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Building Management (Amendment) Bill 2005

Thank you for your letter of 6 May 2005.

2. Set out below are our comments on the questions raised in your letter about the Building Management (Amendment) Bill 2005 (the Bill).

Clause 4

3. The Administration proposed at the meeting of the Subcommittee on Review of the Building Management Ordinance (BMO) on 6 February 2004[1] that owners should be reminded in section 3 of the BMO of the importance of making reference to the voting rights of shares which are specified in the deeds of mutual covenant (DMC). The proposal was adopted in the Bill through inclusion of the provisions about voting rights in the existing section 5 (in particular section 5(5)(a)) into the amended sections 3, 3A and 4.

[1] LC Paper No CB(2)1193/03-04(01)

4. You will note that the existing section 5 of the BMO will be repealed through clause 7 of the Bill. We consider that the present cross-referencing in section 5 to sections 3, 3A and 4 is inconvenient and confusing to owners. Hence, we have included the provisions under section 5 which are related to the procedures of owners' meetings convened for the purpose of appointing a management committee in various ways as provided under sections 3, 3A and 4.

Clause 4(a)

Sub-paragraph (a)

5. We do not consider it necessary to include a provision in section 3 to deal with the competing claims by more than one group of owners of 5% of the shares all wanting to convene an owners' meeting. Firstly, the Land Registrar will only register one owners' corporation (OC) for one building under section 8 of the BMO. This means that the first group to be issued with a certificate of registration from the Land Registrar will be the first management committee of the OC. Secondly, quite some preparation work is required for the convening of an owners' meeting – including the publication of a notice in a newspaper, obtaining from the Land Registrar and then verifying the owners' records, finding the suitable venue, etc. According to our record, it is rare that such situation occurs. Thirdly, even when such odd cases happened, District Offices of the Home Affairs Department (HAD) would mediate among the owners. Fourthly, HAD will only waive the fees for obtaining the owners' records of a building once for each building – and such records are essential for the convening of the first owners' meeting. This in effect means that in practice, the first group of owners of 5% who submits the request to HAD will be given the waiver and this group will convene the owners' meeting.

Sub-paragraph (b)

6. Management of private buildings is squarely the responsibility of the property owners themselves. Other than the building manager and any person specified in the DMC, we do not think that it is appropriate to allow an independent person, other than the owners themselves, to convene an owners' meeting, main purpose of which is to appoint a management committee to decide on the management matters of the building. Furthermore, it would be difficult to ascertain and define who would be an "independent" person to convene an owners' meeting for the purpose of appointing a management committee.

Clause 4(b)

Sub-paragraph (a)

7. Under all the situations mentioned in your letter, the convenor will have to adhere to the procedures set out under the BMO, instead of the DMC (whether they have more or less stringent requirements), in the appointment of a management committee. As you have pointed out in your example, the "management committee" provided under the DMC only have "similar functions as a statutorily formed management committee". It is not a statutorily formed management committee. In the case of *Siu Siu Hing v Land Registrar* (HCAL 77/2000), it was held that unless the DMC of a building specifically referred to the appointment of a management committee under section 3 of the BMO, the management committee referred to in the DMC was not the same creature as the one provided for in the BMO. Section 3(1)(a) and (b) and the new section 3(1)(c) only stipulate who is to be the convenor of the owners' meeting for the purpose of appointing a management committee, but not the procedures for that meeting. While section 3(1)(a) and (b) refer to a person stated in the DMC, it does not say that the person so specified has to refer to the DMC procedures in appointing a management committee. The procedures for appointing a management committee are set out in other provisions under section 3 and there is no mention of the need to refer to the DMC of the building[2]. This point is further reinforced by paragraph 12 of Schedule 2 (Composition and procedure of management committee), which stipulates that in the event of any inconsistency between Schedule 2 and the terms of a DMC, the former shall prevail.

