

立法會
Legislative Council

LC Paper No. CB(2)2535/99-00
(These minutes have been seen
by the Administration and cleared
with Chairman)

Ref : CB2/BC/9/99

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

**Minutes of the 3rd meeting
held on Thursday, 9 March 2000 at 2:30 pm
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 LEE Wing-tat
Hon NG Leung-sing
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon CHOY So-yuk
Hon TAM Yiu-chung, GBS, JP

Members Absent : Hon HO Sai-chu, SBS, JP
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon LI Ka-cheung, JP
Hon James TO Kun-sun

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 CHOW Kim-ping
Chief Building Surveyor (Legal)

Mr J D SCOTT
Senior Assistant Law Draftsman

Miss Shirley WONG
Government Counsel

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

Mr Edward CHU
Assistant Secretary for Home Affairs

Attendance by Invitation : Hong Kong Federation of Insurers

Mr CHOY Chung-foo
Deputy Chairman, General Insurance Council

Mr Dominic LAM
Chairman, Accident Insurance Association

Mr David HUI
Senior Manager
Committee, Hong Kong Federation of Insurers

Hong Kong Institute of Surveyors

Mr S K KWAN
Chairman of Property Management Committee

Mr W L MAK
Committee Member of Property Management Committee

Mr Francis LAM
Committee Member of Property Management Committee

Mr Gary YEUNG
Committee Member of Property Management Committee

Hong Kong Association of Property Management
Companies

Mr Simon SHUM
Chairman, Professional Practice Committee

Mass Transit Railway Corporation

Mr Victor CHAN
Property Development Manager

Mr Mingo KWAN
Chief Estate Manager

Mr Sammy YU
Area Estate Manager

Ms Teresa CHEUNG
Legal Manager General

Ms Maggie SO
External Affairs Manager

Ian Cullen & Associates

Mr Ian R C CULLEN

Mr Dicky Y K CHEUNG

Hong Kong Institute of Housing

Mr K L WONG

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 deputations

[LC Papers Nos. CB(2)1210/99-00(02) to (03) and CB(2)1303/99-00(01) to (05)]

The Chairman welcomed representatives of the deputations and the Administration for attending the meeting.

Hong Kong Federation of Insurers (HKFI)
[LC Paper No. CB(2)1210/99-00(03)]

2 A representative of HKFI expressed support for requiring owners' corporations (OCs) to take out compulsory third party insurance in respect of common parts as proposed in the Bill. He briefed members on HKFI's views as expressed in its written submission, a gist of which was set out below -

- (a) despite the requirement for taking out third party insurance in respect of common parts of a building under the Bill, insurance companies hoped that they should be allowed to exercise their prudent underwriting principles without intervention from the Government when carrying on this kind of business;
- (b) a well-defined monitoring system should be drawn up to ensure compliance of legislation by all relevant parties;
- (c) consideration could be given to establishing a compensation fund to protect the insured;
- (d) as regards the drafting of the new section 28, the reference to "and all parts thereof" should be deleted to avoid ambiguity; and
- (e) the Authority should consult the insurance industry before the regulation in respect of the third party insurance policy was made.

3 The representative of HKFI emphasized that it was very important for insurance companies to have autonomy in deciding whether or not to provide insurance. He pointed out that if a building failed to comply with the minimum maintenance standards, insurance companies might classify it as a high risk building and hence would need to ask for a higher premium, impose some kind of premiums to achieve a deterrent effect or choose not to provide insurance. The representative of HKFI explained that the insurance industry operated under the principle of risk management. The level of premiums was determined having regard to the type of insurance and the risks involved. He also pointed out that the requirement for taking out third party insurance in respect of buildings could not replace the statutory requirements for building safety. Owners had to discharge their legal responsibility of managing and maintaining their buildings to ensure their safety.

