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LegCo Panel on Home Affairs

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

**Minutes of meeting
held on Wednesday, 23 May 2001 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Albert CHAN Wai-yip (Chairman)
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon Andrew WONG Wang-fat, JP
Hon Andrew CHENG Kar-foo
Hon IP Kwok-him, JP
- Member Absent** : Hon CHOY So-yuk
- Public Officers Attending** : Mr Francis LO
Principal Assistant Secretary for Home Affairs (5)

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. Matters arising from last meeting

[Paper No. CB(2)1606/00-01(01) and Appendix to LC Paper No. CB(2)1606/00-01]

Formation of owners' corporations by owners of house developments holding divided shares

Mr Andrew CHENG expressed great disappointment over the Administration's response to members' concerns expressed at the last meeting [Paper No. CB(2)1606/00-01(01)], particularly about the inclusion of house developments in the ambit of the Building Management Ordinance (BMO). He held the view that the Administration's inertia in spite of members' views and suggestions about the need to expand the scope of the BMO was regrettable. He requested the Administration to consult the Department of Justice on the issue as soon as practicable.

2. In response, Principal Assistant Secretary for Home Affairs(5) (PAS(HA)5) explained that the Home Affairs Bureau (HAB) and Home Affairs Department (HAD) had conducted preliminary discussion with the Department of Justice after the meeting on 27 April 2001. The initial view was that under BMO, the decision-making process of an owners' corporation (OC) was premised on ownership of undivided shares. On the other hand, owners of house development owned houses built on different land lots signified by divided shares. Therefore, both ownership structure and nature of property of house developments as opposite to flatted buildings did not fit in the ambit of BMO. He pointed out that unlike houses built on different land lots, flat owners of multi-storey buildings would have to share the use of common parts including lifts, corridors, staircases, roof etc. PAS(HA)5 added that the Administration would also consider whether the ambit of BMO should cover the management of house development. As there were divided views on the matter, the Administration did not have any conclusion at the present stage.

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3. Mr Albert HO acknowledged the serious and complicated implications of extending the scope of BMO to cover house-type properties. However, he stressed that the Administration should consider the issue in the light of its policy commitment to assist owners to form OCs for better management of buildings in the long term. He pointed out that house owners within the house development would have to share the use of common parts including building, recreational, sports and transport facilities, etc. Mr HO also pointed out that there were small houses built on different land lots which were allowed to form OCs under an instrument recognised by the Legal Advisory and Conveyancing Office (LACO) of the Lands Department. Mr HO suggested that LACO should ensure that deed of mutual covenants (DMCs) of new private buildings must stipulate the number of undivided shares allocated to each flat or house and common parts of a development.

4. The Chairman expressed a similar view. He pointed out that BMO had been amended in 1993 and 2000 to accommodate the changing needs of the community in building management. He suggested that in order to accord equal protection to the interests of house owners, the Administration should consider incorporating house-type properties into the ambit of BMO during the next legislative exercise to amend BMO. The Chairman stressed that the Administration should not exclude the management of house developments from BMO simply on the ground of legal technicality. Mr Andrew WONG considered that the concept of condominium could be applied under BMO for similar buildings which were constructed on different land lots and in close vicinity with one another. Mr Albert HO agreed that the concept of common development needed to be applied so that only one single OC would be formed for the joint management of small houses on different land lots. If different OCs were formed, it would be difficult to reach consensus in seeking to resolve building management problems.

Developer holding the majority of undivided shares in a house development

5. Mr Albert HO considered it unfair that some developers held a large proportion of shares by ownership of common parts of the development but were not liable to pay management expenses in respect of the shares. While he agreed that Government should be cautious in contemplating legislative measures to override unfair terms and conditions of DMCs, there were already provisions under the Seventh Schedule of BMO which had the effect of overriding unreasonable terms in DMCs. Mr HO pointed out that if the manager was appointed under a DMC by the developer who held a majority of shares and was entitled to vote for all other purposes, it was unlikely that an OC could be established to terminate the appointment of the manager. He urged the

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Administration to add necessary overriding provisions to BMO in order to protect the interests of flat owners.

6. Mr IP Kwok-him expressed support for further amendments to BMO for the purpose of facilitating formation of OCs. He shared Mr Albert HO's view that developers who held a majority of shares by way of DMCs but were not liable to pay management expenses in respect of the shares should not be entitled to vote for the establishment of an OC.

