

立法會
Legislative Council

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LegCo Panel on Home Affairs

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

**Minutes of meeting
held on Friday, 27 April 2001 at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Albert CHAN Wai-yip (Chairman)
Hon Cyd HO Sau-lan
Hon Andrew CHENG Kar-foo
Hon IP Kwok-him, JP
- Member Attending** : Hon Martin LEE Chu-ming, SC, JP
- Members Absent** : Hon Albert HO Chun-yan
Hon Andrew WONG Wang-fat, JP
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. Confirmation of minutes [LC Paper No. CB(2)1303/00-01]

The minutes of the meeting held on 4 April 2001 were confirmed.

II. Scope and progress of the review of the Building Management Ordinance (Cap. 344)

2. In response to the Chairman, Principal Assistant Secretary for Home Affairs(5) (PAS(HA)5) said that the Administration had introduced significant legislative amendments to the Building Management Ordinance (BMO) which were passed by the Legislative Council (LegCo) in June 2000. An Inter-departmental Steering Group chaired by the Director of Home Affairs had been set up to monitor the implementation of the Building Management (Amendment) Ordinance 2000. At the meeting of the Establishment Subcommittee on 21 February 2001, the Administration had agreed at members' request to forward a paper on the review of the BMO to the Panel on Home Affairs in February/March 2002. Although he personally had reservation as to whether it was opportune to introduce another major revamp of BMO at the present time, the Administration welcomed Members' views in this respect. PAS(HA)5 added that the subject areas to be covered in the Administration's review of BMO coincided with the major issues to be discussed by the Subcommittee as set out in the Appendix to LC Paper No. CB(2)1367/00-01. In this connection, members noted the overall

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Administration's response to the major issues to be discussed by the Subcommittee
[Paper No. CB(2) 1367/00-01(01)]

III. Formation of an owners' corporation

[Paper Nos. CB(2)1367/00-01(01) and (02)]

Inclusion of the management of house-type properties under BMO

3. Members unanimously agreed that the scope of BMO should be enlarged to cover management of house-type properties such as Discovery Bay in Lantau Island, Fairview Park in Yuen Long and Hong Lok Yuen in Tai Po. Mr Martin LEE suggested that the definition of "building" under section 2 of BMO should be amended to include not only flats with undivided shares in multi-storey buildings, but also houses built on lots of lands with divided shares. Mr LEE considered that for developments like Discovery Bay, Hong Lok Yuen and Fairview Park, there should be an owner's corporation (OC) to participate in the management of the developments. Mr IP Kwok-him shared the view of Mr LEE. He said that the Administration should ensure that all property owners, including owners of small units in a house development, enjoy the right to form OCs so that they could collectively manage their properties in accordance with BMO and in the best interests of owners.

4. PAS(HA)5 responded that under BMO, the decision making process of an OC was premised on ownership of undivided shares. Owners of house developments owned land lots or divided shares and their properties were houses as opposed to flatted buildings. In his view, both their ownership structure and nature of property did not quite fit in with the ambit of BMO. In fact, the objectives of BMO, previously known as the Multi-Storey Buildings (Owners' Incorporation) Ordinance, were to facilitate the incorporation of owners of flats in buildings and to provide for the management of such buildings. A house was not a flatted building. Management of house-type properties was akin to land management rather than management of buildings. While substantial amendments to BMO were enacted in 1993 and 2000, the original intent of BMO remained unchanged. He added that the President of the Legislative Council (LegCo), in scrutiny of certain proposed Committee Stage amendments to the Building Management (Amendment) Bill 2000, had ruled that "the amendments seek to extend the application of BMO to a new type of building i.e. house-type properties which neither BMO nor the Bill covers. They are not relevant to the subject matter of facilitating better management of flatted buildings or groups of flatted buildings covered by the Ordinance".

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5. PAS(HA)5 further said that if the ownership of house developments was structured by undivided shares like flatted buildings, there was no prohibition against the owners to form OCs under BMO. Otherwise, the management of house development needed to be addressed outside the ambit of BMO.

6. Mr Andrew CHENG was not satisfied with the Administration's response. He urged that the Administration should consider extending the scope of BMO to cover house-type properties from a policy perspective. In line with the policy of facilitating the formation of OCs, the Administration should amend BMO to cater for house developments to form OCs. He considered that conscientious developers would structure ownership of house developments on the basis of undivided shares, but others might make use of deed of mutual covenants (DMCs) to impose unfair conditions and terms to restrict house owners to form OCs.

7. Mr Martin LEE pointed out that in addressing the issue of managing house developments, the Administration should not be restricted by the narrow definition of "building" under BMO. He considered that with the support of major political parties, the Administration should demonstrate a firm stance and request developers to co-operate and assist owners to establish OCs in house developments. He agreed that the establishment of a management advisory committee in Fairview Park as described in the Administration' paper was a positive step forward. However, the Administration should seek to establish more similar mechanism for management of house developments.

