

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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Panel on Home Affairs

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

**Minutes of meeting
held on Thursday, 26 September 2002 at 10:45 am
in Conference Room B of the Legislative Council Building**

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| Members
Present | : Hon Albert CHAN Wai-yip (Chairman)
Hon Albert HO Chun-yan
Hon NG Leung-sing, JP
Hon Andrew WONG Wang-fat, JP
Hon Andrew CHENG Kar-foo
Hon IP Kwok-him, JP |
| Members
Absent | : Hon Cyd HO Sau-lan
Hon Emily LAU Wai-hing, 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)2783/01-02]

The minutes of the meeting held on 10 July 2002 were confirmed.

II. Meeting with the Administration

2. At the Chairman's invitation, Principal Assistant Secretary for Home Affairs (5) (PAS(HA)5) introduced the Administration's proposals to improve the procedures of forming owners' corporations (OCs) under the Building Management Ordinance (BMO) as detailed in the Administration's paper for the meeting [LC Paper No. CB(2)2805/01-02(01)].

Holding of an owners' meeting for the appointment of a Management Committee (MC)

Appointment of a MC and its members

3. Mr Albert HO noted that section 3(2)(b) of BMO specified that if there was no deed of mutual covenant (DMC) or the DMC contained no provision for the appointment of a MC, a MC could be appointed by a resolution of the owners of not less than 30% of the shares. However, paragraph 2(1) of the Second Schedule did not specify how these individual members and holders of office were to be elected. He was concerned that if these MC members were not elected by owners holding more than 30% of the shares, it might be argued that they were not appointed in accordance with section 3(2)(b) of BMO. Mr HO considered it necessary to specify the appointment practice for MC in a code of practice. He suggested that individual members and holders of office of a MC could simply be appointed by resolutions passed by a majority of the votes of the owners voting either personally or by proxy at the owners' meeting convened for such purpose.

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4. The Chairman shared the concern of Mr Albert HO. In response to his enquiry about the Administration's position, PAS(HA)5 said that the Administration was of the view that as long as the appointment of a MC per se had been supported by a resolution of the owners holding not less than 30% of the shares at an owners' meeting convened in accordance with section 3(2) of BMO, it was not necessary to adopt the same threshold for the purpose of appointing individual members and holders of office of the MC at the same meeting. She considered that allowing appointment of MC members by a simple majority of the votes of the owners would facilitate the constitution of a MC and hence the formation of an OC. The Administration, therefore proposed to specify in paragraph 2(1) of the Second Schedule that individual members and holders of office of the MC shall be appointed by a resolution passed by a majority of votes of the owners voting either personally or by proxy at an owners' meeting.

5. The Chairman considered that BMO should specify the different requirements for appointment of MC and MC members at the first owners' meeting. PAS(HA)5 responded that the Administration would consider applying the existing quorum requirements stipulated in paragraph 5 of the third schedule of BMO for appointment of MC members, i.e. either 20% of the owners for OC meetings to pass a resolution for the dissolution of MC or 10% of the owners in any other cases. She stressed that the Administration was open to views on the issue.

6. Mr Andrew WONG was of the view that the quorum requirements of an owners' meeting convened for the purpose of appointing a MC and individual members and holders of office of the MC should be specified in the principal Ordinance instead of in a schedule. He also considered that apart from meeting these thresholds, any resolutions to be passed at an OC meeting should be supported by a majority of owners voting either personally or by proxies at the meeting. PAS(HA)5 responded that the Administration would consider specifying a quorum requirement for a meeting convened for the purpose of forming an OC.

7. Mr Andrew WONG asked whether the Administration had sought legal advice about the legitimacy of existing MCs which were not appointed in accordance with section 3(2), i.e., supported by owners holding not less than 30% of shares. He also asked whether the issue of a certificate of registration was final for the appointment of a MC and its members, and if not, how owners could appeal to overturn the resolutions passed at the first OC meeting.

