

(English translation prepared by
the Legislative Council Secretariat
for Members' reference only)

(Letterhead of Hon CHOY So-yuk)

25 May 2005

Secretary for Home Affairs
(Attn: Mrs Angelina CHEUNG, JP
Assistant Director of Home Affairs)
Home Affairs Bureau
21/F, China Overseas Building
139 Hennessy Road
Wan Chai
Hong Kong

Dear Mrs CHEUNG,

Building Management (Amendment) Bill 2005

I would like to raise the following questions and points on the Building Management (Amendment) Bill 2005 (the Bill) and should be grateful for your Bureau's early clarification and response:

Appointment of management committee

1. The Bill proposes to amend section 3(1)(c) of the Building Management Ordinance (BMO) to provide that a meeting of the owners to appoint a management committee (MC) shall be convened by an owner appointed to convene such a meeting by the owners of not less than 5% of the shares. I know that the Home Affairs Department (HAD) will provide search records free of charge for a group of owners of not less than 5% of the shares. To avoid abuse of such service, would your Bureau consider requesting the person concerned to undertake to bear a portion of the administrative costs if he/she fails to convene a general meeting within a reasonable period of time or without justified explanation?
2. Would HAD request the person concerned to return the search records within a reasonable period of time to avoid abuse of the service?
3. I also know that normally HAD will not provide further search service after the provision of the relevant records. To encourage the formation of Owners' Corporations (OCs), would HAD provide a group of owners of not less

than 5% of the shares with search records after the lapse of a reasonable period of time?

4. The Bill proposes to amend section 3(2)(b) of the BMO to the effect that an MC may be appointed with the support of the owners of not less than 30% of the shares in aggregate. Please clarify whether “with the support of the owners of not less than 30% of the shares in aggregate” means (1) the shares held by owners who support the appointment exceed those held by owners who do not (i.e. owners who voted against the appointment or abstained from voting) by not less than 30%; or (2) the shares held by owners representing a majority of votes are not less than 30% of the total shares (regardless of their extent of exceeding the shares held by owners who voted against the appointment or abstained from voting)?

5. The Bill proposes to add a new section 3(4)(b) (including sections 3A(3B)(b), 4(6)(b) and 40C(5)(b)) to the BMO to provide that the notice of meeting “shall” specify the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of an MC. Please clarify whether a resolution not specified in the notice of meeting is not allowed to be put to vote at a general meeting? If so, will HAD provide the convenor with a sample of the notice of meeting specifying the necessary resolutions?

6. The Bill proposes to add a new section 3(7) (including sections 3A(3E), 4(9) and 40C(8)) to the BMO to provide that the convenor “shall” preside at a meeting of owners convened under this section. Please clarify whether the convenor may, if he/she considers necessary, designate another person to preside at the meeting on his/her behalf? If it is considered permissible, does section 3(7) (including section 3A(3E)) need to be amended?

7. The Bill proposes to add a new section 3(8) (including sections 3A(3F), 4(10) and 40C(9)) to the BMO to provide that the quorum at a meeting of owners convened under this section shall be 10% of the owners. Please clarify whether a meeting of owners can continue if a quorum (i.e. 10% of the owners) is not present while the meeting is in progress? If not, can the chairman declare that the meeting be adjourned?

8. The Bill proposes to add a new section 3(10) (including sections 3A(3H), 4(12) and 40C(11)) to the BMO to provide that the instrument appointing a proxy “shall be” in the form set out in Form 1 in Schedule 1A. Please clarify and respond to the following questions:

- (a) whether the form mentioned above is the only form that can be used and no modification is allowed to be made;
- (b) whether the form mentioned above should be amended as the proxy appointed is not required to indicate in the form whether or not he/she will support the relevant resolution; as such, the voting right may be abused by the proxy;

- (c) if the owner concerned (or the same co-owner where two or more persons are the co-owners of a share) issue more than one instruments appointing different proxies (and even give different instructions to their proxies as to whether they should vote for or against a resolution), which proxy instrument shall prevail under such circumstances? If the instrument signed last shall prevail, and given the difficulty in determining which instrument was last signed, please consider whether the owners concerned should be informed of the relevant matters as soon as possible and, without limiting the owners' right to vote in person, whether all such instruments should be invalidated if the owners concerned have chosen to vote in person?

9. In paragraph 42 of the Legislative Council Brief prepared by your Bureau, it is stated that a mere amendment to the BMO will not be sufficient to make the BMO applicable to house developments. However, in the case of Siu Siu Hing mentioned in paragraph 5 of the Brief, the house development built on 18 lots of land with each lot subdivided into three undivided shares can incorporate. Please clarify which of the following types of development to which the (existing and amended) BMO applies:

- (a) development built on one single lot and covered by one Deed of Mutual Covenant (DMC) with owners holding undivided shares;
- (b) development built on more than one lots and covered by one DMC with owners holding undivided shares;
- (c) development built on one single lot and covered by more than one DMCs with owners holding undivided shares;
- (d) development built on more than one lots and covered by more than one DMCs with owners holding undivided shares;
- (e) development built on more than one lots and covered by one DMC with owners holding divided shares; and
- (f) development built on more than one lots and covered by more than one DMCs with owners holding divided shares.

10. Will the OC referred to in the above Siu Siu Hing case be affected upon the commencement of the amended BMO?

11. In addition, can more than one OCs be formed in a development built on one single lot and covered by one DMC with owners holding undivided shares?

Protection of members of MC

12. The Bill proposes to add a new section 29A to the BMO to provide that members of an MC acting in good faith incur no personal liability. Please clarify what is meant by “in good faith”.

