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**Bills Committee on
Building Management (Amendment) Bill 2005
Background brief prepared by the Legislative Council Secretariat**

**The Administration's proposals to amend
the Building Management Ordinance**

Purpose

This paper provides an account of the past discussions by the Panel on Home Affairs and the Subcommittee on Review of the Building Management Ordinance (BMO) on the Administration's proposals to amend BMO.

The Administration's proposals to amend BMO

2. In the last term, the Panel on Home Affairs had set up a subcommittee to discuss with the Administration the review of BMO. Following discussions with the Subcommittee, the Administration issued a paper on the proposed amendments to BMO for public consultation in 2003. The Administration reported the results of the public consultation exercise to the Panel at its meeting on 28 November 2003. The Administration also briefed the Panel at that meeting on the proposals to be included in the Building Management (Amendment) Bill 2005 (except the proposed amendments in respect of the qualifications of members of a management committee (MC)). The Subcommittee held three further meetings on 6 February, 4 March and 29 April 2004 to discuss these proposals.

3. According to the Administration, the aims of its proposals to amend BMO were to assist owners' corporations (OCs) in performing their duties and exercising their powers, rationalise the procedures for appointing an MC, and afford better protection for property owners. The Administration's proposals were related to the following areas –

- (a) personal liabilities of members of an MC for the decision of an OC;
- (b) power of an OC to borrow money from the Government in compliance with statutory notices and orders;

- (c) termination of appointment of deed of mutual covenant (DMC) manager by an OC;
- (d) appointment of an MC and its members and holders of office;
- (e) procurement of supplies, goods and services by an OC;
- (f) individual owners' rights to obtain copies of certain building management documents from an OC; and
- (g) appointment of proxy.

Past discussions of the Panel and the Subcommittee

Appointment of an MC

4. The Administration proposed to amend section 3(2) of BMO so that an MC formed under BMO may only be appointed by a resolution of the owners of not less than 30% of the shares, which must also be a majority of votes cast at the same meeting. To avoid any confusion to owners as to whether an MC should be appointed in accordance with BMO or the respective DMC, the Administration proposed to delete all references to DMC in the Second Schedule to BMO concerning the composition and procedure of an MC.

5. The Administration initially proposed to require existing MCs formed in accordance with the procedures set out in DMC to follow the revised requirements in BMO when the incumbent MC retired at the alternate annual general meeting of the corporation. Having considered members' concerns that these MCs might not have sufficient time to comply with the revised requirements, the Administration agreed that these MCs should only be required to comply with the requirements at the second alternate annual meeting¹ of the corporation.

6. The Administration proposed to specify in BMO that for owners' meetings convened under section 3(1)(c), i.e. by the owners of not less than 5% of the shares, the owners should nominate amongst themselves a person to preside over the meeting and this person should also be the one to serve the notice of meeting under section 5(1)(b). Some members expressed concern that the proposed arrangement might give rise to the problem of having more than one such group of owners. They suggested that the Administration should consider appointing a person, who should obtain support from owners of not less than 5% of the shares, to preside the owners' meeting for the appointment of an MC².

¹ According to Clause 35 of the Bill, the transitional period is a period of four years after the commencement date of the relevant provisions.

² Clause 4(a) of the Bill amends section 3(1)(c) of BMO by providing that a meeting of the owners to appoint an MC may be convened by an owner appointed to convene such a meeting by the owners of not less than 5% of the shares in aggregate.

Appointment of proxy by owners

7. The Administration proposed to include a subparagraph under paragraph 4 of the Third Schedule to BMO to provide a sample format of a proxy instrument for OCs and owners to follow. Members expressed support for the proposal. Some members suggested that to avoid unnecessary disputes, BMO should incorporate a single standard format of proxy instrument, with the options of with or without the right to vote on resolutions to be considered at an owners' meeting³.

8. The Administration also proposed to set the deadline for submission of proxy at 24 hours before an owners' meeting. Some members considered that the time was not sufficient and suggested that the time limit for the submission of proxy should be extended to 48 hours before an owners' meeting⁴.