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Hong Kong Institute of Surveyors (HKIS)
[LC Paper No. CB(2)1303/99-00(01)]

4 A representative of HKIS said that the Institute supported the underlying principles of the proposed Bill which included specifying building management and maintenance standards for compliance by OCs; imposing mandatory management on buildings with serious management and maintenance problems; and facilitating owners of new buildings to form OCs. He also briefed members on HKIS's proposals as detailed in its written submission. The major proposals were set out as follows -

- (a) the quorum to appoint a management committee (MC) of an OC should not be less than that of dissolving MC, i.e. 20% of the owners, and the counting of quorum should preferably be by means of shares instead of the number of owners;
- (b) the Code of Practice on Building Management and Maintenance (the Code) should be written in professional terms providing clearly the building management and maintenance standards that should be complied with. Consideration should also be given to drawing up a guideline in layman's terms for easy reference by owners or OCs;
- (c) there should be strict criteria for inclusion into the list of building management agents. Building management agents included in the list should be experienced professionals in the relevant disciplines to ensure that seriously dilapidated buildings would be properly managed; and
- (d) given that property management agents might encounter difficulties in recovering management fees from owners of problematic buildings, the Administration might consider engaging property management agents direct and recovering the management fees from the owners concerned.

Hong Kong Association of Property Management Companies (HKAPMC)
[LC Paper No. CB(2)1303/99-00(02)]

5 The representative of HKAPMC said that while the Association supported the underlying principles of the Bill, it opposed the proposal to simplify the manner for owners of a new building to convene a meeting to appoint a MC. He pointed out that the proposal had violated the principle of majority rule and disregarded the rights and interests of the majority of the owners.

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Mass Transit Railway Corporation (MTRC)

[LC Papers Nos. CB(2)1151/99-00(02) and CB(2)1303/99-00(05)]

6 Members noted the MTRC's view that estates under construction and planned to be completed in phases should not be allowed to have OCs formed until the whole development was completed and a Certificate of Compliance was issued.

7. A representative of MTRC said that while MTRC expressed overall support for the proposals to improve the management of buildings under the Bill, it was concerned about the proposal to simplify the manner for owners of a new building to convene a meeting to appoint a MC. MTRC was of the view that the quorum requirement of 10% of the owners to convene a meeting to form a MC was too low, particularly for large-scale and comprehensive property developments. Citing the development of Area 86 in Tseung Kwan O as an example, MTRC pointed out that upon the formation of an OC, its decisions might affect not only areas that had yet to be developed, but also common areas. Its decision if ran contrary to the Corporation's development programme and procedure, would result in the non-compliance of MTRC's obligations as stipulated in the land grant.

Ian Cullen & Associates (IC & A)

[LC Paper No. CB(2)1210/99-00(02)]

8 A representative of IC & A pointed out that there were deficiencies in the drafting of the Building Management Ordinance (Cap. 344). For instance, the terms "management committee member" and "common parts" were not clearly defined. The representative requested that the definitions as proposed by IC & A for the two terms in its written submission be incorporated into the Bill.

Hong Kong Institute of Housing (HKIH)

[LC Papers Nos. CB(2)1303/99-00(04) and CB(2)1347/99-00(02)]

9 The representative of HKIH said that his views also represented those of the Chartered Institute of Housing (Hong Kong Branch). He said that HKIH supported the proposed specification of building management and maintenance standards for compliance by OCs, mandatory management of buildings with serious management and maintenance problems and mandatory third party insurance in respect of common parts of a building under the Bill. However, the representative of HKIH opposed the two proposals below-

- (a) to allow the publication of the notice of an owners' meeting in one, instead of two, newspaper; and
- (b) to relax the quorum requirement for convening an owners' meeting to form an OC in a new building as the proposed quorum was too low and violated the principle of majority rule in the decision-making process.

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10 The representative of HKIH said that in order to enable owners to attain the required quorum more easily, HKIH proposed that the Ordinance should be amended to provide for the exclusion of shares of common parts when calculating the quorum of a meeting.