8. PAS(HA)5 responded that a MC appointed under section 3, 3A, 4 or 40C should within 28 days of such appointment apply to the Land Registrar for the registration of the owners as a corporation under BMO in accordance with sections 7(2) and (3) of BMO. The Land Registrar shall, if satisfied that the relevant provisions under BMO had been complied with, issue a certificate of

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registration to an applicant. The Land Registrar would consult the Department of Justice or require further submission of documents by the applicants as he considered appropriate. Before the issue of a certificate of registration, owners of a building wishing to challenge the legitimacy of a MC and its membership could lodge an application to the Lands Tribunal for a hearing.

9. Mr Albert HO pointed out that a certificate of registration issued under section 8(1) of BMO shall be taken as a piece of conclusive evidence for the registration of an OC. Owners wishing to challenge the legitimacy of a registered OC after the issue of the certificate would have to apply for a judicial review. In response to the Chairman, he added that the formation of an OC and the appointment of the first MC and its members at the first owners' meeting should be inseparable events for the purpose of the registration of an OC with the Land Registrar.

Meeting procedures for owners' meetings

Acceptance of nominations at the first owners' meeting

10. Mr Andrew CHENG asked whether paragraph (1)(d) of Annex I of the Administration's paper would mean that the convenor of a meeting of owners under section 3(1)(a), 3(1)(b), 3A or 4 of BMO, or an owner nominated by the convenors of a meeting of owners under section 3(1)(c), should not allow nomination at the meeting if there were sufficient nominations for the purpose of forming a MC in accordance with paragraph 1(a) of the Second Schedule. PAS(HA)5 responded in the affirmative.

11. Mr Andrew CHENG expressed concern about the impact of the proposed restriction on accepting nomination of candidates for appointment of MC members at the first owners' meeting. He stressed that caution should be taken in exercising such restriction as it had implications on the right to elect and the right to nominate. Mr CHENG remarked that there should not be any disputes as long as BMO had specified the procedures for nomination of candidates at the first or a subsequent meeting. He pointed out that although paragraph 1(1)(c) of Annex I of the Administration's paper specified that nominations should be made by lodging the prescribed nomination form signed by at least two owners with the convenor not less than 24 hours before the meeting, past experiences had indicated that disputes among owners would occur if nominations proposed at the meeting were not entertained. He considered that the Subcommittee should further deliberate on the procedures for nomination of candidates at the first meeting. Mr IP Kwok-him shared a similar concern. He expressed reservations about the proposed restriction. He pointed out that many owners were not familiar with the requirements for appointment of a MC and its members, and in practice many nominations for MC membership were made at the first meeting.

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12. Mr NG LEUNG-sing said that he shared the concern that not allowing owners to nominate candidates for election of MC members would create conflicts among owners at the first owners' meeting. He considered that the proposed restriction should be enforced after the procedures for the first owners' meeting had been specified and implemented for a certain period of time and the community as a whole became familiar with the procedural requirements.

13. The Chairman expressed a different view. He pointed out that the progress of the meeting would be seriously affected if nominations were allowed for election of MC members at the first owners' meeting because many practical problems would arise. The Chairman said that he recognised the problem that some owners might collaborate to make use of a short nomination period to reject nominations from other owners who were not aware of the nomination procedures. He suggested that acceptance of nominations at the meeting could be allowed by way of an appropriate mechanism, such as passing a resolution for such purpose by a majority of owners at the meeting.

14. Mr IP Kwok-him and Mr Albert HO were of the view that flexibility should be provided for accepting nominations at the meeting. Mr IP added that the Chairman's suggestion was worthy of consideration.

15. PAS(HA)5 responded that the proposal was put forward in response to members' concerns about disputes arising from the nomination procedures for the purpose of appointing MC members. The Administration remained open to further views on the issue.

