

**立法會**  
**Legislative Council**

LC Paper No. CB(2)952/05-06  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/8/04

**Bills Committee on  
Building Management (Amendment) Bill 2005**

**Minutes of meeting  
held on Wednesday, 4 January 2006 at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)  
Hon Albert HO Chun-yan  
Hon Margaret NG  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Hon LI Kwok-ying, MH  
Hon Alan LEONG Kah-kit, SC  
Hon Patrick LAU Sau-shing, SBS, JP  
Hon TAM Heung-man
- Members absent** : Hon Miriam LAU Kin-ye, GBS, JP  
Hon CHOY So-yuk, JP  
Hon Andrew CHENG Kar-foo  
Hon Albert CHAN Wai-yip  
Hon LEUNG Kwok-hung
- Public Officers attending** : Home Affairs Department  
Mr Isaac CHOW  
Deputy Director of Home Affairs (2)  
Mrs Angelina CHEUNG  
Assistant Director of Home Affairs (4)

Department of Justice

Mr Michael LAM  
Senior Government Counsel

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)2

**Staff in attendance** : Mr Stephen LAM  
Assistant Legal Adviser 4

Ms Joanne MAK  
Senior Council Secretary (2)2

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**I. Meeting with the Administration**

[LC Paper No. CB(2)2192/04-05(01) to (02) and CB(2)2617/04-05(01)]

The Bills Committee deliberated the Administration's responses to –

- (a) questions raised by members at the meeting on 14 June 2005 [LC Paper No. CB(2)2192/04-05(01)(revised)];
- (b) Miss CHOY So-yuk's letter dated 16 June 2005 [LC Paper No. CB(2)2192/04-05(02)]; and
- (c) questions 1 – 3 and 6 raised in Mr WONG Kwok-hing's letter dated 22 July 2005 regarding the appointment of a management committee (MC) [LC Paper No. CB(2)2617/04-05(01)].

(Index of proceedings at **Annex**).

Clause 15 of the Bill – Protection of members of an MC

2. On the Administration's proposal to move a Committee Stage amendment to proposed new section 29A to the effect that members of a MC would have to prove that they had acted in good faith as well as acted in a reasonable manner in order to exercise the protection under the proposed new section 29A, members noted that unless provisions were made under the Building Management Ordinance (BMO) to expressly provide for the factors the court would have to take into account in deciding whether an MC member had acted in a reasonable manner for the said purpose, the court would apply the "reasonableness" test on the basis of the particular circumstances of each case. Members agreed that given the existence of section 44(2) of BMO, there

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was no need to make further provisions under BMO to expressly provide that compliance with the Codes of Practice issued by the Secretary for Home Affairs under section 44(1) would be a factor to be considered by the court in the application of the “reasonableness” test.

Section 8 - Incorporation

Admin

3. The Administration was requested to consider the Chairman’s suggestion that as a protection clause for the Land Registrar, section 8 should be amended to stipulate expressly that the Land Registrar could not issue more than one certificate of registration for an owners’ corporations (OC) in respect of one building.

Clause 4 of the Bill - Appointment of an MC

Admin

4. The Administration was requested to take into consideration the following suggestions and concerns raised by members in reviewing its proposal of imposing mandatory requirements on owners to follow the procedures set out in BMO, instead of the deed of mutual covenant (DMC), for the appointment of an MC –

- (a) The provisions of DMCs of some housing estates had set out clear and fair procedures for the appointment of an MC which would enhance the representativeness of the MC, such as each block would have a representative to serve on the MC, and the owners should be allowed to follow these appointment procedures;
- (b) the Administration should not impose the mandatory requirements across the board so that an MC which had been formed by owners in accordance with provisions in their respective DMCs could remain valid if the owners concerned so wished, unless the relevant provisions in the DMCs were clearly unfair or improper, such as spouses of owners would be appointed as members of an MC;
- (c) a detailed mechanism should be provided in BMO to require owners to opt into the statutory scheme by way of passing a resolution at an owners’ meeting for the formation of MCs so that existing MCs which had been formed in accordance with the provisions in their respective DMCs would be allowed to maintain their status quo if they wished to do so;
- (d) if the mechanism in paragraph 4(c) was provided for, the Administration should consider the possibility that the provisions of DMCs which owners had opted to follow might contravene the

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provisions in BMO;

- (e) whether confusion would be caused to the day-to-day work and re-appointment of the existing MCs which were formed in accordance with the provisions in their respective DMCs if the statutory appointment procedures were imposed;
- (f) what would be the legal status of an MC which was formed in accordance with its house rules on appointment procedures passed by a resolution at an owners' meeting and whether such appointment rules would be binding on subsequent terms of the MC.

