet in reality, limited state capacity and restricted resources hamper its realization (Yip and Tran, 2008). On the other hand, local actors in the vibrant informal sector has pushed its way by challenging the official line and break the rules, the so called 'fence breaking" activities (Gainsborough 2010). Hence, "actually exist" policies is a result of interactions and negotiations between state actors as well as between the state and non-state institutions, communities, social groups and individuals (Painter 2005). Urban space produced by complex processes of negotiation, resistance and compromises between the driving impulses of the state, the entrepreneurial sector, and the popular sector (McGee, 2009).

Globalisation and the associated liberalisation of the economy has, arguably, brought Vietnam the life-style that is close to elites in advanced countries. Recent influx of international investment has pushed such process forward. Yet, for local residents, it is sometimes difficult to follow such changes of life-style. The loss of neighbourliness and sense of solidarity in their old neighbourhood may trigger sentimental responses. For the poorest population, long march to the market system makes them vulnerable which needs the determination of the state to enhance its long waited housing policy to rectify their misery.

Acknowledgement

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Further Reading

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