

立法會
Legislative Council

LC Paper No. CB(2)1494/05-06
(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 Tuesday, 21 February 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 Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
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 Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHOY So-yuk
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. Meeting with the Administration

The Bills Committee deliberated –

- (a) paragraphs 19-24 on “power to determine the validity of a proxy instrument” and paragraphs 25-26 on “police’s action in dealing with complaints against false proxy instruments” of the Administration’s responses to matters arising from the meeting on 12 July 2005 [LC Paper No. CB(2)2617/04-05(03)];
- (b) the Administration’s responses to matters arising from the meetings on 26 January 2006 and 9 February 2006 [LC Paper No. CB(2)1182/05-06(02)]; and
- (c) the Administration’s papers on “Interpretation of the term ‘majority’” and “Further interpretation of the term ‘majority’” [LC Paper Nos. CB(2)2617/04-05(04) and CB(2)954/05-06(01) respectively].

Index of proceedings is at **Annex**.

Power to determine the validity of a proxy instrument
[LC Paper No. CB(2)2617/04-05(03)]

2. The Chairman and Ms Miriam LAU expressed the following concerns about the Administration’s proposals of giving powers to determine the validity of questionable proxy instruments to the chairman of a management committee

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(MC) and to the person presiding at the meeting in the case of meeting convened for the purpose of appointing an MC –

- (a) the MC chairman might resign before the holding of the meeting;
- (b) as other owners could not challenge the exercise of such power by the MC chairman, it might be subject to abuse; and
- (c) as the above would be a statutory responsibility of the MC chairman, it was uncertain whether he could use the funds of the owners' corporation (OC) to hire a lawyer to assist him in exercising such power.

Admin

3. The Administration was requested to prepare Committee Stage amendments (CSAs) by stipulating clearly as to who should be given the power to determine the validity of questionable proxy instruments in the absence of the MC chairman, or in case his office was left vacant before the meeting was held. The Chairman reminded the Administration to give due regard to the need for operational efficiency as well as checks and balances in working out the proposed arrangements.

4. The Administration was also requested that if the proxy instrument stipulated in the Bill was adopted, it should be clearly stated in the relevant guidelines that OCs could not impose any additional requirement in respect of the statutorily stipulated format of proxy instrument and the format should be widely publicised.

Cross-checking of proxy voting

[LC Paper No. CB(2)1182/05-06(02)]

5. With regard to the Administration's views set out in paragraphs 4 and 5 of its paper [LC Paper No. CB(2)1182/05-06(02)], Ms Audrey EU suggested that the Home Affairs Department should compile a list of lawyers for the reference of OCs so that owners could hire their services for the holding of owner's meetings, particularly for seeking their legal advice in determining the validity of proxy instruments. Mr Alan LEONG considered that it should not be difficult for the secretary of an MC to display the information in respect of those flats where a proxy had been appointed within seven days of the date of the owners' meeting because the secretary only needed to display the same information which had been posted for inspection before the owners' meeting together with a schedule showing owners of those flats who had turned up for the meeting even though they had appointed a proxy.

Action

6. After discussion, members in general agreed that –
- (a) the proposals spelt out in paragraphs 5(a) and (b) of the Administration’s paper should be implemented and the Administration would introduce CSAs as appropriate;
 - (b) in order to facilitate the implementation of the above, the deadline for submission of proxy should be set as 48 hours before the owners’ meeting; and
 - (c) as there might be difficulties to implement the proposal spelt out in paragraph 4(c) of the Administration’s paper as envisaged by the Administration, the proposal could be re-considered later after the Administration had implemented the new legislative measures about proxy. However, the Administration should encourage OCs and owners to adopt the proposed measure by including it in the relevant guidelines.