8. Mr IP Kwok-him said that although he appreciated the Administration's success in assisting to establish a management advisory committee, the Administration should explore the feasibility of forming OCs for house developments as a long-term solution. He added that the Administration should also work out arrangements for flat owners in estates of the Housing Society to establish OCs, since individual blocks of these estates were built on different lots of land. The Chairman requested the Administration to consider possible proposals to address the problem that owners of residential units of a house development holding "divided shares" were unable to form an OC.

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9. PAS(HA)5 reiterated that BMO evolved from the premise to facilitate the incorporation of owners of flats in buildings or groups of buildings and to provide for the management of the buildings, as well as matters incidental to or connected with these buildings. The Administration would review the inadequacy of the BMO in the light of its limitations under the prevailing circumstances of the community.

10. PAS(HA)5 further said that there were not many major house developments where owners could not establish an OC. He pointed out that house ownership in

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Discovery Bay was structured on undivided shares. The main problem was whether the management company which held a majority of the undivided shares wished to form an OC. He assured members that the Home Affairs Department (HAD) would continue to liaise with owners and developers in the facilitation of formation of OCs in developments where the ownership was structured on undivided shares. In particular, the Islands District Office would continue to liaise with the developer and house owners of the Discovery Bay with a view to working out a solution.

11. PAS(HA)5 also pointed out that section 39(a) of BMO had provided that an owner's share of a development could be determined in the manner provided in an instrument such as a DMC which was registered in the Land Registry. Owners of a house development holding divided shares could collaborate to devise a scheme to allocate undivided shares amongst themselves in accordance with section 39(b). Based on such scheme, owners could convene an owner's meeting in accordance with BMO to appoint a Management Committee (MC) and subsequently apply for registration of an OC. The Land Registrar should then consider the validity of the scheme in connection with the application to register the OC. The Chairman expressed reservation on the feasibility. He said that as in the cases of Discovery Bay and Hong Lok Yuen, most developers who held a certain percentage of the undivided shares were not willing to assist in the formation of OC for house developments.

12. Members considered that in addition to the Fairview Park and Hong Lok Yuen, there were many small groups of houses which could not form OCs due to the restrictive provisions in DMCs.

13. The Chairman expressed reservations about the effectiveness of management advisory committee in the management of Fairview Park. He pointed out that before 1993, similar management advisory committees were established to assist in managing private buildings. However, their powers and effectiveness in building management were limited by unfair provisions in DMCs. To improve the situation, legislative amendments were enacted in 1993 to enable formation of OCs by flat owners and to override some unfair DMC provisions which restricted the operation of OC and its MC.

Provisions of DMCs to hinder the formation of OCs

14. Members shared the view that Government had the obligation to ensure justice and fair provisions in DMCs. The Chairman said that house owners were currently deprived of their rights to form OCs because the developer was holding a majority of shares. He expressed disappointment that there were still DMCs registered after 1993 which allowed the developer or the building manager to hold

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a disproportionate percentage of undivided shares by way of possessing the common parts of the developments. He considered that the Legal Advisory and Conveyancing Office (LACO) of the Lands Department should explain the criteria and guidelines for approving DMCs. He suggested that BMO should provide for owners with a smaller percentage of undivided shares to convene a meeting to appoint a MC after a specified period. He also requested the Administration to provide a list of house developments where formation of OCs was in some ways restricted by unfair provisions of DMCs.

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15. PAS(HA)5 responded that the Administration would consult the Department of Justice to ascertain whether and how BMO could be expanded to incorporate house developments. However, such incorporation would mean a fundamental change in the decision making process of OC which was currently premised on ownership of undivided shares. He stressed that a lot of legislative and technical issues would have to be thoroughly discussed before any legislative amendments to this effect could be proposed for public consultation.

16. The Chairman asked whether and how the Administration would ensure fair and reasonable provisions in DMCs. He urged the Administration to provide remedy against unfair provisions in DMCs such as disproportionate distribution of management fees in respect of ownership shares. Mr Martin LEE added that some developers by way of DMCs held a large number of shares but were not liable to pay management expenses on a pro-rata basis. Mr Andrew CHENG pointed out that the DMC of Discovery Bay had empowered the developer to hold 77.4% of the undivided shares and pay only 1.4% of the management expenses, while the owners held only 22.6% of shares but have to shoulder 98.6% of the management expenses. The Chairman and Mr IP Kwok-him echoed that there were many DMCs specifying an unreasonable share of the management fees between developers and owners, particularly in mixed developments comprising both commercial complex and residential flats.

