

立法會
Legislative Council

LC Paper No. CB(2)1871/99-00
(These minutes have been
seen by the Administration)

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**Bills Committee on
Building Management (Amendment) Bill 2000**

**Minutes of the 2nd Meeting
held on Thursday, 2 March 2000 at 10:45 am
in the Chamber of the Legislative Council Building**

Members Present : Hon CHAN Kam-lam (Chairman)
Hon Albert HO Chun-yan
Hon LEE Wing-tat
Hon Fred LI Wah-ming
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon CHOY So-yuk

Members Absent : Hon Edward HO Sing-tin, SBS, JP (Deputy Chairman)
Hon HO Sai-chu, SBS, JP
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing
Hon James TO Kun-sun
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon TAM Yiu-chung, GBS, JP

Public Officers Attending : Mr Peter P T CHEUNG
Deputy Secretary for Home Affairs (2)

Mr LUI Hau-tuen
Deputy Director of Home Affairs

Mr Francis LO
Principal Assistant Secretary for Home Affairs (5)

Mr LEE Chee-chung
Chief Fire Officer (Protection/Fire Safety)

Mr CHOW Kim-ping
Chief Building Surveyor (Legal)

Mr J D SCOTT
Senior Assistant Law Draftsman

Miss Shirley WONG
Government Counsel

Senior Liaison Officer (Building Management)
Mr MA Kam-ki

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2) 6

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2) 7

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I. Meeting with professional bodies

The Chairman informed members that the Bills Committee had written to the following professional bodies to invite them to give their views to the Bills Committee at the meeting to be held on 9 March 2000 at 2.30 pm-

- (a) Hong Kong Institute of Housing;
- (b) the Chartered Institute of Housing (Hong Kong Branch);
- (c) Hong Kong Association of Property Management Companies;
- (d) Hong Kong Federation of Insurers;
- (e) Hong Kong Institute of Surveyors; and

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(f) Hong Kong Society of Accountants

2. Mr Gary CHENG said that the Democratic Alliance for the Betterment of Hong Kong (DAB) had consulted the public on the Buildings Management Ordinance (BMO). Based on the views collected, the DAB had prepared a consultation paper on "Proposed amendment to the BMO". As the paper was rich in content, he hoped that representatives of the DAB would be invited to give views at a future meeting. Members agreed that the Bills Committee could arrange another meeting to meet with deputations if necessary.

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3. The Chairman said that all the submissions received had been passed onto the Administration. To facilitate discussion, he hoped that the Administration would give a written reply to all the submissions before the next meeting.

II. Meeting with the Administration
[LC Paper No. CB(2)1258/99-00(01)]

4. The Chairman urged the Administration to provide information papers well in advance of the meeting to facilitate members' discussion. Members noted that the Administration's responses to various questions raised by members at the previous meeting were set out in LC Paper No. CB(2)1258/99-00(01).

5. At the invitation of the Chairman, Deputy Secretary for Home Affairs (2) (DS(HA)2) explained in detail the Administration's paper. Members then raised various questions with the Administration. The gist of the Bills Committee's discussion on the paper was summarized in the following paragraphs.

Requirement in respect of owner's shares for the formation of Owners' Corporations in existing buildings

6. Most members present at the meeting considered that the requirement in respect of owner's shares for the formation of Owners' Corporations ("OCs") in private buildings was too strict, resulting in the failure of some of such buildings, especially those older ones, to form OCs. Members requested the Administration to consider lowering the percentage requirement of owner's shares for the formation of OCs in existing private buildings.

7. Mr Gary CHENG said that despite the Administration's claim in paragraph 3 of the paper that the requirements in respect of owner's shares for the formation of OCs in private buildings had been working well since their introduction in 1993, it should improve the existing legislation to cater for those buildings which had failed to form OCs as a result of the strict requirements under existing legislation. Mr CHENG said that there were quite a number of such buildings.

