

立法會
Legislative Council

LC Paper No. CB(2)2580/99-00
(These minutes have been seen by
the Administration and cleared
with the Chairman)

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

**Minutes of the 6th meeting
held on Thursday, 6 April 2000 at 8:30 am
in the Chamber of the Legislative Council Building**

Members Present : Hon CHAN Kam-lam (Chairman)
Hon Edward HO Sing-tin, SBS, JP (Deputy Chairman)
Hon HO Sai-chu, SBS, JP
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing
Hon James TO Kun-sun
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon LEE Wing-tat
Hon Gary CHENG Kai-nam, JP
Hon Howard YOUNG, JP
Hon TAM Yiu-chung, GBS, JP
Hon CHOY So-yuk

Members Absent : Hon Eric LI Ka-cheung, JP
Hon Andrew WONG Wang-fat, JP

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

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

Mr LEE Chee-chung
Chief Fire Officer (Protection/Fire Safety)
Fire Services Department
Mr J D SCOTT

Senior Assistant Law Draftsman

Ms Grace L Y CHAN
Senior Government Counsel

Miss Shirley WONG
Government Counsel

Mr CHOW Kim-ping
Chief Building Surveyor (Legal)

Mr Edward CHU
Assistant Secretary for Home Affairs

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

Attendance by Invitation : The Real Estate Developers Association of Hong Kong

Mr Stewart LEUNG
Vice Chairman
Executive Committee

Mr Louis LOONG
Secretary General

Mr Johnnie CHAN
Ms Wendy GAN
Mr Mingo KWAN
Mr MOK Chi-hung
Mr Alfred SO
Ms Amy WONG
Mr Augustine WONG
(Representatives)

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

I. Meeting with deputation

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The Real Estate Developers Association of Hong Kong
[LC Paper No. CB(2)1570/99-00(01)]

The Chairman welcomed representatives of the Real Estate Developers Association of Hong Kong (REDA) for attending the meeting and giving their views on the Bill to the Bills Committee.

2. The Vice Chairman of the Executive Committee of REDA briefed members on its submission. In short, REDA expressed concern about the proposed quorum of not less than 10% of the owners for convening an owners' meeting for the purpose of forming an owners' corporation (OC) for a new building under clause 3(b) of the Bill. He pointed out that the clause violated the principle of majority rule and caused disruption to the development of large-scale composite property developments. REDA also expressed concern that if the quorum was set too low, owners of different factions might compete to form OCs.

3. The Vice Chairman of the Executive Committee of REDA said that as far as a phased property development was concerned, the fairest and most reasonable arrangement was for an OC to be set up only upon the completion of all phases when it would be truly representative of the interests of all owners.

Members' discussion with the deputation

4. Given that REDA considered the 10% requirement to be too low, Mr Edward HO asked whether it was acceptable to REDA if the quorum for convening an owners' meeting for the purpose of forming an OC for a new building was set at 30% of the owners.

5. A representative of REDA said that under section 3(2)(b) of the Building Management Ordinance (the Ordinance) (Cap. 344), a management committee (MC) might be appointed by a resolution of the owners of not less than 50% of the shares. Under sections 3A and 4, with the consent of owners of not less than 30% and 20% of the shares, an application might be made to the Secretary for Home Affairs and the Lands Tribunal respectively for an order to be made to convene a meeting of owners to appoint an MC. The representative pointed out that in case the resolution was supported by owners of less than 50% of the shares, an arbitration mechanism was provided under the existing legislation to deal with the decisions of owners so as to ensure that their interests were protected. As the existing mechanism had provided a fair and effective channel for owners to form an MC, REDA was of the view that the new proposal under clause 3(b) was unnecessary.

6. The Vice Chairman of the Executive Committee of REDA added that for some properties which were completed in phases, the developers did not object to the formation of owners' committees before the whole development was

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completed. While owners' committees were not statutory bodies, their terms of reference were in no way different from those of OCs. Management companies would welcome comments of owners' committees on building management and maintenance. For the management and maintenance of properties to proceed smoothly, there should be mutual understanding and support between both parties.

7. Mr Albert HO disagreed with REDA's view that the existing legislation was fair in handling matters concerning the formation of OCs. He pointed out that the requirement for the consent of owners of not less than 50% of the shares for the formation of OCs under section 3(2)(b) of the Ordinance was too high and was unfair to owners. He said that as some developers held more than 50% of the shares of shopping arcades and common areas, owners were unable to form OCs.

