

立法會

Legislative Council

LC Paper No. CB(2)299/06-07

(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, 5 October 2006, at 10:45 am
in Conference Room A of the Legislative Council Building

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|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Members present | : Hon James TO Kun-sun (Chairman) Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon Miriam LAU Kin-yee, 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, 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 Jasper TSANG Yok-sing, GBS, JP Hon CHOY So-yuk, JP Hon LEUNG Kwok-hung |
| Public Officers attending | : <u>Home Affairs Department</u> 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. Meeting with the Administration
[LC Paper Nos. CB(3)477/04-05, CB(2)3140/05-06(01) and (02)]

Clause-by-clause examination of the Bill

The Bills Committee proceeded with the clause-by-clause examination of the Bill, together with the consideration of the Committee Stage amendments (CSAs) to be proposed by the Administration (Index of proceedings attached in **Annex**).

ALA4
2. Members agreed that the Bills Committee would examine the Chinese text of the Bill. Members further agreed that, after examination of the text of the Bill in Chinese, the legal adviser to the Bills Committee would examine the English text of the Bill and alert the Bills Committee if issues were identified which required the Bills Committee's consideration. However, members could raise any legal and drafting aspects of the English text of the Bill, as appropriate, in the course of the clause-by-clause examination.

Clause 2 – Commencement

3. Members raised no objection to the Administration's CSA to the effect that the Building Management (Amendment) Ordinance 2005 (the Ordinance) shall come into operation on a day to be appointed by the Secretary for Home Affairs (SHA) by notice published in the Gazette.

4. The Administration informed the Bills Committee of its plan regarding the commencement of the relevant provisions as follows –

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- (a) in order to allow adequate time for publicity work, the Ordinance, other than sections 10, 13 and 28(e) and Part 3, would come into operation on a day which would be around three months after enactment of the Bill;
- (b) sections 10 and Part 3, which related to the procurement of third party risks insurance, could come into operation after the enactment of the Building Management (Third Party Risks Insurance) Regulation 2005; and

[*Post-meeting note* : The Administration supplemented in writing on 19 October 2006 that section 10 and Part 3 would, together with section 12 of the Building Management (Amendment) Ordinance 2000, would come into operation 12 months after the Building Management (Third Party Risks Insurance) Regulation was published in the Gazette.]

- (c) in order to allow time for owners' corporations (OCs) and managers to acquaint themselves with the new provisions, sections 13 and 28(e), which related to new requirements on procurement by OCs and managers, would take effect 12 months after enactment of the Bill.

Clause 3 – Interpretation

Repealing the definition of "authorized officer"

5. The Administration explained that instead of proposing to amend the Interpretation and General Clauses Ordinance sub. leg. C "Specification of Public Offices" in the Bill to enable SHA to delegate to other public officers his powers and duties under the Building Management Ordinance (BMO), the Administration proposed to add a new section 40E to the Bill to the effect that SHA may authorize in writing any public officer to exercise his powers and perform his duties conferred or imposed by BMO. The definition of "authorized officer" and any reference to "authorized officer" in BMO therefore would not be required.

6. The Chairman and Ms Audrey EU expressed concern that the proposed scope of delegation of powers and duties by SHA might be too broad as some of the powers under BMO should be exercised by SHA personally, e.g. power of appointment of building management agent under section 40B. The Administration was requested to provide a table setting out the relevant provisions of BMO under which the powers and duties could be delegated as well as the areas and scope of these powers and duties, if the new section 40E was added.

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Proposed definition of "convenor"

Admin

7. The Administration was requested to explain how the owners of not less than 5% of the shares in aggregate could appoint a convenor under the proposed new section 3(1)(c) (for example, when there were more than one candidate) and to liaise with the Land Registry (LR) to work out a standard form for use by the owners concerned for such purpose.

New clause 3A – References to majority of votes

Admin

8. The Administration was requested to review the drafting of the proposed new section 2B and consider if it was clear by reading that section alone that a proxy appointed by an owner to attend and vote on behalf of the owner at a meeting of owners convened under BMO would also be treated as being the owner present at the meeting.

Admin

9. The Chairman requested the Administration to consider in future review of BMO as to whether owners of a building which had set up an OC could pass a binding resolution on matters relating to building management and maintenance by following the provisions of their deed of mutual covenant (DMC).