5. To facilitate further discussion of clause 4, the Administration was also requested to provide the following information for members' reference –

- (a) the judgment of *Siu Siu Hing v Land Registrar* (HCAL 77/2000); and
- (b) provisions relevant to the appointment procedures of an MC in the DMC of Provident Centre in North Point.

Date of next meeting

6. Members noted that the next meeting would be held on 10 January 2006 at 8:30 am.

7. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2  
Legislative Council Secretariat  
25 January 2006

**Proceedings of the Bills Committee on  
Building Management (Amendment) Bill 2005  
on Wednesday, 4 January 2006 at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000-002800	Chairman Admin Mrs Selina CHOW Mr WONG Kwok-hing ALA4 Ms Emily LAU	<p><b>Administration's response to matters arising from the meeting on 14 June 2005</b> [LC Paper No. CB(2)2192/04-05(01)(revised)]</p> <p><u>Proposed new section 29A – Protection of members of management committee (MC)</u> [Paragraphs 14-20 of LC Paper No. CB(2)2192/04-05(01)(revised)]</p> <ul style="list-style-type: none"> <li>- the Administration's new proposal that members of an MC would have to prove that they had acted in good faith as well as acted in a reasonable manner in order to exercise the protection under the proposed new section 29A</li> <li>- members' general view that there was no need to make further provisions under the Building Management Ordinance (BMO) to expressly provide that compliance with the Codes of Practice issued by the Secretary for Home Affairs under section 44(1) would be a factor to be considered by the court in the application of the "reasonableness" test</li> <li>- misinformation from building manager and remedy for the owners' corporation (OC) concerned</li> </ul>	
002801-005249	Chairman Admin Mr WONG Kwok-hing Mr LI Kwok-ying Ms Audrey EU	<p><b>Administration's response to Hon CHOY So-yuk's letter of 16 June 2005</b> [LC Paper No. CB(2)2192/04-05(02)]</p> <p><u>The requirement that the MC chairman had to convene a general meeting of an OC at the request of not less than 5% of the owners for the purpose specified by such owners within 14 days of receiving such request</u></p> <p>Administration's new proposal to stipulate under BMO that the chairman would have to hold the general meeting within a specified period of time upon receipt of the owners' request.</p>	

Time marker	Speaker	Subjects	Action required
		(This issue to be further discussed later when the Bills Committee deliberates LC Paper No. CB(2)222/05-06(02)).	
005250-020601	Chairman Admin Mr WONG Kwok-hing Mr Albert HO Mr LI Kwok-ying Mr Alan LEONG Mrs Selina CHOW Ms Audrey EU Ms Emily LAU	<p><b>Administration's response to Hon WONG Kwok-hing's letter of 22 July 2005</b>            [LC Paper No. CB(2)2617/04-05(01)]</p> <p><u>Application by an MC for registration of owners as a corporation made to the Land Registrar</u></p> <p>The Chairman suggested that as a protection clause for the Land Registrar, section 8 should be amended to stipulate expressly that the Land Registrar could not issue more than one certificate of registration for an OC in respect of one building.</p> <p><u>Appointment of an MC</u>            (Questions 3 &amp; 6)</p> <p>Various concerns expressed by members on the Administration's proposal of imposing mandatory requirements on owners to follow the procedures set out in BMO, instead of the deed of mutual covenant (DMC), for the appointment of an MC, and the way forward of the 61 OCs which had been formed by owners in accordance with provisions in their respective DMCs.</p>	<p><b>Admin to consider the Chairman's suggestion</b>            (Para. 3 of the minutes)</p> <p><b>Admin to take into consideration members' concerns in reviewing its proposal and to provide supplementary information</b>            (Paras. 4 &amp; 5 of the minutes)</p>
020602-020615	Chairman	Date of next meeting	