

立法會
Legislative Council

LC Paper No. CB(2)2611/99-00

(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 7th meeting
held on Thursday, 20 April 2000 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members Present** : Hon CHAN Kam-lam (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing
Hon CHAN Yuen-han
Hon LEE Wing-tat
Hon Gary CHENG Kai-nam, JP
Hon TAM Yiu-chung, GBS, JP
Hon CHOY So-yuk
- Members Absent** : Hon Edward HO Sing-tin, SBS, JP (Deputy Chairman)
Hon Eric LI Ka-cheung, JP
Hon James TO Kun-sun
Hon Bernard CHAN
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, 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 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 : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

Action

I. Matters arising

[LC Paper Nos. CB(2)1358/99-00(01) 、 CB(2)1511/99-00(01) and CB(2)1711/99-00(01)]

Assistant Legal Advisor informed members that at the meeting on 25 February, a member had asked whether owners were entitled to appeal to the Lands Tribunal against an order made by the Secretary for Home Affairs (the Authority) under the new section 40B(1) in respect of the appointment of a building management agent. The Administration had responded that owners had the right to challenge the Authority's order in the Lands Tribunal. The Administration had also said that it would introduce some technical amendments to vest in the Lands Tribunal the jurisdiction to hear and determine any proceedings instituted under the Building Management Ordinance (the Ordinance) (Cap. 344). Members raised no queries on the Administration's reply.

Action

II. Committee Stage amendments (CSAs) to be proposed by Members

2. Mr Gary CHENG and Mr Albert HO briefed members on their proposed CSAs respectively [LC Paper Nos. CB(2)1608/99-00(01) and CB(2)1727/99-00(01)].

The Administration's response

[LC Paper No. CB(2)1740/99-00(01)]

3. Deputy Secretary for Home Affairs (2) (DS(HA)2) made a response to the CSAs proposed by Mr Gary CHENG and Mr Albert HO, the salient points of which are as follows -

(a) To amend sections 3, 3A and 4

DS(HA)2 said that Mr Gary CHENG's proposal to lower the percentages of owners' shares required for the appointment of a management committee (MC) under such sections from the current 50%, 30% and 20% to 30%, 20% and 10% respectively was already a drastic change. The Administration did not agree to Mr Albert HO's proposal to further reduce the requirement from the percentages of shares to the percentages of owners. It would propose CSAs along the lines of Mr CHENG's proposal;

(b) To add a new section 5A

DS(HA)2 advised that to establish a contingency fund was in principle a good proposal but to make it mandatory at the present stage was considered inappropriate. The Administration was concerned that the proposal would undermine owners' desire to form owners' corporations (OCs);

(c) To add a new section 34M

DS(HA)2 said that Mr Gary CHENG and Mr Albert HO made separate proposals to establish a procedure for amending the terms of a deed of mutual covenant (DMC), both of which involved important legal principles and policies. The Administration considered that amending the terms of a private contract such as a DMC without the explicit agreement of all parties to the contract would affect their rights and obligations. Moreover, given that the proposals were outside the scope of the Bill and no public consultation had been conducted in this respect, the Administration objected to the proposals;

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- (d) To amend paragraph 3(5)(b) of the Third Schedule

DS(HA)2 remarked that the Administration would move a CSA to provide that shares which were not required to pay management fees under a DMC would carry no voting rights in respect of a resolution to terminate the appointment of the building manager;

- (e) To amend the Third Schedule by adding new paragraphs 5(a) and (b)

As regards Mr Gary CHENG's proposal to adopt a dual standard whereby the required quorum should be a certain percentage or a certain number of owners, whichever was the smaller, DS(HA)2 considered that the proposal was undesirable. He pointed out that it would render the procedure unnecessarily complicated, and as far as large housing estates were concerned, the percentage of owners required to reach the quorum would be significantly lowered, resulting in inadequate representativeness of the decisions of OCs;

- (f) To amend the Third Schedule by adding a new paragraph 5A

DS(HA)2 advised that under the existing Ordinance, it would be up to owners to decide whether to authenticate the identity of owners attending meetings of OCs by checking their identity card numbers. There was no need to mandate this by law;

- (g) To amend paragraph 7(2)(b) of the Seventh Schedule

Regarding Mr Gary CHENG's proposal to allow an OC to make payment in lieu of notice as the compensation for immediate termination of the appointment of a management company, DS(HA)2 considered the proposal desirable. The Administration had also consulted the concerned organizations in this respect. They did not object to the proposal in principle but pointed out that it was inappropriate to provide for the compensation in law because the circumstances of each case might vary. The Administration would introduce a CSA to the effect that in lieu of notice, an OC was allowed to make an agreement with a management company in respect of compensation;

- (h) To amend paragraph 5(a) of the Third Schedule and the Seventh Schedule

DS(HA)2 pointed out that the proposals of Mr Gary CHENG and Mr Albert HO to change the requirement for terminating the appointment of a building manager would significantly lower the existing requirement of not less than 50% of the shares and would go against the principle of majority rule. Therefore, the Administration was opposed to these proposals;

Action

- (i) To amend section 5(5)(c)(iii)

DS(HA)2 remarked that the Administration agreed to the proposal of Mr Albert HO for changing the proxy requirement and would move a CSA in this regard;

- (j) To amend section 4

DS(HA)2 advised that the Administration did not agree to Mr Albert HO's proposal for counting developers or owners of multiple units differently. However, it would move a CSA to specify how the number of owners should be enumerated under sections 3, 3A and 4; and

- (k) To amend the Second Schedule by adding a new section

DS(HA)2 remarked that the existing paragraph 2(1) of the Second Schedule provided due flexibility for an MC to decide for itself whether it would enlist the assistance of non-MC members to discharge its duties. The appointment of the secretary and the treasurer should in principle be terminated when an MC was dissolved. An MC could terminate the appointment of the secretary and the treasurer before the expiry of their tenure by either specifying such requirement when they were appointed or by passing a resolution at an owners' meeting. Therefore, the Administration did not consider that there was a need for the amendment proposed by Mr Albert HO.

