

**Bills Committee on Building Management (Amendment) Bill 2005**

**Supplementary Consolidated Response – The Administration’s response to Members’ Suggestions/Views**

Concerns and Views	Suggestions made by Members	Administration’s Response
<b>A. Annual General Meeting (AGM) of an Owners’ Corporation (OC)</b>		
Building Management Ordinance (BMO) – Paragraph 1(1) of Schedule 3		
<p>Some Members expressed concerns over the situation where management committees (MC) failed to convene an AGM of the OC.</p>	<p>(a) The Administration should consider whether any provisions of the BMO could be invoked to compel the holding of an overdue AGM.</p> <p>(b) If there is no such provision, the Administration should consider how to plug the loophole.</p>	<p>- Paragraph 1(1) of Schedule 3 to the BMO stipulates that MC shall convene –</p> <p>(a) the first AGM of a corporation not later than 15 months after the date of the registration of the corporation;</p> <p>(b) an AGM not earlier than 12 months, and not later than 15 months, after the date of the first or previous AGM.</p> <p>- Should the MC fail to comply with the statutory requirements stipulated in paragraph 1(1) of Schedule 3, the owners can apply to the Lands Tribunal under section 45 and Schedule 10 for an order to compel the holding of an AGM of the corporation.</p>

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<b>B. Recording at Owners' Meetings</b>		
<p>Some Members enquired whether OCs could prohibit owners from conducting audio-recording or video-recording during owners' meetings.</p>		<ul style="list-style-type: none"> <li>- We have sought advice from the Department of Justice on the issue. Video-recording or audio-recording of the proceedings of a meeting by attendees of the meeting amounts to collection of personal data under the Personal Data (Privacy) Ordinance (Cap. 486), as the word "data" is defined as any representation of information (including an expression of opinion) in any document, where "document" includes film, disc or tape.</li>   <li>- As such, Data Protection Principles apply to the situation where video-recording or audio-recording is conducted at owners' meetings. According to the Data Protection Principle 1, any collection of personal data must be lawful and fair, and that person from whom personal data are to be collected (i.e. other attendees of the meeting in this case) should be well informed of the purpose of recording.</li>   <li>- We are of the view that owners, being attendees of</li> </ul>

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		<p>the meetings, should have the right to decide whether audio-recording or video-recording should be conducted at the meeting. Thus, we consider that, subject to the terms of the Deed of Mutual Covenant (DMC), an owners' meeting may pass a resolution to prohibit owners from conducting audio-recording or video-recording.</p>
<b>C. Keeping of Proxy Instruments</b>		
<p>Members remained of the view that OCs should be required to keep proxy instruments for a certain period of time.</p>		<ul style="list-style-type: none"> <li>- Having considered Members' views on the matter, we <i>propose</i> to stipulate in the BMO that the MC should keep the proxy instruments received for an owners' meeting for a period of one year after the relevant owners' meeting.</li> </ul>
<b>D. Period of Notice for Convening an MC Meeting</b>		
BMO – Paragraph 8(2) of Schedule 2		
Building Management (Amendment) Bill 2005 (Bill) – Clause 23(h)(i) and 23(h)(ii)		
<p>Some Members expressed concerns over the situation where MC might need to handle urgent matters and convene an MC meeting at less than seven days'</p>	<p>(a) Some Members suggested that provided that 75% to 80% of the MC members were satisfied that there was an urgent need to convene an MC meeting, a</p>	<ul style="list-style-type: none"> <li>- We have consulted a number of associations of OCs on whether a shorter period of notice should be allowed for MC meeting. The associations of OCs in general considered that they have not</li> </ul>