9. The Administration proposed that the chairman of an MC should be given the power to determine the validity of questionable proxy instruments. In view of members' worry that there could be abuse of power by the chairman of an MC, the Administration subsequently proposed to empower MC to determine the validity of questionable proxy instruments. Some members, however, remained to have reservation on the revised proposal. They suggested that an independent third party should be tasked with the job. Some members also suggested that a list of owners who had appointed proxies should be displayed at a prominent place of the building concerned before an owners' meeting and at the entrance to the meeting venue.

Procurement of supplies, goods and services

10. After consideration of the views received during the public consultation exercise, the Administration revised its proposals in respect of procurement by OCs and building managers as follows –

- (a) any procurement of supplies, goods and services which exceeded the sum of \$200,000 (*\$100,000 in the original proposal*) or a sum which was equivalent to 20% (*10% in the original proposal*) of the annual budget of the corporation, whichever was the lesser, shall be done by invitation to tender; and
- (b) any procurement of supplies, goods and services which exceeded the sum of 20% (*10% in the original proposal*) of the annual budget of an OC shall be accepted or rejected by a resolution passed at a general meeting of the OC.

³ Clause 22 of the Bill provides for forms of proxy instrument which authorises the proxy to attend and vote at an owners' meeting for the appointment of MC or at a meeting of an OC respectively.

⁴ The proposed deadline for submission of proxy in the Bill is set at 24 hours before the owners' meeting.

11. Some members were of the view that BMO should provide flexibility for an OC to arrange urgent repair work or appoint a solicitor in times of emergency, without the need to follow the requirement of tendering and endorsement at an owners' meeting. The Administration agreed to draft the amending bill to the effect that OCs would be allowed to formulate a list of urgent matters that did not need to go through the required procurement procedures under BMO. The list, however, should be approved by owners at a general meeting.

Setting up of account for OCs

12. To strengthen the requirements for financial arrangements for building managers in BMO, the Administration proposed to require a building manager to establish and maintain one or more segregated accounts for holding money received in respect of the management of the building with OC as the client. The Administration also proposed to require a building manager to prepare, in addition to the summary of income and expenditure, a balance sheet within one month after each consecutive period of three months in respect of the period.

13. Members expressed support for the Administration's proposals. However, they had divided views as to whether a penalty provision should be included in BMO and on the appropriate penalty to be imposed. A member considered that a financial penalty for non-compliance with the new requirements on financial management would be more appropriate. Another member, however, supported the imposition of an imprisonment penalty as it would have a deterrent effect.

Termination of the appointment of the manager specified in DMC

14. Members noted that having considered the views received during the public consultation exercise, the Administration would re-consider the proposal to relax the existing requirements for the termination of appointment of the manager specified in DMC by an OC after the specified period of management provided in DMC, i.e. from a resolution of the owners of not less than 50% of the undivided shares to a simple majority vote.

15. Some members pointed out that the Subcommittee had almost reached a unanimous view that there was a need to change the existing mechanism for the termination of DMC manager since it would be difficult for OCs of large developments to obtain the support of owners holding not less than 50% of the undivided shares to terminate the DMC manager. They suggested that the threshold for passing the resolution could be lowered from 50% to 30%⁵.

⁵ The Administration has pointed out in paragraph 41 of the LegCo Brief on Bill that the proposal is excluded from the Bill, given the strong objections from the industry, professional organisations and some property owners.