Discussion

Shares of common areas

4. Regarding the Administration's proposal that owners of shares who were not required to pay management fees were not allowed to vote on a resolution to terminate the appointment of the building manager, Mr LEE Wing-tat considered that the scope of the proposal was too narrow. He opined that the proposal should be applicable to other situations such as voting on a resolution for the determination of management fees. Mr Albert HO was of the view that it should be applicable to resolutions for the formation of OCs as well. Mr HO pointed out that the Administration's proposal actually could not help OCs to dismiss a building manager because it only served to prevent owners of shares of common parts from voting against the resolution. It was required under paragraph 7 of the Seventh Schedule that a resolution to terminate the appointment of a building manager could only be passed with the consent of owners of not less than 50% of the shares.

Action

5. DS(HA)2 responded that the Administration had consulted professional bodies and the Real Estate Developers Association on the proposal. They objected to the proposal that owners holding shares were not entitled to vote. They also had reservations about applying the proposal to specific situations such as voting on a resolution for the termination of a building manager. To apply the proposal to all situations in general and deprive owners of shares from exercising their voting rights was a change in principle and the Administration also had reservations about it. DS(HA)2 pointed out that existing DMCs had already provided a mechanism to prevent developers from holding more than 50% of the shares by retaining common parts.

A dual standard for the determination of quorum

6. Mr Gary CHENG pointed out that the purpose of the Bill was to facilitate owners to form OCs. He considered that the original purpose of the Bill could only be served if a dual standard was adopted whereby the smaller number would be taken as the quorum, hence making it easier for owners of large housing estates to convene OC meetings.

7. DS(HA)2 advised that to stipulate the quorum of an OC meeting in the form of a percentage could ensure that resolutions passed by OCs could sufficiently represent the wishes of owners. However, if a specified number of owners, say 100 owners, was adopted as one of the standards for determining the quorum, the effect on a housing estate with 500 flats would be very different from that on another estate with 2 000 flats. Resolutions passed in the latter estate would not be truly representative of owners' wishes.

III. CSAs to be proposed by the Administration

8. DS(HA)2 advised that apart from the above, the Administration would also introduce the following CSAs —

- (a) Regarding the Hong Kong Society of Accountants (HKSA)'s comment that the proposed section 27(1A) on the "certification" of an OC's financial records by an accountant could not reflect the current scope of professional practice of auditors, the Administration, having consulted the Treasury, agreed to accept HKSA's proposal and would move a CSA in this regard;
- (b) Members had pointed out that the existing section 5(5) was not consistent with the new section 3(3), and that the method of vote counting was unclear. The Administration would move a CSA to incorporate by way of a schedule the interpretation of quorum and vote counting of owners in the Ordinance;

Action

- (c) 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. The new proposal would be particularly favourable to buildings which were ordered by the Lands Tribunal to form OCs;
- (d) The Administration would amend section 45 to specify the jurisdiction of the Lands Tribunal in respect of building management; and
- (e) A technical amendment would be introduced to amend section 11.

IV. Any other business

Insurance

9. Mr LEE Wing-tat enquired whether the coverage of the third party insurance included unauthorized building works (UBWs). DS(HA)2 responded that the Administration had provided a paper [Appendix 2 to LC Paper No. CB(2)1570/99-00(02)] at the last meeting to answer relevant questions from members. In short, UBWs would be covered in the insurance if they existed when the insurance policy took effect. However, such UBWs should be subject to the certification of safety by authorized officers or similar professionals. Insurance companies had the right of recovery against owners of UBWs for liabilities or claims arising from UBWs which were constructed after the policy took effect.

Admin 10. Mr Albert HO enquired about the definition of third party insurance. He was of the view that the insurance should cover owners and tenants. DS(HA)2 responded that as a matter of practice of the insurance industry, the concept of "third party" in the context of third party insurance referred to people other than the insurer and the insured. As regards whether a victim was considered a third party, each case had to be determined on its own merits. He advised that the spirit behind the Bill was to extend protection to people who were at risk. At members' request, DS(HA)2 undertook to seek from the insurance profession further information about the definition of "third party".

Allocation of undivided shares

Admin 11. At the Chairman's request, DS(HA)2 undertook to provide a written response elaborating the criteria and method for allocating undivided shares.

Action

V. Date of next meeting

12. Members agreed that the next two meetings would be held at 8:30 am on 9 May 2000 and 4:30 pm on 18 May respectively.

(Post-meeting note: The meeting originally scheduled on 18 May 2000 was subsequently changed to 8:30 am on 17 May 2000.)

13. The meeting ended at 3:35 pm.

Legislative Council Secretariat

22 August 2000