

立法會
Legislative Council

LC Paper No. CB(2)2536/99-00
(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 4th meeting
held on Monday, 13 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 HO Sai-chu, SBS, JP
Hon Albert HO Chun-yan
Hon LEE Wing-tat
Hon LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon TAM Yiu-chung, GBS, JP

Members Absent : Hon Bernard CHAN
Hon James TO Kun-sun
Hon CHOY So-yuk

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 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 : Miss Anita HO
Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Matters arising

The Administration's response to issues raised by members at the meeting on 25 February 2000

[LC Paper No. CB(2)1258/99-00(01)]

The Bills Committee continued to discuss the paper provided by the Administration (LC Paper No. CB(2)1258/99-00(01)) which aimed at responding to questions raised by members at the meeting on 25 February 2000. At the invitation of the Chairman, Deputy Secretary for Home Affairs (2) (DS(HA)2) briefed members on the paper. A gist of the Bills Committee's deliberations was set out in the following paragraphs.

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Consultation paper on the "Proposed amendments to the Building Management Ordinance" issued by the Democratic Alliance for the Betterment of Hong Kong (DAB)(the consultation paper)

2. Members noted that the Administration had agreed in principle to the DAB's proposal that there should be an option of payment in lieu of notice between owners and management companies. The Administration would introduce relevant amendment to the Ordinance.

3. Mr Gary CHENG informed members that the proposal to introduce a licensing system for property management companies did not come from the DAB. Rather, it was the views put forward by professional property management bodies after studying the draft consultation paper. The DAB subsequently included their views in its consultation paper. As regards the request for lowering the quorum for convening an owners' meeting, Mr CHENG said that the proposed dual standard was actually a principle upon which the Government could set different requirements to cater for different circumstances. For example, different quorum requirements could be set for large housing estates with more than 1 000 flats and small housing estates with less than 1 000 flats.

Admin

4. DS(HA)2 responded that the quorum for the formation of owners' corporations (OCs) in new buildings as proposed in the Bill was considered simple, feasible and fair. Regarding the dual standard proposed by Mr CHENG, the preliminary view of the Administration was that various problems might arise if it was put into practice. Take an estate with more than 1 000 flats as an example, even though resolutions on important issues were passed, disputes might easily arise among owners in future due to the lack of representativeness resulted from a low quorum. In response to a further question raised by Mr CHENG, DS(HA)2 said that the Administration understood the position held by members on the percentage of owners' shares required for terminating the appointment of building managers and it would reconsider the matter.

Mandatory management of buildings

5. Mr Albert HO expressed concern that no property management companies would be willing to become management agents of buildings requiring mandatory management. Even if there were management agents willing to manage these buildings, they might encounter difficulties in collecting management fees. Mr HO considered it necessary for the Administration to provide financial support during the initial stage of mandatory management so that the management agents concerned could meet the necessary recurrent expenses before receipt of the management fees.

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6. DS(HA)2 advised that the Administration had approached the Hong Kong Association of Property Management Companies. The Association had confidence in recovering the outstanding payments because the order made by the Lands Tribunal might direct the management agent's tenure and determine such terms and conditions as the remuneration and expenses payable by owners. The management agent could apply to the court for making an order charging against the relevant owners' interest in the properties if they refused to pay the outstanding management fees.

7. DS(HA)2 further pointed out that as long as the price was reasonable, property management agents could always be appointed for buildings requiring mandatory management. He advised members that the majority of the 70 members of the Hong Kong Association of Property Management Companies had indicated their willingness to become such management agents. Qualified property management agents for buildings requiring mandatory management would be included into a list which would be published in the Gazette for owners' reference.

8. Responding to a question raised by Mr Albert HO, DS(HA)2 reiterated that property management agents would not be selected by tenders. OCs could choose their property management agents from the list published in the Gazette. For buildings with no OCs, the Lands Tribunal would order an owner to appoint one of the companies on the list as the management agent.

Formation of OCs by owners holding "divided shares"

9. Mr Gary CHENG informed members that he was an owner of the Fairview Park. Since the owners of that estate held "divided shares", their shares could not be determined in the manner prescribed in section 39 of the Ordinance on the "determination of owner's shares" and hence they were unable to form an OC. Mr CHENG pointed out that the owners of the Fairview Park actually did not hold "divided shares", given that access from their houses to other roads could only be made through the areas owned by the developer. He informed members that the owners of the Fairview Park held a total of about 48% of the shares while the developer which owned the common parts including the garden and access roads held about 52% of the shares. With the completion of more and more low density residential developments, Mr CHENG requested the Administration to face up to the problems arising from "divided shares". Mr Albert HO considered that the solution to the problem lay in the Deed of Mutual Covenant. The Legal Advisory and Conveyancing Office of the Lands Department should provide a set of criteria for determining owner's shares in respect of low density housing developments.

