

立法會
Legislative Council

LC Paper No. CB(2)2613/99-00

(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 9th meeting
held on Wednesday, 17 May 2000 at 8:30 am
in Conference Room B 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 NG Leung-sing
Hon CHAN Yuen-han
Hon Gary CHENG Kai-nam, JP
Hon Howard YOUNG, JP
Hon TAM Yiu-chung, GBS, JP

Members Absent : Hon Fred LI Wah-ming, JP
Hon Eric LI Ka-cheung, JP
Hon James TO Kun-sun
Hon Bernard CHAN
Hon Andrew WONG Wang-fat, JP
Hon CHOY So-yuk

Member Attending : Hon Ronald ARCULLI, 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

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 : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Committee Stage amendments (CSAs) to be proposed by Members
[LC Paper No. CB(2)2025/99-00(01)]

Mr Albert HO briefed members on the proposed CSAs which he tabled at the meeting [LC Paper No. CB(2)2025/99-00(01)]. The Bills Committee's deliberations on the CSAs are set out in the following paragraphs.

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Common parts

2. Mr Albert HO explained that the new section 7A on common parts was different from the one proposed by the Administration. Under the Administration's proposed CSA, only shares which did not attract the liability to pay management fees under a deed of mutual covenant (DMC) did not carry any voting rights in respect of a resolution to terminate the appointment of a building manager. However, under the CSA proposed by him, any shares allocated to the common parts which did not attract the liability to pay management fees could not carry any voting rights or be taken into account for the purpose of calculating the quorum of any meeting.

3. Deputy Secretary for Home Affairs (2) (DS(HA)2) said that the guidelines on DMCs issued by the Legal Advisory and Conveyancing Office (LACO) contained provisions similar to Mr Albert HO's proposal but such provisions targeted at new buildings only. He considered the CSA proposed by the Administration as a fairer approach. DS(HA)2 pointed out that under Mr HO's proposal, owners who held shares but were not required to pay management fees would be completely deprived of their voting rights. The trade had already indicated their opposition to this proposal.

Buildings with "divided shares"

4. Mr Albert HO said that owners holding "divided shares" were unable to form owners' corporations (OCs) because their shares could not be determined in the manner prescribed in section 39 of the Building Management Ordinance (the Ordinance)(Cap. 344) on the "determination of owner's shares". To prevent delay by the Administration in solving the problem, he would move a CSA to the effect that in respect of buildings forming an estate with "divided shares", an owner's shares should be determined in proportion to the total number of buildings owned by the owner within the estate whereas each building in the estate should carry one share. By doing so, owners of these buildings could form their OCs in accordance with the Ordinance.

5. Mr Gary CHENG asked Mr Albert HO whether under his proposal, a lot was taken as a basis for determining an owner's shares. He pointed out that as far as the Fairview Park was concerned, the lots for common parts were owned by the developer. Mr Howard YOUNG asked how an owner's shares were determined for two adjoining houses, several adjoining houses or a detached house contained several units under Mr HO's proposal.

6. Mr Albert HO responded that he would consider amending the definition of "building" under the Ordinance. If a lot could be sub-divided or each flat in a building could form a separate household unit, each individual flat would carry one share. For example, two adjoining houses would carry two shares and a building with three separate units would carry a total of three shares.

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7. Mr Edward HO pointed out that Mr Albert HO's proposal could only deal with the management of the lots owned by owners. As for management of the common parts, they were beyond owners' control. Mr Gary CHENG pointed out that "undivided shares" of common parts and "divided shares" of common parts were two different concepts. As far as the Fairview Park was concerned, it was stipulated in the DMC that the developer had absolute authority over the use of common parts and as such, the developer was not obliged to allow owners to use common parts.

8. Mr Albert HO responded that for buildings with "divided shares", their DMCs would have stipulated that common parts were part of the estate and had to be duly maintained and managed. He pointed out that if a DMC stipulated that the developer had the power to bar owners from using the common parts, he believed it would not be approved by the LACO.