Polling for election of MC members

16. Mr Andrew WONG asked whether owners of large development could propose at the first owners' meeting the conduct of a poll for appointment of MC members. He considered that nomination of candidates should be open for a specific period as proposed and passed by owners at the first meeting, and the election of MC members should then be carried out at another OC meeting convened for such purpose. As an alternative option, the owners at the meeting might also pass a resolution to adjourn the first meeting and resume the meeting at a specified date and time to carry out the polling exercise. He pointed out that given the huge number of owners in a large development, the adoption of such practice would enhance fair competition among owners for MC membership without the need to repeat the procedures for convening another OC meeting. PAS(HA)5 responded that subject to the passage of a resolution in forming an OC at the first meeting of owners for this purpose, the election of individual MC members could take place at the next owners' meeting. The Administration would consider Mr WONG's idea.

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17. Mr Andrew CHENG and Mr IP Kwok-him expressed reservations about conduct of a poll for appointing individual members and holders of office of a MC separately. They said that arranging two separate meetings for formation of an OC and appointment of a MC and its members would not only prolong the process but also create additional work for the participating convenors and owners. They considered the flexibility in acceptance of nominations at the meeting sufficient for the purpose. Mr Albert HO shared their view. He pointed out that members should consider the additional time, costs and work incurred for conducting an election poll.

Cancellation of meeting

18. Mr NG Leung-sing considered that it would be difficult to enforce the proposed provision which allowed the convenor to cancel the meeting when the order of that meeting could not be maintained because whether the order of a meeting could be maintained or not would be subject to interpretation. He also pointed out that the same applied to the phrase “the meeting cannot be continued due to inclement weather”.

19. PAS(HA)5 explained that the provision for the convenor to have the power to declare cancellation of a meeting was necessary in case there were unresolved disputes among owners at the meeting such as when a resolution to appoint a MC could not be passed two hours after the commencement of the meeting. Mr Albert HO remarked that apart from the specified conditions, there were other reasons which would lead to cancellation of an OC meeting. In response to Mr Andrew WONG's query about paragraph 1(l)(f)(i), PAS(HA)5 clarified that the Administration proposed to empower the convenor of a meeting to declare cancellation of the meeting if a resolution to appoint a MC had not been passed within 2 hour after the time scheduled for commencement of the meeting. Mr HO pointed out that the counting of votes of owners holding different types of shares for formation of an OC and the appointment of a MC in a large development could take more than two hours to complete.

20. The Chairman pointed out that the effects of the cancellation of a meeting on resolutions passed or decisions made at that meeting should be carefully examined. He suggested that the Administration should provide clear guidelines on cancellation or adjournment of a meeting for owners to follow. At members' suggestion, PAS(HA)5 agreed to set out the meeting procedures for owners' meetings including the effects of cancellation or adjournment of an OC meeting on resolutions passed or decisions made at the same meeting in the form of standing orders or a code of practice, instead of a schedule to the Ordinance. If adopted, the Administration would encourage owners to follow the procedures and guidelines under the standing orders or code of practice by way of a wide publicity programme. Mr IP Kwok-him and Mr Albert HO, however, pointed out that the requirements and procedures in respect of certain

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financial and statutory functions of an OC such as the invitation and selection of tenders should be specified in BMO. PAS(HA)5 undertook to consider the incorporation of these requirements in the BMO.

Election of the convenor/chairman at the first owners' meeting

21. Members expressed concern about the impartiality of the convenor in presiding the first owners' meeting, particularly when the meeting was convened by owners in possession of 5% of shares and the convenor himself was also a candidate for an office of a MC. Mr Andrew WONG asked whether BMO had specified the procedures for election of the convenor and whether a person who was not an owner could be appointed as the convenor to preside over the election of MC members at the first meeting.

22. PAS(HA)5 responded that BMO had not specified a procedure for election of the convenor at the first owners' meeting if the meeting was convened by owners of not less than 5% of the shares in accordance with section 3(1)(c). The usual practice was that the owners of not less than 5% of the shares should agree among themselves on who should be presiding at the first meeting.

