

立法會
Legislative Council

LC Paper No. CB(2)1076/02-03
(These minutes have been seen
by the Administration)

Ref : CB2/PS/2/00

Panel on Home Affairs

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

**Minutes of meeting
held on Thursday, 14 November 2002 at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Albert CHAN Wai-yip (Chairman)
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 Albert HO Chun-yan
Hon Andrew WONG Wang-fat, JP
Hon WONG Sing-chi
- Public Officers Attending** : Ms Esther LEUNG
Principal Assistant Secretary for Home Affairs (5)
- Miss Angelina FUNG
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

Miss Lolita SHEK
Senior Assistant Secretary (2)7

Action

I. Confirmation of minutes
[LC Paper No. CB(2)279/02-03]

The minutes of the meeting held on 26 September 2002 were confirmed.

II. Meeting with the Administration
[LC Paper No. CB(2)303/02-03(01)]

2. At the invitation of the Chairman, Principal Assistant Secretary for Home Affairs (5) (PAS(HA)5) highlighted the Administration's proposals set out in its paper to amend the Building Management Ordinance (BMO) relating to the following areas –

- (a) appointment of a management committee (MC) of an owners' corporation (OC);
- (b) procedural requirements regarding procurement of supplies, goods and services; and
- (c) rights of owners to obtain copies of certain building management documents.

Appointment of a MC of an OC

3. Members noted that the Administration had proposed in paragraph 3 of the paper that if there was no deed of mutual covenant or the deed contained no provision for the appointment of a MC, as long as the appointment of a MC had

Action

been supported by a resolution of owners holding not less than 30% of the shares at an owners' meeting convened under section 3(2) of BMO, it should be specified in paragraph 2(1) of the Second Schedule of the Ordinance that members and holders of office of the MC should be appointed by a resolution passed by a majority of the votes of the owners at the same owners' meeting with a quorum of 10% of the owners.

4. Mr IP Kwok-him sought clarification whether the proposed quorum of 10% of the owners would be required for the meeting for appointing a MC as well. PAS(HA)5 clarified that no quorum requirement for such meeting had been specified in section 3 or paragraph 2 of the Second Schedule. The feedback from the parties concerned and staff of the Home Affairs Department indicated that there were usually difficulties in obtaining a resolution of owners holding not less than 30% of the shares at a meeting of the owners for appointing members and holders of office of a MC. In view of this, the Administration had therefore proposed the quorum of 10% of owners for meetings for appointing individual members and holders of office of a MC only. The proposal was in line with the quorum requirement for a normal general meeting of an OC under paragraph 5(1)(b) of the Third Schedule. PAS(HA)5 added that it was up to members to consider whether such quorum requirement should apply to the meeting for appointing MC as well.

5. Mr IP Kwok-him informed members that according to past experience, there might not be difficulties in obtaining a resolution of owners of not less than 30% of the shares, which might involve only a small number of owners, at an owners' meeting for appointing a MC. To encourage the appointment of MC, Mr IP opined that the additional requirement for a quorum should not be imposed on such a meeting in case there might be difficulties in establishing the required quorum. However, he supported the proposed requirement of a quorum of 10% for appointing individual members and holders of offices of a MC in order to prevent domination of MC by a few owners who held a large percentage of shares.

6. Mr NG Leung-sing opined that there was a need to strike a balance between facilitating the appointment of MC and ensuring participation of as many owners as possible in the affairs of OC. He suggested that a lower requirement should be adopted having regard to past experience in order to facilitate the appointment of a MC.

7. The Chairman said that there were few occasions when there was less than 10% of the owners attending OC meetings. Very often, the number of owners of 30% of the shares would exceed 10% of the owners. He, however, pointed out that after the resolution for the appointment of MC was passed, some of the owners might leave the meeting before the appointment of individual members and holders of offices of MC was discussed. There would then be difficulties in obtaining another resolution of owners of not less than

Action

30% of the shares for such appointment. He therefore supported the Administration's proposal to adopt the quorum requirement of 10% of owners which was relatively easier to be met. However, for the sake of consistency, he suggested that a quorum of 10% of owners should be required of all owners' meetings. He explained that such requirement, while ensuring greater participation of owners in the affairs of OC, would not create additional difficulties for the conduct of OC meetings. Both Mr NG Leung-sing and Mr IP Kwok-him indicated that they were supportive of the Chairman's proposal.

Adm

8. In response to the question from Mr NG Leung-sing, PAS(HA)5 clarified that for the purposes of establishing the quorum and counting votes on resolution at owners' meetings, Schedule 11 had stipulated how the enumeration of the percentage of owners should be computed. Mr IP Kwok-him suggested that to avoid disputes, it should be specified clearly in section 3(2) of BMO whether the resolution of owners required for appointing a MC should be passed by a majority of the votes of the owners at the same owners' meeting. PAS(HA)5 undertook to review the relevant provision.