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8. Miss CHOY So-yuk pointed out that owners of some older buildings had to appoint management companies to manage their buildings because of the failure to form OCs. As such, they did not have the statutory power to demolish unauthorized structures, if any. When such unauthorized structures endangered human life, all owners of such buildings would be held legally liable for the consequences and this was not fair indeed. Miss CHOY considered it necessary to lower the percentage requirement in respect of owner's shares for the formation of OCs.

Adm 9. DS(HA)2 informed members that the Secretary for Security and the Secretary for Home Affairs had jointly published the "Consultation Paper on Proposals to Improve Fire Safety in Private Buildings" (the Consultation Paper) in June 1998. The Administration had made various proposals in the Bill having regard to the outcome of the consultation process. He pointed out that as the suggestion made by members was not part of the consultation process for the Consultation Paper, the Administration would have to carry out internal studies and consultation before it could respond to members' suggestion.

Requirement in respect of the number of owners for the formation of OCs in new buildings

10. DS(HA)2 said that one of the proposals in the Consultation Paper called for the automatic formation of OCs in new buildings. The Administration had received views from various parties who had pointed out that OCs would not be able to operate effectively should owners be reluctant to take part in the work of the management committee despite the automatic formation of OCs. Therefore, the Administration decided to simplify the manner for owners of new buildings to convene meetings for the purpose of appointing management committees.

11. DS(HA)2 explained that under the Bill, the quorum of a meeting for the purpose of appointing a management committee would be not less than 10% of the owners and the appointment should be made by a resolution passed at the meeting. DS(HA)2 further explained that to facilitate the convening of a meeting to form an OC by the owners who had occupied the building in question, the 10% quorum requirement would be on the basis of the number of owners and a single owner of several units would be counted as one owner. In respect of the resolution for the appointment of a management committee, the number of owner's shares would be used as the basis for counting the votes.

12. Mr LEE Wing-tat was of the view that the proposed quorum requirement for convening an owners' meeting in new buildings was too low, which would have serious implications on buildings with a small number of flats. For example, in a new building with only 12 flats an owners' meeting could be convened for the purpose of forming an OC with the consent of just

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one or two owners. Mr LEE pointed out that such a low quorum requirement might result in a resolution (including that for the appointment of the management committee) passed by one group of owners at a meeting and to be overturned by another group of owners at another meeting. Mr LEE suggested that the determination of a quorum for convening an owners' meeting should be in reverse proportionality in that the higher the number of units, the lower the quorum requirement would be.

13. Mr Howard YOUNG suggested that, to address Mr LEE's concern, the quorum requirement should include a percentage of owners as well as a minimum number of the owners present at the meeting.

14. In response, DS(HA)2 reiterated that the purpose of the proposed quorum requirement of not less than 10% of the owners was to facilitate the early formation of OCs by owners who were willing to shoulder responsibility of building management. He explained that the above-mentioned quorum requirement of 10% of the owners was a minimum requirement. It did not mean that an OC's decision would be manipulated by a few owners as such. A decision must be made in accordance with the wishes of the majority of the owners. He believed that owners who otherwise were reluctant to take part in the management of their buildings would attend a meeting to protect their own interests if they realized that their interests would be affected by a decision to be made at that meeting. Therefore, Mr LEE's concern could happen in theory but not in reality as it would be highly unlikely for 10% of the owners to be able to control all the resolutions passed at an owners' meeting.

15. As regards the proposals put forward by Mr LEE and Mr YOUNG as well as the two criteria suggested by Mr Gary CHENG at the previous meeting for determining a quorum, DS(HA)2 said that the proposal in the Bill was simple and practical. The Administration did not see any need to introduce a more complicated mechanism.

