

立法會
Legislative Council

LC Paper No. CB(2)1320/05-06

(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 Thursday, 9 February 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LI Kwok-ying, MH
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man

Members absent : Hon Albert HO Chun-yan
Hon Margaret NG
Hon Abraham SHEK Lai-him, JP
Hon Alan LEONG Kah-kit, SC
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

Action

I. Confirmation of minutes

[LC Paper No. CB(2)1050/05-06]

The minutes of the meeting held on 10 January 2006 were confirmed.

II. Meeting with the Administration

[LC Paper No. CB(2)2617/04-05(03)]

Followed-up discussion on adjournment of owners' meeting

2. The Administration informed members that after considering members' views expressed at the previous meeting and consulting the Department of Justice, the Administration proposed that –

- (a) the common law power for the adjournment of meeting should be applicable to owners' meeting convened under the Building Management Ordinance (BMO);
- (b) the requirement of issuance of notice at least 14 days before the meeting should also apply to all adjourned meeting and new provisions to this effect would be introduced;
- (c) the original proxy instrument could also be used at an adjourned meeting, unless the owner concerned had signed a new proxy replacing the original one which would then be deemed as being revoked.

Action
Admin

The Administration would provide a paper setting out details of the above revised proposal.

3. The Bills Committee then deliberated paragraphs 9-15 on “format of the proxy instrument” and paragraphs 16-18 on “cross-checking of proxy voting” of the paper on matters arising from the meeting on 12 July 2005 [LC Paper No. CB(2)2617/04-05(03)] (Index of proceedings at **Annex**).

Format of the proxy instrument

4. Regarding the two proposed options set out in Annex A to the Administration’s paper [LC Paper No. CB(2)2617/04-05(03)], except Mr WONG Kwok-hing who preferred Option B, other members who expressed views all indicated support for Option A mainly on the following grounds –

- (a) the proposed format was relatively simple and easy to understand which would facilitate use of proxy instruments by owners and owners’ corporations (OCs);
- (b) allowing too much flexibility to owners to alter the statutory format of the proxy instruments could lead to disputes over the validity of proxy instruments and operational problems in the holding of owners’ meetings;
- (c) in appointing a person to be his proxy, the owner supposedly should have a certain degree of trust in the person who could vote on his behalf;
- (d) although Option B was in line with flexibility allowed to shareholders in company meetings under the Companies Ordinance, it should be noted that companies were in a much better position than OCs in dealing with proxy instruments of different formats, given that companies had much better professional support in their operation;
- (e) owners would be discouraged from appointing proxies if a proxy instrument was made too complicated, e.g. if various resolutions on the agenda were included; and
- (f) adopting Option A was to strike a right balance as it would create the least problems but could resolve the most problems.

5. Mr WONG Kwok-hing requested to put on record the following reasons why he supported Option B –

Action

- (a) it could protect owners' right to choose over matters of building management and maintenance and better protect their interests;
- (b) it could meet the operational needs of OCs, particularly those of large housing estates when they needed to carry out major maintenance works and in that situation, owners were often required to choose from amongst various options by voting at an owners' meeting. As many owners might not be available to attend an owners' meeting, and if they could not indicate their instructions to the proxy on the proxy instruments, they might choose not to vote at all.

6. Mr Andrew CHENG pointed out that Option A did not deprive owners of their right to vote as owners could still exercise their own voting right by attending the owners' meeting/general meeting in person if they wished to do so. He said that he supported the Administration taking measures to reduce, as far as possible, disputes over the validity of proxy instruments in order to enhance owners' trust in OCs. He also urged the Administration to step up public education and publicity on the functions and the use of proxy instruments stipulated in the law after passage of the Bill.

Admin

7. The Administration was requested to take into consideration members' views expressed above and draw up detailed proposals for consideration by the Bills Committee.

Inclusion of additional information on the proxy instruments and cross-checking of proxy voting

Inclusion of additional information on the proxy instruments

8. Mr LEE Kwok-ying, Ms Miriam LAU and Mr WONG Kwok-hing considered it necessary to mandate owners to give at least the first four digits or all the digits of their Hong Kong Identity Card (HKID) numbers on the proxy instruments as they considered that without such information, the mere signature of an owner on a proxy instrument could hardly serve the purpose of verification and for the same reason, they considered that the witness should also be required to give at least the first four digits or all the digits of their ID numbers on the proxy instruments.

