

立法會
Legislative Council

LC Paper No. CB(2)223/05-06
(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, 4 October 2005 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 Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, 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 LEUNG Kwok-hung
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Members absent** : Hon Albert HO Chun-yan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Alan LEONG Kah-kit, SC
- 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. Meeting with the Administration

[LC Paper No. CB(2)1709/04-05(04), CB(2)1885/04-05(03), CB(2)2017/04-05(01) to (03), CB(2)2192/04-05(01)(revised), CB(2)2192/04-05(02) to (03), CB(2)2264/04-05(01), CB(2)2514/04-05(01), CB(2)2617/04-05(01) to (06)]

Continued discussion of the Administration's responses to questions raised by Miss CHOY So-yuk in her letter dated 25 May 2005

The Bills Committee agreed that as questions 9 to 11 were related to the formation of owners' corporations (OCs) in house developments, it would discuss the Administration's responses to these questions only when the Bills Committee specifically discussed about this subject later. The Bills Committee deliberated the Administration's responses [LC Paper No. CB(2)1885/04-05(03)] to questions 12 to 22 raised in Miss CHOY So-yuk's letter dated 25 May 2005 [LC Paper No. CB(2)1709/04-05(04)] (Index of proceedings at **Annex**).

New proposals of the Administration

Clause 15 of the Bill on the proposed new section 29A – personal liability of a member of a management committee acting in good faith in the exercise or performance of the powers and duties of OC

2. With reference to paragraphs 14 to 19 of LC Paper No. CB(2)2192/04-05(01)(revised), the Administration informed the Bills Committee that after considering members' views, it had no objection from the policy perspective to require members of a management committee (MC) to act in a reasonable manner for the purpose of the proposed new section 29A. Accordingly, MC members would have to prove that they had acted in good faith as well as acted

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in a reasonable manner, in order that they could claim protection under the proposed section 29A. The Administration would move a Committee Stage amendment (CSA) to this effect.

3. Members' responses to the Administration's proposal were as follows –
- (a) Mr WONG Kwok-hing, Ms Audrey YU, Mr Andrew CHENG, Mr Albert CHAN, Miss TAM Heung-man and Miss CHOY So-yuk expressed support for moving the above amendment to the proposed section 29A as they considered that the proposed new section 29A might be too loose;
 - (b) Ms Miriam LAU expressed reservations about it as it would have the effect of raising the threshold for MC members to claim the protection under the proposed section 29A; and
 - (c) Ms Emily LAU expressed concern that such an amendment would have adverse impact on the protection afforded to MC members, thereby deterring owners from participating in the work of OCs.

Clause 28(g) of the Bill – proposal to specify that the termination mechanism under the Ordinance only had to be applicable to the termination of the appointment of the manager under the deed of mutual covenant

4. With reference to paragraphs 2 to 3 of LC Paper No. CB(2)2192/04-05(01)(revised), the Administration informed the Bills Committee that after considering members' views, it proposed that the mechanism for termination of the appointment of managers under paragraph 7 of the Seventh Schedule to the Building Management Ordinance (BMO) would apply to the first manager (i.e. the manager specified under the deed of mutual covenant (DMC)) and subsequent contract managers whose contract with OC did not specify a termination mechanism at all. Therefore, if the contract had already provided for a termination mechanism (regardless of the terms/requirements), then the contractual spirit should be upheld. The Administration would move CSAs as appropriate.

Administration's responses to issues raised at the meeting

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

Clause 15 of the Bill - proposed new section 29A

- (a) to explore whether it was possible for the proposed Building Affairs Tribunal, if implemented, to handle as well libel cases

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arising from disputes in building management/maintenance between MC members and parties concerned such as property developers;

- (b) to consider whether it was feasible to provide for privilege which specifically applied to libel cases arising from discussion of OCs' affairs;
- (c) to explain, with reference to case laws, the powers vested in an OC chairman under BMO, and to address the Chairman's concern about whether such powers could be mixed up with the powers conferred by BMO on the corporation;

Clause 24 of the Bill – Meetings and procedure of corporation

- (d) to provide case laws showing that individual MC members (e.g. OC chairman or secretary) had been sued by owners for refusing to provide copies of documents of OC, such as summaries of the income and expenditure of OC, upon request and had been ordered by the court to pay for the litigation cost;
- (e) to consider a suggestion that a provision should be added to the Third Schedule to provide that, in case the owners present at a meeting of the corporation decided by passing a resolution that the MC chairman should not preside the meeting due to direct conflict of interest, the meeting would have to be presided by the deputy chairman, or the secretary, and if the deputy chairman or the secretary was not available, a person to be elected by the owners present;

Clause 28 of the Bill – mechanism for terminating the appointment of managers

- (f) to explain the rationale of the proposal referred to in paragraph 4 above put up by the Administration;

Paragraph 1(2) of the Third Schedule – the mechanism that the MC chairman had to convene a general meeting of OC at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such requests

- (g) to provide information on existing problems concerning the above mechanism and to consider measures to prevent abuses of the above mechanism by some owners to compel the MC chairman to hold general meetings of OC until after it had passed a resolution which was favoured by those owners but had been

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voted down at previous OC meetings;