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notice.	<p>shorter period of notice should be allowed.</p> <p>(b) Some Members suggested that a mechanism should be provided for under the BMO whereby an MC could authorize some of its members to form a working group, which would be responsible for handling urgent matters or expenses below certain stipulated amount.</p>	<p>encountered any particular difficulties under the current seven-day requirement and they see no need to shorten the notice period. They considered that the proposal might result in more disputes among MC members.</p> <p>- During the discussion of the Bills Committee paper "Consolidated Response – The Administration's response to Members' Suggestions/Views" [CB(2)2368/05-06(01)], Members agreed that it would be difficult to decide what is an urgent matter and that some MC members might abuse the mechanism and convene MC meetings whenever certain opposing MC members would not be available.</p> <p>- We have reservation on suggestion (b). Section 29 stipulates that the power and duties of an OC shall be exercised and performed by the MC. There is no provision to allow the further delegation of powers and duties to other committees or working groups. That said, we see no problem for MCs to</p>

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		<p>form committees or working groups to assist in the management of the building provided that any decision must be resolved by the MC. We consider that if we provide these committees or working groups with certain statutory powers, there would be even more disputes over issues like, whether the committees or working groups have enough representation, whether and if so when the decision of an MC could override that of the committee or working group, etc. .</p>
<b>E. Allowing Owners to Attend MC Meetings</b>		
<p>Members expressed diverse views on whether owners should be allowed to attend MC meetings.</p> <p>(a) Some Members considered that owners should be allowed to attend as observers.</p> <p>(b) Other Members, however, considered that if MC meetings</p>		<ul style="list-style-type: none"> <li>- We have reservations on stipulating in the BMO that owners should be allowed to attend all MC meetings. We are of the view that this should best be decided by the MCs themselves.</li> <li>- Moreover, paragraph 10(4B) of Schedule 2 to the BMO stipulates that the minutes of the MC meeting shall be displayed in a prominent place in the building within 28 days of the date of the relevant MC meeting. This provides a channel for the</li> </ul>

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were made open to all owners on a mandatory basis, it might be very difficult for the MC to conduct the meetings properly.		owners to know what has been discussed at the MC meetings.
<b>F. Appointment of an MC Member on a full-time basis</b>		
Some Members enquired whether it was permissible for an MC chairman to be appointed on a full-time basis and received a salary for discharging administrative building management duties.		<ul style="list-style-type: none"> <li>- Section 18(2)(a) stipulates that an OC may, in its discretion, engage and remunerate staff for any purpose relating to the powers or duties of the corporation under the BMO or the DMC.</li> <li>- Should the MC chairman, or any other MC members, be employed on a full-time basis, then the terms and conditions of the employment, such as the salary level or the duties of the job, will be governed by the contract between that particular individual and the OC.</li> </ul>
<b>G. Inspection of Documents</b>		
BMO – Section 27 and Schedule 6		
Bill – Clause 14 and 27		
Members expressed concerns over the	(a) Some Members suggested that a	- We consider that the existing provisions under

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<p>situation where owners could not inspect bills, invoices, vouchers, receipts etc referred under paragraph 1 of Schedule 6 to the BMO.</p>	<p>provision should be provided in the BMO to allow owners to inspect bills, invoices, vouchers, receipts and other documents kept by an MC as required by paragraph 1 of Schedule 6.</p> <p>(b) Some Members considered that owners should at least be given the right to apply for a court order to inspect the bills, invoices etc.</p> <p>(c) Some Members, however, considered that the requirement of having an accountant to audit the financial statements of the OC is sufficient. To allow owners to inspect bills, invoices, receipts etc. might add a huge administrative burden on the OC.</p>	<p>section 27 of and Schedule 6 to the BMO regarding disclosures and auditing of the financial position of OC are already sufficient. We are of the view that allowing owners to inspect bills, receipts etc. may add a huge administrative burden on the OC.</p> <p>- Nevertheless, in the light of Members' views on this issue, we <i>propose</i> to include a new provision in the BMO that the MC shall permit any person, who is supported by not less than 5% of the owners, to inspect all documents referred to under paragraph 1 of Schedule 6 at any reasonable time.</p> <p>- We further <i>propose</i> that individual owner may apply for a court order to inspect all documents referred to under paragraph 1 of Schedule 6. This is in line with the arrangement in section 152FA of the Companies Ordinance (Cap.32).</p>
<b>H. Management Fees</b>		
<p>H1. Members expressed diverse views</p>	<p>(a) Some Members suggested adding a new</p>	<p>We have responded to Members' views in a separate</p>