16. Referring to DS(HA)2's remarks that an owner who owned several units in a building would be counted as one owner in establishing a quorum (paragraph 11 refers), Mr Albert HO pointed out that the concept was contrary to the guidelines issued by the Lands Department to the land executives. According to the relevant guidelines, an owner owning 30 units in a building would be counted as 30 owners for the purpose of establishing a quorum. As the definition of "owner" was not clear in the BMO, he expressed concern that lawsuits might be brought should the Administration fail to clarify this issue.

17. Senior Assistant Law Draftsman (SALD) agreed that there were two possible interpretations for "owner" in the BMO. The term "owner" did in some cases referred to the "number of owners" and in other cases referred to the "number of owner's shares". It was a policy question as to which particular interpretation applied in any given situation.

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18. DS(HA)2 explained that the BMO provided that an “owner” was defined as “a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building; and a registered mortgagee in possession of such a share”. In line with a recent judgement made by the Lands Tribunal, the Bill proposed that a single owner owning multiple number of units in a building would be counted as one owner in the determination of a quorum. If members found the relevant provisions unclear, the Administration would consider making improvement. At the request of members, DS(HA)2 undertook to provide the relevant Lands Tribunal judgement for members’ reference.

(Post-meeting note: the Lands Tribunal judgement on the relevant case was circulated to members vide LC Paper No. CB(2)1283/99-00(02) on 6 March 2000.)

Appointment of a proxy

19. Mr Andrew WONG asked whether a proxy who was appointed by two owners would be counted as two owners for the purpose of establishing a quorum.

20. Principal Assistant Secretary for Home Affairs (5) (PAS(HA)5) explained that new section 3(3) provided that if an owners’ meeting was convened for the purpose of appointing a management committee, any proxy appointed by an owner for the purpose of voting on the resolution concerning the appointment of a management committee should be treated as being an owner present at the meeting for the purpose of establishing that quorum.

21. Mr Andrew WONG opined that it went against the legal principles if a proxy would be counted towards a quorum. He pointed out that if an owner was appointed as a proxy by other owners to vote on the resolution concerning the appointment of a management committee, in theory, his presence alone at the meeting would satisfy the quorum requirement and he alone could decide on the outcome of that resolution at the meeting. Mr WONG was of the view that a proxy should only have the right to vote and he should not be treated as an owner present at the meeting. He pointed out that the legislative intent of the Bill was to facilitate the early formation of OCs among owners who were willing to shoulder responsibility. If the policy allowed a single owner who was authorized by other owners to decide on such matters as the formation of an OC, that would be contrary to the Bill’s purpose of encouraging owners to take part in building management. Mr WONG said that he did not support the proposal. Mr Gary CHENG also considered that a proxy was only appointed by an owner to vote on the owner’s behalf in respect of a specific item on the agenda and therefore should not be treated as an owner present at the meeting.

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22. SALD said that a proxy was normally appointed for the purpose of voting rather than counting towards a quorum. However, new section 40C(3)(a) and paragraph 5(2) of the Third Schedule concerning meetings and procedure of OC in the Bill clearly provided that a proxy would be treated as an owner present at the meeting. Therefore there were two situations where as a matter of policy, the Administration would treat proxy as counting towards the quorum as well as counting towards the votes.

23. Mr Albert HO informed members that Mr Ambrose CHEUNG, a former LegCo Member, had raised a question concerning the quorum for an OC meeting at a LegCo meeting in June 1999 at which he asked whether a person holding proxies from 100 owners would be regarded as one owner or 100 owners. Mr HO pointed out that the Secretary for Home Affairs' response was that that proxy would be regarded as 100 persons for counting towards a quorum. He suggested that the Administration should provide the Secretary for Home Affairs' reply for members' reference.

(Post-meeting note: the Secretary for Home Affairs' reply was issued to members vide LC Paper No. CB(2)1283/99-00(01) on 6 March 2000.)

