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LegCo Panel on Home Affairs

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

**Minutes of meeting
held on Wednesday, 10 July 2002 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Albert CHAN Wai-yip (Chairman)
Hon Albert HO Chun-yan
Hon NG Leung-sing, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon IP Kwok-him, JP
- Members Absent** : Hon Cyd HO Sau-lan
Hon Andrew WONG Wang-fat, JP
- Public Officers Attending** : Ms Esther LEUNG
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 : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Stanley MA
Senior Assistant Secretary (2)6

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I. Confirmation of minutes
[LC Paper No. CB(2)2485/01-02]

The minutes of the meeting held on 14 May 2002 were confirmed.

II. Meeting with the Administration
[LC Paper No. CB(2)2520/01-02(01)]

2. At the invitation of the Chairman, Principal Assistant Secretary for Home Affairs (5) (PAS(HA)5) said that the Administration had considered the concern and suggestion of the Subcommittee in respect of terminating the appointment of a building manager appointed by way of a Deed of Mutual Covenant (DMC) or a management contract between an owners' corporation (OC) and the manager. She briefed members on the Administration's preliminary proposals as follows –

- (a) If a DMC or a management contract provided for a specified initial period of management of a manager, that manager's appointment could only be terminated in accordance with paragraph 7 of the Seventh Schedule to the Building Management Ordinance (BMO) during this specified period;
- (b) After the initial period of management as specified in a DMC or a management contract, the owners might at a general meeting convened under paragraph 3(3) of the Third Schedule to BMO by the OC for the purpose decided by a majority of votes to appoint a new manager and to terminate the appointment of the existing manager. The appointment of the new manager should take effect on the day immediately after the date of termination of the existing manager's appointment, in order to prevent the incidence of a management vacuum;

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- (c) If there was no specified initial period in a DMC or a management contract, the procedure at (b) above shall only apply after the manager's initial two years of management; and
- (d) If no new manager had been appointed following the procedure at (b) above, the existing manager's appointment could only be terminated in accordance with paragraph 7 of the Seventh Schedule to BMO, either within or after the specified initial management period.

Termination of the appointment of the first manager and subsequent manager of a private building

3. The Chairman said that he considered the preliminary proposal in paragraph 2(b) consistent with the spirit of the DMC Guidelines which required that the initial service period of the first manager in a DMC should not exceed two years. The proposal, if implemented, would mean that a simple majority of votes of owners at a general meeting attended by not less than 10% of owners could by resolution terminate the appointment of the first manager after the initial period of management, if the appointment of a new manager would take effect on the day immediately after the date of termination of the first manager's appointment.

4. Ms Emily LAU pointed out that in some circumstances, owners of a private building might want to terminate the appointment of the first manager, but had no intention to appoint a new manager immediately.

5. PAS(HA)5 responded that any decision to terminate the appointment of a serving manager, be it the first manager named in a DMC or a subsequent manager appointed by the OC, which was not immediately followed by the appointment of a replacement manager could result in a management vacuum. The Administration took the view that it was an important decision and should be supported by a majority of owners holding more than 50% of the undivided shares (those who were entitled to vote) in the building in accordance with paragraph 7 of the Seventh Schedule to BMO. In that case, a resolution of the owners holding not less than 50% of the undivided shares was required for the dismissal of the first manager or a subsequent manager, instead of a simple majority of votes of owners attending a general meeting of OC as proposed in paragraph 2(b). She pointed out that subject to the requirement in paragraph 7 of the Seventh Schedule to BMO, an OC of a small building would have the discretion to terminate the appointment of a building manager and let its Management Committee (MC) assume the responsibility of managing the building.

6. Mr NG Leung-sing asked about the arrangements for the appointment of a new manager and termination of an existing manager's appointment. He

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asked whether an OC could appoint a new manager and terminate the appointment of the first manager at different meetings.

7. PAS(HA)5 responded that the proposal was primarily intended to ensure that there would be no management vacuum in the building. The Administration had therefore no intention to specify that the decisions of OC to appoint the new manager and terminate the existing manager's appointment should be made at the same meeting. The Administration was only concerned that in order to apply the alternative mechanism, the appointment of the new manager should follow paragraph 3(3) of the Third Schedule to BMO and take effect on the day immediately after the date of termination of the appointment of the existing manager.

8. The Chairman stressed that relevant provisions to be incorporated in BMO should be clearly worded in order to adequately achieve the purpose of providing an alternative mechanism for OCs to terminate the appointment of a manager after the initial period of management as specified in a DMC or a management contract. He pointed out that the proposed amendments should specify the requirements for the appointment of the new manager to take effect on the day immediately after the date of termination of the existing manager's appointment, as well as the legislative procedures for the conduct of general meetings and associated arrangements for such purpose. He cautioned that a single drafting or technical fault in the relevant provisions might result that developers and managers could subsequently challenge the decisions of OCs on legal basis. In this connection, the Chairman suggested that the Administration should provide appropriate references and guidelines for OCs and MCs to follow. He considered that the actual appointment of a new manager and the termination of the appointment of an existing manager should preferably be passed at the same general meeting. PAS(HA)5 undertook to consider the Chairman's views.