Relevant papers

16. A list of documents which are relevant to the past discussions of the Administration's proposals to amend BMO is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
13 May 2005

Building Management (Amendment) Bill 2005
List of relevant papers

LC Paper No. CB(2)1753/00-01(03) - Paper provided by the Administration on "Procurement of third party liability insurance by owners' corporations under the Building Management Ordinance (Cap. 344)"

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/papers/1753e03.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/papers/1753e03.pdf)

LC Paper No. CB(2)1775/00-01(01) - Extract of minutes of the meeting of the Bills Committee on Building Management (Amendment) Bill 2000 on 30 March 2000

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/papers/1775e01.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/papers/1775e01.pdf)

LC Paper No. CB(2)1957/02-03(01) – Paper provided by the Administration on "The support from Home Affairs Department in resolving disputes arising from the formation of owners' corporations"

[\[http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0509cb2-1957-1e.pdf\]](http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0509cb2-1957-1e.pdf)

LC Paper No. CB(2)2049/02-03(01) - Consultation paper and pamphlets provided by Administration on proposed amendments to the Building Management Ordinance (Cap. 344)

[\[http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0613cb2-2049-1e-scan.pdf\]](http://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0613cb2-2049-1e-scan.pdf)

LC Paper No. CB(2)422/03-04 - Report of the Subcommittee on Review of the Building Management Ordinance

[\[http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1128cb2-422e.pdf\]](http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1128cb2-422e.pdf)

LC Paper No. CB(2)430/03-04(01) – Paper provided by the Administration on "The result on the consultation on proposed amendments to the Building Management Ordinance (Cap. 344)"

[\[http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1128cb2-430-1e.pdf\]](http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1128cb2-430-1e.pdf)

LC Paper No. CB(2)912/03-04 – Minutes of meeting of Panel on Home Affairs on 28 November 2003

[\[http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031128.pdf\]](http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031128.pdf)

LC Paper No. CB(2)1193/03-04(01) - Paper provided by the Administration for the meeting on 6 February 2004

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0206cb2-1193-1e.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0206cb2-1193-1e.pdf)

LC Paper No. CB(2)1518/03-04(01) - Paper provided by the Administration on "Subcommittee on Review of the Building Management Ordinance (Cap. 344)"

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0304cb2-1518-1e.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0304cb2-1518-1e.pdf)

LC Paper No. CB(2)1518/03-04(02) - A summary of proposals prepared by the Legislative Council Secretariat on "Amendments to the Building Management Ordinance"

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0304cb2-1518-2e.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0304cb2-1518-2e.pdf)

LC Paper No. CB(2)2149/03-04(01) - Paper provided by the Administration on "Subcommittee on Review of the Building Management Ordinance"

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0429cb2-2149-1e.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0429cb2-2149-1e.pdf)

LC Paper No. CB(2)2151/03-04 – Minutes of meeting of the Subcommittee on Review of the Building Management Ordinance on 6 February 2004

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/minutes/bm040206.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/minutes/bm040206.pdf)

LC Paper No. CB(2)2152/03-04 – Minutes of meeting of the Subcommittee on Review of the Building Management Ordinance on 4 March 2004

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/minutes/bm040304.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/minutes/bm040304.pdf)

LC Paper No. CB(2)2226/03-04(01) – Paper provided by the Administration on "Proposed standard proxy instrument"

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0429cb2-2226-1e.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/papers/ha_bmo0429cb2-2226-1e.pdf)

LC Paper No. CB(2)2226/03-04(02) - Paper provided by Hon Tommy CHEUNG containing views on the suggested amendments to the Building Management Ordinance (Chinese version only)

LC Paper No. CB(2)3065/03-04 - Final report of the former Subcommittee on Review of the Building Management Ordinance (Cap. 344)

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/reports/habmocb2-3065e.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/reports/habmocb2-3065e.pdf)

LC Paper No. CB(2)3207/03-04 – Minutes of meeting of the Subcommittee on Review of the Building Management Ordinance on 29 April 2004

[\[http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/minutes/bm040429.pdf\]](http://www.legco.gov.hk/yr00-01/english/panels/ha/ha_bmo/minutes/bm040429.pdf)

LC Paper No. CB(2)196/04-05(01) - Paper provided by the Administration on "The case of Albert House: Measures to protect flat owners from legal liability or claims arising from or in respect of unauthorized building structures or common parts of their buildings"

[\[http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/ha1112cb2-196-1e.pdf\]](http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/ha1112cb2-196-1e.pdf)