

(English translation prepared by
the Legislative Council Secretariat
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(Letterhead of Hon CHOY So-yuk)

16 June 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

With regard to the reply from the Home Affairs Bureau (“HAB”) in June 2005 (LC Paper No. CB(2)1855/04-05(03)), I would like to raise further questions and comments and should be grateful for your early clarification and response:

Appointment of management committee

Question 4

1. It appears from HAB’s reply that the phrase “supported by the owners of not less than 30%” in section 3(2)(b) means that [a resolution] supported by a majority vote of the owners of no less than 30% of the shares (regardless of their extent of exceeding the shares held by owners who voted against the resolution or abstained from voting). Nevertheless, would HAB consider recasting the provision in clearer terms, so that section 3(2)(b) will not give rise to a misconception that the shares held by the supporting owners are at least 30% more than those held by dissenting owners (including those who voted against the resolution or abstained from voting)?

Question 5

2. HAB has pointed out that a management committee (“MC”) appointed under sections 3, 3A, 4 and 40C of the Building Management Ordinance (“BMO”) should only act on behalf of the owners’ corporation (“OC”) after a certificate of registration

is issued. It is therefore considered appropriate to propose other resolutions in relation to building management at a meeting after the issuance of the certificate of registration. Please clarify whether its reply suggests that it is considered appropriate to propose resolutions other than those relating to the appointment of MC after the issuance of the certificate of registration? If the answer is in the affirmative, regarding the provision 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 a management committee” in section 3(4)(b), does the term “in particular” is taken to mean that resolutions other than those relating to the appointment of MC will be allowed to be proposed? If so, what types of resolutions will be allowed under that section?

3. In addition, please also clarify whether a resolution not specified in the notice of meeting is not allowed to be put to vote at a general meeting?

Question 6

4. As pointed out by HAB, other than the persons specified in sections 3(1)(a) and (b), a meeting of owners convened under sections 3, 3A, 4 and 40C shall be presided over by a convenor, and not by a third party on behalf of that convenor. I agree that it is reasonable for a meeting of owners to be presided over by a convenor. However, many convenors of meetings convened under the above sections have no experience in handling the proceedings of owners’ meetings and hence may have difficulties in presiding over such meetings.

5. Besides, please advise whether the relevant provisions do not allow the convenor to be absent from a meeting of owners on health grounds? If the convenor is a deaf-mute person, is it necessary to arrange for someone else to preside over the meeting? If so, will the relevant provisions contravene the Disability Discrimination Ordinance?

Question 7

6. HAB has advised that a meeting of owners cannot continue if a quorum is absent while the meeting is in progress. Please clarify whether the chairman can declare that the meeting be adjourned in such circumstances?

Question 8

7. HAB has advised that the form of the instrument appointing a proxy may not be modified. In my view, such a proxy form will deprive the owners concerned of the right to restrict their proxies to voting for or against a resolution. The voting right may also be abused by the proxies. In this regard, I hope that HAB would consider making reference to the form of the proxy instrument as stipulated in paragraph 73 of Table A of Schedule 1 to the Companies Ordinance (“CO”).

8. Besides, would HAB clarify which instrument appointing a proxy should be valid if more than one instruments appointing different proxies are issued by the same owner? If the instrument signed last shall prevail, and given the difficulty in determining which instrument was last signed, would HAB 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?

Questions 9 to 11

9. As pointed out by HAB, owners of house developments are not allowed to incorporate themselves under the present regime of the BMO. Please clarify whether owners of these developments may form OCs under the amended Ordinance if the title of each individual house is divided into three undivided shares?

10. Would HAB clarify whether, as a primary consideration for formation of an OC, the relevant owners must hold "undivided shares" if they are to form an OC under the BMO?

11. Please also advise whether it is allowed to form more than one OCs in a housing development built on a single lot and covered by one deed of mutual covenant ("DMC") with owners holding undivided shares?

