

立法會
Legislative Council

LC Paper No. CB(2) 2614/99-00
(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 10th meeting
held on Monday, 29 May 2000 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon CHAN Kam-lam (Chairman)
Hon Albert HO Chun-yan
Hon LEE Wing-tat
Hon NG Leung-sing
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon CHOY So-yuk

Members Absent : Hon Edward HO Sing-tin, SBS, JP (Deputy Chairman)
Hon HO Sai-chu, SBS, JP
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon James TO Kun-sun
Hon Gary CHENG Kai-nam, JP
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon TAM Yiu-chung, GBS, JP

Public Officers Attending : Mrs Betty FUNG
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)

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. Meeting with the Administration on submissions by deputations

Members noted that the Administration's written response to the submissions made by the Real Estate Developers' Association of Hong Kong (REDA) and the Law Society of Hong Kong (LSHK) had been circulated to members vide LC Paper No. CB(2)2125/99-00(01).

Response to the submission by REDA

[LC Paper Nos. CB(2)2009/99-00(01) and CB(2)2125/99-00(01)]

2. Deputy Secretary for Home Affairs (2) (DS(HA)2) informed members that at members' request, the Administration had met REDA on 15 May and 18 May 2000 to discuss its concerns. After careful consideration, the Administration considered REDA's proposal acceptable. DS(HA)2 explained that under REDA's proposal, owners of a multi-phased property development could convene an owners' meeting to appoint a management committee (MC) under the new section 3(3) only after occupation permits in respect of all

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buildings had been issued. If owners who took possession of their flats in the early phase intended to form their owners' corporation (OC), they could convene an owner's meeting for the purpose of forming an OC under sections 3, 3A or 4 of the Building Management Ordinance (the Ordinance) (Cap. 344). She said that the Administration would move Committee Stage amendments (CSAs) to amend the various minimum percentages of shares required for the formation of OCs under sections 3, 3A and 4 from the existing 50%, 30% and 20% to 30%, 20% and 10% respectively. As regards single phase property developments, they would be able to form OCs under the new section 3(3).

3. In response to a question raised by Mr LEE Wing-tat, Principal Assistant Secretary for Home Affairs (5) said that the various percentages of shares, i.e. 30%, 20% and 10% as amended under sections 3, 3A and 4 were determined on the basis of owners' shares stipulated in a deed of mutual covenant (DMC).

4. Mr LEE Wing-tat pointed out that under REDA's proposal, it would be difficult and would take a long time for owners who took possession of their flats in the early phase of a multi-phased property development to form an OC. He pointed out that the Administration's initial proposal was based on the number of owners, the purpose of which was to facilitate the early formation of OCs by owners. However, the requirements under sections 3, 3A and 4 as amended were based on owners' shares stipulated in a DMC. Mr LEE further pointed out that as shares of most uncompleted parts of a development were still held by the developer, owners who took possession of their flats in the early phase might not be able to form an OC even with a 100% attendance at an owners' meeting under the proposal. Take a large-scale property development with 3 000 flats as an example, under section 3 as amended, an OC could be formed by a resolution of the owners of not less than 30% of the shares at an owners' meeting. If only 600 flats were completed in the first phase, even if all 600 owners attended an owners' meeting, they would still not be able to secure 30% of the shares as required and hence could not form an OC.

5. Mr LEE Wing-tat was dissatisfied with the Administration's decision to accept REDA's proposal because it was against the original intent of the Bill.

6. Mr Albert HO shared the views of Mr LEE Wing-tat. Mr HO pointed out that despite REDA's concern over the new section 3(3), the Administration's position on this issue had been very firm. The Administration had explained on several occasions that while an OC could be formed with the consent of only 10% of the owners in a new building, a resolution of the OC had to be passed by a majority vote of the owners of undivided shares.

7. Mr Albert HO was concerned that for a multi-phased property development, REDA's proposal would impose undue restriction on the rights of owners who took possession of their flats at an early stage to form an OC. Mr HO said that the Democratic Party (DP) would not accept the proposal. He said that having considered REDA's concern, the DP had put forward a proposal to the Administration under which the new section 3(3) could only be invoked one

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to two years after the completion of the first phase of a development. It was to ensure that an OC was formed only after a sufficient number of owners had taken possession of their flats.

