

Bills Committee on Building Management (Amendment) Bill 2005

Owners' Rights to Request the Chairman of an Owners' Corporation to Convene a General Meeting of the Corporation

Purpose

This paper seeks Members' views on how the provision in paragraph 1(2) of Schedule 3 to the Building Management Ordinance (BMO) regarding owners' rights to request the chairman of an owners' corporation (OC) to convene a general meeting of the OC could be improved.

Problem

2. Paragraph 1(2) of Schedule 3 to the BMO provides that the chairman of the management committee 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. There have been problems in the implementation of this provision. On the one hand, we have received complaints from owners on the refusal of the chairman of the management committee in acceding to their request. On the other, there were also complaints from chairmen that some owners have abused their rights under this provision by submitting repeated requests in an unreasonable manner.

Precedent Judgments

3. The Lands Tribunal has held that the responsibility to convene a general meeting of an OC under paragraph 1(2) of Schedule 3 rests with the chairman of the management committee and not the management committee¹. Once the chairman receives what appears *prima facie* to be requests from at least 5% of the owners, the burden falls on the chairman to prove that the statutory requirements were not in fact satisfied, otherwise the chairman must convene the meeting within 14 days². We have also seen case law³ where the court examined the defence of the

¹ 胡桂容及廖廣海 訴 黃漢明 (LDBM 323/2002).

² *Fung Yuet Hing and The Incorporated Owners of Hing Wong Mansion, Lee Leng Kong and Wong Sik Cham* (LDBM 367/2004).

³ In *梁淑兒AND 鄭沛濂* (LDBM 268/2003), the judge ruled in favour of the chairman of the management committee with respect of paragraph 1(2) of Schedule 3 to the BMO. The judge was of the view that the chairman was entitled to satisfy himself generally that the requests of the 5% owners comply with the statutory requirement. While the judge considered that it was not appropriate for him

chairman against the facts of the case and determined whether the chairman had acted reasonably in the circumstances.

4. While the Lands Tribunal has also held that the term “convene” in paragraph 1(2) of Schedule 3 does not mean formally holding the meeting, and only means the issuance of the notice of meeting⁴, we are still left with the question on when the general meeting of an OC should actually be held.

Reference to Similar Statutory Provisions

5. In the light of the above problems, we have conducted research into similar provisions in the Companies Ordinance (Cap. 32) and also the Land Titles (Strata) Act of Singapore. Section 113 of the Companies Ordinance provides that the directors of a company shall on the requisition of members of the company holding not less than 1/20 of such of the paid-up capital of the company, forthwith proceed duly to convene an extraordinary general meeting of the company. Section 113 further states that if the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, the requisitionists may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date. A meeting convened by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

6. As for the Land Titles (Strata) Act of Singapore, the council (similar to a management committee under the BMO) of a management corporation (similar to an OC under the BMO) shall, on receipt by the secretary of the management corporation of a requisition for an extraordinary general meeting signed by not less than 25% of the total number of owners of the building (or owners with share value which is at least 20% of the aggregate share value of the building), forthwith proceed to convene an extraordinary general meeting of the management corporation to be held as soon as practicable but in any case not later than six weeks after the receipt by the secretary of the requisition. The Act further provides that if the council does not within 14 days after the date

to lay down any principles for the verification process a chairman should undertake and all depends on circumstances, in the case concerned, he considered that the chairman had every reason to embark on the process of verification as the application from the 5% owners contained a conspicuous error that certainly tainted the authenticity of all the requests.

⁴顏偉國訴何蘭及嘉都大廈業主立案法團 (LDBM 173/2000).

of the deposit of the requisition proceed to convene a meeting, the requisitionists may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by the council, convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.

Consideration

7. Having regard to the above research findings, we think that we should consider the following issues –

- (a) Whether the duty to convene a general meeting of an OC under paragraph 1(2) of Schedule 3 should remain with the chairman alone?
- (b) Whether we should stipulate in paragraph 1(2) of Schedule 3 the time limit for actually holding the meeting (instead of only stipulating the time limit for issuing the notice of meeting)?
- (c) Whether we should make reference to the Companies Ordinance and the Land Titles (Strata) Act of Singapore by empowering the 5% owners to convene a general meeting of an OC themselves under paragraph 1(2) of Schedule 3?
- (d) Whether we should limit the right of owners in making such request (e.g. the same request should not be repeated within a certain period) to avoid abuse by owners?

Whether the duty to convene a general meeting of an OC under paragraph 1(2) of Schedule 3 should remain with the chairman alone?

8. Paragraph 1(1) of Schedule 3 sets out the scenario where a management committee shall convene a general meeting of an OC. Paragraph 1(2) of the same Schedule sets out the scenario where the chairman (not the management committee) shall convene a general meeting of an OC. This is different from the corresponding provision in the Companies Ordinance and the Land Titles (Strata) Act of Singapore where the directors and the council of a management corporation (similar to a management committee under the BMO) were given the duties respectively.

