立法會
Legislative Council

LC Paper No. CB(2)2579/99-00
(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 5th meeting
held on Thursday, 30 March 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 HO Sai-chu, SBS, JP Hon NG Leung-sing Hon James TO Kun-sun Hon CHAN Yuen-han Hon Bernard CHAN Hon LEE Wing-tat Hon Gary CHENG Kai-nam, JP Hon TAM Yiu-chung, GBS, JP
Members Absent	:	Hon Albert HO Chun-yan Hon Eric LI Ka-cheung, JP Hon Fred LI Wah-ming, JP Hon Andrew WONG Wang-fat, JP Hon Howard YOUNG, JP 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 CHEUNG Kwok-man
Chief Building Surveyor/Control
Buildings Department

Mr C C TSANG
Assistant Director/Control & Enforcement
Buildings Department

Mr J D SCOTT
Senior Assistant Law Draftsman

Ms Grace L Y CHAN
Senior Government Counsel

Miss Shirley WONG
Government Counsel

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

Mr Edward CHU
Assistant Secretary for Home Affairs

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. The Administration's response to issues raised by members at the meeting on 13 March 2000
[LC Paper No. CB(2)1489/99-00(01)]

The Bills Committee discussed the paper provided by the Administration [LC Paper No. CB(2)1489/99-00(01)] responding to questions raised by

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members at the meeting on 13 March 2000. A gist of the Bills Committee's deliberations is set out in the following paragraphs.

Formation of owners' corporations for owners holding "divided shares"

2. Deputy Secretary for Home Affairs (2) (DS(HA)2) informed members that the situation regarding houses with "divided shares" such as the Fairview Park was outside the scope of the Building Management Ordinance (BMO) (Cap. 344). The Administration suggested that the owners concerned might consider devising a scheme to allocate undivided shares among themselves in accordance with section 39(b) of Cap. 344. The Land Registry would consider the validity of the scheme in connection with any application to register an owners' corporation (OC). As the circumstances of individual cases differed, the owners concerned should seek independent legal advice themselves.

3. Mr Gary CHENG informed members that he was an owner of the Fairview Park in Yuen Long. He pointed out that the owners of the Fairview Park actually did not hold "divided shares" as the developer which owned all the common parts including the garden and access roads held about 52% of the shares. Owners would set foot on the areas owned by the developer once they stepped out of their houses. With regard to the solution proposed by the Administration, Mr CHENG pointed out that without the cooperation of the developer, owners would have difficulties in devising a scheme to re-allocate "undivided shares".

4. Mr TAM Yiu-chung pointed out that if owners were required to seek independent legal advice themselves, they might have to pay a huge amount of solicitors' fees or even legal costs before they could achieve their aim of forming OCs. He pointed out that as the purpose of the Bill was to encourage owners to form OCs, the Administration should take this opportunity to solve the problem of forming OCs by owners holding "divided shares" as well. Mr TAM said that many owners holding "divided shares" were disappointed at the Bill which failed to address the problem. He said that the Administration should stop adopting a delaying approach.

5. Senior Government Counsel reiterated that "divided shares" were outside the ambit of the Bill. The ownership of common areas was subject to the terms of the deed of mutual covenant (DMC) of the residential estate concerned. The DMCs should have stated the rights and obligations of the developer and owners. DS(HA)2 added that the proposal under the Bill could not address all building management problems. Members' concern involved a wide range of issues and should be handled separately. He advised that the Administration had set up a special working group to study the long-term policy on building safety and management. He would convey members' concern to the working group for follow-up actions.

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6. DS(HA)2 further said that the Administration had adopted a proactive attitude in addressing the problem of "divided shares". While realizing that it would be very difficult to tackle the problem, the Administration undertook to follow up the matter outside the context of the Bill.