9. Mr Albert CHAN and Mrs Selina CHOW did not consider it necessary to mandate owners to include their ID numbers and the name/signature of a witness on the proxy instruments because –

- (a) it could serve the purpose of verification of a proxy instrument by including the name, signature and address of an owner, as it was the established practice for the secretary of an OC to check the

Action

signature upon receipt of a proxy instrument;

- (b) owners would be deterred from appointing proxies if they were required to give their ID numbers and to find a witness; and
- (c) a lot of extra work of checking would be created and problems would be caused to the holding of an owners' meeting if there was doubt about the information of a witness signed on any proxy instrument.

10. Mr CHAN and Mrs CHOW agreed that the inclusion of contact telephone number of the owner should only be made optional so that a proxy instrument would not be made invalid merely because it did not include such information. Mr Jasper TSANG, however, considered that in relation to the purpose of verification of proxy instruments, the measures set out in paragraph 17 of the Administration's paper were more effective than inclusion on the proxy instruments of the additional information set out in paragraph 12 of the same paper.

11. Mr Albert CHAN proposed that the inclusion of only the following information on the proxy instruments should be made mandatory –

- (a) the name, signature and address of the owner; and
- (b) the date of signing the proxy instrument.

Mr CHAN suggested that in case two different proxy instruments signed by the same owner on the same date were lodged with the secretary of the OC, both proxy instruments would become void. He, however, agreed that it was not necessary to stipulate this in BMO. Mr LEE Kwok-ying proposed that this suggested arrangement, if adopted, should be included in the guidelines for reference by OC and owners if not stipulated in BMO.

Admin

Cross-checking of proxy voting

12. Members agreed that for the purpose of prevention of abuse of proxy instruments, the following practices which were set out in the existing guidelines for reference by OC and owners should be made mandatory under BMO –

- (a) the secretary of an OC had to acknowledge receipt of all valid proxy instruments submitted by depositing a receipt slip (preferably with an authorised signature of the OC and/or the seal of the OC) in the letter box of the owner; and

Action

- (b) after verifying the proxy instruments, the secretary of the OC had to post the information in respect of those flats where a proxy had been appointed in a prominent place of the venue of the owners' meeting for inspection.

13. Based on the above principles, members further agreed that BMO should be amended along the following lines –

- (a) the secretary of the OC needed to post the information in respect of those flats where a proxy had been appointed in a prominent place of the venue of the owners' meeting for inspection *prior to the holding of the meeting* and if the secretary failed to do so, the secretary would not be subject to penalties but he/she had to arrange to do so *within a specified period of time, say, seven days, after the owners' meeting was held*. Failing that, the secretary would be held liable and subject to penalty.
- (b) The secretary's failure to post the above information in a prominent place of the venue of the owners' meeting for inspection *prior to the holding of the meeting* would be taken into consideration by the court in deciding whether there were material irregularities in the holding of the owners' meeting concerned when the voting results of the meeting were challenged.

Admin

14. The Administration was requested to consider the suggestions set out in paragraph 13 above and draw up detailed proposals for members' consideration.

Admin

15. The Administration was also requested to confirm whether it was permissible by law to copy or take photos of the information referred to in paragraph 13 when it was posted for inspection. The Chairman suggested that if the Administration confirmed that it was permissible to do so, it should be specified in the guidelines for reference of owners and OCs.

Date of next meeting

16. Members noted that the next meeting would be held on Tuesday, 21 February 2006 at 8:30 am.

17. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 9 February 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000134-000256	Chairman	Confirmation of minutes	
000257-000459	Admin Ms Miriam LAU Chairman	Continued discussion of the Administration's paper on matters arising from the meeting on 12 July 2005 [LC Paper No. CB(2)2617/04-05(03)] <u>Adjournment of owners' meeting</u>	Admin to work out details of the revised proposal (para. 2 of the minutes)
000500-004454	Admin Chairman Ms Miriam LAU Mr WONG Kwok-hing Mr LI Kwok-ying Mr Andrew CHENG Mr Albert CHAN Ms Emily LAU Miss TAM Heung-man	<u>Format of the proxy instrument</u> [Paragraphs 9 to 10 of and Annex A to LC Paper No. CB(2)2617/04-05(03)]	Admin to consider members' views and draw up detailed proposals (para. 7 of the minutes)
004455-015237	Chairman Admin Mr LI Kwok-ying Ms Miriam LAU Mr WONG Kwok-hing Mr Albert CHAN Mrs Selina CHOW Mr Jasper TSANG Ms Emily LAU Miss CHOY So-yuk	<u>Inclusion of additional information on the proxy instruments and cross-checking of proxy voting</u> [Paragraphs 11 to 18 of LC Paper No. CB(2)2617/04-05(03)]	Admin to consider members' views and draw up detailed proposals and to provide additional information (paras. 14 & 15 of the minutes)
015238-015314	Chairman	Date of next meeting	