Interpretation of the term “majority” used in the Building Management Ordinance (BMO)

[LC Paper No. CB(2)2617/04-05(04) and CB(2)954/05-06(01)]

- Admin 7. Members in general agreed to the Administration’s new proposals spelt out in paragraphs 8, 12, and 15 of the Administration’s paper [LC Paper No. CB(2)2617/04-05(04)] and paragraph 10 of Administration’s paper [LC Paper No. CB(2)954/05-06(01)]. However, the Administration was requested to stipulate that if nominees for the same office received the same number of votes, the person presiding the meeting should exercise his casting vote in accordance with the lot drawn by him. The Administration would introduce CSAs as appropriate.

- Admin 8. The Administration was also requested to work out how the “majority rules” principle would be applied in the selection of tenders by an OC for members’ consideration.

II. Any other business

Date of next meeting

9. Members noted that the next meeting would be held on Thursday, 9 March 2006 at 10:45 am.

Action

Future meeting schedule

Clerk 10. At the suggestion of Ms Emily LAU, the Chairman said that the Bills Committee should consider at the next meeting the need to increase the number of meetings held in each month from April onwards. To facilitate discussion, the Clerk would prepare a proposed meeting schedule for members' consideration at the next meeting.

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

Council Business Division 2
Legislative Council Secretariat
22 March 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Tuesday, 21 February 2006 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000524-003754	Chairman Admin Ms Miriam LAU Ms Emily LAU	<p><u>Continued discussion of the Administration's responses to matters arising from the meeting on 12 July 2005</u> [LC Paper No. CB(2)2617/04-05(03)]</p> <ul style="list-style-type: none"> - power to determine the validity of a proxy instrument" (paragraphs 19-24 of the paper) - who should be given the power to determine the validity of questionable proxy instruments in the absence of the Management Committee (MC) chairman, or in case his office was left vacant, before the meeting convened for the purpose of appointing an MC was held - police's action in dealing with complaints against false proxy instruments (paragraphs 25-26 of the paper) 	Admin to prepare draft Committee Stage amendments (CSAs) (Para 3 of the minutes)
003755-013759	Chairman Admin Ms Audrey EU Mr Albert HO Ms Emily LAU Mr Alan LEONG Ms Miriam LAU	<p><u>Discussion of the Administration's responses to matters arising from the meetings on 26 January 2006 and 9 February 2006</u> [LC Paper No. CB(2)1182/05-06(02)]</p> <ul style="list-style-type: none"> - Cross-checking of proxy voting - proposals in paragraphs 5(a) and (b) of the Administration's paper and the deadline for submission of proxy should be set as 48 hours before the owners' meeting - the difficulties to implement the proposal spelt out in paragraph 4(c) of the Administration's paper as envisaged by the Administration 	Admin to prepare CSAs (Para. 6(a) of the minutes)

Time marker	Speaker	Subjects	Action required
013800-015552	Chairman Admin Ms Miriam LAU Ms Emily LAU Mr Albert HO	<p><u>Discussion of the Administration's papers on "Interpretation of the term 'majority'" and "Further interpretation of the term 'majority'"</u> [LC Paper Nos. CB(2)2617/04-05(04) and CB(2)954/05-06(01)]</p> <ul style="list-style-type: none"> - Interpretation of the term "majority" used in the Building Management Ordinance (BMO) - Administration's new proposals spelt out in paragraphs 8, 12, and 15 of the Administration's paper [LC Paper No. CB(2)2617/04-05(04)] and paragraph 10 of Administration's paper [LC Paper No. CB(2)954/05-06(01)] - if nominees for the same office received the same number of votes, the person presiding the meeting should exercise his casting vote in accordance with the lot drawn by him - members' enquiries about how the "majority rules" principle would be applied in the selection of tenders by an owners' corporation 	<p>Admin to prepare CSAs (Para. 7 of the minutes)</p>
015553-015744	Chairman Ms Emily LAU Admin	<ul style="list-style-type: none"> - Date of next meeting - Consideration of the need to increase the number of meetings held in each month from April onwards at the next meeting 	<p>The Clerk to prepare a proposed meeting schedule (Para. 10 of the minutes)</p>