

Building Management (Amendment) Bill 2005
Administration's Response to Hon CHOY So-yuk's Letter of 16 June 2005

The Home Affairs Department (HAD) has submitted LC Paper No. CB(2) 1885/04-05(03) which was in response to Hon CHOY So-yuk's letter of 25 May 2005 (LC Paper No. CB(2) 1709/04-05) regarding the Building Management (Amendment) Bill 2005 (the Bill). Set out below are our response to further questions raised by Hon CHOY So-yuk in her letter of 16 June 2005 [LC Paper No. CB(2) 2017/04-05(03)].

Appointment of Management Committee

Question 4

2. According to the existing section 3(2)(b) of the Building Management Ordinance (BMO) (Cap.344), a management committee may be appointed by a resolution passed by the owners of not less than 30% of the shares in aggregate at a meeting of owners duly convened for the appointment of a management committee. However, it is not clearly stated in the existing provision whether the appointment shall be valid if other owners of 30% of the shares vote against it. The question was raised in the case of *Kwan & Pun Company Limited v Chan Lai Yee and others* (CACV 234/2002). We therefore propose to amend the existing section 3(2)(b) to clearly stipulate that the resolution on the appointment of a management committee must be supported by owners of not less than 30% of the shares and that, by virtue of the amended section 3(2)(a), to expressly state that such resolution must also be passed by a majority of votes of the owners at the same meeting. This is in line with the proposal of Hon CHOY So-yuk in her letter, i.e., to specify clearly the statutory requirement clear that the resolution on the appointment of a management committee must be supported by owners of not less than 30% of the shares and that there must also be a majority of votes of the owners at the same meeting.

Question 5

3. A meeting of owners referred to in sections 3, 3A, 4 and 40C of the BMO is convened for the purpose of appointing a management committee.

As such, only the resolutions on matters relating to the appointment of a management committee, and in particular the appointment of a management committee, shall be set out in the notice of meeting. In general, apart from the resolution on the appointment of a management committee, owners would also pass resolutions concerning the composition of the management committee and the name and registered address of the owners' corporation (OC). A sample notice of meeting is contained in the booklet "How to form an Owners' Corporation and achieve effective building management" published by HAD.

4. As mentioned in our previous reply¹, the powers and duties conferred or imposed by section 8 of the BMO shall be exercised and performed on behalf of the OC by the management committee after the certificate of registration has been issued. As such, resolutions on building management that are not related to the appointment of a management committee should more appropriately be raised at meetings of the management committee or the OC convened after the certificate of registration has been issued. The meeting procedures of the management committee and OC are set out in Schedules 2 and 3 to the BMO.

5. Paragraph 3(7) of Schedule 3 stipulates that no resolution passed at a meeting of owners shall have effect unless it has been set out in the notice of meeting. In *蘇振文、鄧平與盧永佳 v 置安大廈業主立案法團* (CACV302/99)], the court held that the resolution passed was not valid as it did not comply with the requirement in paragraph 3(7) of Schedule 3.

Question 6

6. The Bill proposes that a meeting of owners to appoint a management committee under the amended section 3 be presided by a convenor who must be an owner appointed by the owners of not less than 5% of the shares in aggregate. This means that the convenor should be a person considered, upon deliberation and consideration, by a group of owners to be reliable, suitable and capable of convening and presiding at meetings. There is no restriction in the BMO on the appointment of disabled persons as convenors.

7. District Offices (DOs) will render the necessary assistance as far as practicable to owners of multi-storey buildings to facilitate the formation of

¹ Please refer to LC Paper No. CB(2) 1885/04-05(03)

OCs. If owners have queries on the convening of meetings, staff of DOs will, prior to the meetings, provide them with reference materials such as a checklist and VCD on procedures of meeting for OC formation compiled by HAD. They will also attend owners' meetings to give advice and assistance on issues such as procedures of meetings.

8. Furthermore, the DOs and the Building Management Resource Centres also arrange, on a regular basis, workshops and training courses for members of the management committees of OCs in order to enhance their awareness of building management and assist them in discharging their duties.

Question 7

9. The power to adjourn a meeting rests with the meeting itself. Generally, the meeting should vote to decide whether the majority of owners agree to the adjournment. If nobody objects at the meeting, it could be taken that the meeting agrees to the adjournment. However, according to the law books², the chairman may adjourn the meeting if a quorum is not present.

