

立法會
Legislative Council

LC Paper No. CB(2)905/06-07

(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, 14 December 2006, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
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 CHOY So-yuk, JP
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 LEUNG Kwok-hung

Members absent : Hon Margaret NG
Hon Andrew CHENG Kar-foo
Hon Alan LEONG Kah-kit, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man

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. Confirmation of minutes

[LC Paper No. CB(2)636/06-07]

The minutes of the meeting on 9 November 2006 were confirmed.

II. Meeting with the Administration

[The Bill, LC Paper No. CB(2)3140/05-06(01) and LC Paper No. CB(2)638/06-07(01) to (03)]

2. The Bills Committee discussed paragraphs 2 to 43 of the Administration's paper [LC Paper No. CB(2)638/06-07(01)], and relevant revised Committee Stage amendments (CSAs) proposed by the Administration. (Index of proceedings attached in **Annex**).

Appointment of proxy

3. Members noted the Administration's position that inclusion of a protection clause for the convenor in checking the proxy instrument raised both human rights and Basic Law concerns on the grounds that it would impose a procedural bar on an individual's right to institute legal proceedings before a court in civil matters and a restriction on the court's jurisdictions and powers.

4. The Administration confirmed that if the convenor had no reason to believe that the proxy instrument was not in order, or had no reason to suspect that there was a motive for forgery, then it was acceptable for him, as a reasonable man, to consider that the proxy was valid. The Administration also confirmed that, if the convenor suspected that the proxy instrument lodged

Action

by a body corporate was not in order, then he might need to check the Memorandum and Articles of Association of that body corporate to ensure that the requirement of appointment of a proxy had been met. Members raised no further queries on the Administration's response.

5. Mr WONG Kwok-hing requested to put on record his dissatisfaction with the Administration's decision of not extending the new requirements for owners' corporations (OCs) on appointment of proxy to owners' committees. He considered that, as such new requirements would be useful in preventing abuses of proxy instruments, they should also be made applicable at least to those owners' committees for large estates and which were supported by property managers. He pointed out that many of these large estates had established owners' committees only because they were unable to set up OCs due to various constraints.

Admin

6. The Chairman expressed concurrence with Mr WONG's views. He suggested that the Administration should re-consider the feasibility of extending these new requirements to owners' committees in the light of the implementation experience of OCs in meeting these requirements and report the developments to the Panel on Home Affairs. Members agreed that the issue should be referred to the Panel on Home Affairs for follow up.

Clerk

Avoidance of formation of more than one OC

7. The legal adviser to the Bill Committee advised that he did not foresee that the legal basis for the proposed new section 8(1A) would be challenged.

Procurement of supplies, goods and services by OCs

Admin

8. Members requested the Administration to devise a comprehensive plan (including provision of adequate manpower resources for carrying out publicity programmes) for the implementation of the relevant provisions following the passage of the Bill

9. The Chairman said that he still had reservations about the proposed retention of the new section 20A(2A) which would allow an OC to decide at a general meeting of owners not to procure any supplies, goods or services by invitation to tender. He would give further thought to the issue.

10. Members raised no objection to the Administration's plan of publishing in the Gazette the commencement of all the provisions of the Amendment Ordinance (except those related to the third party risks insurance for OCs) around three months following the passage of the Bill.

Action

Posting of information about legal proceedings

11. Members noted the Administration's view that a management committee (MC) should be required with no exception under the new section 26A to notify owners of all legal proceedings. Members raise no further queries.

Protection of members of an MC

12. The Chairman expressed concern that the court in the case of Yeung Chung Lau and Incorporated Owners of Century Industrial Centre and Ors (DCCJ381/2006) had applied a very restrictive interpretation of section 14(1) of the Building Management Ordinance (the Ordinance) in determining whether it could be decided by resolution at an owners' meeting to financially support the chairman of the MC in a lawsuit against him. The Chairman considered that the chairman of an MC should be entitled to such financial support when legal proceedings were instituted against him in connection with his decision made regarding the validity of a proxy instrument. However, it was not clear that such a situation would be covered by section 14(1). He requested the Administration to keep in view of the result of the relevant appeal and consider whether amendments to the Ordinance would be required.

Admin

III. Any other business

13. The Bills Committee agreed to schedule three meetings for January 2007 on the following dates -

- (a) 8 January 2007 at 2:30 pm;
- (b) 16 January 2007 at 2:30 pm; and
- (c) 22 January 2007 at 8:30 am.

(Post-meeting note: a meeting schedule of the Bills Committee was issued vide LC Paper No. CB(2)670/06-07 on 15 December 2006.)

14. Members noted that the next meeting would be held on Monday, 18 December 2006, at 8:30 am.

15. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 2
Legislative Council Secretariat
18 January 2007

**Proceedings of the meeting of Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 14 December 2006, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000205	Chairman	Confirmation of minutes of meeting	
000206 - 000530	Chairman Admin Ms Emily LAU Mrs Selina CHOW	Scheduling of additional meetings	
000531 - 001514	Chairman Admin	Discussion of the Administration's paper and relevant revised Committee Stage amendments (CSAs) proposed by the Administration [LC Paper No. CB(2)3140/05-06(01) and CB(2)638/06-07(01) to (03)] <u>Proposed deletion of the new section 40E</u>	
001515 - 001559	Chairman Admin	<u>The new section 2B</u>	
001600 - 002405	Chairman Admin Ms Emily LAU	<u>Appointment of the convenor under the proposed new section 3(1)(c)</u>	
002406 - 002739	Chairman Admin Ms Emily LAU	<u>Publication of the notice of owners' meeting in a newspaper</u>	
002740 - 003059	Chairman Admin	<u>The Building Management Ordinance (BMO) vs deed of mutual covenant</u>	
003100 - 010159	Chairman Admin Ms CHOY So-yuk Mr WONG Kwok-hing	<u>Appointment of proxy</u>	Admin to report developments to the Panel on Home Affairs and the Clerk to make referral (para. 6 of minutes)
010200 - 010638	Chairman Admin ALA4	<u>Avoidance of formation of more than one owners' corporation (OC)</u>	
010639 - 010759	Chairman Admin	<u>Change of name by a corporation</u>	

010800 - 010959	Chairman Admin Mr WONG Kwok-hing	<u>Register of corporations maintained by the Land Registrar</u>	
011000 - 011029	Chairman Admin	<u>Chinese translation of "with necessary modifications"</u>	
011030 - 011542	Chairman Admin Mr WONG Kwok-hing Ms Emily LAU	<u>Allowance for members of management committee (MC)</u>	
011543 - 012719	Chairman Admin Ms Emily LAU	<u>Procurement of supplies, goods and services by OCs</u>	Admin to devise an implementation plan (para. 8 of minutes)
012720 - 014117	Chairman Admin	<u>Posting of information about legal proceedings and protection of members of MC</u>	Admin to follow up the Chairman' suggestion (para. 12 of minutes)
014118 - 014741	Chairman Admin	<u>Procurement of third party risks insurance by OCs</u>	
014742 - 014750	Chairman	Date of next meeting	

Council Business Division 2
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