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9. Mr Albert HO asked whether the proposed alternative mechanism for the termination of the appointment of the first or any subsequent manager would apply to existing buildings. The Chairman pointed out that the proposed alternative mechanism would apply so long as the initial two-year period of management of the first manager was over. Since the proposal would bring along substantial change to the present situation about the termination of the appointment of a manager, most owners of private buildings would welcome the proposal but objection from developers and management companies were expected.

10. Mr Albert HO doubted whether an OC could effectively proceed with the appointment of a new manager when it was uncertain whether the appointment of the existing manager could be terminated.

11. The Chairman remarked that in practice most OCs would conduct an opinion survey to ascertain the majority views of the owners before proceeding

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with a tendering exercise for the selection of a prospective new manager. The actual appointment of the new manager would be made after the decision to terminate the appointment of the existing manager was passed at a general meeting by owners holding more than 50% of the undivided shares.

12. Assistant Legal Adviser 4 pointed out that according to paragraph 7(5)(c) of the Seventh Schedule to BMO, the existing manager's appointment could not be terminated if, within the previous three years, the appointment of a previous manager had been terminated. The provision should prevail in case the appointment of a subsequent manager was terminated after serving for less than three years, or after the expiry of a management contract with an effective period of less than three years.

13. PAS(HA)5 explained that when proposing amendments to BMO for the operation of the alternative mechanism, the Administration would also repeal paragraph 7(5)(c) of the Seventh Schedule. As regards existing DMCs and management contracts without a specified initial period, she explained that the procedures at paragraph 2(b) above shall only apply after the manager's initial two years of management. However, if the initial period of management as specified in a DMC or a management contract was longer than two years, the procedure at paragraph 2(b) shall be applicable only after the specified period.

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14. Most members expressed support for the Administration's proposal regarding the termination of the appointment of the first manager and subsequent managers. The Chairman considered that the decision to terminate a manager's appointment should be as important as that to dissolve an OC. At his suggestion, PAS(HA)5 undertook to re-consider whether the percentage of owners required for implementing the proposed alternative mechanism should be adjusted to 20%, in line with the requirement for passing a resolution to dissolve an existing OC at a general meeting.

Termination of a subsequent manager's appointment before expiry of his management contract

15. The Chairman considered that an OC should not be required to follow paragraph 7 of the Seventh Schedule to BMO for terminating the appointment of a manager with unsatisfactory performance. Rather, the OC should be allowed to apply the relevant terms and conditions specified in the management contract, e.g. three months' notice of termination. He pointed out that in case the performance of a subsequent manager appointed through a tendering exercise was not satisfactory, the OC should have the right to terminate his appointment. He considered that even though the management contract of a subsequent manager had not expired, a lower percentage of undivided shares such as 20% should be required for terminating the appointment of a manager.

16. In response, PAS(HA)5 explained that the Administration was of the view that termination of a manager's appointment before the expiry of a

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management contract was an important building management decision which should be decided by a majority of owners. She pointed out that if the proposal on alternative mechanism in paragraph 2(b) was implemented, OCs would be able to conclude building management contracts with durations shorter than three years. If the management contract could be terminated any time before its expiry through a simple majority of members present at an owners' meeting, this could lead to unduly frequent changes in property managers which might not be in the interests of the owners of a private building. This was especially so if decisions on pre-mature termination of a running management contract could be made by a simple majority of members present at a meeting, which could be made up of just a minority share of all the owners of the building. In the interest of the owners, the Administration proposed that the decision to terminate a manager's appointment before the expiry of an existing contract should only be made by owners holding not less than 50% of undivided shares.

17. Mr Albert HO pointed out that there were cases in which a MC had renewed the management contract with the existing manager for two or three years without having consulted owners or passed a relevant resolution at an OC meeting. He opined that a right balance had to be struck and different scenario should be catered for. Mr HO considered that the percentage of undivided shares required for terminating the appointment of a manager before the expiry of a management contract should be proportionately adjusted, i.e. owners of not less than 20% of the shares if the proposed alternative mechanism in paragraph 2(b) was implemented.

18. The Chairman shared Mr Albert HO's view. He pointed out that he would agree that a resolution of the owners of not less than 50% of the undivided shares should be required if owners and the MC had opposing views over the termination of the appointment of a manager. He, however, could not see why it was necessary to require a resolution of the owners of not less than 50% of the undivided shares if the MC was simply following the terms and conditions of a management contract to terminate the appointment of a manager with very poor performance. The Chairman requested that the Administration should consider specifying a lower threshold for such purpose.

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19. PAS(HA)5 reiterated that if the proposed alternative mechanism for the termination of the appointment of a manager was implemented, the requirement in paragraph 7(5)(c) in the Seventh Schedule to BMO would no longer apply. The Administration therefore considered that any decision to terminate the appointment of a serving manager within the contractual period should not be made by a simple majority of votes of owners attending a general meeting of an OC. She stressed that it was necessary to prevent frequent changes of manager unless it was so decided by a majority of owners holding more than 50% of the undivided shares. However, the Administration would consider members' views.