7. The Chairman was of the view that it was unreasonable for developers or managers who held undivided shares and were not liable to pay management expenses in respect of the shares to vote for a proposed increase of management fees. He also pointed out that complications would arise when common parts owned by a developer was assigned to a person in the form of trust and that person was not liable to pay management fees but was entitled to vote at OC meetings.

8. In response, PAS(HA)5 stressed that a narrow and focussed approach should be adopted to override DMC provisions by legislation. He pointed out that relevant amendments to BMO in 1993 were restricted to procedures for meetings of MCs and OCs under the Second and Third Schedules respectively. According to the Amendment Ordinance in 2000, shares which were not liable to pay management expenses did not carry any voting rights for the termination of the appointment of building manager. These amendments had not affected the property rights of the developers and owners under DMCs. He emphasised that DMCs were private contracts between the developers and owners and the Administration had to be extremely cautious in contemplating further legislation to override their terms and conditions.

9. Mr Andrew WONG pointed out that provisions of DMCs were proposed by developers and approved by LACO, which would be considered as final as soon as the first buyer had signed the legal document for purchase of a flat of the development concerned. These DMCs often would allocate a majority of shares to developers by ownership of the common parts of the developments and the car parking spaces, if available. Mr WONG considered that if the allocation or the DMC provisions were apparently unfair, the law should provide a mechanism to make these provisions void. He suggested that to safeguard the interest of flat owners, Government should allow registration of separate DMCs for commercial and residential units of a mixed development.

10. PAS(HA)5 explained that LACO would assess the allocation of shares proposed under a DMC in accordance with its internal guidelines which would take into account the prevailing market values of the different units of the

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development. He advised that LACO should be in a better position to explain the criteria for approving DMCs to members.

11. Mr IP Kwok-him considered that an independent and transparent mechanism to monitor and amend unfair provisions in DMCs should be established. Mr Albert HO suggested that an unfair provision in a DMC could be amended by a resolution of the OC with the approval of HAB or the Court. The Chairman also suggested that the Administration should review whether management expenses for commercial and residential units in a mixed development should be separately specified in DMCs. The Chairman further suggested and members agreed that the criteria for approving DMCs and the establishment of a mechanism to monitor and amend DMCs would be discussed with LACO at a future meeting.

Appointment of a management committee (MC)

12. Miss Cyd HO pointed out that section 3(2)(b) as presently worded was not clear enough as to whether a MC could be appointed by a resolution of the owners of 30% of the shares, if owners of another 50% of the shares objected to its appointment. The Chairman and Mr Albert HO opined that a resolution would not be passed if owners of another 50% of the shares objected to it. However, the Chairman requested the Administration to consider whether the drafting could be further improved in order to ensure clarity.

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II. Any other business

Issues to be considered by the Subcommittee

Building management tribunal

13. Mr Albert HO suggested that a mechanism operating in the form of a tribunal should be established to reconcile minor building management disputes between owners of a development such as a dispute between two flat owners arising from water leakage from an upper floor.

Proxy

14. Mr Andrew WONG considered that the voting procedures for proxies at OC meetings should be revamped. He considered that flat owners should have the right to demand a poll for a particular resolution and the meeting should be adjourned to give sufficient time for owners to cast their votes. The Chairman said that different OCs would adopt different formats for proxies. He suggested

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that the Administration should review the procedures for counting proxies towards the quorum and vetting voting results..

Procedures for appointment of MC and OC meetings

15. Mr Andrew WONG suggested that the procedures for convening the first owners meeting to appoint a MC should be comprehensively reviewed. He considered that a more transparent voting procedure and a longer duration of time for casting votes should be provided for flat owners. Miss Cyd HO said that under the present system, persons other than those who participated in the process of convening the owners' meeting for the appointment of a MC could hardly be elected to join a MC. Mr Albert HO opined that a set of standard procedures for nomination and voting of MC members should be specified under BMO. The Chairman and Mr IP Kwok-him agreed that the arrangements and procedures for electing MC members and conducting OC meetings should be thoroughly reviewed.

16. Members agreed that the issues as raised above would be discussed by the Subcommittee at future meetings

Date of next meeting

17. The Chairman informed members that a total of 14 written submission had been received as at 22 June 2001. Members agreed to meet deputations at the next meeting scheduled for 9 July 2001 at 4:30 pm.

18. There being no further business, the meeting ended at 12:35 pm.

Legislative Council Secretariat
30 August 2001