9. The Chairman requested the Administration to proceed with the public consultation on the proposed amendments to BMO relating to the appointment of MC and its members and office holders as agreed by members.

Procedural requirements regarding procurement of supplies, goods and services

10. Members noted the Administration's proposal in paragraph 6 of the paper to amend section 20A of BMO as follows -

- (a) to lower the minimum percentage of an OC's annual budget for the purpose of tendering in section 20A(2)(b) from the existing 20% to 10%; and
- (b) to include a requirement that any tender of a value exceeding a sum which was equivalent to 10% of the annual budget of the corporation should be submitted to the corporation, and any such tender should be accepted or rejected by a resolution passed at a general meeting of the corporation.

Minimum value for procurement by invitation to tender

Adm

11. The Chairman informed members that it was not uncommon that some OCs did not prepare their annual budgets. He suggested that it would be more appropriate to refer to 10% of the annual expenditure instead of annual budget of an OC in the proposed amendments. Mr NG Leung-sing requested that it should be specified very clearly in the amendments to be proposed whether the annual budget or expenditure of an OC would be used as the basis of calculation as there might be a difference in the resulting amounts. PAS(HA)5

Action

Adm undertook to review the amendments in the light of members' above comments. In response to the Chairman's suggestion, PAS(HA)5 also agreed that management companies should be required to comply with the above amendments in order to prevent possible abuse of management funds.

Adm 12. On renewal of existing contracts such as cleaning contracts, the Chairman said that it was very common that new contracts would normally be prepared based on the existing ones with only minor amendments. He suggested that under such circumstances, the new contracts should only be required to be approved by the OC without the need to invite tenders. In response, PAS(HA)5 clarified that renewal of contracts would be required to comply with the procurement procedure under the proposed amendments to BMO. She undertook to consider the suggestion of the Chairman.

13. The Chairman also pointed out that there were occasions in which MCs might procure the same kind of goods or services in different transactions of smaller values so as to avoid the trouble of inviting tenders. He suggested that a provision should be included in BMO to preclude the possibility of such kind of non-compliance with the procurement procedure. PAS(HA)5 replied that it might be difficult to prevent such kind of non-compliance by including a provision in BMO. She explained that the Administration had already tightened the requirement on the procurement of goods and services by introducing the amendments mentioned in paragraph 10(a) and (b) above.

14. Sharing the view of the Administration, Mr IP Kwok-him opined that the example of non-compliance with the tendering procedure quoted by the Chairman was an extreme case and was very difficult to prevent by statutory provisions. Mr NG Leung-sing opined that the provisions should not be drafted with the assumption of the ill intent of MC members and management companies. He pointed out that objection from the public might be aroused by provisions of BMO that were too strict. He therefore was in favour of drafting the provisions in general wording.

15. Members present in general supported the Administration's proposal at paragraph 10(a) above. The Chairman, however, requested the Administration to consider the different opinions of members in drafting the relevant provisions.

Approval of tenders

16. Mr NG Leung-sing remarked that most of the owners were so busy that OCs would normally conduct a general meeting once a year. To facilitate the management of buildings, OCs normally authorised MCs to award contracts on their behalf. Mr NG pointed out that the punitive clause for contravention of procedural requirements proposed in paragraph 6(c) of the Administration's paper might impose undue operational constraints on MCs and OCs. Both the

Action

Chairman and Mr NG Leung-sing enquired whether blanket approval could be granted by OCs for MCs to award contracts on their behalf under BMO if amended so as to facilitate the management of private buildings. PAS(HA)5 confirmed that such blanket approval could not be granted by OCs under the proposed provisions. Mr NG Leung-sing suggested that the Administration should assess the impact of these new provisions on OCs to determine whether the proposed procedural requirements were reasonable.

17. Holding a different view, Mr IP Kwok-him pointed out that in view of the large sum of money involved, MCs might prefer to refer tenders exceeding \$100,000 to OCs for approval. At the same time, owners were very concerned about large expenditure items of OCs and might prefer to consider and approve such tenders themselves. He therefore considered that blanket approval from OCs to MCs for the award of contracts might not be necessary.

Punitive clause

18. Mr IP Kwok-him commented that the punitive clause proposed in paragraph 6(c) of the Administration's paper was too harsh. Under that clause, in the event of a contravention of the requirements mentioned in paragraph 10(a) and (b) above, every member of a MC would be guilty of an offence and would be liable on conviction to a fine at level 5 (i.e. \$50,000). He considered it not fair to those MC members who had not attended the meeting concerned and hence were not involved in the award of the contracts concerned. He said that the proposal would discourage people from serving in MCs. PAS(HA)5 responded that if a MC member could prove that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances, he would not be guilty of such an offence.