8. The Vice Chairman of the Executive Committee of REDA advised that the situation mentioned by Mr Albert HO did occur in the past but for large-scale developments completed recently, major owners seldom held more than 50% of the shares. A representative of REDA added that according to the guidelines of the consent scheme for the pre-sale of uncompleted properties, the Government had since 29 June 1999 made it a requirement to stipulate in the deed of mutual covenants (DMCs) that shares allocated to common areas should not carry any voting right. In December 1999, the Law Society of Hong Kong had also asked for the inclusion of the same provision in all DMCs of uncompleted properties under the non-consent scheme.

9. The Vice Chairman of the Executive Committee of REDA informed members that the income generated from building management was not as good as before with the profits dropping drastically from 10% - 15% in the past to 3% - 4% at present. He said that developers had adopted a liberal attitude towards the formation of OCs. For some buildings, developers handed over the power of management to OCs upon their formation. He pointed out that as some large-scale residential developments were well managed by the management companies appointed by the developers, the OCs concerned continued to appoint the same management companies to manage their buildings in many cases. There were also precedents of developers offering assistance to owners to form OCs. The Vice Chairman of the Executive Committee of REDA further advised that it would cause confusion if an OC could be formed with the consent of 10% of the owners only. He expressed concern that political parties would persuade owners of different factions to form their own OCs, hence creating confusion to other owners.

10. Mr Albert HO responded that unless owners took the initiative to seek help, political parties would not intervene in building management matters. The problems involved should have become very complicated when political parties intervened.

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11. Regarding REDA's suggestion that an OC should only be formed upon the completion of all phases of a development, Mr Albert HO pointed out that owners of an earlier phase would not be able to form their OC if there was a delay in the construction of a later phase. Mr HO considered it necessary to form OCs for earlier phases as large-scale residential developments usually took a long time to complete. The problem was that when an OC should be formed in order to be fully representative of all owners.

12. The Vice Chairman of the Executive Committee of REDA responded that postponing development projects was a strategy adopted by developers usually due to an adverse business environment. Postponement in fact did not bring any advantages to developers. Apart from paying more interest, developers might also be penalized for not completing projects on schedule.

13. Mr Edward HO enquired about REDA's views on the formation of OCs by phases. A representative of REDA informed members that a large-scale residential estate in Kowloon had once considered forming OCs by areas with each OC appointing its own management company. However, the plan was eventually aborted as delineation of boundaries for separate management of common roads and facilities could not be achieved.

14. Mr Albert HO held the view that under the regulation of the Ordinance and DMC, it was impossible for an OC formed by owners of newly completed phases to make decisions which were detrimental to the interests of owners of subsequent phases. Mr LEE Wing-tat pointed out that all resolutions had to be passed by a majority vote of the owners. Besides, alterations to access roads or common facilities had to be approved by the relevant Government departments before they could proceed.

15. The Vice Chairman of the Executive Committee of REDA remarked that developers were not concerned about alterations to be made to common facilities by OCs. Instead, they were concerned that OCs did not allow them to alter certain facilities. He explained that phased residential developments were each under a single master layout plan which set out the comprehensive design and planning of all phases including common facilities. Developers very often needed to apply to the Government for making revisions to the layout plans during construction having regard to the changing environment. Under the proposal of the Bill, such application might be objected by the OC formed by a minority group of owners. As resolutions of an OC were binding on each phase of the whole development, the planning and development of uncompleted portions could be affected.

16. A representative of REDA added that the new proposal was extremely unfair to owners of uncompleted portions of a multi-phased property development. They could not participate in the decision-making process which formed the OC. Developers had the responsibility to improve the overall

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planning of property developments and look after the interests of owners as a whole.

17. Mr LEE Wing-tat said that only OCs could represent the interests of owners. He opined that it was beyond criticism for OCs to give their views on revisions to be made to layout plans. In response, a representative of REDA pointed out that an OC formed in such a manner could only represent the interests of owners of earlier phases but not all owners. Developers made revisions to layout plans in the interest of owners as a whole so that the design could serve its purpose and achieve the best results.

The Administration's response

[Appendix 3 to LC Paper No. CB(2)1570/99-00(02)]

18. Members noted that the salient points raised by REDA in its letter to the Administration dated 20 March 2000 were similar to those stated in its submission to the Bills Committee. A copy of the Administration's reply to REDA dated 23 March 2000 was at Appendix 3 to LC Paper No. CB(2)1570/99-00(02).

