

立法會
Legislative Council

LC Paper No. CB(2)1748/05-06

(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, 23 March 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 CHOY So-yuk, 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 LEUNG Kwok-hung
Hon TAM Heung-man

Members absent : Hon Albert HO Chun-yan
Hon Margaret NG
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 Patrick LAU Sau-shing, SBS, JP

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. Confirmation of minutes

[LC Paper No. CB(2)1494/05-06]

The minutes of the meeting on 21 February 2006 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)222/05-06(02) and CB(2)2617/05-06(05)]

2. The Bills Committee deliberated –

- (a) paragraphs 9 to 16 of the Administration's paper on "Procurement by owners' corporations (OCs) and managers" [LC Paper No. CB(2)2617/04-05(05)]; and
- (b) the Administration's paper on "Owners' rights to request the Chairman of an OC to convene a general meeting of the corporation" [LC Paper No. CB(2)222/05-06(02)].

Index of proceedings is at **Annex**.

Renewal of contracts

3. Mrs Selina CHOW expressed support for the Administration's new proposal as spelt out in paragraph 11 of the paper [LC Paper No. CB(2)2617/04-05(05)] because the new proposal would give flexibility to owners to retain the existing service without the need to go through the tendering requirement, and the ultimate decision would rest with owners at an

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owners' meeting, not the management committee (MC) only. Mr LI Kwok-ying expressed the view that an MC might be in a better position to make the decision as owners tended to focus on the price, instead of the quality of service, in considering tender returns

4. The Chairman and Mr WONG Kwok-hing, however, did not support the new proposal on the following grounds –

- (a) the threshold for imposing the statutory procurement requirements involved a large sum of money, and it would be proper for procurement proposals of such a large sum to go through tendering;
- (b) the tendering process would enable owners to obtain the best quotations and the most up-to-date market information;
- (c) the tendering process could give owners a right to choose on the basis of the performance of existing contractor and other tender returns; and
- (d) it was unclear as to how a procurement proposal would be regarded as a renewal of contract, for example, whether or not it would be regarded as a renewal of contract if the contract terms had been varied.

Admin

5. The Administration was requested to consider members' views and finalise its proposal for members' consideration.

List of urgent items

6. Mr Alan LEONG indicated that he tended to support the Administration's new proposal of deleting from the Bill the proposed provisions relating to urgent items because –

- (a) it would not be feasible for owners to draw up a comprehensive list of urgent items to cover the circumstances which might arise in individual buildings;
- (b) the mechanism might be subject to abuse if the list was too general; and
- (c) as most emergency works of a building would unlikely cost over \$200,000, owners could proceed with the emergency work and would have the leeway to comply with the statutory procurement requirements.

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7. Most members present, however, expressed reservations on the Administration's new proposal on the following grounds –

- (a) while there might be practical difficulties in drawing up a comprehensive list of urgent items, owners, in consultation with appropriate professionals if necessary, could draw up a list containing only the minimum content of description of each urgent item for endorsement at an owners' meeting;
- (b) the Bill should provide for a mechanism for owners to draw up such a list of urgent items if they chose to do so;
- (c) the mechanism was necessary for owners or an MC to take prompt action to deal with emergency situation because emergency work for a large housing estate might very often cost over \$200,000 and emergency work for a single-block building would likely cost over 20% of the annual budget of an OC; and
- (d) it might be more cost effective for owners to commission a contractor to undertake overall remedial work which would cost over \$200,000, instead of carrying out remedial work on a temporary basis.

8. Mr WONG Kwok-hing specifically requested to put on record that he objected to the new proposal because it would deprive owners of the discretion to draw up a list of urgent items even if they wished to do so, and it was totally against the principle of democracy. He stressed that owners had every right to manage their properties and should be given the opportunity to discuss and decide on the list in a democratic manner at an owners' meeting.

9. The Chairman, however, was of the view that there was no relation between the provision of the mechanism for drawing up a list of urgent items and the principle of democracy. He pointed out that if owners were not allowed to draw up the pre-approved list, they would have to fully comply with the statutory procurement requirements in respect of emergency works once the threshold was reached and the procurement proposal would need to be endorsed by majority of owners at owners' meetings. In his view, owners still retained their rights to make decision in managing their properties. The Chairman also requested to put his view on record.

10. The Administration was requested to consider members' views and finalise its proposal for members' consideration. The Administration was also requested to provide a sample list of urgent items for members' reference.

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Procurement of legal service

Admin

11. Members in general agreed that it should be stipulated in the Building Management Ordinance (BMO) that OCs or building managers could not engage in lawsuits unless such a decision had been endorsed at owners' meetings by resolution. The Administration was requested to consider members' view and draw up a detailed proposal for members' consideration. The Chairman reminded the Administration to consider whether the requirement should apply to legal actions to recover arrears of management fees.

12. As regards the application of the statutory procurement requirements to legal service, the Chairman, Miss CHOY So-yuk and Mr Alan LEONG expressed the following concerns about the practicability of the proposal –

- (a) it was not feasible to estimate the litigation cost in advance and to anticipate whether the cost would exceed the statutory thresholds because legal proceedings were of an interactive nature and many lawyers would charge their service on an hourly basis; and
- (b) owners might have difficulties in obtaining adequate quotations from lawyers for the purpose of complying with the statutory procurement requirements.

