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Panel on Home Affairs

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

**Minutes of meeting
held on Thursday, 29 April 2004 at 4:30 pm
in Conference Room A of the Legislative Council Building**

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 CHOY So-yuk
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Members absent : Hon Cyd HO Sau-lan
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, JP

Public Officers attending : Mr Isaac CHOW
Deputy Director of Home Affairs

Mrs Angelina CHEUNG
Assistant Director of Home Affairs

Miss Christine AU
Administrative Officer
Home Affairs Department

Mr MA Kam-ki
Senior Liaison Officer (Building Management)
Home Affairs Department

Clerk in attendance : Ms Doris CHAN
Chief Council Secretary (2)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Stanley MA
Senior Council Secretary (2)6

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I. Confirmation of minutes

[LC Paper Nos. CB(2)2151/03-04 and CB(2)2152/03-04]

The minutes of the meetings held on 6 February and 4 March 2004 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)2149/03-04(01) and CB(2)1518/03-04(01) - (02)]

2. Members noted the paper provided by Hon Tommy CHEUNG which was tabled at the meeting [LC Paper No. CB(2)2226/03-04(02)].

3. At the invitation of the Chairman, Assistant Director of Home Affairs (AD(HA)) briefed members on the summary of proposals on amendments to the Building Management Ordinance (BMO) as set out in LC Paper Nos. CB(2)1518/03-04(01) and (02).

Appointment of Proxy

4. Mr NG Leung-sing suggested that the proposed standard proxy instrument which was tabled at the meeting [LC Paper No. CB(2)2226/03-04(01)] should provide space for the secretary of an Owners' Corporation (OC) to record the date and time of receipt. He considered that there would be disputes over the validity of those proxies which were signed by owners 24 hours before the OC meeting was held but were only submitted to the Management Committee (MC) shortly before the meeting started. To avoid

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unnecessary disputes, the OC secretary should acknowledge receipt of the proxies lodged by owners by an appropriate means.

5. AD(HA) responded that the format and wordings of the proposed standard proxy instrument were modeled on the standard format of proxies provided for the Companies Ordinance. The Administration would also make reference to the Companies Ordinance in drafting the procedures for handling the proxy instruments under BMO. AD(HA) pointed out that the Guidelines for appointment of proxy for owners' meetings in the Annex of LC Paper No.CB(2)1193/03-04(01) had suggested some general principles for MCs to follow. In particular, MCs should notify owners of the deadline and the procedures for submission of proxies to the secretary or depositing them in the designated collection boxes placed within the building. AD(HA) undertook to consider Mr NG Leung-sing's suggestion in respect of the standard proxy instrument during the drafting of the amendment bill.

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6. Mr Albert HO considered it more practical to specify a deadline for owners of a large estate to lodge their proxies by putting them in the designated boxes, as well as the time at which MC members should open these boxes and collect the proxies for verification purpose. He expressed appreciation of the Administration's efforts in conducting an extensive consultation and proposing the amendments to BMO. Mr HO suggested that the Administration should improve the procedural arrangements for the handling of proxy instruments by way of subsidiary legislation.

7. Mr IP Kwok-him said that to avoid malpractice, a list of the proxies received by an MC should be displayed in prominent places of the building for owners' information shortly after the specified deadline for submission. He considered it difficult for MCs to reach a consensus on the validity of questionable proxies. He pointed out that falsification of a proxy instrument was a criminal offence under the Crimes Ordinance and suggested that questionable proxies should be reported to the Police for follow-up investigation. Mr IP also considered that a valid proxy instrument should contain the Hong Kong Identity (HKID) Card number of the person who was authorised by the owner concerned to attend and vote at an OC meeting.

8. AD(HA) responded that the Administration would consider members' views on ways to determine the validity of questionable proxies received by MCs. She pointed out that as suggested in the Guidelines for appointment of proxy for owners' meetings, the secretary of an MC should specify in the proxy instrument when and where the proxy instrument should be lodged. The secretary was advised to post the information in respect of flats where a proxy had been appointed in a prominent place of the meeting venue. In addition, the secretary was suggested to include such information in the minutes of the OC meeting which should be displayed in a prominent place of the building within 28 days of the owners' meeting. As regards the incorporation of HKID Card

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number in proxy instruments, AD(HA) said that there was no statutory requirement for owners to provide the HKID Card number in the proxy instrument. She added that according to the Privacy Commissioner, such information was not a prerequisite for a proxy instrument to be valid and neither was there the need to stipulate such requirement.

9. Mr IP Kwok-him considered that given the legal status of proxies in endorsing resolutions at OC meetings, BMO should specify the requirements for valid proxies and the correct procedures for handling proxies. In this connection, Mr IP requested the Administration to clarify with the Privacy Commissioner in writing whether setting the requirement to enter a proxy's HKID Card number in a proxy instrument was in violation of the Personal Data (Privacy) Ordinance. Deputy Director (Home Affairs) (DD(HA)) undertook to follow up with the Privacy Commissioner on the implications of such requirement.