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<p>as to whether owners who default on payment of management fees should be disallowed to vote at owners' meetings –</p> <p>(a) Some Members are of the view that non-paying owners should be disallowed to vote. They considered that such measure might be a deterrent to the default on payment of management fees.</p> <p>(b) Some other Members considered that disallowing non-paying owners to vote might amount to infringement of the property rights of the owners concerned.</p>	<p>provision in the BMO, which stipulates that non-paying owners should be disallowed to vote at any owners' meetings; or such owners should be disallowed to vote if a resolution to such effect has been passed at an owners' meeting.</p> <p>(b) Some suggested that should suggestion (a) be adopted, a credit period should be allowed.</p> <p>(c) Some suggested that in any case, the rights of non-paying owners' to vote for the appointment of members of the management committee (MC) should not be affected.</p>	<p>Bills Committee paper [CB(2)3038/05-06(02)].</p>
<p>H2. Members expressed concerns over the problems of unfair allocation of undivided shares and management shares under some old DMCs,</p>	<p>Members considered that there should be mechanism to re-distribute management fees among owners in accordance with their respective undivided shares.</p>	<p>We have responded to Members' views in a separate Bills Committee paper [CB(2)3038/05-06(03)].</p>



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which in turn led to unfair allocation of management fees.		
<b>I. Copying Charge</b>		
Some Members expressed concerns over the level of copying charge determined by MCs in providing copies of relevant documents to the owners.	The Administration should find out the level of copying costs generally charged by the MCs and provide the normal range of costs in the relevant code of practice for OCs/owners' reference.	Having checked with a number of MCs, we note that the copying charge for providing copies of documents to owners ranges from \$0.5 to \$8 per page. We will provide such information to OCs to facilitate their setting of the level of charge.
<b>J. Sub-Deeds of Mutual Covenant (Sub-DMCs)</b>		
Building Management Ordinance (BMO) – Schedule 7 and Schedule 8		
Some Members expressed concerns over the applicability of Schedule 7 and Schedule 8 to the BMO to sub-DMCs.		We will respond to Members' views later.
<b>K. Enforcement of Proposed New Provisions</b>		
Some Members expressed concerns over the enforcement of the proposed new provisions of the BMO.	(a) Some Members suggested that the Administration should consider how the proposed new provisions would be enforced in the absence of penalties provided for under the BMO.	We will respond to Members' views later.

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	(b) The Administration may consider the concept of civil penalties and imposition of such penalties under the BMO.	
<b>L. Lands Tribunal</b>		
BMO – Section 45 and Schedule 10		
<p>L1. Members in general considered that Lands Tribunal should have exclusive jurisdiction on building management matters.</p> <p>However, Members agreed that it would not be necessary to pursue this issue in the current legislative exercise.</p>		<ul style="list-style-type: none"> <li>- We will consider the issue in collaboration with the Judiciary.</li> <li>- Given the complexity of the issue, this matter will not be included in the current legislative amendment exercise.</li> </ul>
<p>L2. Members considered that some fast-track summary proceedings might be put in place in the Lands Tribunal for handling relatively straightforward case, such as application for an order to compel</p>		<ul style="list-style-type: none"> <li>- This proposal will have great implications on the conduct of legal proceedings under the Judiciary. We will consider the issue in collaboration with the Judiciary.</li> <li>- Given the complexity of the issue, this matter will</li> </ul>

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the OC/managers to provide copies of records or documents.		not be included in the current legislative amendment exercise.

Home Affairs Department  
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