8. Under the existing section 3(2) of the BMO, a management committee may be appointed, amongst others, by a resolution of the owners of not less than 30% of the shares. The percentage required was previously 50% and was lowered to the present 30% by virtue of the Building Management (Amendment) Ordinance 2000 (69 of 2000) in order to facilitate the formation of OCs. This amendment has given rise to the question of whether, despite a resolution voted in favour by the owners of not less than 30% of the shares, it would be possible for other owners with 30% or more of the shares to vote against the appointment of a management committee at the same owners' meeting. The question

[2] With the exception of the new section 3(9)(a), purpose of which is to remind owners the need to refer to the DMC for the voting rights of their shares.

was raised in the case of *Kwan & Pun Company Limited v Chan Lai Yee and others* (CACV 234/2002). We would therefore like to make it clear that the resolution on the appointment of a management committee under section 3 must be supported by not less than 30% of the shares and that there must also be a majority of votes of the owners in the same meeting.

Sub-paragraph (b)

9. We have made reference to the case of *The Incorporated Owners of Tsuen Wan Garden v Prime Light Limited* heard at the Lands Tribunal (LDBM 83-85/2003) and on appeal to the Court of Appeal (CACV 1/2004). We note that the Court of Appeal has expressed that "we believe "majority" and「多數」should be given their ordinary meanings, namely more than 50%". We do not think that the Chinese words 「以多數票」, as ruled by the Lands Tribunal and the Court of Appeal, are inaccurate translation, as compared to「過半數」, for the English word "majority". That said, we will consider further the matter in consultation with the Department of Justice.

Sub-paragraph (c)

10. We have added "in aggregate" after the new section 3(2)(b) as we consider that it is a more accurate presentation of the statutory requirements (you will note that「合計」is actually used in the Chinese version of the existing section 3(2)(b)). For the same reason, the words "in aggregate" are also added to the new/amended section 3A(5), section 4(1)(a), paragraph 7(1) and (5A)(b) of Schedule 7, paragraph 8(b) and 11A(b) of Schedule 8. While「合計」、「總計」and「總共」are now used in the Chinese text of the BMO, opportunity is taken to achieve consistency in the use of 「總共」generally.

Clause 4(c)

Sub-paragraph (a)

11. We see no problem to amend the new section 3(3)(a), (b) and (c) by changing "any person" to "the person" and adding the words "(if any)" at the end . We will amend through Committee Stage Amendments (CSAs).

Sub-paragraph (b)

12. There is no express statutory provision in the BMO governing the powers and liabilities of the convenor of an owners' meeting for the purpose of appointing a management committee. The convenor is required under the BMO to perform the following duties –

(a) prepare a notice of the meeting in accordance with the requirements under the BMO (new section 3(4));

(b) give notice of the meeting to the persons specified in the BMO (new section 3(3) and (5));

(c) display the notice of the meeting in a prominent place in the building (new section 3(6));

(d) publish the notice of the meeting in a newspaper (new section 3(6));

(e) preside at the owners' meeting (new section 3(7));

(f) receive proxy instruments from owners before the owners' meeting (new section 3(10)(b)); and

(g) comply with the requirements as set out in Schedule 2 to the BMO regarding composition and procedures of management committee (amended paragraph 2(1) of Schedule 2).

13. The existing BMO is silent on who should preside at an owners' meeting convened for the purpose of appointment of a management committee. This is not satisfactory. We note one view of the Subcommittee on Review of the BMO that there could be a separate election for the chairman for that particular meeting. However, we consider that it will be very confusing to leave this matter until the owners' meeting is convened. During this first owners' meeting, there is already the need to pass resolutions on the appointment of a management committee, the appointment of the chairman, vice-chairman and others members of the management committee, and other urgent matters. For the sake of clarity and convenience, we consider it most appropriate for the 5% of shares of the owners to decide among themselves the person to convene the first owners' meeting.

Sub-paragraph (c)

14. Under the existing BMO, the proxy instruments should be lodged not less than 24 hours before the time for the holding of the meeting at which the proxy proposes to vote, or within such lesser time as the convenor of the owners' meeting or chairman of the management committee (as the case may be) shall allow. Our proposal is to make the 24-hour deadline an absolute one. We have not extended it further to a 48-hour deadline because –

(a) setting a 48-hour deadline may cause it difficult, in some cases, for the convenor of the owners' meeting or the chairman of the management committee (as the case may be) to attain sufficient quorum for the meeting; and

(b) the Multi-storey Buildings (Owners Corporation) Ordinance enacted in 1970 actually provided for a 48-hour deadline for the submission of proxy, but that was amended to 24 hours in the 1993 legislative amendment exercise because the 48-hour requirement was considered too stringent.

