

立法會
Legislative Council

LC Paper No. CB(2)698/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/PS/2/00

LegCo Panel on Home Affairs

**Subcommittee on review of the
Building Management Ordinance**

**Minutes of meeting
held on Tuesday, 27 November 2001 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members Present** : Hon Albert CHAN Wai-yip (Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing, JP
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
- Members Absent** : Hon Albert HO Chun-yan
Hon IP Kwok-him, JP
- Public Officers Attending** : Mr Francis LO
Principal Assistant Secretary for Home Affairs (5)
- Mrs Kenny WONG
Assistant Director of Home Affairs (4)
- Miss Stella CHANG
Assistant Secretary for Home Affairs (5)2
- Mr MA Kam-ki
Senior Liaison Officer (Building Management)
Home Affairs Department

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Miss Irene MAN
Senior Assistant Secretary (2)9

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I. Confirmation of minutes
[LC Paper No. CB(2)443/01-02]

The minutes of the meeting held on 9 July 2001 were confirmed.

II. Membership of the Subcommittee

2. Members noted that Hon NG Leung-sing had joined the Subcommittee while Hon CHOY So-yuk had withdrawn her membership.

3. Members agreed that the request from Hon Emily LAU for late membership be accepted. Members also agreed that re-election of Subcommittee Chairman was not necessary.

III. Matters arising
[Appendices I and II to LC Paper No. CB(2)487/01-02]

The Administration's position

4. At the invitation of the Chairman, Principal Assistant Secretary for Home Affairs (5) (PAS(HA)5) said that having considered the views expressed by members and the deputations, the Administration would consider devising concrete proposals relating to the following three major issues in the review of the Building Management Ordinance (Cap.344) (BMO) -

- (a) Incorporation of owners of house-type properties;
- (b) Specific exemption for members of an owners' corporation (OC) from legal liabilities; and

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- (c) Restriction on the voting rights of the shares allocated to the common parts of a building.

5. On the incorporation of owners of house-type properties, PAS(HA)5 said that the Administration supported in principle that owners of house-type properties should enjoy the right to form OCs as they had common use and enjoyment of the facilities in a house development. The Administration had the following three options in mind for owners of house-type properties to form OCs -

- (a) an owner's share could be determined in proportion to the total number of houses owned by the owner, that was, one share for one house; or
- (b) an owner's share could be determined in proportion to the size of a land lot, for example, one share for one square metre of land; or
- (c) an owner's share could be determined in proportion to the areas of the structures built on a land lot.

6. PAS(HA)5 pointed out that each option had its own problems and the Administration had to balance the interests of all parties concerned in devising a proposal. For example, the size differences of houses and the space differences of properties built on a land lot might give rise to the question of unfairness. Mr Andrew CHENG said that he did not expect that there would be much controversy because the notion of determining the amount of management fees in proportion to the size of a property was well-accepted.

7. On the legal liabilities of OC members, PAS(HA)5 said that it would be inappropriate to give a blanket exemption to individual members of an OC. The Administration would consider exemption to individual members of an OC from legal liabilities only under very clear, specific and narrow circumstances in order to prevent abuse.

8. Mr Andrew WONG considered that BMO had not specified clearly the scope of power of owners and that of a management committee (MC), thereby leading to conflicts between the two parties. Mr WONG suggested that possible exemption of the civil liabilities of owners and individual members of a MC should also be considered in the Administration's review. Responding to the Chairman, PAS(HA)5 confirmed that the Administration could consider the issue in the review.

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9. On the voting right of shares allocated to the common parts of a building, PAS(HA)5 said that the Building Management (Amendment) Ordinance 2000 had amended paragraph 7 of the Seventh Schedule to the effect that for the purpose of termination of manager's appointment by an OC, only the owners of shares who paid or who were liable to pay the management expenses relating to those shares were entitled to vote. The right of these shares was restricted in this very specific and limited context. Any consideration of restricting the voting right of shares allocated to the common parts of a building should also follow a very focused and specific approach.

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10. The Chairman said that Legislative Council Members had raised these issues with the Administration on various occasions and he was pleased with the Administration's positive response. At the request of the Chairman and Ms Cyd HO, PAS(HA)5 agreed to provide the Subcommittee with a paper setting out the scope of the review of the BMO for the next meeting of the Subcommittee on 18 December 2001.

11. In response to Ms Cyd HO's enquiry about the Administration's role in the review of BMO, PAS(HA)5 said that the Administration was prepared to take a positive and co-ordinated approach in reviewing the Ordinance. The Administration would co-ordinate meetings among the relevant parties, including professional institutes and associations, and residents' organisations in the coming months. The Department of Justice would also be consulted on the feasibility of possible legislative proposals from the legal aspects. The Administration aimed to put forward concrete recommendations to the Subcommittee for consideration in the first half of 2002.