19. Deputy Secretary for Home Affairs (2) (DS(HA)2)'s response to REDA's views and members' questions raised at the meeting is summarised in the ensuing paragraphs.

The principle of majority rule

20. DS(HA)2 said that the proposed quorum requirement of not less than 10% of the owners to convene an owners' meeting to form an OC aimed at facilitating the early formation of OCs by owners who were willing to shoulder the responsibility of building management. The Administration explained that the quorum requirement of 10% of the owners was only the minimum requirement. Convening a meeting with the minimum quorum did not necessarily mean that the resolutions of an OC could be manipulated by those owners present at the meeting as all resolutions of an OC had to be determined by a majority vote of the owners. Therefore, the proposal did not go against the principle of majority rule.

Multi-phased property developments

21. DS(HA)2 remarked that if no legislation was enacted to facilitate the formation of OCs in new buildings or multi-phased property developments, there would be no effective mechanism to encourage owners to discharge their responsibility of building management. He was of the view that the scenario of owners of earlier phases making decisions which could affect the interests of owners of later phases was unlikely to happen. The reasons were as follows -

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- (a) the term “common parts” was defined in detail in the First Schedule to the Ordinance. “Common parts” did not include parts undergoing development or had yet to be developed. Therefore, it was impossible for OCs to cause disruption to the future development of common parts;
- (b) resolutions on making alterations to facilities within common parts had to be passed by a majority vote of the owners holding undivided shares. Developers would normally hold the undivided shares vested in the remaining undeveloped phases and hence could vote to safeguard the interests of future purchasers and themselves at owners’ meetings; and
- (c) DMCs were usually drafted by developers and had to be approved by the Legal Advisory and Conveyancing Office (LACO). In case a multi-phased property development was under different land grants with each phase having a separate DMC, there should be means for the developer, as the drafter of the DMCs, to ensure that the OCs of earlier phases would not have authority over areas beyond the intended scope.

22. A representative of REDA pointed out that under section 34J(2) of the Ordinance, a provision in a DMC should be void and of no effect if it operated to prevent any business relating to the management of a building being conducted at a meeting by any owner or any person managing the building. Therefore, even if a DMC was approved by the LACO, the power vested in an OC under the Ordinance would prevail legally when the provisions under the Ordinance and the DMC contradicted each other. Another representative of REDA reiterated that there would be practical problems in building management if properties completed in different phases formed their own OCs.

23. The Chairman did not agree to the proposal that each phase of a property development should have its own DMC. He pointed out that if facilities were constructed within a specified area only, disputes might arise among different OCs as to the burden as well as rights and interests brought about by the facilities within their respective areas. As such, the proposal was not feasible. He then asked the deputation to suggest ways to deal with requests of owners of earlier phases to form an OC. A representative of REDA said that it was the current practice of developers to help owners to set up owners’ committees for handling matters regarding building management.

24. Mr Howard YOUNG remarked that there were indeed difficulties in implementing the Administration’s proposal. He suggested that it should consider introducing bills to handle building management matters regarding single-block buildings and multi-phased property developments separately.

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25. The Chairman thanked the deputation for attending the meeting to express their views.

II. Matters arising

[LC Paper No. CB(2)1570/99-00(02)]

26. At the invitation of the Chairman, DS(HA)2 briefed members on the paper [LC Paper No. CB(2)1570/99-00(02)] responding to the points raised by members at the meeting held on 30 March 2000.

III. Clause by clause examination of the Bill

[LC Paper No. CB(2)1151/99-00(03)]

Clause 7 (new section 28) - Obligations regarding insurance

27. Mr Albert HO expressed concern that members of an MC might be guilty of a criminal offence if it failed to take out third party insurance in respect of its building as proposed under section 28(2). He asked how MC members could prove that they had “exercised all due diligence” in order to exempt themselves from any criminal liabilities.

28. Senior Government Counsel explained that the new section 28(2) already provided two circumstances under which an MC member could be exempted from criminal liabilities, that is, the offence was committed without his consent or connivance; and he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances. She remarked that drafting the provision as “exercised all due diligence” provided great flexibility and was intended to allow members of an MC, when it was in genuine difficulties, to exempt themselves from criminal liabilities if they could prove that they had exercised all due diligence. She said that it was very difficult to explain how section 28(2) would apply by citing a specific case.