Sub-paragraph (d)

15. The existing BMO is silent on who should have the power to determine the validity of a proxy instrument. The Administration has proposed at the meetings of the Subcommittee on Review of the BMO on 6 February 2004[3] and 4 March 2004[4] either the chairman of the management committee or the whole management committee to have such power. Both suggestions were not accepted by the Subcommittee and no suitable person was proposed. We have therefore dropped the amendment from the Bill.

Clause 5(a)

16. On the Chinese translation for the word "majority", please refer to paragraph 9 above.

Clause 5(c)

Sub-paragraph (a)

17. We see no problem to amend the new section 3A(3A) by

[3] LC Paper No CB(2)1193/03-04(01)
[4] LC Paper No CB(2)1518/03-04(01)

changing “any person” to “the person” and adding the words “(if any)” at the end. We will amend through CSAs.

Sub-paragraph (b)

18. On your questions about the powers and liabilities of the convenor and whether the convenor should preside at the owners’ meeting, please refer to paragraphs 12 and 13 above.

Sub-paragraphs (c) and (d)

19. On your questions about the deadline for lodging proxy instruments and the power to determine the validity of proxy instruments, please refer to paragraphs 14 and 15 above.

Clause 6(a)

20. On the Chinese translation for the word “majority”, please refer to paragraph 9 above.

Clause 6(b)

Sub-paragraph (a)

21. We see no problem to amend the new section 4(5) by changing “any person” to “the person” and adding the words “(if any)” at the end. We will amend through CSAs.

Sub-paragraph (b)

22. On your questions about the powers and liabilities of the convenor and whether the convenor should preside at the owners’ meeting, please refer to paragraphs 12 and 13 above.

Sub-paragraph (c) and (d)

23. On your questions about the deadline for lodging proxy instruments and the power to determine the validity of proxy instruments, please refer to paragraph s 14 and 15 above.

Clause 9(c)

24. Any person who submits a false declaration under the new section 7(3)(e) commits an offence under section 36 of the BMO.

Clause 11(a)(i)

25. Clause 11(a)(ii) amends section 18(2)(aa) to empower an OC to pay an allowance to a member of the management committee, irrespective of whether or not the member is a chairman, vice-chairman, secretary or treasurer. After the amendment, the existing section 18(3) is actually not necessary. It is to be retained only for the avoidance of doubt (see clause 11(b)). As the operation of section 18(2)(aa) as amended is not subject to section 18(3), the words "subject to subsection (3)" at the beginning of section 18(2)(aa) should be deleted.

Clause 15

Sub-paragraphs (a) and (b)

26. Clause 15 is included to address the concerns of the Subcommittee on Review of the BMO. Members of the Subcommittee considered that owners participating in the work of an OC were generally acting in good faith and should be given an explicit statutory assurance not to be held personally liable for the collective decisions of the OC. They also considered that it would be easier for the Lands Tribunal or the High Court to exercise their discretion in striking out the name of member(s) of management committees from the proceedings. They were aware that such a provision would not give any extra "protection" to members of the management committee.

27. Clause 15 is modeled after section 23 of the Hospital Authority Ordinance (Cap.113). We are not aware of any court cases involving the application of this section.

28. There are provisions in the BMO that specifically set out the responsibilities of certain persons, like the chairman, secretary or treasurer of the management committee. Examples include sections 12(3), 20(5), 38(1), paragraphs 1(2), 2, 3, and 6(1) of Schedule 3, paragraph 5 of Schedule 5 and paragraph 4 of the Schedule 6, etc. The person specified, instead of the management committee or the OC, may remain to be personally liable for his/her own act (or omission). For example, even with the enactment of clause 15 of the Bill, it remains to be the personal responsibility of the chairman of the management committee to convene an owners' meeting at the request of not less than

5% of the owners as required under paragraph 1(2) of Schedule 3 to the BMO.

Clause 18

29. This is only a technical amendment. Section 40B(1) provides that under specified circumstances, the Authority may order the management committee to appoint a building management agent. The existing section 40B(3) defines "building management agent" as a person appointed from a list of specified persons. This may mean that for a person to be a "building management agent", he/she must be already appointed. We have taken the opportunity to remove the ambiguity by setting out who is eligible to be appointed as a building management agent.