Adm 24. Mr Albert HO said that as far as he was aware, the Secretary for Home Affairs' reply to the Member's question was inconsistent with the guidelines issued by the Home Affairs Department. He again requested the Administration to provide in tabular form the following information in respect of the calculation of a quorum-

- (a) multiple ownership of a single unit;
- (b) single owner owning multiple number of units;
- (c) single person holding proxies from multiple number of owners; and
- (d) multiple number of persons holding proxies from multiple number of owners.

25. Mr Albert HO pointed out that the crux of controversy was whether proxy should be allowed. If the policy was to allow proxy, then a proxy should be given unlimited representation, i.e. a proxy should have the right to vote on behalf of an owner as well as be treated as an owner present at the meeting for the purpose of establishing a quorum. He expressed concern that the abolition of proxies would make the formation of OCs even more difficult.

26. Mr Andrew WONG disagreed with Mr HO's views. Mr WONG opined that, under new section 3(3) of the Bill, the appointment of a proxy should be limited in that he could vote on specific items on the agenda only

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instead of being free to exercise all the rights vested with an owner. Moreover, a proxy should not be allowed to decide on how to vote, he must act in accordance with the instruction given by the owner when casting a vote on a specific item on the agenda.

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27. DS(HA)2 reiterated that new section 3(3) clearly provided that if an owners' meeting was convened for the purpose of appointing a management committee, any proxy appointed by an owner for the purpose of voting on the resolution concerning the appointment of a management committee should be treated as being an owner present at the meeting for the purpose of establishing that quorum. He would give a written reply to Mr Andrew WONG's comment.

Termination of appointment of a building manager

28. DS(HA)2 said that paragraph 7(1) of the Seventh Schedule of the BMO provided that the termination of a building manager's appointment could be effected by a resolution of owners of not less than 50% of the shares. The Administration considered that the termination of a manager's appointment was an important decision. If the relevant percentage was lowered, the wishes of the majority of the owners might not be reflected. He further explained that terminating a manager's appointment was a highly controversial subject. For example, some owners might consider the performance of a manager satisfactory while others might demand that the manager be dismissed. If these two groups of owners were close in numbers, a lower percentage requirement might lead them to overturn each other's decision at different meetings. The Administration considered that the existing percentage requirement which could reflect the wishes of the majority of owners was appropriate and practical.

29. Mr Albert HO said that judging from his experience, it was too strict and unreasonable to require the approval of owners holding not less than 50% of the shares for terminating a manager's appointment. It would be especially difficult to obtain the approval of the required number of owners in buildings where a large number of the units were occupied by non-owner-occupiers. Mr HO said that the Democratic Party had proposed to the Home Affairs Bureau in June 1999 that the termination of a manager's appointment could be effected as long as the relevant resolution was passed at a meeting attended by owners holding not less than 30% of the shares. Mr HO said that if the Administration did not accept the proposal, he would consider moving Committee stage amendments to lower the percentage requirement in respect of owner's shares for terminating a manager's appointment.

(Post-meeting note: the Democratic Party's proposal to amend the BMO was circulated to members vide LC Paper No. CB(2)1347/99-00(01) on 10 March 2000.)

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30. Mr Albert HO pointed out that owners encountered great difficulties in dismissing the first manager appointed by developers. This was because developers held the shares of both commercial units and common parts, which in turn made it very difficult for other owners to obtain the support of owners holding not less than 50% of the shares. Moreover, building management arrangements in the deeds of mutual covenant (DMC) were usually made by developers. Persons who bought the unit had de facto agreed to the terms in the DMC. Mr HO further pointed out that if owners were successful in terminating the appointment of the first manager, the procedure for dismissing the subsequent managers would be relatively simple because the appointment contract usually provided that the appointment of a building manager could be terminated by a resolution passed by a majority of the owners present at a meeting attended by not less than 10% of the owners, in addition to serving a 3-month notice.

31. Mr Andrew WONG was also of the view that the 50% requirement of owner's shares for terminating a manager's appointment was too stringent and he considered that the following procedures for terminating a manager's appointment were more reasonable-

- (a) a resolution passed by a majority of the owners and proxies present at the meeting; and
- (b) with the support of persons holding 30-35% of undivided shares.