9. Whilst there is no record explaining the reason for giving such a

power/duty to the chairman (instead of the management committee) when this provision in the BMO was enacted in 1970, we consider that there is merit in doing so – as this will avoid the need to convene a management committee meeting first (which requires seven days’ notice) before convening a general meeting of an OC. This will obviously speed up the process and in turn offer better protection to the interests of owners.

10. Subject to Members’ views, we propose to retain the existing provision.

Whether we should stipulate in paragraph 1(2) of Schedule 3 the time limit for actually holding the meeting (instead of only stipulating the time limit for issuing the notice of meeting)?

11. There is already case law ruling that the term “convene” under paragraph 1(2) of Schedule 3 does not mean formally holding the meeting, but only means the issuance of a notice of the meeting within 14 days of receiving such request. We are aware that some chairmen have taken advantage of such an interpretation by issuing a notice of meeting within the time limit (thus complying with the law) but the actual general meeting was only to be held months later.

12. To plug the loophole, we propose to include another time limit for the actual holding of the general meeting. Paragraph 2(1) of Schedule 3 stipulates that notice of general meeting shall be served at least 14 days before the date of the meeting. When paragraphs 1(2) and 2(1) of Schedule 3 are read together, we consider that one option is to stipulate that the chairman shall issue a notice of meeting within 14 days and that the meeting should be held within 28 days (14 + 14 days) on receipt of the owners’ request. There is, however, concern that there may not be sufficient time for the chairman/management committee to prepare for the meeting. An alternative, as suggested by the Law Society of Hong Kong⁵, is to stipulate that the chairman shall hold the general meeting within 60 days on receipt of the owners’ request.

13. Subject to Members’ views, we will introduce Committee Stage Amendments as appropriate.

Whether we should make reference to the Companies Ordinance and the Land Titles (Strata) Act of Singapore by empowering the 5% owners to convene a general meeting of an OC themselves under paragraph 1(2) of

⁵ Please refer to paragraph 10.12 of LC Paper No.CB(2)2149/04-05(01).

Schedule 3?

14. We are not aware of the frequency of shareholders exercising their rights under section 113 of the Companies Ordinance as such action need not be reported to the Companies Registry. However, according to a law book explaining a similar provision in the Companies Act 1985 of the United Kingdom, it was said that “*the directors are unlikely to be so foolish as to allow the initiative to pass in this way to the requisitionists*”⁶. As such, we consider that such a fallback provision for the shareholders/owners themselves to convene a meeting is more to achieve a push effect for the original responsible party (i.e. the directors) to do his job.

15. Furthermore, we are of the view that allowing owners to convene a general meeting of an OC themselves might create more problems. Firstly, there will be a lot of questions raised about the procedures of such a meeting – e.g. who should be the chairman of the meeting, who should issue the notice of meeting, and who should receive the proxy, etc. Secondly, there is concern about the validity of any resolution passed at such a meeting – this is particularly the case when the resolution concerned is over the appointment of the incumbent management committee. All these will likely create more disputes, instead of settling the original disputes, among owners.

16. As explained above, there is precedent judgment holding that the responsibility to convene a general meeting of an OC under paragraph 1(2) of Schedule 3 rests with the chairman of a management committee. In that particular case, the court ruled that the respondent, i.e. the chairman of the management committee had to bear his own legal costs as well as the legal costs of the applicant, i.e. two owners of the building. We consider this judgment has already served as a strong push factor for chairmen of management committees to perform their statutory duties.

17. Subject to Members’ views, we do not think that the BMO should empower the 5% owners to convene a general meeting of an OC themselves under paragraph 1(2) of Schedule 3.

Whether we should limit the right of owners in making such request (e.g. the same request should not be repeated within a certain period) to avoid abuse by owners?

⁶ Please refer to paragraph 19-31, page 211-213 of “Shackleton on The Law and Practice of Meetings”, Sweet and Maxwell, 9th edition.

18. We are aware of cases of abuse by owners in exercising their rights under paragraph 1(2) of Schedule 3. Some of these owners made repeated requests to the chairman of the management committee to convene a general meeting of an OC to discuss the same subject matter over and over again. Some made the request to convene a general meeting to re-consider a subject matter that has already been resolved at a previous general meeting – this is to delay the carrying out of the resolution (in most cases related to renovation works) on purpose.

19. We have received suggestions that the BMO should restrict the owners' request to only new items that have never been discussed or resolved at a general meeting of an OC. There were also suggestions that the same group of 5% owners should not be allowed to make the same request again. Others suggested that a greater number of owners (say 10%) should be allowed to make the request under paragraph 1(2) of Schedule 3 (or a greater number should be allowed to request a meeting to re-consider a previously approved matter).

20. We have carefully considered the suggestions. While we appreciate that the existing provision may be subject to abuse, we could not agree to any of the suggestions above as they are difficult to enforce and are, arguably, not in the interests of property owners. Nevertheless, we are open to ideas and welcome Members' views on this matter.

Views Sought

21. Members' views are invited on the above.

Home Affairs Department
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