Clause 19(a)

30. On the Chinese translation for the word "majority", please refer to paragraph 9 above.

Clause 19(c)

31. We agree with your view that the reference to section 3(1)(a) in the new section 40C(4) may be superfluous in most situations. However, we would like to retain it because section 40C has never been invoked since its enactment in 2000 and we really do not have much experience with this provision. Moreover, the Subcommittee on Review of the BMO has not thoroughly studied section 40C and we do not want to propose substantial changes for the time being. Hence, we prefer to keep this provision intact.

Clause 19(d)

Sub-paragraphs (a) and (b)

32. Unlike the meetings of owners convened under sections 3, 3A and 4 where each owner will have one vote for each share (subject to the DMC provisions), for the meetings of owners convened under section 40C, each owner will have one vote (regardless of the number of shares they own, and also the voting power of their shares). This was the decision of the Legislative Council when passing the Building Management (Amendment) Ordinance 2000. The words "unless the DMC (if any) otherwise provides" are therefore not necessary in the new

section 40C(10)(a). For the same reason, the word "co-owners" is used in the new section 40C(10)(c) instead of "co-owners of a share". We are simply moving section 5A(b) to section 40C(10)(a) and section 5A(c) to section 40C(10)(c) and (d) with necessary modifications.

Sub-paragraph (c)

33. Section 5A(a), which provides for the definition of "owner", is not adopted in section 40C. The purpose of the definition in the existing section 5A(a) is solely to show how the concept of "one owner, one vote" works in section 40C (as opposed to the concept of "one share, one vote" in sections 3, 3A and 4). If it were to be adopted in section 40C, it would apply to all the references to "owner" in the newly amended section 40C. However, we consider that the definition is only relevant in relation to the reference to "owner" in the new section 40C(10) – and this is already set out clearly in the new section 40C(10)(a) that each owner shall have one vote. Furthermore, if the definition were to apply to all references to "owner" in section 40C, questions may arise as to whether the "owners" in a meeting of owners convened under sections 3, 3A or 4 are different from the "owners" in a meeting of owners convened under section 40C.

Clause 20(b)

34. This relates to section 7 of the draft Building Management (Third Party Risks Insurance) Regulation. If the draft section 7 only applies to arrangements, agreements or understandings made after the commencement of the Regulation, an OC or owner may evade liability by entering into such arrangement, agreement or understanding in anticipation of the commencement. In that case, the objective of that section 7 would be substantially defeated. If it applies to all pre-existing arrangements, agreements or understandings, it would interfere with the existing rights and obligations of the parties to the arrangements, agreements or undertakings. To the extent that these rights are property rights, such interference will have to satisfy a fair balance test – whether a fair balance has been struck between the demands of the general interest of the community and the protection of the individual's fundamental rights. The Department of Justice advised that the application of that section 7 to all pre-existing arrangements, agreements or undertakings did not appear to strike such a fair balance. In view of clause 20(b) in the Bill, members of the public would be aware of the intention to introduce that section 7 once the Bill was gazetted on 1 April 2005. We therefore limit the application of that section 7 to arrangements, agreements or

undertakings made after that date. The Department of Justice advised that this would be able to address the "fair balance" concern.

Clause 22

35. We note the view of some Members of the Subcommittee on the Review of the BMO that owners should be given the option to elect to give a proxy to another person to attend and vote at the owners' meeting or only to attend the meeting. This was in fact the original proposal of the Administration which was discussed at the Subcommittee meetings on 6 February and 4 March 2004[5]. However, there were also comments at the Subcommittee meetings that allowing the owners such an option would render the proxy instrument a voting paper and would create a lot of extra work for the management committee in counting the votes. Having considered the various views of the Subcommittee, and strongly believing that an owner should carefully consider appointing someone he/she trusts to be his/her proxy, we put forward the present proposal in the Bill.

Clause 23(c)

Sub-paragraph (a)

36. The existing paragraph 1 of Schedule 2 sets out the size of a management committee, if there is no DMC or the DMC does not specify the number of persons which is to constitute the management committee. We have deleted such provision so that all management committees formed under the BMO would have to follow the size requirement as stipulated in Schedule 2, regardless of the DMC provisions.

