

立法會
Legislative Council

LC Paper No. CB(2)298/06-07

(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, 28 September 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
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 Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LI Kwok-ying, MH, JP
Hon Alan LEONG Kah-kit, SC
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Members absent** : Hon Albert HO Chun-yan
Hon CHOY So-yuk, JP
Hon Albert CHAN Wai-yip
Hon LEUNG Kwok-hung
- Public Officers attending** : Home Affairs Department
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 Nos. CB(2)3095, 3096 and 3097/05-06]

The minutes of the meetings held on 27 June, 17 July and 18 July 2006 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)3038/05-06(02)&(03) and CB(2)3087/05-06(01)]

2. The Bills Committee deliberated (index of proceedings at **Annex**).
3. The Chairman reported that he had agreed to the Administration's suggestion of deferring discussion of the paper on "Borrowing Power of Owners' Corporations (OCs)" to a future meeting.

Recovery of management fees

[LC Paper No. CB(2)3038/05-06(02)]

4. Members in general raised no objection to the Administration's position of not adopting the Law Society of Hong Kong's suggestion to disallow owners who defaulted on payment of management fees to attend or vote at any general meetings of owners.

5. The Chairman and Ms Miriam LAU, however, considered that the Administration should explore introducing amendments to the Building Management Ordinance (BMO) in future review to the effect that it would be easier for an OC to sell the interest of the owners concerned in the land in order to facilitate recovery of management fees.

Admin

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6. The Chairman also requested to put on record his view that as a major owner could make use of his dominant position in the appointment of a management committee (MC) to default on payment of management fees, a mechanism should be provided under BMO whereby small owners could apply to the court to disallow a defaulting owner *who was the major owner* from attending or voting at a particular owners' meeting (i.e. an owners' meeting for the appointment of an MC) on the basis of some objective criteria such as length of period in default on payment of management fees and reasonableness for making the application.

Admin

7. With reference to paragraph 4 of the Administration's paper, the Chairman requested the Administration to provide precedents in which provisions in deeds of mutual covenant (DMCs) had become void and of no effect because of contravention with section 34J(2) of BMO for members' reference.

[*Post-meeting note* : The Administration informed the Secretariat on 19 October 2006 that it was not aware of any court judgments where provisions in DMC had become void and of no effect because of contravention with section 34J(2) of BMO.]

Apportionment of management fees
[LC Paper No. CB(2)3038/05-06(03)]

Admin

8. Members noted that the Administration generally did not have objection in principle to the introduction of a mechanism for amendments of provisions in DMC through legislative means for the purpose of facilitating effective building management and maintenance. The Administration informed the Bills Committee that the Administration would devise such a mechanism and revert to the Panel on Home Affairs accordingly.

9. Mr WONG Kwok-hing requested to put on record his view that there was general discontent amongst those owners to whom management fees were not allocated in accordance with the principle, as stipulated in the Guidelines for DMCs, that both the undivided and management shares of a building should be allocated on gross floor area basis.

10. Referring to paragraph 17 of the paper, the Chairman pointed out that it was the first time for the Administration to indicate categorically that it would not introduce any provision in BMO to mandate the re-allocation of management fees for existing buildings. He, however, considered that while the principle of respecting private contracts should be upheld, the Administration should continue to explore the introduction of a mechanism under BMO whereby owners could apply to the court for the re-allocation of management fees which were grossly unfair. He took the view that the test of

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"significant public interest" could be satisfied provided that objective criteria of gross unfairness would be devised and the adjustments to the management fees payable to be ordered by the court would be limited. The Chairman suggested that when reverting to the Panel on Home Affairs on the proposed mechanism for amendments of provisions in DMC, the Administration should report the progress in this regard.

Admin

Sub-deed of mutual covenant (sub-DMC)
[LC Paper No. CB(2)3087/05-06(01)]

11. The Chairman pointed out that some developers would divide the commercial part of a building into individual units for sale and the relevant sub-DMC was not required to be submitted to the Legal Advisory and Conveyancing Office for approval since these commercial units of the building were not uncompleted flats. He requested that the Administration should in the future review of BMO study the problems encountered by owners of these units in terminating the appointment of the manager who was responsible for the management of these small units.

Admin

III. Any other business

12. Members agreed that the Bills Committee would proceed with the clause-by-clause examination of the Bill at the next meeting on Thursday, 5 October 2006, at 10:45 am.

13. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 2
Legislative Council Secretariat
7 November 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 28 September 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject | Action required |
|-----------------|--|--|--|
| 000840 - 001222 | Chairman | <u>Confirmation of minutes of meetings</u> [LC Paper Nos. CB(2)3095, 3096 and 3097/05-06] | |
| 001223 - 005706 | Admin Mr WONG Kwok-hing Chairman Ms Miriam LAU Ms Emily LAU Mrs Selina CHOW | <u>Recovery of management fees</u> [LC Paper No. CB(2)3038/05-06(02)] <ul style="list-style-type: none"> - briefing on the Administration's paper - discussion on the Hong Kong Law Society's suggestion of disallowing owners who defaulted on payment of management fees to attend or vote at any general meetings of owner; - discussion on the Chairman's suggestion of introducing amendments by the Administration, in future reviews, to the Building Management Ordinance (BMO) to the effect that it would be made easier for owners' corporations (OCs) to sell the interest of the defaulting owners in the land, in order to enhance the deterrent effect of BMO and facilitate recovery of management fees; and - discussion on the Chairman's suggestion of introducing a mechanism under BMO whereby small owners could apply to the court to disallow a defaulting owner who was the major owner from attending or voting at an owners' meeting held to appoint members of the management committee (MC). | Admin to consider the Chairman's suggestion and to provide information (paras. 5 & 7 of minutes) |

| Time marker | Speaker | Subject | Action required |
|-----------------|---|--|--|
| 005707 - 012141 | Admin Chairman Mr WONG Kwok-hing Ms Emily LAU Ms Miriam LAU | <u>Apportionment of management fees</u> [LC Paper No. CB(2)3038/05-06(03)] - briefing on the Administration's paper; - introduction of a mechanism for amendments of provisions in deeds of mutual covenant (DMCs) through legislative means for the purpose of facilitating effective building management and maintenance; - discussion on the Chairman's suggestion of introducing a mechanism under BMO whereby owners could apply to the court for the re-allocation of management fees which were grossly unfair. | Admin to revert to the Panel on Home Affairs (paras. 8 & 10 of minutes) |
| 012142 - 013700 | Admin Chairman | <u>Sub-deed of mutual covenant</u> [LC Paper No. CB(2)3087/05-06(01)] - briefing on the Administration's paper; - problems in terminating the appointment of the manager under a sub-DMC | Admin to consider the Chairman's view in future reviews of BMO (para. 11 of minutes) |
| 013701 - 013809 | Chairman | Date of next meeting | |