II. Discussion

Formation of OCs

11. Mr Gary CHENG pointed out that the deed of mutual covenants (DMCs) contained unfair provisions. In some cases, as the developer held a considerable amount of shares, individual owners were deprived of their rights and benefits in respect of the decision in forming OC and terminating the management companies. He enquired about the number of MTRC's property developments where OCs were successfully formed.

12. A representative of MTRC responded that the Corporation had all along adopted a liberal attitude towards the formation of OCs. Properties developed by MTRC such as the Southorn Garden had already formed its OC. Moreover, some of its properties had also set up owners' committees to give valuable advice relating to building management and maintenance to the management companies. The representative pointed out that despite the different power vested in OCs and owners' committees, MTRC respected very much the advice of owners' committees. MTRC believed that a harmonious style of management was most effective. For the management and maintenance of properties to proceed smoothly, there should be mutual understanding and support between owners and management companies.

13 Mr NG Leung-sing suggested that for large-scale property developments, MTRC might consider naming them by phases and areas. Arrangement could be made to form an OC upon the completion of a phase so as to achieve the purpose of early formation of OCs in that area. This would also prevent the resolutions passed by the OC in one area from affecting the development of another area.

14 The representative of MTRC said that difficulties would be encountered if Mr NG Leung-sing's proposal was put into practice. The reason was that, for every property development, there was normally only one DMC. Moreover, cross-district common areas such as common access roads, garden and other recreational facilities were part of the property development. It would be inappropriate for these facilities to be managed by different OCs.

15. The representative of HKIH pointed out that developing large-scale and comprehensive properties had the advantage of enabling tenants to share common facilities. Tenants would no longer be able to benefit from this arrangement should each area having its own OC. The representative

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considered that allowing the setting up of an owners' committee for each phase of development under the DMC would help to solve the problem.

16 Mr Edward HO enquired about the MTRC's views on the Administration's response as set out in paragraphs 27 and 28 of LC Paper No. CB(2)1303/99-00(06). The Administration stated in paragraph 28 that as the drafter of the DMC, MTRC might include in the DMC provisions which prevented owners in general, during the construction of all phased property developments concerned, from exercising their power of management over the development of the remaining uncompleted common areas or interfering with such development through their OCs.

17 The representative of MTRC responded that the Government's proposal did not have any legal effect. The inclusion of the proposed provision in the DMC might not be approved by the Legal Advisory and Conveyancing Office of the Lands Department. Moreover, where the provisions under the Bill and the DMC contradicted each other, the power vested in OCs under the Ordinance would prevail legally. The concern of MTRC would not be addressed unless the Government's proposal was enacted into law.

18 The representative of MTRC further said that according to paragraph 27 of the Administration's paper, the developer, as the major owner, still owned most of the shares under the master DMC and it might exert substantial influence on the voting on resolutions by the OCs. The representative said that MTRC did not agree with the proposed solution as unnecessary conflicts and disputes would arise if the developer exerted influence on the voting on resolutions by OCs with its shares.

19 Regarding the view of the representatives of HKAPMC and HKIH that the proposed quorum requirement of 10% of the owners would lead to a minority group of owners controlling the decisions of the OCs, Mr Gary CHENG pointed out that the Ordinance was enacted to strike a balance between the interests of the major and minor owners. Even under the principle of majority rule, the interests of the minor owners should be protected. However, it was unfair to the minor owners that in reality, the developer was the major owner possessing the power of management over the properties. Miss CHOY So-yuk added that unfair situations also existed in commercial/residential buildings. For example, shops, though large in number, occupied a small area each whereas residential flats, though relatively few in number, occupied a large area each. As a result, owners occupying a larger area had to submit to the decision of those owners occupying a smaller area.

