

立法會
Legislative Council

LC Paper No. CB(2)351/06-07

(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 Tuesday, 17 October 2006, 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 Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LI Kwok-ying, MH, JP
Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
- Public Officers attending** : Home Affairs Department
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

Action

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 completed examination of clause 4 of the Bill (*Appointment of management committee (MC)*) and the relevant Committee Stage amendments (CSAs) to be proposed by the Administration. (Index of proceedings attached in **Annex**).

Proposed new section 3(10)(a)(i)

Admin

2. The Chairman requested the Administration to consider making reference to the Wills Ordinance (Cap. 30) and introducing into the Building Management Ordinance (BMO) the concept that signing by another person, in the presence of an owner, would also be deemed as a valid signature of that owner, in order to cater for the needs of owners who were physically incapable of signing. Ms Miriam LAU, however, expressed worry that the validity of such a signature might be subject to disputes. She pointed out that the Wills Ordinance required that the signature had to be made or acknowledged by the testator in the presence of two or more witnesses present at the same time when the signing took place. Ms LAU requested the Administration to confirm whether the making of a thumbprint or a cross would be accepted as "signing" in this context.

Admin

Action

Proposed new section 3(10)(a)(ii)

Admin 3. The Administration was requested to explain what would constitute a valid authorization by a body corporate, e.g. whether proof of authorization would require a letter issued by or relevant minutes of meeting of the body corporate.

Admin 4. The Administration was also requested to review the drafting of the expression "be sealed or stamped with the seal or stamp...", having regard to the following members' suggestions and views -

- (a) the expression could be revised as "be sealed with a seal or be stamped with a stamp";
- (b) the word "chop" could be used instead of "stamp"; and
- (c) a generic English term could be used instead of the phrase "sealed or stamped".

Proposed new section 3(10)(b) to (e)

Admin 5. On proposed new section 3(10)(e)(i) and (iii), the Administration was requested to consider whether reference to "flat" in the former provision and other relevant provisions covered the meaning of houses within a house development and, if so, whether reference to "address" in the latter should be substituted with reference to "flat" or any other better term.

Admin 6. On the determination of the validity of proxy instruments, the Administration was requested to -

- (a) explain what the convenor would need to do in order to discharge this statutory duty; and
- (b) consider the suggestion of Ms Audrey EU and Mr Albert HO that the convenor should be given statutory protection under the proposed new section 29A in the course of performing his duty under the proposed new section 3(10)(e)(ii).

7. Mr Albert HO also suggested that, if the convenor had adopted the advice of the Liaison Officer in determining the validity of proxy instrument, it could be used as an immunity against any claim for his personal liability in the course of exercising such statutory power. The Administration responded that representatives of the Home Affairs Department attending meetings of owners did not play the role of providing legal advice on procedures under BMO.

Action

Suggestion of putting in place a central mechanism for convening a meeting of owners to appoint an MC

8. Ms Emily LAU pointed out that many owners remained concerned that, notwithstanding better protection afforded to them by the proposed amendments to existing provisions, there might still be problems, e.g. collusion between the building manager and the convenor or existing MC perverting the appointment process. These owners preferred to a central mechanism to be put in place by the Administration for conducting the appointment of MC, including verification of proxy instruments. She added that it would be acceptable to owners even though the service would be provided on a fee-charging basis under the proposed mechanism. Ms Audrey EU also considered that such mechanism should be put in place to provide, at least, the service of convening a meeting of owners for the appointment of an MC. Mr Albert HO, however, expressed reservation about the suggestion.

Admin

9. The Chairman requested the Administration to consider members' views and revert to the Bills Committee later. He said that the Bills Committee could discuss issues relating to the implementation of new provisions, e.g. strengthening of publicity and relevant guidelines on new statutory requirements to be introduced under BMO at future meetings. The Bills Committee could also consider referring relevant issues to the Panel on Home Affairs for follow-up discussion.

II. Any other business

Administration's responses to members' concerns

Admin

10. At members' request, the Administration agreed to provide written responses to concerns and suggestions raised by members during the clause-by-clause examination of the Bill for further deliberation.

Date of next meeting

11. Members agreed to re-schedule the next meeting originally to be held on 23 October 2006 for Tuesday, 24 October 2006, at 10:45 am to avoid clashing with a meeting of the Panel on Environmental Affairs.

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

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Tuesday, 17 October 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000605	Chairman members	Re-scheduling of next meeting of the Bills Committee	
000606 - 001532	Chairman Admin Ms Audrey EU Ms Emily LAU Ms Miriam LAU	Briefing of the Administration's response to some of the concerns and suggestions raised by members at the previous meeting on 5 October 2006	Admin to provide response in writing (para. 10 of minutes)
001533 - 002109	Chairman Admin Ms Miriam LAU Ms Audrey EU	Clause-by-clause examination of the Bill and scrutiny of the Committee Stage amendments (CSAs) proposed by the Administration [The Bill and LC Paper Nos. CB(2)3140/05-06(01) & (02)] <u>Clause 4</u> Proposed new section 3(9)	
002110 - 003450	Chairman Admin Ms Miriam LAU Ms Emily LAU Ms Audrey EU Mr Albert HO Mr LI Kwok-ying	Proposed new section 3(10)(a)	Admin to consider the Chairman's suggestion and respond to Ms Miriam LAU's concerns (para. 2 of minutes) Admin to review drafting (para. 4 of minutes)
003451 - 003539	Chairman Admin	Proposed new section 3(10)(b)-(c) [CSAs proposed by the Administration to add new section 3(10)(b)&(c)]	Admin to consider members' concerns about reference to "address"/"flat" (para. 5 of minutes)

Time marker	Speaker	Subject	Action required
003540 - 003727	Chairman Admin	Proposed new section 3(10)(d) [CSAs proposed by the Administration to add new section 3(10)(d)]	
003728 - 004307	Chairman Admin Ms Miriam LAU Mr WONG Kwok-hing Mr LI Kwok-ying Mr Albert HO	Proposed new section 3(10)(e) [CSAs proposed by the Administration to add new section 3(10)(e)]	Admin to provide response and to consider members' suggestion (para. 3 and 6 of minutes)
004308 - 004946	Chairman Admin Ms Miriam LAU Mr LI Kwok-ying	Proposed new section 3(11)-(12) [CSAs proposed by the Administration to add new section 3(11)&(12)]	
004947 - 011234	Chairman Admin Ms Margaret NG Mr WONG Kwok-hing Mr LI Kwok-ying Ms Audrey EU	Proposed new section 3(13)-(14) [CSAs proposed by the Administration to add new section 3(13)&(14)]	
011235 - 015837	Ms Emily LAU Admin Mr Albert CHAN Chairman Ms Audrey EU Ms Miriam LAU Mr Albert HO	Suggestion of putting in place a central mechanism for convening a meeting of owners to appoint a management committee	Admin to consider members' views (paras. 8 & 9 of minutes)
015838 - 015853	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
 14 November 2006