Protection of members of MC

Question 13

12. HAB has pointed out that, according to previous court cases, it is the chairman's personal responsibility to convene a general meeting. He/she is the one who should make such a decision and be held accountable for the consequence, and this has nothing to do with the MC. I opine, however, that if the MC does not support the holding of a general meeting, it is quite impossible for the chairman to convene the meeting with his/her own efforts alone, given all the necessary arrangements to be made: the notice of meeting should be served by the secretary of the MC on each owner and tenants' representative; a meeting venue should be booked and the expenses so incurred be paid; proxy instruments have to be lodged with the secretary of the MC; the identity of owners attending the meeting need to be verified; minutes of proceedings of the general meeting should be prepared, etc. If the chairman convenes a general meeting which should not be convened, is he/she acting as a responsible chairman?

13. Regarding the general meeting convened under paragraph 1(2) of Schedule 3, I wonder if HAB could seriously consider whether it is desirable for the chairman to hold an MC meeting first, followed by the general meeting convened by the MC?

Composition of MC, meetings and procedure of OC

Questions 15 and 20

14. HAB has advised that if a person requests in writing the OC or the manager to supply copies of any minutes of meeting or draft budget but the secretary or the manager refuses to supply such copies, he/she may seek redress from the court. In my view, small owners may tend to avoid such a course of action because they have to confront the OC or the manager concerned at the expense of their own time and money.

15. I urge that HAB should seriously consider making amendments to the BMO in order that small owners may seek assistance from HAB in requesting the OC or the manager to supply copies of the aforesaid documents. Penalty should be imposed on those OCs or managers who have refused HAB's requests without justified reasons.

Questions 16 and 17

16. If the chairman of the MC is to convene a general meeting on 30 June under paragraph 1(2) of Schedule 3 and a notice of meeting to that effect is issued to the owners, but as the MC subsequently does not want the owners to attend the meeting, in order to cause confusion, it thus issues another notice of meeting under paragraph 1(1)(c) informing the owners that another general meeting will be held on 29 June, please clarify whether such an arrangement is permitted under the Ordinance; if so, would HAB consider making amendments to the Ordinance?

Mandatory terms in DMCs

Question 21

17. HAB has advised that a manager should open and maintain an interest-bearing account and should use that account exclusively in respect of the management of the building. I agree with such a requirement. However, should the interest rate for savings accounts drop to zero or even become negative due to an economic downturn in Hong Kong (a situation that I least want to see), is there any flexible mechanism to deal with this situation under the BMO?

Abuse of the majority vote system

Question 23

18. According to HAB, if "reasonable" criteria are to be introduced to avoid the abuse of the majority vote system, any disputes arising therefrom may likely have to be resolved by the court through judicial interpretation. It is also considered that more disputes may arise, which will prevent OCs from operating effectively. I believe that small owners of most OCs abide by the system of deciding by a majority

of votes and do not want to see any situations that may arouse further disputes. However, there may be abuses of the majority vote system, leading to aggrieved feelings, disputes and even more serious consequences. Therefore, introducing a mechanism based on “reasonable” criteria and subject to interpretation by the court will be sufficient to achieve a balance. Moreover, there are provisions in other existing legislation which safeguard the rights of minorities, such as the alternative remedy to winding up in cases of unfair prejudice under section 168A of the CO, and the stipulation under section 177(1)(f) of the same Ordinance that minority shareholder may apply to the court for winding up the company on just and equitable grounds. Would HAB clarify whether the provisions in the CO have given rise to more disputes?

Amendments to DMCs

Question 24

19. I agree that the mechanism for amending DMCs needs detailed consideration. However, the possibility of making necessary amendments to certain unreasonable provisions should not be overlooked. I urge that HAB should consider devising a more stringent mechanism by, for example, stipulating that for any amendment to a DMC to be effected, it requires the consent of owners of over 95% of the shares and that the court should examine if there is anything unfairly prejudicial to the interests and responsibilities of other owners.

Licensing system for managers

Question 25

20. I hope that HAB would consult the public on a licensing system for managers as soon as possible.

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