Sub-paragraph (b)

37. Upon enactment of the legislative amendment, for a management committee to be formed under the BMO, OC and the management committee will have to follow strictly the requirements set under the BMO. These include, amongst others, the size of the management committee as set out in paragraph 1 of Schedule 2. Owners remain to be free to form any other types of committees for management purpose provided under the DMC of the building, like owners' committee or owners' advisory board, but that would not be a management committee under the BMO and could not be registered as an OC with the Land

[5] LC Paper No CB(2) 1193/03-04(01) and LC Paper No CB(2)1518/03-04(01)

Registrar.

Sub-paragraph (c)

38. The Guidelines for DMC issued by the Legal Advisory and Conveyancing Office of the Lands Department provide that the manager of a building shall call the first meeting of owners as soon as possible, but in any event not later than nine months after the date of the DMC, which meeting shall appoint a chairman and committee of owners or shall appoint a management committee for the purpose of forming an OC under the BMO (Guideline No.10). In practice, we note that most managers will initiate the appointment of an owners' committee. Upon enactment of the legislative amendment, owners are free to choose to form a statutory OC under the BMO or a non-statutory body under the DMC. So long as there is the support of 30% of the shares of owners in appointing a management committee (as provided under the new section 3 of the BMO), and there is not another group of 30% or more of the shares of owners objecting to the resolution (see paragraph 8 above), a management committee could be appointed under the BMO. In the example you have quoted, if there is the support of 30% of the shares of owners in appointing a management committee under the BMO, and the other 70% not only want to appoint a non-statutory body under the DMC but also indicate their clear objection to the appointment of a management committee under the BMO at the owners' meeting convened for such purpose, then the resolution could not be passed and no management committee is formed under section 3 of the BMO. However, it must be noted that once a management committee has been appointed, as provided under section 34K of the BMO, the members of the management committee shall be deemed, for the purposes of the DMC, to be the owners' committee and shall to the exclusion of any other persons have all the functions, powers and duties of the owners' committee under the DMC.

Sub-paragraph (d)

39. In *The Incorporated Owners of Blocks F1 to F7 of Pearl Island Holiday Flat v Wong Chun Yee and others* (CACV 1911/2001), the court ruled that even if the size of a management committee falls under the statutory minimum, it does not necessarily mean that the management committee will become invalid. Paragraph 6 of Schedule 2 provides for the mechanism for appointment of members to fill the casual vacancy in a management committee. However, if there is a lack of quorum due to insufficient number of members, the management committee may not

resolve its affairs even though it still exists[6].

Clause 23(d)(i)

Sub-paragraph (a)

40. The posts of the secretary (already provided for in the Multi-storey Buildings (Owners Incorporation) Ordinance) and treasurer (included in the 1993 legislative amendment exercise) have always not been restricted to owners. The reasons are that owners may not have the necessary expertise and knowledge about secretarial and accounting/financial matters. Owners always retain the right to appoint a secretary and/or a treasurer from among owners if they so wish. We consider the present mechanism works well.

Sub-paragraph (b)

41. On the Chinese translation for the word "majority, please refer to paragraph 9 above.

Sub-paragraph (c)

42. For meetings of owners which are not convened under the BMO, they have to follow the DMC provisions. For meetings of owners which are convened for the purpose of forming a non-statutory body as provided under the DMC, the provisions in the DMC regarding meeting procedures, appointment procedures, size of the non-statutory body, membership criteria, etc. should be followed.

Sub-paragraph (d)

43. There is no specific provision in the BMO about the nomination procedures for members of management committee. In practice, the owners' meeting will usually, after passing a resolution on the appointment of a management committee, decide on the size of the management committee and then invite nominations from owners. In some cases, especially for those larger estates with the assistance of a property management company, nominations could be made to the convenor before the owners' meeting is held and time will be given to these nominees to present themselves at the owners' meeting.

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[6] Please refer to *Chan Lit Hung v The Incorporated Owners of Belvedere Garden Phase II* (LDBM 54 of 2002).