10. According to paragraph 56 of Table A of Schedule 1 to the Companies Ordinance (Cap.32), if within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

11. That said, in the case of meetings convened for the purpose of appointment of a management committee (i.e., an OC has not yet been formed) and in the case of insufficient quorum, the DO staff attending the owners' meeting will normally recommend to the convenor and the owners to arrange afresh another owners' meeting in order to avoid any legal dispute in future.

² Please refer to Page 62 of "Shackleton on The Law and Practice of Meetings" by I Shearman, 9th edition, Sweet & Maxwell.

Question 8

12. The format of the proxy instrument has been drawn up by the Subcommittee on the Review of BMO after careful deliberation. The proposal of including a standard format of the proxy instrument in the principal Ordinance aims to provide owners with a standardized form so as to achieve consistency and avoid any dispute over the format of the proxy instrument. However, there were comments at the Bills Committee meeting on 14 June that some flexibility should be provided for in the proxy instrument. The Administration has an open mind on the matter and welcome any suggestions.

13. Regarding the example quoted by Hon CHOY, if an owner appoints more than one proxy to attend the owners' meeting, then the proxy who was last appointed by the owner should be valid. Clarification has to be sought from the owner if it is not clear whom of the proxies was last appointed. If the owner attends the meeting and casts a vote in person, all the proxy instruments he made would be deemed invalid.

Questions 9-11

14. On the incorporation of owners of house developments, please refer to the paper on "Incorporation of Owners of House Developments" [LC Paper No. CB(2)1709/04-05(01)] and the Administration's letter of 20 June 2005 to the Bills Committee [LC Paper No. CB(2)2017/04-05(02)].

Protection for Members of Management Committee

Question 13

15. A general meeting of owners is the highest authority of an OC and the BMO has provided for various means for convening of a general meeting. Paragraph 1 of Schedule 3 to the BMO empowers the management committee to convene a general meeting. Paragraph 1(2) of Schedule 3 to the BMO further 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. The latter arrangement aims to provide a quicker and more efficient means by

which the owners can put in a request for convening a general meeting to discuss matters of their concern.

16. Under Paragraph 1(2) of Schedule 3 to the BMO, the responsibility of convening a general meeting rests with the chairman of the management committee. It has been held by the Lands Tribunal that the chairman could not transfer such a responsibility to the management committee³. However, in performing the responsibility of convening a general meeting, the chairman may, having regard to the practical circumstances and needs, convene a meeting of the management committee under paragraph 8(1)(a) of Schedule 2 so as to discuss the logistics arrangements for the meeting, such as the venue and manning arrangements.

17. There are also precedents showing that the Lands Tribunal, when deciding whether the chairman has breached the law, will take into account various factors. In the case *梁淑兒 v 鄭沛濂* (LDBM 268/2003), it was held that the chairman had the right to verify the authenticity of the requests of the 5% owners. In the case *顏偉國 v 何蘭·嘉都大廈業主立案法團* (LDBM 173/2000), the judge considered that the term “convene” did not mean formally holding the meeting. The statutory explanation of “convene” was that the chairman should announce the details about the meeting within 14 days of receiving such request.

18. We are aware that the difficulties in enforcing paragraph 1(2) of Schedule 3 to the BMO have mostly arisen from the unwillingness of the chairmen of management committees to convene the meeting. If we amend the BMO to transfer the responsibility of convening a general meeting to the management committee merely because some individual chairmen have refused to perform their statutory responsibilities, this would undermine the general protection for owners. That said, we welcome views from Members on the matter.

Composition of Management Committee and Meetings and Procedure of OC

Questions 15 & 20

³ *胡桂容及廖廣海 v 黃漢明*(LDBM 323/2002)

19. There is no statutory sanction under paragraph 4 of Schedule 5, paragraph 3 of Schedule 6 and paragraphs 1(7) and 2(5) of Schedule 7. In the absence of a statutory sanction, the affected party may seek redress from the court. The purpose of the provisions is to safeguard the owners' right to obtain copies of the documents. There were precedent cases where owners have sought redress from the court under the protection of the BMO. These include: 張宗明 v 李俊德、寶怡花園業主委員會、啓勝管理服務有限公司 (LDBM 351/1998)⁴, 大廈發展有限公司 v 和域臺業主立案法團 (LDBM 76/1999)⁵, and 黎明光 v 林兆年 (LDBM 297/2000)⁶.