9. Some members remarked that while agreeing with the direction of Mr Albert HO's proposal in principle, they expressed concern over whether it was feasible. Mr Ronald ARCULLI pointed out that there were various types of buildings and housing estates with "divided shares" in the property market. If the definition of "building" did not cover all circumstances, various problems might arise. For example, property prices or owners' voting rights might be adversely affected or other unforeseeable consequences might surface. He considered that to play safe, an application mechanism for the determination of an owner's shares should be established. He expressed concern whether it was feasible for the Administration to implement Mr Albert HO's proposed CSA should it be passed.

10. DS(HA)2 advised that the Administration's position on this issue was very clear. It had reiterated on several occasions that buildings with "divided shares" fell outside the scope of the Bill.

11. Mr Albert HO advised that it was up to the President of the Legislative Council to decide whether the CSA he proposed fell outside the ambit of the Bill. He was of the view that if the Administration did not take this opportunity to solve the problem arising from "divided shares", the chances for these owners to form an OC would be dismal. He requested the Administration to respond in one to two weeks on the feasibility of his proposal.

12. DS(HA)2 said that Mr Albert HO's proposal involved a wide range of issues. Before implementing his proposal, the Administration had to consider factors such as the applicability of the Ordinance to buildings with "divided shares", the effect to be brought about by the new definition of "building", the resource implications of the proposal as well as consultation with the concerned organizations. Under these circumstances, it would be impossible for the Administration to provide a response in one to two weeks. DS(HA)2 reiterated that the Administration did not support the proposal.

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13. Mr TAM Yiu-chung and Miss CHAN Yuen-han said that while Mr Albert HO's proposal would require further study, it was in the right direction. They urged the Administration to give an express undertaking that the problem arising from buildings with "divided shares" would be dealt with expeditiously.

14. DS(HA)2 advised that the Administration had already set up a working group to study the long term policy on building safety and management. The working group had been in operation for several months and was expected to complete its review in one year. He had conveyed members' concerns to the working group for follow-up actions.

The tenure of the secretary and treasurer

15. Regarding Mr Albert HO's proposal to amend the Second Schedule of the Ordinance to specify that holders of office of a management committee (MC) should retire from office at the same time as other MC members, DS(HA)2 remarked that it was the Administration's view that the proposed amendment was not necessary. He pointed out that the provision in the existing paragraph 2(1) of the Second Schedule had the merit of providing due flexibility for an MC to decide for itself whether it would enlist the assistance of non-MC members to discharge its duties. Furthermore, the tenure of the secretary and treasurer could be specified by some other ways.

Termination of the appointment of a building manager

16. DS(HA)2 said that Mr Albert HO had proposed to lower significantly the existing requirement for the termination of the appointment of a building manager from the consent of owners of not less than 50% of the shares to that of not less than 30% of the shares. As it contravened the principle of majority rule, the Administration could not agree.

17. Mr Albert HO responded that the proposed 30% requirement was a necessary condition and not a sufficient condition. Resolutions of an OC could be passed only with the support of a majority of the owners. The greatest deficiency of the existing legislation was that a resolution for terminating the appointment of a building manager could not be passed even if it was supported by owners holding 49% of the shares and was objected by owners with 2% of the shares.

18. DS(HA)2 reiterated that the termination of the appointment of a building manager was an important decision. Disputes might easily arise among owners if the appointment of the building manager was terminated without the support of owners of a majority of the shares. He further pointed out that as owners who were not required to pay management fees would not be entitled to vote and their shares would not be counted towards the total number of shares, there was a corresponding reduction in the number of shares required for terminating the appointment of the building manager by an OC.

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DMC

19. DS(HA)2 remarked that under Mr Albert HO's proposal, with the consent of owners of not less than 50% of the shares, an application might be made to the Authority for amending the provisions of a DMC. Since the proposal involved important legal principle and policies, the Administration was opposed to it. Senior Government Counsel added that the Administration had sought advice from solicitors of the LACO on Mr HO's proposal and they also had reservations about it. They pointed out that owners should have noted and accepted their rights and obligations as stipulated in the DMCs when they purchased their flats. If the provisions of the DMCs could be altered with the support of owners of only 50% of the shares, it would be unfair to the rest of the owners. The Administration was also concerned that the proposal would contravene the Basic Law and the Bill of Rights.