10. DS(HA)2 responded that as the problems arising from the Fairview Park involved a wide range of issues and were beyond the ambit of the Bill, they should be handled separately. He undertook to provide a written response to address members' concern.

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The Administration's response to issues raised by members at the meeting on 2 March 2000

[LC Paper CB(2)1312/99-00(01)]

11. Members noted that the Administration had provided a paper in response to the questions raised by members at the meeting on 2 March 2000. A gist of the Bills Committee's deliberations on the paper was set out in the ensuing paragraphs.

12. Members noted that the Administration had provided a table to illustrate the determination of the number of owners (Annex 1 of LC Paper No. CB(2)1312/99-00(01)). Mr NG Leung-sing pointed out that the requirements under the Ordinance in respect of the quorum of a meeting convened to form an OC and the voting on resolutions were both based on the number of owners' shares. He queried why the Administration had changed its principle by proposing in the Bill the adoption of the number of owners as the basis.

13. DS(HA)2 explained that the principle of owners' shares being proportional to voting rights remained unchanged. In most cases, the requirement in respect of voting on resolutions at an owners' meeting was set on the basis of the number of owners' shares. The proposed adoption of the number of owners as the basis of counting only applied to the quorum and number of votes required to convene the first owners' meeting for the purpose of forming an OC in a new building.

14. DS(HA)2 further explained that the purpose of the proposal was to facilitate owners who had taken possession of their flats to convene a meeting to form an OC as soon as possible. As for making any other decisions at an owners' meeting, owners' shares was still the basis for counting votes.

15. Responding to a question raised by Mr Andrew WONG, DS(HA)2 explained that under clause 3 of the Bill, "a management committee... may be appointed by a resolution passed by a majority vote of the owners voting either personally or by proxy at a meeting with a quorum of not less than 10% of the owners". In other words, the decision to form an OC could be made by a majority vote of the owners together with the proxies present at the meeting.

16. Mr Andrew WONG queried why the quorum to convene a meeting to appoint a management committee ("MC") in a new building was only 10% of the owners while that required to re-appoint a MC was 20% of the owners. Furthermore, voting on a resolution to re-appoint a MC was based on the number of owners' shares while voting on a resolution to appoint the first MC was based on the number of owners. Mr WONG pointed out that it was unreasonable to have a more stringent requirement for re-appointing a MC than appointing the first MC. DS(HA)2 reiterated that the adoption of the number of owners as the basis for counting votes on a resolution to appoint a MC was to facilitate early formation of OCs in new buildings.

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17. Principal Assistant Secretary for Home Affairs (5) clarified that according to paragraph 5(b) of the Third Schedule to the Ordinance, the quorum required for an existing OC to re-appoint a MC was 10% of the owners, which was the same as the quorum requirement proposed in the Bill for appointing the first MC. The requirement of 20% as mentioned by Mr Andrew WONG in fact referred to the quorum required to dissolve a MC at an owners' meeting under paragraph 5(a) of the Third Schedule. He pointed out that the number of owners' shares was again adopted as the basis of counting votes on such a resolution.

18. Mr Andrew WONG said that if owners of new buildings encountered difficulties in forming OCs, there were other ways to resolve the problem. It was not necessary to relax the policy and make special arrangements for new buildings. In the worst scenario, problems arising from building management could be solved by the court. As such, the interests of owners and the management of buildings were safeguarded. Mr WONG further pointed out that it would be more effective to give owners a sufficient and reasonable notice of meeting than to relax the quorum requirement for convening an owners' meeting to form an OC.

19. DS(HA)2 responded that the proposal of the Government and that of Mr Andrew WONG, though adopting different means, would attain the same objective. Both of them intended to allow exceptional treatment of certain issues under special circumstances. However, the procedures for convening an owners' meeting and voting on a resolution were still very similar to the current mode of operation. For example, the adoption of both the number of owners' shares and the number of owners as the basis of convening meetings was the current practice.

20. Mr Albert HO pointed out that there was inconsistency between clause 3(3) of the Bill and section 5(5) of the Ordinance. He explained that it was clearly stated towards the end of clause 3(3) that the number of owners was taken as the basis for counting the quorum. However, under section 5(5)(a) of the Ordinance, "At a meeting convened under sections 3, 3A or 4, each owner shall, ... , have one vote in respect of each share which he owns". Such inconsistency also existed in the Third Schedule to the Ordinance.

21. Senior Assistant Law Draftsman opined that the various percentages of owners under section 3(1), 3(2) and other relevant sections referred to the percentages of shares held by owners. The new clause 3(3) stipulated the number of owners instead. Under the Ordinance, the number of owners and the number of owners' shares were two different concepts. Mr Albert HO pointed out that the legislative intent could not be clearly reflected in the relevant provisions. DS(HA)2 thanked Mr HO for his observation and said that the Administration would reconsider the drafting of the relevant provisions.