20 In response, the representative of HKAPMC said that the issue raised by Miss CHOY So-yuk was related to the determination of an owner's shares. Miss CHOY's concern could be addressed if it was provided in the DMC that the area occupied by an owner was directly proportional to the number of shares he held. The representative further advised that the principle of majority rule was applied in the Ordinance. Resolutions of an OC would be valid if they were

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passed by a majority vote of the owners. It was against the spirit of the law if the wishes of the minority prevailed over those of the majority.

21 The representative of HKIH said that the position of MCs was not paramount. They are only responsible for managing and maintaining the buildings. MC members holding a larger number of shares and those holding a smaller number of shares would each entitle to one vote only. Decisions of MCs were also made by a majority vote. An owners' meeting had to be convened to decide on important issues. Owners present at the meeting could support or object to the decisions of the MC and resolutions had to be passed by a majority vote of the owners. In short, the rule of the game governing building management was that the minority had to submit to the decisions of the majority.

22 The representative of HKIS pointed out that the proposed quorum requirement of 10% of the owners for convening an owners' meeting would give rise to difficulties in practice. Technically speaking, it was not possible to calculate accurately the number of owners given that some owners might own several flats. Moreover, taking the number of owners as the basis of counting a quorum was not fair. For instance, a developer constructed two buildings and upon their completion, one was for lease the other was for sale. Under the new proposal, it would be difficult for the developer to exert influence on the formation of OCs since it has only one vote.

Insurance

23 Mr NG Leung-sing enquired how the minimum maintenance standards of buildings were set by the insurance industry. The representative of HKFI said that the standards were normally defined by professional bodies. As far as he knew, the Code of Practice would provide specific standards on building management and maintenance for OCs to follow. The representative emphasized that it was the duty of owners to ensure safety of their own building. Insurance only served to disperse risks by offering protection to those affected by accidents.

24 Mr LEE Wing-tat expressed concern that insurance companies might refuse to provide insurance or charge an excessively high premium if the buildings concerned failed to meet the minimum maintenance standards.

25 In response, the representative of HKFI said that the insurance industry was highly flexible. It could provide services to meet the needs of customers under any circumstances. If the premium to be charged by a insurance company was higher than the maintenance costs of a building, it could induce owners to shoulder the responsibility to improve management of their buildings.

26 Mr Howard YOUNG enquired about the circumstances under which insurance companies would refuse to provide insurance. The representative of HKFI explained that the insurance company would assess the risks involved in a specific type of insurance and determine the premium to be charged. The

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insurance company might conclude that even if its customer could afford to pay the premium, it might not be able to indemnify him for all his financial losses should an accident occur. In such cases, the insurance company would make a business decision and refuse to provide insurance. However, refusal to provide insurance by one company did not necessarily mean that no other companies would offer the service.

27 In response to a question of Mr Bernard CHAN, the representative of HKFI said that the mode of operation of the compensation fund proposed by the Federation would be similar to those of the fund operated by the Motor Insurers' Bureau and the Travel Industry Compensation Fund. The insured had to contribute towards the fund to protect themselves against a rainy day. For example, in case of the sudden closure of an insurance company, the fund could provide financial support to pay the required compensation.

III. The Administration's response

[LC Papers Nos. CB(2)1295/99-00 and CB(2)1303/99-00(06)]

28 The Administration's response to the written submissions of the deputations was set out in LC Papers Nos. CB(2)1295/99-00 and CB(2)1303/99-00(06). Deputy Secretary for Home Affairs (DS(HA)2)'s response to the deputations' views and members' questions raised at the meeting was summarised in the following paragraphs.

Common parts

29 DS(HA)2 advised that the term "common parts" was defined in detail in the First Schedule to the Ordinance. Parts undergoing development or had yet to be developed did not fall under "common parts". As such, the concern of MTRC that the decision made by an OC which was formed during the first phase of a development would affect the areas that had yet to be developed was not a question. As regards the case in which flat roofs adjacent to private premises were unintentionally designated as common parts as mentioned by IC & A, section 34H of the Ordinance clearly provided that it was the obligation of the owners concerned to maintain those parts.

