

立法會
Legislative Council

LC Paper No. CB(2)2612/99-00
(These minutes have been seen
by the Administration and cleared
with the Chairman)

Ref : CB2/BC/9/99

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

**Minutes of the 8th meeting
held on Tuesday, 9 May 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 NG Leung-sing
Hon Albert HO Chun-yan
Hon Howard YOUNG, JP
Hon CHOY So-yuk

Members Absent : Hon HO Sai-chu, SBS, JP
Hon LEE Wing-tat
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
Hon TAM Yiu-chung, GBS, 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 J D SCOTT
Senior Assistant Law Draftsman

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

Mr CHOW Kim-ping
Chief Building Surveyor (Legal)

Ms Grace L Y CHAN
Senior Government Counsel

Mr Edward CHU
Assistant Secretary for Home Affairs

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

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

Action

I. Confirmation of minutes of meetings
[LC Paper Nos. CB(2)1792/99-00 and CB(2)1872/99-00]

The minutes of meetings held on 25 February and 2 March 2000 were confirmed.

II. Matters arising
[LC Paper No. CB(2)1868/99-00(01)]

2. Members noted the Administration's response to members in respect of the definition of third party insurance and the basis for allocating undivided shares was tabled at the meeting and subsequently issued vide LC Paper No. CB(2)1868/99-00(01) for members' reference.

Action

3. Mr Albert HO expressed concern about the formation of owners' corporations (OCs) by owners with "divided shares". He noted the Administration's view that this issue was beyond the scope of this Bill and requested that the Administration should undertake to follow up this issue separately.

4. Deputy Secretary for Home Affairs (2) (DS(HA)2) responded that he had advised members at a previous meeting that owners might consider devising a scheme to allocate undivided shares amongst themselves in accordance with section 39(b) of the Building Management Ordinance (the Ordinance) (Cap. 344). The Land Registry would consider the validity of the scheme in connection with any application to register an OC. As the circumstances of individual cases differed, the owners concerned should seek independent legal advice themselves. DS(HA)2 further advised that the Government had set up a special working group to study the long-term policy on building safety management. He would convey members' concern to the working group for follow-up.

Admin

III. Draft Committee Stage amendments (CSAs) to be proposed by the Administration

[LC Paper Nos. CB(2)1868/99-00(02) and CB(2)1921/99-00(01)]

5. DS(HA)2 briefed members on the fourth working draft of the Administration's proposed CSAs [LC Paper No. CB(2)1868/99-00(02)] and the latest fifth working draft [LC Paper No. CB(2)1921/99-00(01)] which was tabled at the meeting. A gist of the Bills Committee's deliberations is set out in the following paragraphs.

Clause 3 (to amend sections 3, 3A and 4 of the Ordinance)

6. DS(HA)2 advised that the Administration would propose CSAs to amend the share percentage requirements for the formation of an OC from the existing percentages of not less than 50%, 30% and 20% to 30%, 20% and 10% respectively. Regarding the manner for convening an owners' meeting for the purpose of forming an OC in a new building, the Administration would propose two CSAs.

7. DS(HA)2 explained that the first CSA was intended to add section 3(4)(a) to explicitly state the meaning of the expression "10% of the owners". As the meaning of the term "ownership" in the fourth working draft of the CSAs was not clear, amendments had been incorporated into the fifth working draft in this respect. As for the other CSA, the purpose was to add section 3(4)(b) to state the manner for convening such meeting.

Action

Clause 4 (to amend section 5)

8. DS(HA)2 advised that to reduce owners' initial expenses incurred in convening an owners' meeting, the Administration would amend section 5(3)(b) to specify that it was sufficient to publish the notice of an owners' meeting in one newspaper.

9. DS(HA)2 explained that the purpose of amending section 5(5)(c)(iii) was to allow any one of the co-owners to appoint his proxy, and in case the co-owners had appointed separate proxies, only the proxy appointed by the co-owner whose name, in order of priority, stood highest in relation to the relevant share in the register kept at the Land Registry would be counted.

