

Bills Committee on Building Management (Amendment) Bill 2005

Matters Arising from Meeting on 26 January and 9 February 2006 Appointment of Proxy

At the meeting of the Bills Committee on 26 January and 9 February 2006, Members raised a number of suggestions about the appointment of proxy during the discussion of LC Paper No. CB(2)2617/04-05(03). Below are the responses of the Administration.

Adjournment of Owners' Meeting

2. Having considered Members' views, we propose that all adjourned owners' meetings should comply with the procedural requirements set out in Schedule 3 to the BMO. In particular, the requirement of issuance of notice at least 14 days before the meeting should also apply to all adjourned meetings. Furthermore, the proxy instruments deposited for the original owners' meetings (submitted in accordance with the statutory format) could be used at adjourned meetings, unless revoked, replaced by a new proxy instrument submitted by the owner, or specifically instructed by the owner to the contrary in accordance with the statutory format.

Format of the Proxy Instrument

3. Having considered Members' views, we propose that the statutory proxy format in the new Schedule 1A to the BMO should allow no flexibility for owners to indicate their voting instructions or to alter the statutorily-stipulated format.

Cross-Checking of Proxy Voting

4. To facilitate the cross-checking of proxy by owners, Members suggested that the following new provisions should be introduced into Schedule 3 to the BMO –

- (a) The secretary of the management committee should be required to acknowledge receipt of the proxy instruments submitted by depositing a receipt slip into the letter box of the owner.
- (b) The secretary of the management committee should, before the

owners' meeting, post the information in respect of those flats where a proxy has been appointed (without details about the proxy) in a prominent place of the venue of the owners' meeting for inspection by owners.

- (c) The secretary of the management committee should, within seven days of the date of the owner's meeting, display the information in respect of those flats where a proxy has been appointed (without details about the proxy) in a prominent place in the building. A penalty clause should be introduced for non-compliance of this requirement.

5. We have considered Members' suggestions in consultation with the Department of Justice. Set out below are our views –

- (a) We have no objection to the proposal in paragraph 4(a). We propose that the receipt slip should be signed by the secretary. The receipt slip should be left at the flat of the owner or deposited into his letter box (this is in line with the wordings of paragraph 2(1A)(c) of Schedule 3) as soon as reasonably practicable. This will be a responsibility for the secretary and he could be subject to civil liability. We further propose that this requirement should also apply to owners' meetings convened for the purpose of the appointment of a management committee.

- (b) We also have no objection to the proposal in paragraph 4(b). We propose that the information in respect of those flats where a proxy has been appointed should be posted in a prominent place of the venue of the owners' meeting throughout the owners' meeting. This will be a responsibility for the secretary and he could be subject to civil liability. Moreover, as this is a procedural requirement of all owners' meetings, non-compliance may also be subject to challenge in court over the validity of the meeting. We further propose that this requirement should also apply to owners' meetings convened for the purpose of the appointment of a management committee.

- (c) We however have reservation on the proposal in paragraph 4(c) –

- i. Members have already proposed a new requirement for the posting of the relevant information at the owners' meeting (i.e. paragraph 4(b) above). We consider this has already

served the purpose of cross-checking of proxy which will have a deterrent effect on the submission of false proxy instruments.

- ii. This additional requirement (with a penalty clause) for the posting of the same information within seven days of the date of the owner's meeting will raise questions like (01) whether the first or the second requirement should prevail; (02) whether complying with the second requirement could compensate for the non-compliance with the first requirement, and vice versa; and (03) whether it is mandatory to comply with the first requirement if only the second requirement comes with a penalty clause.
- iii. Owners are generally against the introduction of additional penalty clause into the BMO as they considered that it would discourage them from participating in the voluntary work of the owners' corporations.
- iv. Section 11(3) of the BMO stipulates that in the event of a contravention of the requirement about display of a copy of the certificate of registration of the owners' corporation, every member of the management committee shall be guilty of an offence and shall be liable on conviction to a fine of \$50¹. Section 12(4) stipulates that in the event of a contravention of the requirement about notifying the Land Registrar about change of particulars of a management committee, the secretary shall be guilty of an offence and shall be liable on conviction to a fine of \$100 for each day during which the contravention continues. If we were to introduce a penalty clause for non-compliance of the requirement about display of the proxy information, the penalty level would likely be along similar level. We doubt if they really have a strong deterrent effect (especially that the daily fine does not seem to be applicable in this case).
- v. More importantly, there is the enforcement issue. A penalty clause should only be introduced if it could be effectively enforced. In this case, it is simply impossible to collect evidence to prove that the relevant information is not posted

¹ Unless the member proves that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

in a particular building within seven days of the date of the owners' meeting. Whilst the Authority could act on complaint, prima facie evidence must be collected to prove that the relevant information is not posted within the statutory period.

- vi. All the new requirements regarding the cross-checking of proxy are targeted at the secretary. Whilst this is logically the duties of a secretary, it is after all an additional burden on this particular post (an even bigger burden if there is a penalty clause). This might discourage owners from agreeing to be a secretary.
- vii. We appreciate Members' reasons for the proposal of introducing a penalty clause for non-compliance. Members may like to note section 36 of the BMO which provides that a person is liable on conviction to a fine at level 3 (\$10,000) and to imprisonment for six months if he knowingly makes a false statement or furnishes false statement. Section 36 should apply to proxy instruments submitted for meetings of an owners' corporation. Together with the new requirement about posting of the proxy information throughout the owners' meeting, we consider it should serve the purpose of deterring the submission of false proxies.
- viii. Section 42 of the BMO stipulates that the Chief Executive may, by order published in the Gazette, amend the Schedules (except Schedules 7 and 9). In other words, provisions in Schedule 3 could be amended by the process of negative vetting by the Legislative Council (if no provisions in the main legislation need to be amended at the same time). The Administration could re-consider the proposal after we have implemented the new legislative measures about proxy.

Views Sought

6. Members' views are invited on the above. Subject to Members' views, we will introduce Committee Stage Amendments as appropriate.

Home Affairs Department
February 2006