The way forward

12. The Chairman said that the Subcommittee had only identified various concerns about BMO during the previous meetings and no consensus had been reached. He suggested that the Subcommittee in the current legislative session should focus its discussion on a few major issues so that recommendations would be put forward in time for the Administration to consider in the review of BMO. The Chairman took members through the list of issues to be discussed by the Subcommittee [Appendix I to LC Paper No. CB(2)487/01-02]. After discussion, members agreed that in addition to the three major issues identified by the Administration in paragraph 4, the Subcommittee should also discuss the following issues -

- (a) Formation and election procedure of an OC;

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- (b) Mechanism to amend provisions in the deeds of mutual covenant which are unfair to owners;
- (c) Percentage of shares required for the termination of the appointment of building manager; and
- (d) Mediation mechanism to settle disputes relating to building management.

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13. Members requested that the Administration should set out its initial position on the four issues identified by members in the Administration's paper to be provided (as undertaken by the Administration in paragraph 10).

14. On the formation and election procedure of an OC, Ms Cyd HO and Mr Andrew WONG were of the view that BMO did not provide clear guidelines on the formation and election procedures of OCs. Mr WONG considered that the formation and election procedures of an OC should be stipulated in detail. For instance, owners should not be allowed to appoint proxies if they were in town and the maximum number of proxies to be appointed by an owner should be specified.

15. Ms Cyd HO pointed out that the role of the Home Affairs Department (HAD) in assisting the formation of OCs should also be discussed. Mr Andrew CHENG said that he had received many complaints about the services rendered by the Building Management Resources Centres (BMRCs). Mr Andrew WONG considered that BMRCs had not been effective in rendering assistance to owners and owners very often had to seek advice from private legal practitioners. In response to Mr CHENG's enquiry, PAS(HA)5 confirmed that an additional \$40 million per year had been allocated to HAD and additional manpower had been deployed to the 18 District Offices.

16. On the mediation mechanism, PAS(HA)5 said that the Lands Tribunal had been handling disputes arising from the BMO since 1993. This was already a cheaper and quicker channel. Since setting up a mediation mechanism would have considerable implications on financial and staff resources and the work of many government departments, he suggested that the Subcommittee should consider the issue at a later stage. The Chairman did not agree with the Administration's suggestion. He pointed out that many residents would not approach the Lands Tribunal to resolve disputes because of the legal cost involved. He said that the Subcommittee would put forward relevant proposal for consideration in the Administration's review of BMO and the Administration should determine its way forward on the issue.

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17. Mr Andrew WONG took a strong view that the drafting of BMO was not user-friendly and the Ordinance should be re-written in modern language. In response, PAS(HA)5 said that the BMO was a complicated piece of legislation first written in the 1970's and had been amended many times. He considered that introducing further amendments to the existing legislation would be more cost-effective than re-writing the Ordinance.

18. Mr Andrew WONG expressed dissatisfaction with the Administration's response. He said that the Administration should attach great importance to the Ordinance and consider deploying more resources to re-write BMO. Mr WONG suggested that the Subcommittee should also discuss the issue and urge the Administration to re-write the Ordinance in the review of BMO. The Chairman pointed out that as Mr Andrew WONG's suggestion was not on the list of issues to be discussed by the Subcommittee, he invited members' view on the suggestion.

19. Ms Emily LAU said that given the work schedule of the Subcommittee, she did not support the suggestion of Mr Andrew WONG. Ms Cyd HO was of the view that many existing legislation should also be re-written in modern language. As a policy issue, it might be more appropriate for the Panel on Administration of Justice and Legal Services to follow up the issue.

20. The Chairman concluded that as there were no other views indicating support for Mr Andrew WONG's suggestion, the Subcommittee would focus on its future discussion on the seven major issues as decided in paragraph 12. However, he invited the Administration to consider Mr WONG's suggestion in the course of the review of BMO.

21. At Ms Emily LAU's suggestion, members agreed that in order to facilitate the Subcommittee's discussion, the Clerk should prepare a paper summarising members' views on the seven major identified issues and setting out possible proposals to improve BMO. Members further agreed that taking into account of the work schedule of the Administration's review, the Subcommittee should aim to put forward its recommendations on the seven major issues to the Panel on Home Affairs for endorsement and to the Administration for consideration in the review of BMO by March 2002. The Chairman said that the Subcommittee could continue to discuss other outstanding issues at a later stage.

Clerk

IV. Any other business

22. Members agreed that the Subcommittee would hold its next meeting for Tuesday, 18 December 2001 at 2:30 pm in Conference Room B.

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23. There being no other business, the meeting ended at 10:00 am.

Council Business Division 2
Legislative Council Secretariat
17 December 2001