13. According to paragraph 1(2) of the Third Schedule of the BMO, the chairman of the MC shall convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request. If the MC chairman convenes an MC meeting upon receiving such a request, and it is resolved at the meeting that no general meeting of the OC shall be convened, should the chairman, secretary (who is responsible for issuing the notice of meeting according to paragraph 2(1) of the Third Schedule) or members of the MC be held personally liable for that?

DMC managers

14. The Bill proposes to amend section 34D(1) of the BMO to include the definition of DMC managers. Please clarify, where the appointment of the DMC manager of a development is terminated under the DMC and he/she is re-appointed by the OC as the manager subsequently, whether the manager in question, being the one who is specified in the DMC to manage the development, is still considered as the DMC manager within the meaning of the BMO?

Composition of MC and meetings and procedure of OC

15. The Bill proposes to amend the Second and Third Schedules of the BMO by adding new paragraphs 10A and 6A to the effect that if the person concerned requests in writing the OC to supply him with copies of any minutes, the secretary shall, on the payment of such reasonable copying charge as the MC may determine, supply such copies to that person. Please clarify how the person concerned can seek the remedy if the secretary refuses to supply copies of any minutes.

16. The Bill proposes to amend paragraph 2(1) of the Third Schedule of the BMO to provide that the secretary of the MC shall, at least 14 days before the date of the meeting of the OC, give notice of the meeting to each owner and the tenants’ representative (if any). However, since a meeting of owners cannot be held without the consent of the MC, the statutory requirement for the chairman of the MC to convene a general meeting (under paragraph 1(2) of the Third Schedule) appears to be inconsistent with that for the secretary to issue the notice of meeting (under paragraph 2(1) of the Third Schedule).

17. In addition, as paragraph 1(1)(c) of the Third Schedule of the BMO provides that the MC shall convene a general meeting of the OC at any time for such purposes as the MC thinks fit, the MC may possibly convene another general meeting on the day before the general meeting which is to be convened at the request of not less than 5% of the owners, thus causing confusion to owners.

18. Please consider whether relevant amendments should be made to the BMO to address the above issues?

Annual budget and accounts

19. The Bill proposes to amend the Fifth Schedule and paragraph 3 of the Sixth Schedule of the BMO to the effect that if the person concerned requests in writing the OC to supply him with copies of any budget and accounts, the treasurer shall, on the payment of such reasonable copying charge as the MC may determine, supply such copies to that person. Please clarify how the person concerned can seek the remedy if the treasurer refuses to supply copies of any budget and accounts.

Mandatory terms in DMCs

20. The Bill proposes to amend paragraphs 1(7) and 2(5) of the Seventh Schedule of the BMO to the effect that if the person concerned requests in writing the manager to supply him with a copy of any draft budget, budget or revised budget, or the books or records of account and any income and expenditure account or balance sheet, the manager shall, on payment of a reasonable copying charge, supply a copy to that person. Please clarify how the person concerned can seek the remedy if the manager refuses to supply a copy of the above documents.

21. The Bill proposes to amend paragraphs 3(1) and 4(3) of the Seventh Schedule of the BMO and add new paragraphs 3(1A) and 4(3A) to the same to provide that the manager shall open and maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building. If, due to the economic downturn, the bank is unable to offer any interest (or even offers a negative interest rate) for the account, how can the manager meet this statutory requirement?

Presiding over an owners' meeting

22. The Bill proposes to amend paragraph 8(b) of the Eighth Schedule of the BMO to provide for a meeting of the owners to be convened by owners of not less than 5% of the shares in aggregate. However, paragraph 12 of the Schedule provides that a meeting of the owners "shall be" presided over by the chairman of the owners' committee. Since a meeting of the owners convened under paragraph 8(b) may likely be incompatible with the interest of the owners' committee, please consider amending paragraph 12 to allow a meeting of the owners convened under paragraph 8(b) to be presided over by other persons.

Abuse of the majority vote system

23. Except as otherwise provided in sections 3(2)(b) and 10(1)(b) and paragraphs 7(1) and 5A(b) of the Seventh Schedule of the BMO, a resolution

should be passed by a majority of the votes of the owners at a meeting of the owners and an MC meeting. This requirement enables the owners who are in control of the majority votes to pass an unreasonable resolution. Please consider whether “reasonable” criteria can be introduced to avoid the abuse of the majority vote system?

Amendments to DMCs

24. Please clarify whether an agreement has to be signed by all owners for certain provisions of a DMC to be amended as deemed necessary by an OC? If so, as it is practically almost impossible to require all owners to sign an agreement for such purpose, would your Bureau consider making relevant amendments to the BMO in the light of this issue?

Licensing system for managers

25. As members of an MC are mostly non-professionals and do not manage the building on a full-time basis, they have to consider employing managers for the management of their building. It will only be unfortunate if the OC have to be held responsible for any damages caused by the manager’s failure to make timely suggestions for the OC to take certain actions (such as removal of unauthorized building structures). The OC may fare even worse if the court rules that the manager is held liable for such damages to a certain extent, and the manager eventually resorts to bankruptcy or winding-up in order to escape liability. In this connection, please consider providing for a licensing system for managers in the BMO, and specifying that, as one of the licensing conditions, the manager is required to provide the OC with a bank guarantee of a certain amount.

Your early clarification and response will be appreciated.

(Miss CHOY So-yuk)
Legislative Council Member

c.c. Members of the Bills Committee on Building Management (Amendment)
Bill 2005