Sub-paragraph (e)

44. On your question about appointing holders of offices to the management committee, firstly, the proposed amendment is to clear the ambiguity of paragraph 2(1) of Schedule 2 together with section 18(2)(aa) on whether a holder of office or non-holder of office (but a member of management committee) is eligible for the monthly allowances. We note that the term "holders of offices" has no other use in the BMO other than for the purpose of determining one's eligibility for the monthly allowances. Hence, we have deleted such term in the BMO. Following the amendment, all members of the management committee will be eligible for the monthly allowances so long as it is endorsed at an owner's meeting and the allowances are capped by Schedule 4. In other words, all members of the management committees, whether they are chairman, vice-chairman, or do not have any titles, will be eligible for the monthly allowances subject to section 18(2)(aa). Secondly, it goes back to our proposal in paragraph 7 above that for a management committee to be formed under the BMO and the owners be statutorily incorporated, owners have to follow the procedures set out in the BMO, and not the DMC. There is hence no need for owners to refer to the DMC on whether there is any requirement for the appointment of certain holders of offices or the size of the management committee. Owners could always decide on the size of the management committee as they desire provided it meets the statutorily required minimum size.

Clause 23(f)(i)

45. Clause 23(f)(i) is modeled after section 21 of the District Councils Ordinance (Cap.547) and section 39 of the Legislative Council Ordinance (Cap.542). The existing provision in clause 23(f)(i) has missed out the point about conviction in Hong Kong or any other place. We will amend through CSAs.

Clause 23(f)(iii)

Sub-paragraph (a)

46. Any person who submits a false declaration under the new paragraph 4(3), (4) and (6) of Schedule 2 commits an offence under section 36 of the BMO. The penalty level under section 36 of the BMO is a fine at level 3 (maximum $10,000) and to imprisonment for six months.

Sub-paragraph (b)

47. There is no statutory sanction under the new paragraph 4(3), (4), (5) and (6). In the absence of a statutory sanction, the affected party may seek redress from the court. In this particular provision, the Land Registrar may exercise its discretion under section 8 of the BMO to refuse to register the OC on the ground that the new section 7(3)(e) has not been fully complied with. Once an OC has been formed, if a member of a management committee fails to submit a declaration or delays in submitting a declaration, he may be subject to removal from office by resolution of the OC as provided under paragraph 4(2)(f) of Schedule 2 to the BMO.

Clause 23(g)(i)

48. There are already existing provisions in the BMO regarding handing over of books and records to the incoming management committee. Paragraph 5A of Schedule 2 stipulates that a member of a management committee who ceases to be a member of the committee shall, within 14 days of his ceasing to be a member, hand over to the secretary or, if the secretary is not readily available, any other member of the management committee any books or records of account, papers, documents and other records in respect of the control, management and administration of the building together with any movable property belonging to the OC that are under his control or in his custody or possession.

Clause 23(g)(ii)

49. For appointment of holders of offices to a management committee, please refer to paragraph 44 above.

Clause 23(i)

50. There is no statutory sanction under the new paragraph 10A(2) of Schedule 2. In the absence of a statutory sanction, the affected party may seek redress from the court. This is in line with the provision in paragraph 4 of Schedule 5 and paragraph 3 of Schedule 6.

Clause 23(j)

51. Given paragraph 12 of Schedule 2 which provides that in case of

inconsistency, Schedule 2 will prevail over the DMC, the words "notwithstanding any provision in a DMC to the contrary" in paragraph 11(1) of the same Schedule are redundant.

Clause 24(c)(i)

Sub-paragraph (a)

52. There may be a misunderstanding here. We have not proposed to repeal or amend any provision in paragraph 1 of Schedule 3.

Sub-paragraph (b)

53. The chairman of a meeting has a common law power to adjourn the meeting so as to give all persons entitled a reasonable opportunity of speaking and voting at the meeting. An adjournment, if bona fide, is only a continuation of the meeting and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. If however, the meeting is adjourned without a date for the adjourned meeting having been fixed, a fresh notice must be given[7].

Clause 24(d)(iii)

54. On the Chinese translation for the word "majority", please refer to paragraph 9 above.

Clause 24(e)(ii)

55. On the deadline for lodging proxy instruments, please refer to paragraph 14 above.

Clause 24(f)

56. There is no statutory sanction under the new paragraph 6A(2) of Schedule 3. In the absence of a statutory sanction, the affected party may seek redress from the court. This is in line with the provision in paragraph 4 of Schedule 5 and paragraph 3 of Schedule 6.