17. PAS(HA)5 responded that amendments to the terms and conditions of DMCs had been discussed by the Bills Committee on Building Management (Amendment) Bill 2000. The Administration agreed with the ruling of the President of the LegCo that providing a mechanism by which an OC could resolve to vary the terms of its DMC was not the subject matter of BMO. It was the Administration's stance that a DMC was a private contract between the developer and owners, stipulating the property rights and obligations of the parties concerned. The Administration was not a party to the contract and was therefore not in a position to meddle with the terms and conditions in DMCs, especially those which affected the property rights of the parties concerned.

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18. The Chairman reminded the Administration that BMO had been amended in 1993 to override a number of unfair provisions in DMCs. The Building Management (Amendment) Ordinance 2000 also had provision to specify that only owners of shares who were liable to pay the management expenses relating to those shares could vote for the termination of the appointment of a building manager.

19. PAS(HA)5 explained that the scope of the amendments to BMO in both 1993 and 2000 was narrow and focussed. In essence, the amendments in 1993 targeted at the procedure for meetings of OCs and MCs and the relevant Amendment Ordinance enacted in 2000 only applied to the termination of the appointment of building manager. These amendments did not intervene with the property rights of the developers and owners under DMCs. The Administration was of the view that the amended provisions had struck an appropriate balance between the interests of the owners and those of the developers or the managers.

20. Mr Andrew CHENG said that while the Administration should not interfere with the property rights and obligations of parties under a private contract, it should by legislation establish a mechanism to ensure fair and reasonable provisions in DMCs. Mr IP Kwok-him stressed the importance of protecting the rights and interests of flat owners. He asked how unfair provisions in existing DMCs could be amended. The Chairman suggested the Administration to put forward possible proposals to address the problem that owners of residential units of a house development holding "undivided shares" were unable to form an OC because the DMC had allocated a vast majority of shares to the developer.

21. PAS(HA)5 explained that LACO was the operational office of the Lands Department which was tasked to approve DMCs on behalf of the Director of Lands. It had updated the guidelines for approving DMCs, as stipulated in the LACO Circular Memorandum No.41 dated 29 June 1999, with a view to striking a fairer balance of interests between purchasers and developers as co-owners, owners and managers and as between owners themselves. He took note of members' concerns and would further consult the views of the Department of Justice on workable options for amending "unfair" provisions in DMCs.

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22. Members agreed that LACO should be invited to attend a future meeting of the Subcommittee to explain the criteria and guidelines in approving DMCs. Members also requested that the Administration should provide a list of building management problems arising from unfair terms of DMCs as frontline staff of HAD should be familiar with these problems.

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Proxy

23. Mr IP Kwok-him considered that a proxy appointed in accordance with paragraph 4(2) of the Third Schedule should be allowed to vote at a meeting of the owners convened under section 3, 3A, 4 or 40C of BMO. He agreed with the Administration that allowing the appointment of proxy would encourage and facilitate owners' participation in building management.

IV. Any other business

Codes of Practice

24. Mr IP Kwok-him pointed out that the Codes of Practice under section 44 had provided that any tender of a value exceeding the sum of \$200,000 should be approved by a resolution passed at a general meeting of an OC. He considered that such requirement should be reviewed since many expense items of large developments such as service contracts for lifts maintenance would involve an annual expenditure exceeding \$200,000. Members agreed to include the matter in the list of issues to be discussed by the Subcommittee.

Public consultation exercise

25. Mr Andrew CHENG suggested that the Subcommittee should invite submissions from OCs and owners' committees on the review of BMO as these bodies would have first-hand information about building management problems. The Chairman supported Mr CHENG's suggestion, saying that the problems came to the knowledge of members might only constitute the tip of an iceberg. Members agreed that a press release should be issued and a notice should be posted at the website of LegCo to invite submissions on the review. Members further agreed to meet deputations on the review at a future meeting.

26. Mr Andrew CHENG was also of the view that since the Subcommittee was set up to discuss with the Administration the review of BMO in order to expedite the process, the Administration should inform all OCs and owners' committees of the review and invite them to put forward their views on the review. PAS(HA)5 said that the Administration would decide its way forward on the matter. He added that the Building Management Resource Centres of HAD could be of assistance in this matter and that copies of the Subcommittee's invitation for submission could be placed in the Centres for the public's collection. Miss Cyd HO considered that the Administration should have started to conduct a public consultation exercise since the review of BMO would have significant impact on

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the general public. She requested that the Administration should report its consultation work to the Subcommittee.

Date of next meeting

27. Members agreed that the Subcommittee would hold its next meeting on Wednesday, 23 May 2001 at 10:45am to continue discussion with the Administration.

28. There being no other business, the meeting ended at 10:30 am.

Legislative Council Secretariat

30 August 2001