23. The Chairman asked whether the owner who convened the first meeting could automatically preside at the meeting. PAS(HA)5 and Assistant Legal Adviser 4 advised that the existing BMO did not incorporate a provision with such effect.

24. Mr Andrew WONG asked whether a management company or any other persons authorised by a DMC to convene the first owners' meeting could send an outsider to preside at the meeting. PAS(HA)5 replied that the relevant statutory requirements had been set out under sections 3(1)(a) and (b) of BMO. Mr WONG considered that the person or the corporation who was authorised to convene the first owners' meeting should be held responsible for any resolutions not made in accordance with the relevant procedures even if he had delegated someone to preside at the meeting.

25. The Chairman suggested that BMO should provide for the owners who convened the first meeting to agree among themselves on a convenor, and alternatively for the owners attending the first meeting to pass a resolution to appoint a person who was or was not an owner to preside over the meeting. Mr IP Kwok-him and Mr Albert HO expressed support for the Chairman's suggestion. Mr Andrew WONG supplemented that the Administration should also consider specifying a requirement for electing a chairman to preside over the meeting and the election should first be presided by the convenor of the meeting. PAS(HA)5 undertook to examine the feasibility of members' suggestion.

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26. Mr Albert HO pointed out that the convenor of the first owners' meeting had the discretion to allow the acceptance of late proxies. If the convenor himself was also a candidate for election of an office of the MC, disputes would arise when he accepted late proxies in support of his election and rejected others. He considered it more appropriate to appoint an independent person to preside over the election of MC members at the meeting. He asked whether the liaison officers of the Home Affairs Department (HAD) attending such meetings could perform the role of a convenor for the election of MC members.

27. PAS(HA)5 responded that since the Secretary for Home Affairs played a significant role in the implementation of BMO and might assume an adjudicative role in building management disputes, the Administration did not consider it appropriate for officers of HAD, which was an executive department under the Home Affairs Bureau, to assume the role of a convenor for appointment of MC and their members. Moreover, direct participation of HAD at OC meetings was not in line with the spirit of encouraging owners to participate in the management of their own buildings. Mr Albert HO remarked that if it was not feasible for liaison officers to perform the role of convenor for election of MC members, the Administration should establish a mechanism to ensure the impartiality of the convenor.

Offices of MC

28. Mr Albert HO expressed support for the proposal to specify that MC members should hold office until a new MC was appointed and assume office at the next annual general meeting of the OC. He considered that the offices of the secretary and the treasurer should preferably be held by owners. Mr Andrew WONG shared his view. Mr IP Kwok-him and Mr NG Leung-sing remarked that flexibility should be given for MCs to appoint outsiders to perform the functions of a secretary and a treasurer. Mr WONG further suggested that an owner should be allowed to take up the offices of both the secretary and the treasurer at the same time to facilitate operation of OCs and MCs in small buildings.

29. Mr IP Kwok-him pointed out that the offices of the chairman, the vice-chairman (if required under a DMC), the secretary and the treasurer had their statutory obligations and should perform financial functions stipulated in BMO. He expressed concern that opportunities for abuses of powers might arise if a person could hold two offices of a MC at the same time. The Chairman held a similar view. PAS(HA)5 said that the chairman, the secretary and the treasurer had their statutory obligations under BMO and a person holding two or more offices of a MC might dominate the discussions and decisions at MC meetings.

30. Mr Andrew WONG asked whether the appointment of chairman, vice chairman, secretary and treasury of a MC should precede the appointment of

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other MC members at the same meeting. PAS(HA)5 responded that BMO did not specify a sequence for appointment of these office holders and individual MC members. If considered necessary, it could be specified in a code of practice.