19. Mr NG Leung-sing, however, pointed out that it would be very difficult for individual MC members to prove their innocence. He sought for information on the extent of disputes between owners and OCs over contravention of procurement procedures. PAS(HA)5 explained that the proposed punitive clause would ensure compliance with the relevant statutory requirements and was in line with that under section 27(3) of BMO relating to accounting requirements. She informed members that according to the Administration's records, there had not been cases in which MC members were fined because of contravention of procedural requirements. However, the Administration had received many complaints about abuses of management funds. It had therefore proposed the punitive clause to address this issue.

20. The Chairman pointed out that in some cases, the MC chairman had awarded contracts without putting them to meetings of MCs for consideration. He therefore suggested that to be fair to MC members, the wording of the punitive clause should be revised so that only those MC members who had

Action

been involved in the award of the contracts concerned should bear the criminal liability for contravening the procedural requirements. Mr NG Leung-sing supported his suggestion.

21. Assistant Legal Adviser 4 (ALA4) suggested that the punitive clause might be revised to the effect that the onus of proof would lie on the prosecution instead of MC members so that no prosecution would be brought against a particular MC member unless the prosecution could prove that the offence was committed with the member's consent. The Chairman, Ms Emily LAU and Mr Andrew CHENG supported ALA4's suggestion.

22. While acknowledging the need for ensuring that contracts of a value exceeding 10% of the annual budget of OC should be approved at the OC meeting, Mr Andrew CHENG expressed reservation on the criminalisation of the contravention of such requirement. He opined that the punitive clause would discourage owners from serving on MCs.

23. In response, PAS(HA)5 explained that there was a need to strike a balance between encouraging participation of owners in MCs and protecting owners from abuse of management funds. She advised that based on the feedback from the public, the Administration had proposed the punitive clause to safeguard against possible abuse of management funds. She added that without any punitive clause, MCs might need to be dissolved in the event of a contravention of the statutory requirements. However, she agreed to consider ALA4's suggested revision to the punitive clause.

Adm

24. Mr Andrew CHENG remained of the view that civil proceedings to resolve disputes over abuse of management funds were preferable to criminalisation of contravention of the procurement procedures. He remarked that some MC members might have contravened the requirements with good intent as they considered that it would save both time and resources not to obtain approval from OCs for the award of the contracts concerned.

25. The Chairman pointed out that at present without any punitive clause to ensure compliance with procedural requirements regarding procurement of goods and services, disputes often arose over these areas between owners and MCs. Some of the disputes might even lead to civil proceedings at court which incurred huge cost. He therefore agreed that there might be a need for the introduction of a punitive clause. However, he requested the Administration to consider revising the punitive clause in accordance with the suggestion of ALA4. Sharing the views of the Chairman, Ms Emily LAU added that public consultation had to be conducted on the insertion of the proposed punitive clause.

Action

Rights of owners to obtain copies of certain building management documents

26. The Chairman noted that the Administration had proposed in paragraph 10 of its paper to specify in BMO that MC should, on payment of a reasonable copying charge, supply any owner with a copy of the minutes of a MC's meeting and those of an OC's general meeting. He suggested that the provision should cover other building management documents and that the charge should be specified in BMO so as to prevent MCs from over-charging owners in order to deter them from obtaining the documents. He also pointed out that without any punitive clause for non-compliance with this requirement, some MCs might still refuse to provide copies of the documents to owners who would then have to appeal to the Lands Tribunal for assistance.

27. In reply, PAS(HA)5 advised that the proposed amendment was in line with similar provisions regarding copies of annual budget, income and expenditure accounts and balance sheet in paragraph 4 of the Fifth Schedule and paragraph 3 of the Sixth Schedule of BMO where the charge was not specified. Discretion could then be allowed for MCs and OCs to determine the charge with flexibility. She also pointed out that contravention of the requirement might not be serious enough to justify the insertion of a punitive clause. The Chairman said that he did not object to the proposed amendment but suggested that the charges should be specified in the Ordinance.

III. Way forward

28. The Chairman informed members that the Administration had agreed to introduce legislative proposals to amend BMO as a result of the discussion at previous meetings of the Subcommittee. The Administration had planned to submit the proposals to be included in a composite bill to the Panel on Home Affairs for comments in June 2003 after public consultation on these proposals.

29. PAS(HA)5 advised that consultation with building owners had already commenced on the proposed amendments which were agreed by the Subcommittee. In response to a question from Mr Andrew CHENG, PAS(HA)5 informed members that the issue regarding the formation of OCs for house developments would be dealt with in a separate exercise. The Administration would revert to the Subcommittee when there was further progress. The Chairman suggested and members agreed that the Subcommittee would hold meetings to discuss the legislative proposals, when necessary, before they were submitted to the Panel in June 2003.

Action

IV. Any other business

30. There being no other business, the meeting ended at 4:15 pm.

Council Business Division 2
Legislative Council Secretariat
29 January 2003