Clause 27(c)

[7] Please refer to paragraphs 5-15 and 6-16 of "Shackleton on the Law and Practice of Meetings", 9th edition.

57. There is no statutory sanction under the new paragraph 3 of Schedule 6. In the absence of a statutory sanction, the affected party may seek redress from the court. The proposed amendment does not change the current effect of this paragraph.

Clause 28(c) and (d)

58. There is no statutory sanction under the amended paragraph 3 and 4 of Schedule 7. In the absence of a statutory sanction, the affected party may seek redress from the court. We have had the discussion at the Subcommittee on Review of the BMO on 4 March 2004[8] but there was no consensus at the meeting.

Clause 28(g)(vi)

Sub-paragraph (a)

59. Please note that paragraph 7(5)(c) of Schedule 7, which provides that a manager's appointment may not be terminated if within the previous three years, the appointment of a previous manager was terminated, is deleted through clause 28(g)(vi).

Sub-paragraph (b)

60. There is no provision in the BMO which prohibits an OC from appointing a new manager at the same meeting when it terminates the appointment of the existing manager. Paragraph 7(2)(b) of Schedule 7 already provides that the OC may, instead of giving three months' notice, pay to the outgoing manager a sum equal to the amount of remuneration for the period. This means that the existing manager could leave service immediately. It must, however, be noted that as the appointment of a new manager is highly likely to exceed the procurement thresholds under the amended section 20A, the OC or the management committee will need to comply with the tendering procedures beforehand if it wishes to make the appointment at the same owners' meeting when the existing manager's appointment is terminated.

Sub-paragraph (c)

61. Paragraph 7(5)(a) and (b) of Schedule 7 are outdated. With the passage of time, the transitional arrangements under paragraph 7(5)(a)

[8] LC Paper No CB(2) 1193/03-04(01)

and (b) can longer be applied in relation to the termination of the appointment of a DMC manager. As for paragraph 7(5)(d) of Schedule 7, we have proposed amendments to paragraph 7 of Schedule 7 to clarify that the termination mechanism provided under the Schedule applies only to DMC manager, and not other managers appointed by subsequent contracts. Following this amendment, paragraph 7(5)(d) of Schedule 7 which refers to a manager appointed by contract (and not the DMC manager) is no longer applicable, and hence is deleted through clause 28(g)(vi). As to paragraph 7(5)(c), please refer to paragraph 59 above.

Clause 29(c)

62. The 7-day notice for convening meetings of owners' committee is in line with the requirement for convening of meetings of management committee as set out in paragraph 8(2) of Schedule 2. The 14-day notice requirement applies to meetings of owners (paragraph 9 of Schedule 8) and meetings of OC (paragraph 2 of Schedule 3).

Clause 29(j)(ii)

63. On the deadline for lodging proxy instruments, please refer to paragraph 14 above.

Clause 33(e)

64. Noted. This will be amended through CSAs.

Clause 36(3)

Sub-paragraphs (a) and (b)

65. Both the existing and amended paragraph 1 of Schedule 2 set out the minimum size and not the maximum size of a management committee. If a management committee was formed in accordance with the existing paragraph 1(b) of Schedule 2, it means that the size of the management committee has at least met the minimum set by the amended BMO. Upon expiry of the grace period, the management committee may choose either to reduce the size of the management committee to the statutory minimum, or retain its original size, which is still in line with the BMO requirements.

Clause 39(d)(i) and (ii), 40(a)(i), 52(c)(iii), 64(c)(i) and (ii), 65 and 68(a)(i) and (b)(i)

66. On the reason for inclusion of the words "in aggregate", please refer to paragraph 10 above. As to clause 52(c)(iii) which amends section 34E(5), the words "in aggregate" have always been there.

Clause 69(a) and (c)

Sub-paragraphs (a) and (b)

67. It is not certain whether the Land Titles Ordinance (26 of 2004) will come into operation before the enactment of the Bill. The proposed amendments are not necessary or appropriate at this stage. We shall keep in view the progress and, if required, amend the relevant provisions through CSAs.

68. If you have further questions on the above, please feel free to contact me on 2123 8391.

(Mrs Angelina Cheung)
for Director of Home Affairs