Admin

10. The Administration was also requested to provide comprehensive guidelines on the arrangements for the implementation of the "majority rules" principle in the selection of tenders.

11. Mr Albert CHAN requested to put on record his view that the proposed new section 2B could not address the concern that the existing requirement as stipulated in the proposed paragraph 7(1)(b) of the Seventh Schedule to BMO for termination of the appointment of the manager specified under a DMC was too harsh.

Clause 4 – Appointment of management committee

Admin

12. The Administration agreed to –

- (a) amend "appointed a management committee" in the English text of the proposed new section 3(2) to read "appoint a management committee"; and

[*Post-meeting note* : The Administration has clarified that the typo only occurs in the marked-up version. Hence, there is no need to amend the proposed new section 3(2).]

- (b) abolish the requirement in proposed new section 3(6) and other relevant provisions that the convenor had to publish the notice of

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meeting in a newspaper selected from a list of newspapers specified by the Authority.

Admin

13. The Administration was requested to liaise with LR to put in place a mechanism whereby information on the total number of persons who were owners could be made readily available to owners/managers in order to facilitate the calculation of the quorum at meetings of owners convened under BMO.

14. Mr WONG Kwok-hing suggested that the proposed new section 3(8) should be amended to expressly specify that a proxy appointed by an owner to attend and vote on behalf of the owner at the meeting convened under that section also be treated as being the owner present at the meeting. The Chairman and Mr Albert CHAN, however, considered that it was not necessary to do.

II. Any other business

15. Members agreed that the Bills Committee would continue with the clause-by-clause examination of the Bill at the next meeting on Tuesday, 17 October 2006, at 10:45 am.

16. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
7 November 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 5 October 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject | Action required |
|-----------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 000000 - 000921 | Chairman Admin Ms Margaret NG | Clause-by-clause examination of the Bill and scrutiny of the Committee Stage amendments proposed by the Administration [The Bill and LC Paper Nos. CB(2)3140/05-06(01) & (02)] <u>Clause 1</u> | |
| 000922 - 001819 | Chairman Admin Ms Margaret NG Ms Emily LAU | <u>Clause 2</u> Administration's plan regarding the commencement of the Building Management (Amendment) Ordinance 2005 | |
| 001820 - 005023 | Chairman Admin Ms Audrey EU Ms Miriam LAU Mr WONG Kwok-hing Ms Emily LAU | <u>Clause 3</u> Proposed definition of "convenor" Proposed definition of "member" Repealing the definition of "authorized officer" and the effect of adding new section 40E New section 2B – References to majority of votes | Admin to provide information (paras. 6&7 of minutes) Admin to review the drafting of new section 2B (para. 8 of minutes) |
| 005024 - 005342 | Mr Albert CHAN Admin | Guidelines on the arrangement for the implementation of the "majority rules" principle in the selection of tenders by OCs | Admin to strengthen relevant guidelines (para. 10 of minutes) |
| 005343 - 010911 | Ms Audrey EU Chairman Admin Mr WONG Kwok-hing Mr Albert CHAN | Whether owners of a building which had set up an OC could pass a binding resolution on matters relating to building management and maintenance by following the provisions of their deed of mutual covenant (DMC) | Admin to consider the Chairman's concern in future reviews of the Building Management Ordinance (para. 9 of minutes) |

| Time marker | Speaker | Subject | Action required |
|-----------------|------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 010912 - 014204 | Chairman Admin Ms Emily LAU Mr WONG Kwok-hing Ms Miriam LAU | <u>Clause 4</u> Provision of a standard form to facilitate compliance with new section 3(1)(c) Requirement in proposed new section 3(6) that the convenor had to publish the notice of meeting in a newspaper selected from a list of newspapers specified by the Authority | Admin to liaise with Land Registry (para. 7 of minutes) Admin to amend new section 3(6) and relevant provisions (para. 12 of minutes) |
| 014205 - 015929 | Chairman Admin Ms Emily LAU Mr WONG Kwok-hing Ms Audrey EU Mr Albert CHAN | Provision of information on the total number of persons who were owners by the Land Registry to owners/managers A member's concern about the clarity of the drafting of the proposed new section 3(8) | Admin to liaise with Land Registry (para. 13 of minutes) |
| 015930 - 020015 | Chairman | Date of next meeting | |

Council Business Division 2
Legislative Council Secretariat
7 November 2006