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22. Mr Albert HO considered that the table in respect of the form of ownership and proxy in Annex 1 of the paper appeared to be inconsistent with the Lands Tribunal's judgement on the U Wai Investment Co. Ltd case. He

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explained that the judgement delivered a very clear concept that the number of flats was used as the basis for calculating the number of owners. In other words, each sold flat would be counted as one owner while the developer or an owner holding several unsold flats would also be treated as one owner.

Adm 23. DS(HA)2 explained that there seemed to be ambiguity in the judgement. While it stated that an owner who had yet to sell their flats would be treated as one owner, it also stated that the number of owners' shares should ultimately be equal to the number of owners. The judgement was unclear about the way the number of owners was to be counted in case an owner held many shares. The judgement simply could not serve to clarify all the queries regarding the "number of owners". DS(HA)2 undertook to provide further response on this issue in writing.

Adm 24. Mr Albert HO considered that as far as the definition of the term "owner" was concerned, the judgement of the Lands Tribunal was not legally binding and the explanation given by the Secretary for Home Affairs at the Council meeting held in June 1999 in response to Mr Ambrose CHEUNG's question regarding the quorum for an OC meeting might not be accepted by the court. Under such circumstances, the best solution was to state clearly in the Ordinance the way the number of owners was to be counted in order to avoid unnecessary litigation. DS(HA)2 agreed to consider the member's suggestion.

Adm 25. Given the complexity of the problem, Mr TAM Yiu-chung asked the Administration to set out in tabular form the way of counting the number of owners or the number of shares under different circumstances in respect of the various quorum and voting requirements under the Ordinance for members' reference.

Other issues

Appointment of proxies

Adm 26. Mr Albert HO said that the amendments to the Ordinance proposed by the Democratic Party to the Home Affairs Bureau in June 1999 were largely similar to those proposed by the DAB in its consultation paper. The Administration had made its response except the proposal on the appointment of proxies. Mr HO pointed out that paragraph 3(5)(b)(iii) of the Third Schedule to the Ordinance provided that if any share was jointly owned by co-owners, the co-owner whose name stood first in relation to that share in the register kept at the Land Registry could appoint his proxy. Since the co-owner whose name stood first might be away from Hong Kong for various reasons, there would be difficulties in appointing a proxy. Mr HO proposed to amend the Ordinance 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 stood first in relation to the relevant share in the register kept at the Land Registry would be counted. DS(HA)2 said that he would consider Mr HO's suggestion.

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Tenure of the secretary and the treasurer

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27. Mr Albert HO pointed out that, according to the Second Schedule, the persons appointed as the secretary and the treasurer of an MC might not necessarily be members of the MC. As their tenure was not stipulated upon their appointments, the secretary and the treasurer would not need to retire from office even upon the expiry of the tenure of the MC or its dissolution, and it was an unreasonable arrangement. Mr Andrew WONG shared Mr HO's views. Mr HO requested the Administration to consider amending the provision to stipulate that the secretary and the treasurer of a MC had to be members of the MC and that their tenure should tie in with that of the MC. DS(HA)2 said that he would consider Mr HO's suggestion.

Unauthorized building works

28. Mr LEE Wing-tat pointed out that the Bill had not addressed the problem of unauthorized building works ("UBWs") which included structures erected on roofs or attached to external walls, canopies and metal racks. He expressed concern that OCs would have difficulties in taking out insurance if the problem of these UBWs were not dealt with. Mr LEE wished to be informed of the current policy, measures and implementation plan to deal with the problem of UBWs.

29. The Chairman informed members that the Financial Secretary had announced in his Budget Speech on 8 March 2000 that new resources amounting to \$90 million would be allocated to the Buildings Department for the removal of more UBWs in the coming three years. As regards how to attain the target, the Chairman suggested that members should follow up this issue at the meetings of the relevant Panel.

30. DS(HA)2 responded that given the removal of UBWs was a major subject, the Administration would provide a written response on this subject in due course.

II. Any other business

Meeting with deputations

31. The Chairman said that since no other organizations had requested to give their views at a meeting and members belonging to the DAB had fully explained their proposals as set out in its consultation paper at the meeting, he proposed and members agreed that it was not necessary to arrange another meeting to meet deputations.

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Date of next meeting

32. Given that the next scheduled meeting would clash with that to be held by the Panel on Manpower, members agreed that the meeting on 30 March 2000 be rescheduled from 10:45 am to 8:30 am.

33. There being no other business, the meeting ended at 4:00 pm.

Legislative Council Secretariat

9 May 2000