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Establishment of a non-statutory mediation mechanism to resolve building management disputes

20. The Chairman enquired about the progress in the development of a non-statutory mediation mechanism to resolve building management disputes. Mr Albert HO suggested that the Administration should consider empowering the Lands Tribunal in the legislation to refer building management disputes to a mediation mechanism operated by the Home Affairs Department for settlement, in order to save the substantial legal costs incurred for legal proceedings on such disputes.

21. PAS(HA)5 responded that the Administration had to assess the effectiveness of a non-statutory mediation mechanism to resolve building management disputes before formulating a proposal for members' consideration. She pointed out that currently mediation bodies did not require their mediators to be accredited and persons in possession of a professional expertise could become a mediator after receiving certain training in mediation. Furthermore, according to the Hong Kong Mediation Centre and the Hong Kong Mediation Council, there was at present a limited supply of qualified mediators in respect of building management disputes.

22. Assistant Director of Home Affairs (4) supplemented that the Administration was liaising with Hong Kong Mediation Centre and Hong Kong Mediation Council on the detailed arrangements for provision of free mediation services at Building Management Resources Centres (BMRCs). A total of eight dispute cases would be given to the two organisations for their assessment on whether the cases were mediable and for the provision of appropriate mediators. In addition, the two organisations had agreed to conduct publicity workshops on mediation services in July, August and September 2002. Subject to the assessment of the two organisations on the eight cases, the parties involved in the dispute cases would be invited to attend the workshops. The Administration would assess the effectiveness of the free mediation services in respect of the dispute cases concerned and revert to the Subcommittee in due course. She added that so far the two organisations had not confirmed the number of qualified mediators available for handling building management disputes.

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Allocation of undivided shares and management shares between owners

23. The Chairman asked whether the DMC Guidelines had been amended to require that allocation of undivided shares and management shares between owners in a building should base on the gross floor area rather than market value. PAS(HA)5 responded in the affirmative. At the Chairman's request, PAS(HA)5 undertook to provide the Subcommittee with a copy of the amended DMC Guidelines and the first DMC registered in accordance with the amended Guidelines.

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Other issues

24. Mr Albert HO said that provisions in BMO needed fine-tuning and he would prepare a list of inadequacies in the Ordinance during the summer recess for the Subcommittee to consider.

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25. Mr Albert HO further said that many owners were not aware of the building management and maintenance requirements arising from recent legislative amendments on building safety and insurance matters. He suggested that the Administration should arrange briefing seminars and publish information leaflets for owners to follow. PAS(HA)5 agreed to follow up the matter.

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26. Ms Emily LAU cited a recent case to illustrate the need for clearer guidelines for front-line officers of the Home Affairs Department to assist owners in the formation of OCs and MCs. Mr IP Kwok-him expressed a similar concern, adding that liaison officers should be more forthcoming in providing advice to owners in the process. PAS(HA)5 undertook to follow up the issue.

Public consultation

27. Ms Emily LAU and Mr Andrew CHENG were of a strong view that apart from professional bodies and trade associations, the Administration should consult owners, OCs and other interested parties on the proposed alternative mechanism and other amendments to BMO. PAS(HA)5 agreed to consider members' view.

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Way forward

28. The Chairman asked about the progress of other legislative proposals to amend BMO. PAS(HA)5 said that it was the advice of the Department of Justice that BMO might need to be substantially revised in order to be applicable to the management of house developments. The Administration suggested that the relevant legislative proposal regarding formation of OCs in house developments should be dealt with separately in order not to delay other legislative amendments which had been discussed. Mr Albert HO informed members that there was a recent court case which had substantial impact on the establishment of OCs for groups of house developments under the concept of common development. At the Chairman's request, Mr HO undertook to provide the court case to the Subcommittee and the Administration for reference.

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[*Post-meeting note* : The court case was subsequently circulated to members vide LC Paper No. CB(2)2622/01-02(01) on 18 July 2002.]

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29. The Administration undertook to provide the preliminary proposals in respect of the following for discussion at the next meeting -

- (a) provision of the alternative mechanism as in paragraph 2(b) after consultation;
- (b) express provisions in BMO to exempt MC members from certain legal liabilities for an OC's collective decision;
- (c) incorporation of a new schedule to BMO on the meeting procedures for formation of OCs and appointment of MCs; and
- (d) the proposal of empowering an OC to borrow from the Building Safety Loan Scheme to carry out necessary building management works in the event of irresponsible or missing owners not paying their share of the costs involved.

III. Date of next meeting

30. Members agreed to hold the next meeting on Thursday, 26 September 2002 at 10:45 am to discuss the Administration's preliminary legislative proposals.

IV. Any other business

31. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 2
Legislative Council Secretariat
17 September 2002