7. Mr LEE Wing-tat said that the solution to the problem lay in the DMC. He informed members that all DMCs had to be vetted and approved by the Legal Advisory and Conveyancing Office (LACO) to ensure that the terms therein could strike a fair balance of interests between purchasers and developers as co-owners and managers respectively. Mr LEE was extremely dissatisfied with the operations of the LACO, its work in respect of the vetting and approval of DMCs and its accountability. He considered that there was a lack of transparency in the work of the LACO, hence resulting in many unfair DMC terms. For example, the major owner, though holding the majority of the shares, was required to pay only a small amount of management fees and the developer, though owning the shopping arcade, was not required to pay any management fees. However, under the existing legislation, the terms of DMCs could not be amended without an unanimous endorsement by all owners.

8. Mr LEE Wing-tat pointed out that DMCs were drafted by developers and no alterations could be made once they were approved by the LACO. Mr LEE opined that the Administration should monitor the operations of the LACO in order to safeguard the interests of owners. He requested the Administration to provide a paper setting out the operations of the LACO as well as the procedures and criteria for vetting and approving DMCs for members' reference.

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9. Mr Gary CHENG suggested that the Administration should conduct an analysis of individual DMCs which were related to "divided shares" and explore ways to solve the problem.

10. Mr Edward HO considered that the issue raised by Mr LEE, though important and warranted in-depth discussion, was outside the ambit of the Bill. DS(HA)2 also agreed that the matter should be followed up in the relevant Panel.

New section 3(3)

11. Members noted that the Administration would introduce a Committee Stage amendment to provide for the adoption of a "head count" of owners under the new section 3(3) and the "one vote in respect of each share" requirement under the existing Ordinance would not apply. Members also noted the Administration's view that the drafting of the new section 3(3) clearly showed that the term "majority vote" referred to a simple majority vote of the owners voting either personally or by proxy.

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Tenure of the secretary and the treasurer

12. At the last meeting, the Bills Committee expressed concern about the absence of any provision in Cap. 344 to stipulate the tenure of the secretary and the treasurer of a management committee (MC). Members pointed out that it would be an anomaly if the secretary and the treasurer remained in office while the MC was dissolved. DS(HA)2 remarked that the Administration had discussed members' concern with the Hong Kong Association of Property Management Companies and conducted an internal study. Since some owners were reluctant to become the secretary or the treasurer of an MC, the proposed paragraph 2(1) of the Second Schedule to Cap. 344 provided due flexibility for an MC to decide for itself whether it would enlist the assistance of non-MC members to work as the secretary or the treasurer. He pointed out that members' concern could be addressed through administrative means. For instance, upon the appointment of the secretary or the treasurer, an MC could stipulate that their appointment should be terminated when a MC was dissolved.

13. Mr LEE Wing-tat pointed out that there were still other deficiencies in the existing Ordinance. For example, MC members had to be re-elected while the secretary and the treasurer were appointed. Furthermore, an anomaly would arise if the secretary and the treasurer who came from the management company remained in office upon its dismissal.

Unauthorized building works (UBWs)

14. Mr LEE Wing-tat noted that it was the Government's policy to remove dangerous UBWs posing hazard to life and property as a matter of priority and to issue warning letters to owners of UBWs with no imminent danger. Mr LEE was of the view that such warning letters amounted to advising owners that their UBWs were not dangerous and that the Government would not take any immediate action. Under such circumstances, the owners concerned would just ignore the warning of the Government.

15. Assistant Director of the Buildings Department responded that given limited resources, the Government, in dealing with UBWs, had to set priorities for clearance operations in accordance with the level of safety risk posed. As UBWs were large in number, it was very difficult for the Government to deal with those UBWs which were of a low risk level or even posed no danger at all. The Government was considering the possibility of permitting the existence of small-scale UBWs which were safe and useful to the buildings concerned through administrative means.

16. Assistant Director of the Buildings Department admitted that due to limited resources, the Government had not made enough efforts to remove UBWs. He informed members that while in the past most of the UBWs were removed in accordance with their order of priority, the Buildings Department had recently adopted a more proactive approach and conducted large-scale clearance

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operations. In 1999, the Buildings Department initiated a clearance operation to remove 14 000 UBWs on the external walls of 307 buildings in densely-populated districts. Assistant Director of the Buildings Department emphasized that it was actually the responsibility of owners to remove their UBWs.