Paragraph 7 of the Seventh Schedule

- (h) to reconsider a member's strong view that the termination mechanism for DMC managers should be relaxed, as it would be practically difficult for an OC to obtain a resolution of the owners of not less than 50% of the undivided shares for the purpose;

Use of OC funds to meet legal cost of litigations initiated by owners against individual members of MC for failing to perform his/her statutory duties

- (i) to explain the circumstances, making reference to relevant court cases, under which an owner could resort to OC funds to meet the legal cost incurred to him in suing individual members of MC for failing to perform his/her statutory duties and the circumstances under which an MC chairman or member could resort to OC funds to meet the legal cost of litigation involving that member in his/her capacity as MC chairman or member; and to confirm whether decisions over such matters were to be made by the OC concerned or by the court; and
- (j) to provide precedents in which the court had ordered an OC to pay for the legal costs incurred to the owner suing the OC even though the owner had lost in the lawsuit.

II. Any other business

Date of future meetings

6. Members noted that the next meeting of the Bills Committee would be held on Monday, 10 October 2005 at 10:45 am. Members also agreed that the Bills Committee would discuss and agree on a meeting schedule in the new session at its next meeting under agenda item I.

7. At the suggestion of Ms Emily LAU, members agreed that the meeting scheduled for 31 October 2005 would be cancelled to facilitate members' attendance of a meeting scheduled for the same timeslot.

8. There being not other business, the meeting ended at 12:55 pm.

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Tuesday, 4 October 2005 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000214	Chairman	Continued discussion of the Administration's responses to questions raised in Miss CHOY So-yuk's letter dated 25 May 2005. The Bills Committee deliberated the Administration's responses [LC Paper No. CB(2)1885/04-05(03)] to questions 12 to 22 raised in Miss CHOY So-yuk's letter dated 25 May 2005 [LC Paper No. CB(2)1709/04-05(04)].	
000215 - 001719	Mr WONG Kwok-hing Admin Chairman	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. Discussion on the proposal to require members of an MC to act in a reasonable manner for the purpose of the proposed new section 29A. [Paragraphs 14 to 19 of LC Paper No. CB(2)2192/04-05(01)(revised)]	Admin. to provide response (para. 5(a) & (b)).
001720 - 002922	Mr Albert CHAN Chairman Admin Ms Audrey EU	Discussion on precedents of large property developers exerting pressure on MC members by threatening to take legal actions against them and any assistance could be provided to protect the MC members.	
002923 - 004240	Miss CHOY So-yuk Chairman Admin	Paragraph 1(2) of the Third Schedule to the Building Management Ordinance (BMO) - the mechanism that the MC chairman had to convene a general meeting of OC at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such requests.	Admin. to provide response (para. 5(g)).
004241 - 010453	Ms Miriam LAU Chairman Admin Ms Audrey EU Ms Emily LAU	Various members' responses to the proposal to require MC members to act in a reasonable manner for the purpose of the proposed new section 29A.	
010454 - 011313	Mr Andrew CHENG Ms TAM Heung-man Chairman Admin	Discussion on the powers vested in an OC chairman under BMO, and whether such powers could be mixed up with the powers conferred by BMO on the corporation.	Admin. to provide response (para. 5(c)).

Time marker	Speaker	Subjects	Action required
011314 - 011644	Mr Albert CHAN Chairman	Precedents of owners' abuses of the mechanism provided in paragraph 1(2) of the Third Schedule to BMO compelling the MC chairman to hold general meetings of OC, until after it had passed a resolution which was favoured by those owners but had been voted down at previous meetings of the OC.	
011645 - 012857	Miss CHOY So-yuk Chairman Admin Ms Audrey EU Ms Emily LAU	Mechanism for determining the use of OC funds to meet legal cost of litigations incurred to an owner or the MC chairman/member arising from building management disputes.	Admin. to provide response (para. 5(i) & (j)).
012858 - 013343	Admin Chairman	Proposal to specify that the termination mechanism under BMO was only applicable to the termination of the appointment of the manager under the deed of mutual covenant (DMC). Discussion on an additional proposal that the mechanism for termination of the appointment of managers, under paragraph 7 of the Seventh Schedule to BMO, would apply to the first manager (i.e. the DMC manager and subsequent contract managers whose contract with OC did not specify a termination mechanism at all. [Paragraphs 2 to 3 of LC Paper No. CB(2)2192/04-5(01) (revised)]	Admin. to provide response (para. 5(f) & (h)).
013344 - 013835	Mr Albert CHAN Chairman Miss CHOY So-yuk Admin	Suggestion of relaxing the termination mechanism for DMC managers.	
013836 - 015249	Miss CHOY So-yuk Admin Chairman	Problems arising from the lack of penalty clauses in connection with the several proposed amendments to the Second Schedule and the Third Schedule to BMO.	Admin. to provide response (para. 5(d)).
015250 - 015942	Miss CHOY So-yuk Admin Chairman Ms Emily LAU Mr Albert CHAN	Whether or not the chairman of an MC should still preside at an OC meeting if he was considered to have direct conflict of interest with matters for discussion at the meeting.	Admin. to provide response (para. 5(e)).
015943 - 020103	Chairman Ms Emily LAU	Date of future meetings.	