Adm 31. Members considered that in reality an elected MC member would decide whether to accept nomination for election of the chairman, secretary or treasurer depending on the membership of MC. In other words, election of these office holders should follow the appointment of MC members. In this connection, Mr IP Kwok-him suggested and the Administration agreed to delete the phrase "及有關職位" from paragraphs 1(1)(c) and 2(1)(a) in Annex I of the Administration's paper.

Adjournment of meeting

Adm 32. The Chairman considered it unnecessary to specify a period of 14 days for adjournment of an annual general meeting convened under paragraph 1(1)(b) of the Third Schedule as flexibility should be allowed for OCs to plan and fix the date and time for resumption of the meeting. He pointed out that some OCs had specified in the notice of meeting that if the meeting could not be finished after a certain time, the meeting would be adjourned and resumed at a pre-determined date and time. In response to Mr Albert HO, PAS(HA)5 undertook to clarify whether owners' meeting could be adjourned and resumed at a date specified in the notice of that particular owners' meeting which should be issued not less than 14 days before the meeting was held. ALA4 Assistant Legal Adviser 4 also undertook to ascertain relevant information for members' consideration.

Other issues

Replacement of MC members

33. Mr Albert HO pointed out that in a recent court judgment on the composition of MC (*Chan Yip-keung and Leung Shiu-kuen Vs The Incorporated Owners of Belvedere Garden Phase II and Chiang Shu-to*), the court was of the view that a MC should cease to operate when its membership had fallen below the size, i.e., not less than 9 persons for a building with more than 100 flats, as specified in paragraph 1 of the Second Schedule. He suggested that a new provision should be added in BMO to reflect the legislative intent on the issue.

34. The Chairman echoed that small buildings were more likely to have the problem of insufficient members in MC. He suggested that if the position of a MC Chairman was left vacant, BMO should provide for a mechanism for the OC to convene an owners' meeting for the appointment of another MC without the need to apply for a court order.

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35. The Chairman pointed out that BMO should specify a period for an appointed MC to take over the office and transfer of any books or records of account, papers, documents and other records in respect of the control, management and administration of the building between the existing and the succeeding MC members. He pointed out that any disputes over or delays in the transfer of these documents would affect the operation of an OC and its MC as well as effective management of the building.

Submission from Democratic Party

Adm

36. With the concurrence of the Chairman, Mr Albert HO tabled the submission of the Democratic Party which incorporated a total of 10 proposals in relation to the review of BMO. He requested the Administration to study the proposals for discussion with the Subcommittee at the next meeting. Members agreed. Mr HO also suggested that the Administration should consider a lower percentage of owners' attendance for an OC meeting which was convened after two or more unsuccessful trials. PAS(HA)5 noted Mr HO's suggestion.

[*Post-meeting note* : The submission was subsequently forwarded to members vide LC Paper No.CB(2)2832/01-02(01) on 27 September 2002.]

Way forward

37. PAS(HA)5 informed the meeting that subject to members' views, the Administration would proceed to consult the building owners, the relevant professional bodies and trade associations on proposed legislative amendments to BMO.

38. The Administration would include the following legislative proposals in a composite bill to amend the BMO –

- (a) to make clear the legislative intent that MC members of an OC should not be held personally liable for any collective decision of an OC solely on the ground that they were members of the MC;
- (b) enable an OC to borrow money from the Government's Building Safety Loan Scheme for the sake of complying with statutory safety orders; and
- (c) rationalize the requirements regarding termination of appointment of property managers by an OC.

39. The Chairman informed the meeting that the Subcommittee should consider at the next meeting whether it should continue discussion with the

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Administration, or resume discussion with the Administration after enactment of the composite Bill to be introduced.

III. Date of next meeting

40. Members agreed to hold the next meeting on 28 October 2002 at 10:45 am.

[*Post-meeting note* : The meeting was subsequently re-scheduled to 14 November 2002 at 2:30 pm.]

IV. Any other business

41. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 2
Legislative Council Secretariat
6 November 2002