8. DS(HA)2 explained that at the last Bills Committee meeting, some members had considered REDA's arguments reasonable and requested the Administration to discuss further with REDA with a view to working out a feasible solution. In the course of consideration, the Administration had also taken into account the DP's proposal to defer the implementation of the new section 3(3). The Administration was of the view that if the number of owners who took possession in the early phase of a development was too small, the OC would lack representativeness even though its formation was deferred. The Administration considered REDA's proposal as a more practicable option because it had the least implications and could strike a balance of the concerns and interests among all parties. REDA's proposal could address the special circumstances of multi-phased property developments without unduly affecting owners' rights to form OCs.

9. Some members did not accept the Administration's explanation. They queried the rationale behind the Administration's change of its original position. The Chairman said that the Administration had reconsidered the new section 3(3) at members' request and members could decide at their own discretion whether to accept the Administration's CSA which gave effect to REDA's proposal.

Response to the submission by LSHK

[LC Paper Nos. CB(2)1868/99-00(03) and CB(2)2125/99-00(01)]

10. DS(HA)2 advised that the Administration had met LSHK and taken on board two of its suggestions, the details of which were set out in paragraphs 4 to 6 of LC Paper No. CB(2)2125/99-00 (01).

II. Any other business

CSAs to be moved by Members

[LC Paper Nos. CB(2)2144/99-00(01) and (02)]

11. Mr Albert HO said that after considering members' views on the determination of "divided shares", he had made another CSA to the relevant section to the effect that an owner holding "divided share" would carry one share for each flat owned by him.

12. The Chairman said that Mr Gary CHENG had also made amendments to his proposed CSAs which included the increase of the minimum percentage of owners' shares required to pass a resolution for amending a DMC from 50% to 75%.

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13. DS(HA)2 advised that the Administration had provided responses [LC Paper Nos. CB(2)2144/99-00(01) and (02)] to the CSAs proposed by Mr Gary CHENG and Mr Albert HO respectively. As regards members' proposal in connection with the procedure for amending a DMC, DS(HA)2 reiterated that it was the view of the Administration that the CSAs were beyond the ambit of the Bill.

14. Mr Albert HO said that it was up to the President of the Legislative Council to decide whether the CSAs fell outside the ambit of the Bill. He was of the view that it was very unfair to owners holding "divided shares" if they were unable to form OCs.

15. Mr LEE Wing-tat said that given the proposals of the DP relating to the procedures for amending a DMC and terminating the appointment of a building manager were similar to those of the Democratic Alliance for the Betterment of Hong Kong (DAB) in principle, he suggested that the two parties should discuss such issues. If a consensus was reached, the Chairman could move relevant CSAs on behalf of the Bills Committee. Members agreed to the proposal.

CSAs to be moved by the Administration

[LC Paper No. CB(2)2125/99-00(02)]

16. Members noted that the Administration had provided the 8th working draft (i.e. 7th working draft for the Chinese version) of its proposed CSAs [LC Paper No. CB(2)2125/99-00(02)].

17. Assistant Legal Advisor 4 said that as he had just received the latest version of the 8th working draft for the English version of the Administration's CSAs, he would need more time to study the relevant provisions. He pointed out that the new section 3(6) was neither introduced in response to REDA nor LSHK. He requested the Administration to explain the purpose for adding the new section.

18. DS(HA)2 advised that the new section 3(6) sought to make clear that members of an MC had to be appointed by a resolution passed by a majority vote of the owners.

Legislative timetable

19. Members initially agreed that the Bills Committee should submit a written report to the House Committee on 9 June 2000 recommending that the Second Reading debate on the Bill be resumed on 21 June 2000.

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III. Date of next meeting

20. Members agreed that the next meeting be held at 9:30 am on 2 June 2000 to conclude the deliberations of the Bills Committee.

21. The meeting ended at 11:35 am.

Legislative Council Secretariat

30 August 2000