Mr LI Kwok-ying expressed the view that it was inappropriate to conduct tendering for legal service, as it was fundamentally wrong to determine which lawyers to be engaged simply on the basis of price without giving any regard to the quality of service.

Admin

13. Mr LEUNG Kwok-hung and Mr WONG Kwok-hing were supportive of the proposal to apply the statutory procurement requirements to legal service. The Chairman accepted in principle that the statutory procurement requirements should apply to professional service including legal service, if the practicality issues could be addressed. The Administration was requested to consider members' views and finalise its proposal for members' consideration.

Owners' rights to request the Chairman of an OC to convene a general meeting of the corporation

Whether the duty to convene a general meeting of an OC under paragraph 1(2) of Schedule 3 should remain with the chairman alone

14. Mr WONG Kwok-hing considered that in order to have deterrent effect, penalties should be imposed on the chairman of an OC who refused to convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners. Mr LEUNG Kwok-hung considered

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that it was absolutely unacceptable for the chairman of OC to refuse to convene a general meeting of an OC at the request of owners. He suggested that BMO should be amended to the effect that if the chairman of an OC failed to convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners for a specified number of times without reasonable explanations, he would not be allowed to stay in his office. He added that he would consider moving an amendment to the Bill to this effect if the Administration did not do so.

15. Mr LI Kwok-ying suggested that in considering the question of whether the duty to convene a general meeting of an OC under paragraph 1(2) of Schedule 3 should remain with the chairman alone, members should have regard to the practical problems that some owners had abused their rights under this provision by making repeated requests for convening general meetings to discuss the same issue, hoping that it would be resolved in their favour.

16. Members agreed to continue discussion of the issue at the next meeting.

III. Any other business

A consolidated response to be provided by the Administration

17. Members suggested that as members might have expressed diverse views on various issues, the Administration should provide a consolidated response in early June 2006, setting out the Administration's finalised proposals/position in respect of members' suggestions or views which were accepted or not accepted by the Administration, for the purpose of facilitating the scrutiny process. The Administration agreed that it would provide the consolidated response, after careful consideration of members' suggestions or views, and consultation with various stakeholders if necessary.

Admin

Rescheduling of the meeting on 11 April 2006

18. Members agreed that as the Chairman was unable to attend the meeting on 11 April 2006 at 10:45am because of another important commitment, the meeting on that day would be re-scheduled for Tuesday, 30 May 2006 at 2:30pm.

Date of next meeting

19. Members noted that the next meeting would be held on Thursday, 6 April 2006 at 2:30 pm.

20. There being no other business, the meeting ended at 12:50 pm.

Action

Council Business Division 2
Legislative Council Secretariat
19 April 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 23 March 2006 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000-000819	Chairman Mrs Selina CHOW	<u>Confirmation of minutes of meeting on 21 February 2006</u> [LC Paper No. CB(2)1494/05-06] <u>Re-scheduling of meeting to be held on 11 April 2006 for 30 May 2006</u> <u>General discussion on the pace of scrutiny work of the Bills Committee</u>	
000820-002517	Chairman Mr WONG Kwok-hing Admin Mrs Selina CHOW Mr LI Kwok-ying	<u>Renewal of contracts</u> [paragraphs 9 to 12 of LC Paper No. CB(2)2617/05-06 (05)]	Admin to consider members' views and finalise its proposal. (para. 5 of the minutes) Admin to prepare a consolidated response and provide it in early June 2006 (para. 17 of the minutes)
002518-011233	Chairman Mr WONG Kwok-hing Mrs Selina CHOW Admin Mr Alan LEONG Mr LI Kwok-ying	<u>List of "urgent items"</u> [paragraphs 13 to 15 of LC Paper No. CB(2)2617/05-06 (05)]	Admin to finalise its proposal and provide a sample list of urgent items. (para. 10 of the minutes)
011234-014132	Chairman Admin Miss CHOY So-yuk Mr LEUNG Kwok-hung Mr Alan LEONG Mr LI Kwok-ying Mr WONG Kwok-hing	<u>List of "urgent items" – whether the procurement requirements should be waived for legal service</u> [paragraph 16 of LC Paper No. CB(2)2617/05-06 (05)]	Admin to draw up a detailed proposal. (para. 11 of the minutes) Admin to finalise its proposal.

Time marker	Speaker	Subjects	Action required
			(para. 13 of the minutes)
014133 - 020233	Chairman Admin Mr WONG Kwok-hing Mr LEUNG Kwok-hung Mr LI Kwok-ying	<u>Briefing by the Administration on its paper on "Owners' rights to request the Chairman of an OC to convene a general meeting of the corporation"</u> [LC Paper No. CB(2)222/05-06(02)] - whether the duty to convene a general meeting of an OC under paragraph 1(2) of Schedule 3 should remain with the chairman alone	

Council Business Division 2
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