

For discussion on
4 March 2004

Legislative Council Panel on Home Affairs
Subcommittee on Review of the
Building Management Ordinance (Cap. 344)

PURPOSE

1. This paper sets out the Administration's response to comments raised by Members on LC paper ref. CB(2)1193/03-04(01) at the meeting of the Subcommittee on Review of the Building Management Ordinance (BMO) on 6 February 2004.

APPOINTMENT PROCEDURES OF A MANAGEMENT COMMITTEE

2. On the Administration's proposal to amend section 3(2) of the BMO so that a management committee *formed under the BMO* may only be appointed in accordance with the requirements set out in the BMO (i.e. by a resolution of the owners of not less than 30% of the shares) instead of the deed of mutual covenant (DMC) and to delete all references to the DMC in the Second Schedule to the BMO concerning the composition and procedure of a management committee, some Members were of the view that the proposed amendment would have an overriding effect over existing DMCs. There were also concerns that the developers, when drafting sections about appointment of management committees in new DMCs, would take this into account and specifically refer the management committee in their new DMC to be referred as one formed under the BMO.

3. In the case of *Siu Siu Hing v Land Registry* (HCAL 77/2000), it was held that unless the DMC of a building specifically referred to the appointment of a management committee under section 3 of the BMO, the management committee referred to in the DMC *was not the same creature* as the one provided for in the BMO. In other words, according to the court's ruling, there are indeed two types of committees: one is the management committee referred to in the BMO and one is any owners' committee (however it is named) provided under the DMC. Our policy intention is not to override a management committee formed under a

DMC but rather to make it crystal clear in the BMO that only a management committee formed in accordance with the requirements under the BMO will be recognized as a legal entity. For a management committee to be formed under the BMO, the owners have to follow the requirements and procedures set out in the law – and only this management committee could be registered with the Land Registry under section 8 of the BMO. Owners can still form other types of committees (say, owners’ committee, estate committee, or even management committee, howsoever named in the DMC) as provided under the DMC. The question of “overriding the provisions in DMC” therefore does not exist.

4. That said, we consider that our proposal will have the effect of restricting the application of BMO to those management committees formed under the statutory regime only. According to the records in the Land Registry, 58 of the 7 000 OCs registered were formed under section 3(2)(a) (i.e. in accordance with the DMC provisions rather than the BMO provisions) in the past. To ensure that these 58 management committees will remain valid upon enactment of the proposed amendment, we proposed in our previous paper to include a savings provision for these management committees and to require them to follow the BMO requirements on composition and procedure as set out in the revised Second Schedule when the incumbent management committee retires at the alternate annual general meeting of the corporation in accordance with paragraph 5(1) of the Second Schedule to the BMO.

5. Some Members were concerned that these management committees might not have sufficient time to prepare for the change and implement it. Having considered Members’ views, we propose to allow more time for these management committees by specifying that they will only need to comply with the BMO requirements at the *second* alternate annual general meeting of the corporation. In other words, these management committees will be given at least 36 months to at most 60 months to follow the new requirements.

6. The Department of Justice has been consulted and considered the above proposal practicable.

7. On the question of the drafting of new DMCs, Members should

rest assured that we are in close liaison with the Legal Advisory and Conveyancing Office (LACO) of the Lands Department. LACO is the office responsible for approving, on behalf of the Director of Lands, DMCs submitted by developers. No pre-sale of flats and units under the Consent Scheme will be permitted unless the DMC has been approved by LACO. In approving new DMCs, LACO will ensure that the current Guidelines for approving DMCs as stipulated in the LACO Circular Memorandum, which is amended and updated by LACO from time to time, are complied with. LACO will, where appropriate, incorporate the amended provisions in the Guidelines for DMCs once they are enacted. In any case, paragraph 1(a) of the current Guidelines for DMCs have already stipulated that no provision in a DMC shall contravene the provisions of the BMO. Therefore, following the amendment to section 3(2) of the BMO, if owners wish to incorporate themselves, they will only need to follow the requirements and procedures stipulated in the law rather than the DMCs.

APPOINTMENT OF PROXY

Standard format of the proxy instrument

8. Having considered Members' views, we have revised the proposed format of the proxy instrument as follows –

An instrument appointing a proxy shall be in the following form :

“Incorporated Owners of _____
I/We, _____, of _____ (unit and address of the building)
being an owner/owners of the above-mentioned building, hereby
appoint _____,
or failing him, _____,
as my/our proxy to attend on my/our behalf at the [annual or
extraordinary, as the case may be] general meeting of the owners’
corporation of the building, to be held on _____, and at any
adjournment thereof.

Signed this day of _____.”

Where it is desired to afford the proxy an opportunity of voting for or

against a resolution, the instrument appointing a proxy shall be in the following form:

“Incorporated Owners of _____
I/We, _____, of _____ (unit and address of the building)
being an owner/owners of the above-mentioned building, hereby
appoint _____,
or failing him, _____,
as my/our proxy to attend and vote for me/us on my/our behalf at
the [annual or extraordinary, as the case may be] general meeting
of the owners’ corporation of the building, to be held on
_____, and at any adjournment thereof.

Signed this day of _____.

This form is to be used *in favour of/against the resolution.

Unless otherwise instructed, the proxy may vote as he thinks fit.

*Strike out whichever is not desired.”

9. The revised format above has taken into account Members’ view that the format of proxy instrument to be provided in the law should leave no room for owners to make any further amendment so as to reduce the chance of dispute. Moreover, we have prepared two formats to cater for two situations: (a) the proxy is only allowed to attend the owners’ meeting; and (b) the proxy is allowed to attend and vote at the meeting. In the second situation, we have to stress that the proxy should be allowed to vote as he/she thinks fit unless the owner has indicated his/her view to vote in favour of or against the resolution.

Person to decide the validity of proxy instrument

10. We proposed in our previous paper to stipulate in the BMO that the chairman of the management committee should be given the power to determine the validity of questionable proxy instruments. However, Members had serious reservations about the proposal. Some were worried that there could be abuse of power by the chairman, especially when one of the resolutions to be passed at the owners’ meeting was to

dissolve the management committee or to terminate the appointment of the chairman. Some opined that the management committee as a whole instead of a single person should be given the power. Some Members suggested that an independent third party should be tasked with this job.

11. Having considered Members' views, we propose to empower the management committee to determine the validity of questionable proxy instruments. While it may sometimes be useful for the owners and the management committee to obtain an independent opinion, the owners have to make their own decision on matters concerning their own building. The management committee is the legal representative of all owners in a building and its members are duly elected at an owners' meeting. In accordance with section 29 of the BMO, the powers and duties conferred or imposed by the BMO on a corporation shall be exercised and performed on behalf of the corporation by the management committee. The management committee is therefore best placed to do the job. In convening meetings to go over the questionable proxy forms, the management committee still has to follow the statutory procedures set out in the Second Schedule to the BMO. We will introduce amendments to this effect.

Views Sought

12. Members are invited to comment on the above proposals.

Home Affairs Department
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