32. The Chairman informed members that the DAB had suggested that the percentage of shares required for terminating the appointment of a management company should be lowered from the existing requirement of owners holding not less than 50% of the shares to a simple majority at an owners' meeting attended by 20% or 30% of the owners. Miss CHOY So-yuk also considered it necessary to lower the percentage of shares required for terminating the appointment of a management company.

33. In response to members, DS(HA)2 said that some major developers had stated to Government that, contrary to members' belief, developers usually held 10% to 20% of the owner's shares instead of over 50%. The Administration had acted in accordance with the principle of fairness in drawing up the requirement of owner's shares. In theory, the amount of management fees to be paid by and the voting rights of an owner should be proportionate to the number of owner's shares. The Administration opined that if the 50% requirement of owner's shares was lowered, the decision to terminate the appointment of a manager might not be representative of the owners' wishes. If two groups of owners took opposite stances, the OC would have difficulty to operate smoothly. The Administration did not see any need to revise the existing percentage requirement at present.

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34. Mr LEE Wing-tat pointed out that management arrangements specified in the DMC which were made by developers often put other owners at a disadvantageous position. He considered that the 50% requirement of owner's shares was stringent and unacceptable as it would put owners in a more vulnerable position. He pointed out that as DS(HA)2 had said that when an owners' meeting was convened to decide on important matters, those owners who were reluctant to involve in matters relating to building management would be eager to attend the meeting. Under such circumstances, even if the percentage requirement of owner's shares was lowered to 30%, the Administration should not worry that a decision made at an owners' meeting would not be representative. As for the Administration's concern that a decision made at an owners' meeting could be easily overturned, Mr LEE considered that the Administration was applying different standards and inconsistent policies. He pointed out that the proposed quorum requirement of as low as 10% of the owners in new buildings would really make the decision to form an OC easily overturned.

35. DS(HA)2 clarified that the 10% requirement was for the purpose of counting towards a quorum and not voting on a resolution. He said that it was difficult to find a proper solution to address the problem arising from termination of a manager's appointment as the law did not provide solutions to all the problems. The proper solution lied in owners' unity in dealing with the problems. The Administration's role was to make balanced and consistent policies to address the demands of various parties.

36. Mr Andrew WONG said that it was not difficult to address the Administration's concern about the decision made at an owners' meeting being easily overturned. As long as owners were given adequate and reasonable notice for a meeting, a resolution to dismiss a manager which had been so passed at an owners' meeting could not be easily overturned. Moreover, it could be stipulated in law where the DC had taken a decision on a specific question, no resolution in relation to that question should be reintroduced within a specified period.

37. DS(HA)2 informed members that under the BMO, the notice of owners' meeting on important matters was served 14 days before the date of the meeting. He pointed out that Mr WONG's proposal had implication on the operation of an OC. If the BMO was amended to regulate the operation of an OC, the latter's autonomy would be undermined. As the purpose of the Bill was to facilitate the easy formation and smooth operation of OCs, the Administration did not see the need to impose further legislative measures to regulate an OC's operation.

38. Mr Andrew WONG considered that the notice period of 14 days was inadequate. He pointed out that under the Companies Ordinance, the notice of a meeting on important matters was required to be served 21 days before the date

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Adm of the meeting. He requested the Administration to reconsider extending the notice period.

DMC

39. Mr LEE Wing-tat pointed out that there were inherent conflicts between owners of commercial units and owners of residential flats over their shares in the management fees. He asked the Administration about the criteria used by developers to allocate undivided shares in the DMCs.

40. DS(HA)2 said that allocation of undivided shares was provided in the guidelines for DMC issued by the Director of Lands. The associations of real estate developers had also issued similar guidelines to their members for reference. DS(HA)2 undertook to provide the relevant documents for members' information.