17. Members agreed that the responsibility of removing UBWs rested with owners. The Chairman said that the position of the Government should be that all UBWs had to be removed. Mr TAM Yiu-chung suggested that in dealing with UBWs, the Government should issue letters to the owners of the whole building irrespective of the seriousness of non-compliance, ordering them to remove their UBWs and following up with inspections. Under such circumstances, it would be very difficult for owners to evade their responsibility.

18. Mr LEE Wing-tat considered that the Buildings Department did not go far enough in taking enforcement actions. He suggested that the Government should follow up the cases right after warning letters were issued. If the owners concerned did not remove their UBWs, the Buildings Department could remove the UBWs on their behalf and recover the costs from them afterwards. In case the owners refused to pay the costs, the Government could seek to recover the outstanding payments through proceedings at the Small Claims Tribunal or even apply to the court for making an order charging against the relevant owners' interest in the properties. By doing so, a deterrent effect would naturally be achieved. Mr LEE stressed that after the Buildings Department had removed the UBWs, the costs should only be recovered from the owners concerned instead of the OC.

19. Assistant Director of the Buildings Department informed members that the Buildings Department was devising a preventive maintenance scheme to tie in with the measures proposed in the Bill in relation to building management and insurance. The Buildings Department planned to inspect old buildings regularly and after undertaking a technical assessment of the buildings, it would require the owners concerned to submit a maintenance plan which should include efforts to remove their UBWs. If the owners did not take any action, the Buildings Department would take up the maintenance work and institute legal actions if necessary. As for the costs for inspecting the buildings, they would be borne by the Government.

Incorporation of the way the quorum and owners' shares were to be determined into the Ordinance

20. Mr James TO enquired whether the Administration had examined all judgments made by courts in respect of the "number of owners". If the answer was in the affirmative, he hoped that the Administration could take this opportunity to state expressly in Cap. 344 the way the number of owners was to be calculated to preempt different court judgments regarding the interpretation of the "number of owners" in future.

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21. Senior Government Counsel advised that the Administration had only studied the Lands Tribunal's judgment on the U Wai Investment Co. Ltd case. DS(HA)2 supplemented that the Administration had provided two annexes [LC Papers Nos. CB(2)1283/99-00(01) and 1570/99-00(02)] setting out the ways the number of owners or the number of votes were to be calculated under different circumstances.

22. Mr James TO pointed out that as the judgment of the Lands Tribunal was not legally binding, the Administration should state expressly in law how the quorum and owners' shares were calculated with a view to removing unnecessary uncertainties. He suggested that a schedule should be added to the Ordinance. DS(HA)2 said that he would consider Mr TO's suggestion.

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23. Under some circumstances, an owner who owned several properties would only be counted as one owner. In this connection, Mr James TO asked how OCs could accurately work out the total number of owners when there was a change in ownership. Mr TO pointed out that, as far as large residential estates were concerned, unless the Land Registry had installed in its database computer softwares which could count owners under the same name in the same residential estate as one owner, it was very difficult to know the total number of owners accurately. DS(HA)2 explained that the current practice in counting the number of owners was based on the definition of "owner" as stipulated in Cap. 344. In other words, the number of owners was determined with the use of the records at the Land Registry.

II. The Administration's response to the submission by Ian Cullen & Associates ("IC & A")

[LC Papers Nos. CB(2)1391/99-00(01) and (02) and CB(2)1424/99-00(01)]

24. Assistant Legal Adviser 4(ALA4) informed members that Senior Assistant Law Draftsman had provided a response [LC Paper No. CB(2)1391/99-00(01)] to the letter of IC & A dated 18 January 2000. IC & A wrote to Mr Edward HO again on 10 March to reiterate its concerns. ALA4 asked whether the Administration would make a further response.