Insurance

30 DS(HA)2 explained that imposing a mandatory obligation on OCs to take out third party insurance was intended, inter alia, to prompt owners to take the management and maintenance problems seriously. If OCs disregarded such problems, they would end up paying expensive premiums or not being able to secure insurance. OCs would be guilty of a criminal offence if they contravened the new section 28 by not taking out third party insurance in respect of their buildings. Under the new section 28(2), OCs might be exempted from criminal liabilities if they could sufficiently prove that they had exercised due diligence and yet were unable to take out insurance in respect of their buildings.

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DS(HA)2 further said that mandatory management would be imposed on buildings with serious management and maintenance problems.

31 The representative of HKFI asked for clarification as to the parts of a building that would fall under the proposed requirement of mandatory third party insurance. He pointed out that while paragraph 13 of the Legislative Council Brief only mentioned the taking out of third party insurance in respect of “common parts”, the new section 28 specified “the building and all parts thereof”.

32 Senior Assistant Law Draftsman explained that section 18 (1)(a) of the Ordinance provided that the OC should maintain the common parts and the property of the OC in a state of good and serviceable repair. The new section 28 was intended to impose a mandatory obligation on OCs to take out third party insurance so as to protect tenants, owners and OCs’ property. As such, the original legislative intention of the new section 28 was to include “the building and all parts thereof”.

33. Mr Bernard CHAN enquired whether the Administration would consider deleting the reference to “and all parts thereof” from the new section 28 as suggested by HKFI. In response, DS(HA)2 said that to enhance the management and maintenance of buildings and to provide sufficient protection for owners and the public, the reference to “all parts thereof” was necessary for the required insurance to be effective. If the phrase was deleted from the section and a claim made in respect of an accident could not be proved to be arising from private or common parts, the insured might not be able to receive compensation.

Unauthorized building works (UBWs)

34 Mr LEE Wing-tat pointed out that if the policy on the removal of UBWs was not strictly enforced, insurance companies might be reluctant to provide insurance to buildings with UBWs.

35 Chief Building Surveyor (Legal) advised that an order would be issued to building owners under section 24 of the Buildings Ordinance (Cap. 123) for the removal of their UBWs. He further said that the Buildings Department was stepping up enforcement action against UBWs. For buildings under the large-scale clearance operations, UBWs would be removed. In response to a further question of Mr LEE Wing-tat, Chief Building Surveyor (Legal) said that accurate figures relating to the total number of UBWs and their variance from year to year were not available.

36 The representative of HKFI said that whether a service would be provided by an insurance company depended largely on whether the buildings concerned complied with safety standards. It would be tantamount to conniving at offenders if insurance companies provided insurance in the knowledge that the buildings concerned were unsafe. Insurance companies would only consider

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providing insurance if the UBWs concerned were assessed to be compliant with safety standards.

37 Mr LEE Wing-tat said that he did not believe that the Administration would issue safety certificates in respect of UBWs. DS(HA)2 responded that the Administration noted that the subject of UBWs was a pressing problem and involved a wide range of issues. The Planning and Lands Bureau had already set up a task force to look into the matter.

Building management agents

38 In response to a question of Mr Edward HO, DS(HA)2 advised that the criteria for the inclusion of building management agents into a list as proposed at Annex C to the Legislative Council Brief was drawn up in consultation with professional bodies. The Administration had been studying matters relating to the compilation of the list of building management agents with the HKAPMC. He said that while the list was not part of legislation, it would be published in the Gazette and updated from time to time.

39 The Chairman thanked the deputations for attending the meeting and giving their views.

IV. Date of next meeting

40 As the Secretariat had been receiving submissions from other organizations, the Chairman suggested and members agreed that arrangement might be made for the Bills Committee to convene another meeting to meet deputations if necessary. The Chairman informed members that the next meeting would be held at 2:30 pm on 13 March 2000.

41 The meeting ended at 4:30 pm.

Legislative Council Secretariat

31 July 2000