

立法會
Legislative Council

LC Paper No. CB(2) 678/06-07

(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, 7 November 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 Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
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 Andrew CHENG Kar-foo
Hon Albert CHAN Wai-yip
Hon LI Kwok-ying, MH, JP

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

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 proposed new section 26A, clauses 14 to 20 and clause 33 of the Bill, together with relevant Committee Stage amendments (CSAs) proposed by the Administration. (Index of proceedings attached in **Annex**).

Proposed new section 26A

2. The Chairman expressed the view that it might be more appropriate to require a management committee (MC) to notify the owners of legal proceedings of significance to which the corporation was a party, instead of any legal proceedings. He suggested that reference could be made to the jurisdiction of the Small Claims Tribunal. Mrs Miriam LAU, however, considered that it would be very difficult to set an appropriate threshold. She added that the Tribunal dealt with claims not exceeding \$50,000 which was not a small sum of money.

Action

Admin 3. The Administration was requested to confirm whether proposed new subsection 26A(a) and (b) as presently drafted would cover a situation that an owners' corporation (OC) was involved in legal proceedings as a third party.

Admin 4. The Administration was also requested to provide for members' reference the judgment concerning whether an OC could authorize by resolution the use of management funds to finance the legal cost incurred by an individual member of an MC when he was sued in his personal capacity.

(Post-meeting note: relevant judgments provided by the Administration were issued to members vide LC Paper No CB(2)311/06-07(02) to (03) on 8 November 2006.)

Amended section 27(4) and proposed new paragraph 1A(a) of Schedule 6

Admin 5. The Administration was requested to consider whether the proposed new paragraph 1A(a) of Schedule 6 as presently drafted would create operational difficulties to MCs, as it would allow all those “of not less than 5% of the owners” to inspect the documents specified therein.

Amended section 28

Admin 6. The Administration was requested to -

- (a) clarify the scope of coverage of the "policy of insurance" referred to in amended new section 28(6A) and consider providing for a definition of the term in BMO;
- (b) provide the legal justifications including case law, if any, to support the Administration's view that occupiers had no insurable interests and would not be held liable to any claims arising from incidents related to the common parts of a building; and
- (c) consider from the policy perspective of protecting third parties whether the liability of occupiers should be insured.

Proposed new section 29A

Admin 7. The Administration was requested to -

- (a) clarify its policy intent as to whether the proposed new section

Action

29A would provide protection for the chairman of an MC from being claimed for personal liability in the course of exercising implied authority conferred on him by BMO; and

- (b) provide the relevant judgment concerning the interpretation about the authority of the chairman of an MC for members' reference.

(Post-meeting note: relevant judgment provided by the Administration was issued to members vide LC Paper No CB(2)311/06-07(01) on 8 November 2006.)

Amended section 34J

Admin

8. The Administration informed the Bills Committee that it would move a CSA to delete the proposed amendment to subsection 34J(4)(b), so that the termination mechanism provided in Schedule 7 also applied to managers appointed under contracts which had not stipulated a termination mechanism.

Amended section 40B

Admin

9. The Administration was requested to provide information on the criteria for compiling the list referred to in subsection 40B(3) for members' reference.

New section 40E

Admin

10. The Administration informed the Bills Committee that the proposed new provision would be deleted to address members' concern about the delegation of the powers and duties by the Secretary for Home Affairs under BMO as proposed in the Bill.

Amended section 41

Admin

11. Members expressed serious concern about the proposed new section 41(ca)(xi) which sought to have retrospective effect and intervene in agreements or understandings reached between private parties. The Administration was requested to consult with the Department of Justice and review the need for such a provision.

Action

II. Any other business

12. Members noted that the next meeting would be held on Thursday, 9 November 2006, at 2:30 pm.

13. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 2
Legislative Council Secretariat
15 December 2006

**Proceedings of the meeting of Bills Committee on
Building Management (Amendment) Bill 2005
on Tuesday, 7 November 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000001 – 002515	Admin Chairman Miss CHOY So-yuk Ms Miriam LAU	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)] Amended section 21 <u>CSAs proposed by the Administration</u> Proposed new section 26A	Admin to consider the Chairman's concerns (para. 3 of minutes)
002516 – 002954	Chairman Admin	<u>Clause 14 and CSAs proposed by the Administration</u> Amended section 27 and Schedule 6	
002955 – 003359	Chairman Admin Ms Miriam LAU	<u>Clause 33 and CSAs proposed by the Administration</u> Amended section 28 <u>Clause 14 and CSAs proposed by the Administration</u> Amended section 27 and Schedule 6	Admin to consider Ms Miriam LAU's concerns (para. 5 of minutes)
003400 - 005804	Mr WONG Kwok-hing Chairman Ms Miriam LAU Admin Ms Audrey EU	<u>Clause 33 and CSAs proposed by the Administration</u> Amended section 28	Admin to address members' concerns (para. 6 of minutes)
005805 – 010809	Admin Chairman Ms Miriam LAU	<u>Clause 15 and CSA proposed by the Administration</u> Proposed new section 29A	Admin to address the Chairman's concerns (para. 7(a) of minutes)

Time marker	Speaker	Subject	Action required
010810 – 010907	Chairman Admin	Amended section 30	
010908 – 011314	Ms Miriam LAU Ms Margaret NG ALA4	<u>Clause 16 and CSAs proposed by the Administration</u> Amended section 34D	
011315 – 011453	Chairman Admin	Amended section 34E	
011454 – 011809	Chairman Admin	<u>Clause 17</u> Amended section 34J <u>CSAs proposed by the Administration</u> Amended sections 38 and 40A	Admin to move CSA to amend subsection 34J(4)(b) (para. 8 of minutes)
011810 – 012009	Chairman Admin	<u>Clause 18</u> Amended section 40B	Admin to provide information (para. 9 of minutes)
012010 – 012159	Chairman Admin	<u>Clause 19 and CSAs proposed by the Administration</u> Amended section 40C	
012200 – 012229	Chairman Admin	<u>CSAs proposed by the Administration</u> Proposed new section 40E	Admin to delete this proposed new provision (para. 10 of minutes)
012230 - 013559	Chairman Admin Ms Miriam LAU Ms Margaret NG ALA4	<u>Clause 20</u> Amended section 41	Admin to review the need for adding proposed new section 41(ca)(xi) (para. 11 of minutes)
013600-013751	Chairman	Date of next meeting	