29. In order to allay the worries of MC members, Mr Albert HO suggested that a defence of “reasonable excuse” should be added to the new section 28(2). Senior Assistant Law Draftsman responded that the drafting of the new section 28(2)(a) and (b) was consistent with that of section 11(3) (regarding the display of copy of certificate of registration, etc.) and section 27(3) (regarding the accounts of corporation). Both sections did not provide a defence of “reasonable excuse” for MCs. A defence of “reasonable excuse” only appeared in the new section 40B(2) (regarding the appointment of building management agent by MC under order of Authority) as an uncertain element was involved by reason of the circumstances mentioned in the new section, i.e. there was a danger or risk of danger to the seriously dilapidated buildings and such circumstances were beyond the control of MCs.

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Clause 12 (new section 41) - Power to make regulations

30. DS(HA)2 explained that the new section 41 empowered the Chief Executive in Council to make regulations in respect of policies of insurance by OCs. The conditions and requirements which were to apply in respect of policies of third party insurance were stipulated in detail in the new section 41(ca). In response to a member's request for the draft parameters of the relevant regulation at the last meeting, the Administration had provided such parameters at Appendix 2 to LC Paper No. 1570/99-00(02). In response to questions raised by Mr LEE Wing-tat and Mr Albert HO, DS(HA)2 said that the regulation would be submitted to the Legislative Council for negative vetting.

31. Miss CHOY SO-yuk asked whether the coverage of the third party insurance included unauthorized building works (UBWs). DS(HA)2 responded that during the discussion with the insurance industry, the Administration had requested that the entire building be included in the coverage of an insurance policy. However, the insurance industry advised that they could not underwrite building works which did not exist at the time of effecting the policy. Therefore, they would require the insured to list out all UBWs which were already in existence at the time of the inception of the policy. Moreover, such UBWs should be subject to the certification of safety by authorized officers or professionals. Insurance companies had the right of recovery against owners of UBWs for liabilities or claims arising from UBWs which were constructed after the inception of the insurance policy. In response to a further question raised by Miss CHOY So-yuk, DS(HA)2 stated that the mandatory requirement for taking out third party insurance applied to buildings with OCs only. While owners' committees were not bound by this Bill, they were encouraged to take out third party insurance in respect of their buildings.

32. In response to a question raised by Mr LEE Wing-tat, Chief Building Surveyor (Legal) explained that authorized persons included engineers, surveyors and architects. A list of authorized persons was kept by the Building Authority in accordance with Buildings Ordinance (Cap. 123). If UBWs were not in compliance with the safety standards, the Government would take clearance actions.

33. Mr LEE Wing-tat considered it inappropriate for authorized officers to issue safety certificates to owners of UBWs. He asked whether it was the Administration's intention to make use of the high insurance premium to force owners to remove UBWs.

34. DS(HA)2 responded that the proposal for taking out third party insurance for buildings might result in a scenario as mentioned by Mr LEE Wing-tat. However, the main purpose of the proposal was in fact to protect OCs and the third parties.

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Clause 13 (new section 44(1)) - Codes of Practice

35. DS(HA)2 emphasized that the Codes of Practice set out standards of good management of buildings which should be observed rather than a minimum standard. In response to a question raised by Miss CHOY So-yuk, DS(HA)2 said that the Administration would step up publicity and public education on building management with a view to improving the management and safety of private buildings.

Clause 14 (Third Schedule) - Meetings and procedure of corporation

36. DS(HA)2 informed members that the Administration had accepted members' proposal to incorporate the interpretation of quorum and vote counting of owners in the Ordinance. The Administration would introduce a Committee Stage amendment to that effect.

Clause 15 (Seventh Schedule) - Mandatory terms in DMC

37. Members noted that clause 15 was a technical amendment.

IV. Date of next meeting

38. DS(HA)2 informed members that the Administration would need about two weeks to draft the relevant Committee Stage amendments. As regards the written questions raised by Assistant Legal Adviser, the Administration would respond as early as possible.

39. Members agreed that the next meeting to be held at 2:30 pm on 13 April 2000 be rescheduled to 2:30 pm on 20 April 2000.

40. The meeting ended at 6:25 pm.

Legislative Council Secretariat
22 August 2000