

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1707/04-05

(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, 17 May 2005 at 10:45 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 Miriam LAU Kin-ye, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Andrew CHENG Kar-foo  
Hon Albert CHAN Wai-yip  
Hon LI Kwok-ying, MH  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon CHOY So-yuk  
Hon Abraham SHEK Lai-him, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Hon Patrick LAU Sau-shing, SBS, JP  
Hon TAM Heung-man

**Public Officers attending** : Item II

Department of Home Affairs

Mr Isaac CHOW  
Acting Director of Home Affairs

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. Election of Chairman**

Mr James TO was elected Chairman of the Bills Committee.

**II. Meeting with the Administration**

[Ref : HAD HQ IV 20/5/1, LC Paper Nos. CB(3)477/04-05, LS57/04-05 and CB(2)1550/04-05(01) to (05)]

2. The Bills Committee deliberated (Index of proceedings at **Annex**).

Information requested by members

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3. The Administration was requested to provide the following information –

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- (a) the manpower and caseload of the District Building Management Liaison Teams set up in 18 District Offices and the types of cases handled by the Teams;
- (b) a breakdown, by nature of the professional advice sought, of the cases handled by the four Building Management Resource Centres; and
- (c) the timetable for the implementation of the “Building Affairs Tribunal” proposed by the Housing, Planning and Lands Bureau and the proposed ambit of the Tribunal, particularly whether it would handle disputes arising from provisions of the Building Management Ordinance (BMO).

Clerk

4. The Complaints Division of the Legislative Council (LegCo) Secretariat was requested to provide a summary (with a breakdown by types) of complaint cases on building management problems handled by the Division in the past three to five years.

Clerk

5. Members also requested to be provided with the constitutional document and any code of conduct issued by the Hong Kong Association of Property Management Companies Limited for compliance of its member companies.

Proposals included in the Bill

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6. The Administration was requested to provide responses to the following concerns and suggestions raised by members –

- (a) *Proposed new section 29A – personal liability of a member of a management committee (MC) acting in good faith in the exercise or performance of the powers and duties of the owners’ corporation (OC)*
  - (i) to explain the meaning of the expression “in good faith” in the application of the proposed new section, and whether this new section was subject to a condition that the MC member, in the first place, could not be found to have breached the relevant requirements under BMO in the performance of the powers and duties of the OC;
  - (ii) to explain the scope of protection rendered by the proposed new section, using the case cited by Mr LI Kwok-ying as an example. In the case cited, an OC had passed a resolution in accordance with the required procedures. However, the resolution was found by the OC

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of the succeeding term that it was in breach of certain requirements under BMO. According to Mr LI, the resolution had been passed in such a way that only the OC chairman had voted for it whereas a majority of the other members, though they disagreed to it, had abstained from voting;

- (iii) to explain whether, in the above case cited, persons who had executed the resolution also enjoyed the protection under the proposed new section; and
- (iv) to address the concern that people might take advantage of the proposed new section and feign ignorance to avoid taking responsibility for any irregularities.

(b) *Proposed amendment to the Seventh Schedule regarding the applicability of the termination mechanism under BMO to the termination of the appointment of the building manager under the deed of mutual covenant (DMC)*

- (i) to consider whether the above proposal would create a loophole, i.e. a real estate developer, after selling the first unit of a property development project, quickly set up an OC or an owners' committee which immediately signed a contract for a long service period (say, 20 years) with a property management company with which the developer had close relations; and
- (ii) to consider the suggestion that the termination mechanism under Schedule 7 to BMO should be applicable to the termination of the appointment of both the DMC manager and manager appointed by an OC under a management contract.

(c) *Procurement requirements by OCs and building managers*

- (i) to address the concern that increasing the threshold from \$100,000 to \$200,000 might lead to more disputes, as the increase would mean giving OCs more discretion in the procurement of goods and services;
- (ii) to explain how the Administration could ensure the enforceability of the proposed amendments to the tender procurement provisions under BMO (especially for buildings without OCs), since the Administration would not introduce any penalty clauses to address non-

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compliance or make provisions to invalidate procurement contracts which had not gone through the proposed procurement requirements; and

- (iii) to spell out in BMO the sorts of goods or services which could be regarded as “urgent matters” and needed not go through the required procurement procedures.

(d) *Procurement of third party risks insurance*

To consider setting up a statutory body, similar to the Hong Kong Export Credit Insurance Corporation, to undertake insurance for buildings which were unable to get insurance coverage due to the presence of unauthorised building structures and for buildings without OCs.

Other issues which were not covered by the proposals in the Bill

Admin

7. The Administration was also requested to respond to the following views and suggestions raised by members on issues which were not covered by the proposals in the Bill –

(a) *Resolving building management disputes by mediation*

To explore the feasibility of introducing a mandatory mechanism of mediation in judicial proceeding for dealing with building management cases. Specifically, the Lands Tribunal should provide for a procedure that once a case on building management dispute was filed to the Tribunal, the Tribunal would require or advise the party concerned to first seek the assistance of a mediator in resolving the case.

(b) *Formation of OCs in house developments*

- (i) to provide the Administration’s plan and timetable for introducing legislation to enable owners of house developments to form OCs;
- (ii) to provide, in writing, the legal advice that the Administration had obtained with regard to the various options that it had explored in resolving problems relating to the formation of OCs in house developments; and
- (iii) to re-consider a member’s proposal made some years ago that the Secretary for Home Affairs should be empowered to order the appointment of a building manager by owners

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of a building/house development which was unable to form an OC.

- (c) *Mechanism for resolving problems arising from old DMC provisions which were unreasonable and unfair to owners*

To provide a timetable for introducing a mechanism for tackling problems arising from old DMC provisions which were unreasonable and unfair to owners.

- (d) *Fund in relation to compensation for third parties*

To explain whether or not the Administration would adopt the proposal to set up a fund to grant relief payments to third parties who were victims in incidents related to the common parts of buildings.

- (e) *Relaxing the existing requirement for termination of the appointment of the DMC manager*

To re-consider the suggestion that the existing requirement for termination of the appointment of the DMC manager should be relaxed to protect owners' interests.

- (f) *Other recommendations made by the former Subcommittee on Review of BMO (the Subcommittee)*

To provide a timetable for implementing the recommendations made by the Subcommittee which had not been included in the proposals in the Bill and the Administration's plan to further amend BMO in the future.

**III. Date of next meeting**

8. With the concurrence of the Chairman, the Bills Committee would hold meetings on the following dates –

- (a) 2:30 pm to 4:30 pm on Thursday, 2 June 2005;
- (b) 4:30 pm to 6:30 pm on Tuesday, 14 June 2005;
- (c) 4:30 pm to 6:30 pm on Thursday, 23 June 2005;
- (d) 9:00 am to 12:00 noon on Saturday, 25 June 2005; and

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(e) 9:00 am to 12:00 noon on Thursday, 30 June 2005.

9. The Bills Committee agreed that –

- (a) a notice would be placed on the website of LegCo to invite written submissions on the Bill from the public; and
- (b) interested parties which intended to make oral representations to the Bills Committee would be invited to attend the meeting scheduled for Saturday, 25 June 2005 from 9:00 am to 12:00 noon.

The Chairman suggested that the Administration should provide a list of professional bodies which had been consulted by the Administration in drawing up the proposals included in the Bill for reference of the Bills Committee.

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10. There being no other business, the meeting ended at 1:00 pm.

Council Business Division 2  
Legislative Council Secretariat  
31 May 2005