To add section 5A

10. Referring to members' view that there were inconsistencies between the existing section 5(5) and the new section 3(3), DS(HA)2 advised that the new section 5A sought to specify that the reference to "owner" in section 5 should be construed as a reference to the "number of owners" instead of the "number of shares" and that each owner only had one vote.

11. DS(HA)2 further advised that the new section 5A(c) in the fourth working draft of the CSAs was amended and such amendment was incorporated into the fifth working draft to elucidate the voting mechanism for co-owners of properties.

To add section 5B

12. DS(HA)2 said that the new Eleventh Schedule sought to specify the enumeration of the percentage of owners.

13. Mr Albert HO asked whether an owner owning 35 flats should have one vote or 35 votes if he signed 35 authorization letters. DS(HA)2 explained that the voting rights he was entitled to would be taken as a basis irrespective of the number of authorization letters he signed.

Admin

14. Referring to Assistant Legal Adviser's views on the drafting of the new section 5B, DS(HA)2 remarked that the preliminary view of the Administration was that such views were constructive and it would consider amending the section further to provide that a reference to the term "owner" in the Ordinance should be interpreted in accordance with the Eleventh Schedule.

Admin

15. Assistant Legal Adviser further pointed out that in view of the fact that the new paragraph 9 of the Third Schedule and the new paragraph 11A of the Eighth Schedule made reference to a percentage of owners, the Administration might wish to consider amending the new section 5B and the new Eleventh Schedule accordingly. DS(HA)2 said that it would consider the proposal.

Action

Clause 6 (to amend section 27(1A))

16. DS(HA)2 advised that the Administration had accepted the proposal of the Hong Kong Society of Accountants and would amend section 27(1A) to reflect the current scope of professional practice of auditors.

To amend sections 7 and 8

17. DS(HA)2 explained that the amendments to sections 7 and 8 were technical in nature and sought to improve the Ordinance.

Clause 11 (to amend section 40C)

18. DS(HA)2 explained that the purpose of amending section 40C was to improve clarity.

To amend section 45

19. DS(HA)2 advised that the purpose of amending section 45 was to provide that the Lands Tribunal did not have any jurisdiction other than civil jurisdiction and that the Secretary for Home Affairs was allowed to institute proceedings in the Lands Tribunal.

To amend the Third Schedule

20. DS(HA)2 explained that the amendments to the Third Schedule were consequential amendments.

To amend the Seventh Schedule

21. DS(HA)2 remarked that the amendment to paragraph 7(2)(b) of the Seventh Schedule sought to allow an OC to make an agreement with the management company that it would be paid a sum of money in lieu of notice when its appointment was terminated without notice.

22. DS(HA)2 further pointed out that the new paragraph 5A of the Seventh Schedule provided that owners of shares who were not required to pay management fees under an DMC did not carry any voting rights in respect of a resolution to terminate the appointment of the building manager.

To amend the Eighth Schedule

23. DS(HA)2 explained that the purpose of amending the Eighth Schedule was to improve clarity.

Action

24. At the suggestion of Mr Edward HO, the Chairman requested that the Secretariat Legislative Council Secretariat to prepare a marked-up copy for the latest version of the CSAs for members' reference.

IV. Any other business

[LC Paper No. CB(2)1868/99-00(03)]

Admin 25. Regarding the submission of the Law Society of Hong Kong to the Administration, DS(HA)2 advised that its contents was similar to the points discussed by the Bills Committee, and that some of the Society's proposals had been incorporated into the Bill. As for the proposed definitions and implementation of certain provisions, the Administration would as soon as possible provide a response, a copy of which would be sent to members for reference.

V. Date of next meeting

26. Given that the next scheduled meeting would clash with that to be held by the Bills Committee on Companies (Amendment) Bill 2000, members agreed that the meeting on 18 May 2000 be rescheduled to 8:30 am on 17 May 2000.

27. The meeting ended at 9:20 am.

Legislative Council Secretariat

22 August 2000