

Bills Committee on Building Management (Amendment) Bill 2005

Matters Arising from Meeting on 21 February 2006 Procurement – How to Fulfill the Majority Requirement

At the meeting of the Bills Committee on 21 February 2006, Members, among the others, discussed the paper *‘Interpretation of the Term “Majority”’* [LC Paper No. CB(2)2617/04-05(04)]. Whilst Members generally agreed that the principle of “majority rules” should be retained in the selection of tenders by an owners’ corporation (OC) under the Building Management Ordinance (BMO) (Cap.344), they had concerns on how OCs may fulfil the majority requirement when there are more than two options available. Below are the responses of the Administration.

Plausible Methods of Voting

2. Procurement of goods, supplies and services often involves two or more alternatives for owners to choose. Following the two court judgments of *The Incorporated Owners of Tsuen Wan Garden v Prime Light Limited* (LDBM 83-85/2003 and CACV 1/2004), it is clear that all matters arising at a meeting of an OC (whether there are two or more alternatives for owners to choose) must be passed by more than half of the votes at the meeting. In case where no option receives more than half of the votes in the first round of voting, OCs may have to conduct second round of voting in order to comply with the majority requirement. Some plausible methods of voting are set out below.

(a) Progressive Elimination

After the first round of voting, the OC may eliminate the option with the least number of votes and then carry out the second round of voting. If still no option receives more than 50% of the votes, another round of voting will be carried out, with one more option being eliminated. If this goes on, only two options will be left in the final round of voting. This means that either one of the options must receive more than 50% of the votes.

(b) Short-listing

Alternatively, after the first round of voting, the OC may short-list the two options which gain the greatest support for a second round of voting. This also guarantees that the ultimate

choice fulfils the majority requirement.

(c) Confirmation

Another plausible solution is by way of confirmation. A second round of voting could be carried out to confirm (i.e. to either accept or reject) the option which has attained the highest number of votes in the first round. The confirmation is a binary decision, meaning that a more-than-50% resolution could be achieved.

The Administration's Views

3. The methods listed above are by no means exclusive to each other – different methods of voting may be chosen under different circumstances. For example, if there involves quite a number of alternatives, say six or seven, for the owners to choose from, then the method of progressive elimination may be too time consuming. On the other hand, if an option already receives 45% of votes in the first round of voting, then it may be more effective to comply with the majority requirement by way of confirmation.

4. We therefore consider that no specific method of voting should be stipulated in the BMO. Owners should be given the flexibility to decide how the majority requirement is fulfilled. Furthermore, paragraph 7 of the Third Schedule to the BMO stipulates that the procedure at a general meeting shall be as is determined by the corporation. Thus, as long as the method of voting is determined in accordance with the above-stated provision, we are of the view that it should be for the OC to decide which voting method should be used. This is in fact consistent with the view stated in the judgment of *The Incorporated Owners of Tsuen Wan Garden v Prime Light Limited* (CACV 1/2004) as follows –

‘The owners or the corporation can, if desired, determine any matter by a “2-way vote” and they can arrive at a “2-way vote” by progressive elimination, short-listing etc. These are procedure matters and can be determined in accordance with paragraph 7 of the Third Schedule or by the owners at meetings.’

Views Sought

5. Members' views are invited on the above.

Home Affairs Department
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