(Post-meeting note: the guidelines for DMC issued by the Director of Lands was circulated to members vide LC Paper No. CB(2)1238/99-00(03) on 6 March 2000.)

41. Mr Albert HO explained to members that the concept of "undivided shares" was originated from lawyers in the 1950s who determined the number of shares to each flat and the common parts on the basis of the value of individual flats. The current allocation of shares in the DMC was determined by developers and the relevant lawyers.

42. Assistant Legal Adviser 4 (ALA4) informed members that section 39 of the BMO provided that "an owner's share" shall be determined-

- (a) in the manner provided in an instrument including a deed of mutual covenant (if any) which is registered in the Land Registry; and
- (b) if there is no such instrument, or the instrument contains no such provision, then in the proportion which his undivided share in the building bears to the total number of shares into which the building is divided."

Adm ALA4 said that according to the literal meaning of the provision, an owner's shares were allocated in proportion to plot ratio rather than the value of individual properties. At members' request, DS(HA)2 undertook to provide a written reply on the principle and ways in respect of the determination of owner's shares.

43. Mr Albert HO informed members that there were unfair provisions in some DMCs. When drafting the DMCs, developers tended to make

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provisions favourable to themselves while disregarding the interests of owners of individual units. For example, some developers allocated the majority of undivided shares to common parts, the holders of which were not liable to pay management fees. Some developers also put under their ownership the undivided shares of common parts as well as of the commercial units. Mr HO pointed out that as a developer held a substantial number of owner's shares, it could control management of the building and retain the power to appoint a management company. As more and more DMCs of newly-completed buildings contained terms relating to appointing management companies, Mr HO considered that the solution lied in making legislation to override certain unfair provisions in the DMCs. Otherwise, owners of individual units would not be able to protect their interests by forming OCs. Mr HO further said that the Democratic Party had suggested that owners of undivided shares who did not have to pay management fees should not be counted for the purposes of quorum and voting at a meeting.

44. DS(HA)2 said that what Mr Albert HO had mentioned did exist. Nevertheless, as owners should have read in detail and agreed to the terms of the DMCs upon completion of the sale of the property, they should be subject to the rights and obligations specified under the DMCs. When conflict arose between owners, they should be handled in accordance with the terms in the DMCs. Generally speaking, it was inappropriate for Government to use legislative means to intervene the rights and obligations of the parties who had entered into amongst themselves a private agreement. The BMO already contained provisions which could be used to override certain terms in the DMCs that posed major obstacle to building management.

45. Mr Andrew WONG pointed out that if developers had made prior arrangements with the first buyer who accepted the terms of the DMC, these terms would be imposed on future buyers of the property. The second buyer of the property would have to comply with these terms if he bought the property from the first buyer. Mr WONG asked what could be done to amend the terms of the DMCs.

46. DS(HA)2 said that similar proposal was also put forward by the DAB but was related to DMCs of older buildings. The Administration opined that such a proposal should be dealt with separately as it involved important legal principles and had far-reaching implications. Moreover, it fell outside the scope of the BMO.

47. With regard to the inherent conflicts between owners of commercial units and owners of flats, Miss CHOY So-yuk asked whether it was possible for owners of commercial units and owners of flats to form their respective OCs after consultation.

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48. DS(HA)2 replied that the issue was outside the scope of the Bill. He pointed out that members should carefully consider the various problems arising from the formation of different OCs in the same building. DS(HA)2 added that it was not necessary for owners of a building to form an OC, they could use other ways to manage their building.

II. Date of next meeting

49. Members agreed that the Bills Committee should meet every Thursday. They also agreed that the next three meetings should be held on 9, 13 and 20 March 2000 at 2.30 pm respectively.

(Post-meeting note: the meeting scheduled for 30 March 2000 had been rescheduled to start at 8.30 am.)

50. The meeting ended at 12.45pm.

Legislative Council Secretariat

12 April 2000