20. Regarding the last point raised by Senior Government Counsel, Mr Albert HO considered the Government's position as self-contradictory. He said that the Government had also amended some DMC provisions through legislative means and he queried whether such amendments were in violation of the Basic Law and the Bill of Rights.

II. CSAs to be proposed by the Administration
[LC Paper No. CB(2)1994/99-00(01)]

21. Members noted that the Administration had provided the 6th working draft of its CSAs [LC Paper No. CB(2)1994/99-00(01)]. Assistant Legal Adviser advised that the drafting of the CSAs proposed by the Administration was in order.

III. Submissions by deputations

The Real Estate Developers Association of Hong Kong (REDA)
[LC Paper No. CB(2)2009/99-00(01)]

22. The Chairman said that REDA had pointed out in its letter addressed to the Secretary for Home Affairs [LC Paper No. CB(2)2009/99-00(01)] that the proposed section 3(3) would contravene the principle of majority rule and would cause disruption to the development of multi-phased composite property developments. The Chairman considered that REDA's concern was not unreasonable and requested the Administration to respond.

23. DS(HA)2 remarked that the Administration had held a number of discussions with REDA. Regarding REDA's view that the new section 3(3) went against the principle of majority rule, the Administration had explained to REDA that the proposed quorum of 10% of the owners required to convene an

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owners' meeting for the purpose of forming an OC only applied to the first meeting convened by owners in new buildings. The requirement in respect of voting on other resolutions was set on the basis of the number of shares. As regards multi-phased property developments, the Administration had also explained to REDA that developers had sufficient means to protect future owners' interests and their own interests. For example, developers could vote at owners' meetings with the shares they held. They could also include relevant provisions in DMCs.

24. Referring to REDA's proposal contained in its letter that OCs should only be formed after the whole development had been completed and occupation permits had been issued, DS(HA)2 further advised that it ran contrary to the objective of the Bill to facilitate the early formation of OCs in new buildings. The Administration did not support the proposal.

25. Mr Albert HO considered REDA's proposal to be unreasonable. He pointed out that many large-scale property developments took years to complete and REDA's proposal simply ignored the rights of owners who took possession of their flats at an early stage to form OCs.

26. Mr NG Leung-sing suggested that OCs should be formed by phases. For example, it could be provided that an OC should be formed when a certain percentage of flats were occupied, or upon the completion of the first phase of a five-year property development. The OC so formed would be dissolved upon the completion of the whole development to make way for a new OC to be formed by all owners.

27. DS(HA)2 remarked that the purpose of the Bill was to provide a framework whereby owners could choose to form an OC. Since the formation of an OC was not mandatory, it would contravene the original intent of the Ordinance if legislation was enacted to require an OC to be formed when a certain percentage of flats were occupied or for a property development which would be completed in five years. As regards the suggestion of forming OCs by phases, there would be operational difficulties. As there were quite a number of common facilities within a large housing estate, many problems would arise if these facilities were managed by different OCs or management companies.

28. Mr Edward HO informed members that Mr Ronald ARCULLI might introduce a CSA to address REDA's concern. The Chairman opined that the proposal under the new section 3(3) would indeed give rise to many problems which included aggravating the conflicts between owners and developers. The Chairman asked the Administration to re-consider the views of deputations and members. He suggested that the Administration should consider specifying that owners could form an OC under the new section 3(3) only when 50% of the flats were occupied.

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Law Society of Hong Kong (LSHK)
[LC Paper No. CB(2)1868/99-00(03)]

Admin 29. DS(HA)2 remarked that most of the concerns raised by LSHK had been discussed at the Bills Committee meetings. As regards LSHK's proposal on the legal definitions concerned, the Administration was of the view that it needed to be studied carefully. The Administration would discuss with LSHK again upon completion of the study and would brief the Bills Committee in this respect.

IV. Date of next meeting

30. Members agreed that the next meeting be held at 4:30 pm on 22 May 2000.

(Post-meeting note : The meeting to be held on 22 May 2000 was re-scheduled at 10:45 am on 29 May 2000.)

31. The meeting ended at 9:50 am.

Legislative Council Secretariat
24 August 2000