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10. Mr Andrew WONG shared the view of Mr IP Kwok-him that all proxies received by an MC before the specified deadline should be disclosed to the owners of the buildings for cross-checking purpose. He pointed out that a 24-hour duration might be insufficient for an MC of a large development to prepare and post a list containing the information in respect of flats where a proxy had been appointed in prominent places. He also considered it difficult to curb all possible manipulation of proxy instruments. Mr WONG suggested that the standard proxy instrument should provide an option for an owner to indicate his choice in election of MC members and the resolutions to be considered at an OC meeting. He also suggested that a proxy instrument should provide spaces for the name and signature of a witness where appropriate.

11. DD(HA) undertook to explore the feasibility of providing different options in a proxy instrument for an owner to authorize a person to attend an OC meeting and vote in accordance with the owner's choice in respect of the resolutions to be considered at the meeting.

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12. Mr Albert HO pointed out that the incorporation of an option for owners to indicate his choice in the election of MC members would complicate the handling of the proxy instruments at OC meetings. He considered that a proxy instrument should serve to authorize a person to vote on behalf of an owner, instead of doubling up as a ballot paper with the names of candidates in an election. He suggested that the deadline for lodging of proxies should be advanced from 24 to 48 hours before the meeting to facilitate the preparation and posting of a list of flat units where a proxy had been appointed.

13. Mr NG Leung-sing said that the proxy in question was a legal document certifying the authorization of a person to attend an OC meeting on behalf of an owner. He did not consider it appropriate that the standard proxy instrument

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should provide for the owners to specify their voting decisions in respect of the resolutions to be considered at the meeting. He considered it necessary to state in the proxy the HKID Card number of the person who was authorized to attend the meeting. He suggested that the proxy instrument should contain the signature of the owner concerned. He agreed that MCs should post a list of the proxies lodged before the specified deadline at the meeting venue for owners' information. He did not hold a strong view on whether owners should be required to lodge their proxies 24 hours or 48 hours before the OC meeting.

14. The Chairman said that for validation purpose, a proxy should contain the HKID Card number and other relevant particulars of the person who was authorized to attend and vote at an OC meeting on behalf of the owner concerned. He considered that the flat units of the owners who had appointed a proxy and the names of the persons in the proxies should be disclosed to the owners of the building before the meeting. He held the view that all proxies following the standard format specified in BMO should be accepted by MCs as valid ones, regardless of whether the OCs had prescribed other formats for owners to lodge their proxies. He also considered it more practical for the OC chairman, instead of the MC to hold a meeting, to determine the validity of questionable proxies. He added that he did not hold a strong view on a 24-hour or 48-hour deadline for owners to lodge their proxies and the incorporation of a witness in the standard proxy instrument.

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15. DD(HA) responded that the Administration would consider members' views and suggestions on appointment of proxy. He envisaged that the Bills Committee to be formed to scrutinize the proposals in the amendment bill would discuss the issue in detail.

Termination of appointment of the deeds of mutual covenant (DMC) manager by an OC

16. The Chairman urged the Administration to re-consider the provision of a mechanism for OCs to terminate the appointment of a DMC manager. He considered the requirement of owners holding 50% of the undivided shares to terminate the appointment of a DMC manager after the initial period of service too stringent and unfair to owners. He suggested that BMO should allow a lower threshold of shares for terminating the appointment of a DMC manager, if a resolution for such purpose had not been supported by owners holding 50% of the shares at a preceding meeting.

17. Mr Albert HO pointed out that some developers might hold a large number of undivided shares by ownership of the common areas of a building. He suggested that the undivided shares allocated to the common areas of a building which were not liable to pay management fees should not be counted in the appointment or termination of the appointment of a building manager.

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Appointment of the first and subsequent MCs

18. Mr Albert HO pointed out that the existing provisions in section 3(1)(c) would give rise to situations where more than one group of owners holding 5% of undivided shares could convene an owners' meeting to appoint the first MC. The Chairman suggested that to simplify the administrative procedures, the groups of owners holding 5% of shares should co-ordinate and nominate among themselves a person to preside over the meeting.

19. Mr Albert HO said that the appointment of a subsequent MC and its members by way of passing a resolution at an annual general meeting was often a time-consuming process, particularly when there were many candidates and a large turnout of owners. He suggested that the Administration should explore feasible alternatives to simplify the procedures for casting and counting owners' votes. AD(HA) undertook to consider Mr HO's suggestion during the drafting of the amendment bill.