20. As for the alternative resolutions of building management disputes, please refer to LC Paper No. CB(2)2017/04-05(01).

Questions 16 & 17

21. In the example quoted by Hon CHOY, the chairman of the management committee, who did not want the owners to attend the general meeting on 30 June which was convened at the request of 5% of the owners, convened another general meeting on 29 June under paragraph 1(c) of Schedule 3 so as to discourage owners from attending the meeting held on the next day.

22. Paragraphs 2(1) and 3(7) of Schedule 3 stipulate that the notice of a meeting should be served by the secretary of the management committee upon each owner at least 14 days before the date of the meeting and that any resolution to be passed at any general meeting shall have no effect unless the same is set forth in the notice of the meeting.

23. As it is necessary to make some preparation before convening a general meeting, such as issuing the notice of meeting and finding a suitable venue, it seems highly unlikely that the management committee can convene two general meetings within such a short interval. Besides, owners should

⁴ In the case 張宗明 v 李俊德、寶怡花園業主委員會、啓勝管理服務有限公司(LDBM 351/1998), an owner applied to the court to request the respondents to, among others, supply copies of the budgets. The court ruled that the respondents should provide such copies of documents to the applicant upon payment.

⁵ In the case 大廈發展有限公司 v 和域臺業主立案法團, an owner applied to the court to request copies of the budget and audited accounts of the OC for the past six years. The court ruled that the OC did not possess all the documents requested and the OC had already supplied the information as far as it could.

⁶ In the case 黎明光 v 林兆年(LDBM 297/2000), an owner applied to the court to request the chairman of the management committee to provide copies of the income and expenditure accounts. The court ruled that the requests under paragraph 3 of Schedule 6 should be made in writing.

have clearly known from the notices of meetings issued 14 days before the matters to be discussed and resolved at the two general meetings. They have the right to decide, taking into account their own interests and matters of particular concerns, whether to attend in person or by proxy either meetings or both of them. If the meeting on 29 June is convened merely for the abovementioned purpose and there is no specific issues to be discussed, we are sure that most of the owners will consider only attending the meeting on 30 June which is convened at the request of 5% of the owners. We do not think that it is appropriate to impose restriction to that effect in the BMO lest it is necessary to convene such a meeting on 29 June to discuss and resolve management matters.

Question 21

24. As mentioned in our previous reply, the requirement of opening and maintaining interest-bearing accounts is also provided for in a number of other legislation in Hong Kong. Should there be a zero or negative interest rate for savings accounts, this will affect not only the interest-bearing accounts opened and maintained under the BMO but also those under other pieces of legislation. In this connection, it is not appropriate for individual Government departments to introduce a “mechanism” to address such concern. It would be best to adopt a holistic approach taking all the prevailing circumstances into consideration.

Question 23

25. The enactment of the BMO is to facilitate overall building management and the operation of OCs. It aims to enable OCs to handle different views of owners in an effective way under a system of majority voting. As for the concern on the passing of “unreasonable resolutions” by a majority of votes and the suggestion of introducing guiding principles on “reasonable resolutions”, we find it difficult to provide a clear definition of the term “reasonable”. The proposal will also affect the daily operation of OCs.

26. The existing section 33 of the BMO stipulates that a corporation may be wound up under the provisions of Part X of the Companies Ordinance (Cap.32) as if it were an unregistered company within the meaning of that Ordinance and the provisions of that Ordinance relating to the winding up of an

unregistered company shall, in so far as they are inapplicable, apply to the winding up of a corporation. According to section 327(3)(c) of Part X of the Companies Ordinance, an unregistered company may be wound up if the court is of opinion that it is just and equitable that the company should be wound up. This in effect means that section 177 of the Companies Ordinance as mentioned by Hon CHOY is, to a certain extent, applicable to the winding up of OCs.

Question 24

27. We are aware of Hon CHOY and Members' concern on the mechanism for amending DMCs. We will consider the matter in consultation with other departments, including the Department of Justice, the Land Registry and the Lands Department, and submit papers to the Panel on Home Affairs in due course.

Question 25

28. The view on the introduction of a regulatory regime for property management companies is noted.

Home Affairs Department
July 2005