25. Senior Assistant Law Draftsman said that IC & A had raised a number of concerns in its letter to Mr Edward HO dated 18 January 2000 as well as at the Bills Committee meeting on 9 March 2000. One of its concerns was that an MC would have difficulties in managing its building when its chairman was no longer an owner of the building. The Administration had already provided a response to this concern [LC paper No. CB(2)1391/99-00(01)]. In short, paragraph 4(2)(e) of the Second Schedule to Cap. 344 stipulated that an owner who had been appointed as an MC member by virtue of his capacity as such should cease to be an MC member if he ceased to be an owner. As regards

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other concerns raised by IC & A such as the definition of common parts, they were outside the ambit of the Bill.

III. Clause-by-clause examination of the Bill

[LC paper No. CB(2)1151/99-00(03)]

Clause 7 - Obligations regarding insurance

26. Mr LEE Wing-tat pointed out that the Bill proposed to impose a mandatory obligation on OCs to take out third party insurance in respect of their buildings including the common parts. As such, if the Administration did not implement the policy on the removal of UBWs consistently and allowed UBWs which posed no danger to remain as they were, insurance companies might be reluctant to provide insurance coverage for buildings with UBWs.

27. DS(HA)2 advised that the Administration had consulted the Hong Kong Federation of Insurers which was supportive of the proposal of taking out third party insurance for buildings. Representatives from the insurance profession stated at the Bills Committee meeting on 9 March that the insurance industry was the most flexible industry and it could provide services to meet the needs of customers under any circumstances.

28. Assistant Director of the Buildings Department informed members that certain kinds of professionally recognized persons such as registered structural engineers could be employed to inspect the safety of buildings. The safety certificates they issued would facilitate insurance companies to decide whether to provide insurance.

29. Mr LEE Wing-tat queried whether it was practicable to engage professionally recognized persons to inspect UBWs. As far as he knew, the average cost for inspecting and determining whether the UBWs of a flat were safe was $8,000. If owners were willing to pay for the cost of employing professionally recognized persons to inspect their UBWs, they should have already hired workers to remove their UBWs. The Chairman expressed concern that if insurance companies were willing to provide insurance for low-risk UBWs, the owners concerned would have no intention to remove their UBWs. Mr LEE Wing-tat pointed out that even if insurance companies were willing to provide insurance, owners might have to pay a high premium.

30. Mr Bernard CHAN informed members that the premium for taking out third party insurance in respect of buildings and common parts was not as high as what members had imagined. He believed that insurance companies would not employ professionally recognized persons to inspect buildings because of the expensive fees involved. Insurance companies would evaluate the safety risks of buildings and determine the level of premiums to be charged having regard to factors such as their location, age and how they were managed. To his

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knowledge, the premium for taking out third party insurance for a 20-storey building was around $2,000. Therefore, the problem lay in indemnification rather than the charging of premiums. When an accident arose from UBWs, insurance companies might not offer any indemnity.

31. Mr LEE Wing-tat stated that a premium of $2,000 was not a huge amount but he was concerned that disputes might arise between owners and insurance companies when the former found after an accident that the insurance did not cover UBWs. Mr James TO asked whether the reference to "all parts" under the new section 28(1) concerning the procurement of a policy of insurance in relation to a building and all parts thereof with an insurance company in respect of third party risks included UBWs. He believed that if UBWs were within the insurance coverage, the premium would be very high. If it was the Government's policy to make use of the high insurance premium to force owners to remove UBWs, clause 7 might serve the purpose.

32. DS(HA)2 explained that clause 7 provided the outline of the mandatory insurance scheme. The requirements of the insurance such as the scope of coverage, minimum level of indemnity and qualifications of insurers would be provided in a regulation to be made by the Chief Executive in Council separately after the passage of the Bill. DS(HA)2 emphasized that under the mandatory insurance scheme, owners were required to take out third party insurance rather than comprehensive insurance in respect of their buildings. Furthermore, it was the owners' responsibility to remove their UBWs.