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Procurement of supplies, goods and services by an OC

20. The Chairman considered that BMO should specify the thresholds for procurement of supplies, goods and services by way of invited tenders or open tenders. He pointed out that the provisions on tendering requirements in the Code of Practice on procurement of supplies, goods and services issued by the Secretary for Home Affairs (the Code of Practice) were not legally binding. In practice, some property management companies could easily manipulate the outcome of tendering by inviting only their subsidiary or affiliated companies to lodge tenders. AD(HA) responded that the Administration would propose to amend the provisions on tendering requirement from the Code of Practice so that any procurement with a value exceeding the prescribed thresholds would have to be done through tendering in accordance with BMO.

21. Miss CHOY So-yuk cited an example to illustrate how a property management company could manipulate the award of building maintenance service contracts to its subsidiary or affiliated companies. She suggested that the Administration should explore the feasibility of establishing a system of declaration of interests in BMO for the MC members, the building managers and the appointed consultant who played a role in the tendering process to follow. Mr Andrew WONG expressed a similar concern and asked whether the proposed amendment to BMO would require that all tenders exceeding the stipulated thresholds should be approved by way of a resolution at an OC meeting.

22. AD(HA) responded that the requirement that MC members and the contractors involved in a tendering exercise should declare their interests was specified in the Code of Practice. The proposed amendments would specify the thresholds for procurement of supplies, goods and services which should be

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done by invitation to tender or approved by way of a resolution passed at an OC meeting. AD(HA) pointed out that the Home Affairs Department and the Independent Commission Against Corruption (ICAC) had jointly published a booklet on the procedures for tendering recently. She added that the Administration would make reference to other ordinances having similar provisions to reinforce the legislative requirements on declaration of interests during the drafting of the amendment bill. The Chairman remarked that professionals or building management companies who/which were appointed to prepare the tender documents or co-ordinate the conduct of the tendering exercise should also be required to declare their personal or pecuniary interests, if any.

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23. The Chairman suggested that BMO should specify the right of owners to access the tender documents and submissions within a period of time before the OC meeting. He also requested the Administration to explore the feasibility of requiring a minimum of five tenders on building management service contracts exceeding a stipulated threshold for owners to consider at an OC meeting. AD(HA) agreed to consider the suggestion, but pointed out that there would be difficulty in implementation as not every tender for procurement of supplies, goods or services could attract five or more responses.

24. Mr NG Leung-sing said that the procedures for tendering should be made clear and simple for MCs, building managers and interested contractors to follow, and the provisions in BMO should aim at balancing the interests of owners and the parties involved in tendering exercises. He considered it better to let the market mechanism determine the appropriate methods of tendering for individual building management contracts. He cited a number of operational and interpersonal issues which might affect decisions on award of building management service contracts in practice. Mr NG held the view that as long as the procedures for tendering were specified in BMO or the Codes of Practice, the ICAC should be able to investigate into any non-compliance reported by owners or members of the public.

25. Miss CHOY So-yuk considered that BMO should empower OCs to collect the tender submissions and specify the right of owners to know the personal or commercial relationship between the various parties involved in a tendering exercise. She considered it fair to require MC members, building managers, appointed consultants and tender respondents to declare interests before the owners made their voting decisions on the award of a tender at an OC meeting. Mr Andrew WONG added that MC members should witness the opening of the designated tender box to enhance fair and transparent handling of the tenders lodged before the specified deadline.

26. In summing up discussion on the subject, the Chairman requested the Administration to consider -

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- (a) the introduction of a system for the parties involved to declare their personal and pecuniary interests in a tendering exercise;
- (b) the stipulation of minimum thresholds and procedures for MCs to invite tenders by invitation or by open tendering; and
- (c) the requirement for MCs or building managers to provide owners with free access to the tender documents and submissions before the OC meeting was held.

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In response, DD(HA) undertook to consider members' views and suggestions during the drafting of the amendment bill.

Way forward

Further review on BMO

27. Mr Albert HO suggested that the Administration should conduct another review with a view to resolving the remaining problems in BMO including the procedural arrangements for the conduct of OC meetings and the establishment of OCs in house-type developments such as the Fairview Park in Yuen Long. Mr HO considered that all owners of individual units in a house development should enjoy the right to form an OC and participate in the management of their properties in accordance with BMO.

Subcommittee's final report and drafting of the amendment bill

28. The Chairman instructed the Clerk to prepare the final report of the Subcommittee for endorsement by the Panel on Home Affairs in June 2004. He also requested the Administration to introduce the amendment bill into the Legislative Council in the first session of the next term.

Vote of thanks

29. The Chairman thanked members and the Administration for their time and efforts spent in the deliberations of the Subcommittee on BMO in the past two years.

III. Any other business

30. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 2
Legislative Council Secretariat
9 August 2004