33. Mr James TO said that it was unfair to members of the Bills Committee if they were asked to pass the principal Ordinance before they had an idea of the contents of the regulation.

34. DS(HA)2 informed members that it was the usual legislative procedure to pass the principal Ordinance before the relevant regulations were introduced. Clause 12 of the Bill already provided for the power to make regulations and its scope. As regards the contents of the regulation to be made, the Administration would need to consult the insurance industry before drafting the regulation. The regulation would be submitted to the Legislative Council for negative vetting. At Mr LEE Wing-tat's request, DS(HA)2 undertook to provide the draft parameters of the regulation for members' reference.

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35. Mr LEE Wing-tat expressed concern that MC members might be guilty of a criminal offence under the new section 28(2) if no insurance companies were willing to provide insurance for their buildings, particularly those with UBWs. He asked how the Administration would enforce clause 7 if a building had not formed an OC.

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36. DS(HA)2 explained that under the new section 28(2), OCs might be exempted from criminal liabilities if they could sufficiently prove that they had exercised due diligence and yet were unable to take out insurance in respect of their buildings. Otherwise, they might be liable on conviction to a fine at level 5 (up to $50,000). For buildings without OCs but with safety problems, the Bill conferred the Authority a power to impose mandatory management on these buildings for the purpose of forming OCs. DS(HA)2 further explained that the mandatory insurance requirement was only applicable to buildings with OCs. For buildings with no OCs, the owners concerned was responsible for making the necessary compensation in case an accident occurred. He emphasized that even if owners did not take out third party insurance, it did not necessarily mean that they could shirk their responsibilities when an accident occurred.

37. Since every MC member could be guilty of a criminal offence if an MC failed to take out third party insurance for its building, Mr TAM Yiu-chung was concerned that owners might be unwilling to become MC members. Mr Edward HO pointed out that the Bill appeared to be discriminatory against buildings with OCs, given that buildings without OCs, on the contrary, were not subject to the mandatory insurance requirement and their owners were free from any criminal liability. Mr LEE Wing-tat enquired about the difficulties which might arise if a piece of legislation was made to require all owners to take out third party insurance. He pointed out that since only 20% of the buildings had formed their OCs, 80% of the buildings were not required to take out third party insurance and such an arrangement was undesirable. Mr Edward HO considered that if mandatory third party insurance was imposed across the board, it was not necessary for the Administration to check whether owners had observed the requirement because when an accident occurred, the owners concerned could in no way evade their legal responsibilities.

38. DS(HA)2 remarked that members' suggestion had far-reaching implications. He considered that the proposal of imposing a mandatory obligation on all owners to take out third party insurance should be further studied. The Administration definitely hoped that all owners would take out third party insurance so as to offer protection to more people. In fact, as compared with owners who had taken out insurance, owners who did not do so had to face greater risks. The reason for the Bill to rest the liability on OCs was that it was very difficult to pinpoint the party to be liable before an incident occurred. As such, it should be the collective responsibility of all owners to take out insurance in respect of their building.

Clause 11 (new section 40B) - Appointment of building management agent by order of Secretary for Home Affairs (Authority)

39. Mr LEE Wing-tat asked why mandatory building management had to be imposed on buildings having MCs under the new section 40B(1). He pointed out that the Authority should not intervene if disputes arose between MCs and management companies in order to prevent the Authority from being suspected

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of favouring the latter. He also pointed out that it might not be appropriate to require buildings with a small number of flats to appoint management companies.

40. DS(HA)2 explained that the Ordinance was mainly targeted at buildings with serious management and maintenance problems and without managers. Even though a building had appointed an MC, the Authority would consider issuing a mandatory management order under the new section 40B if the building failed to comply with the standards prescribed in the Code of Practice on Building Management and Maintenance.

Clause 11 (new section 40C) - Appointment of building management agent by order of tribunal

41. Mr LEE Wing-tat enquired about the circumstances under which the Lands Tribunal would order the appointment of a building management agent. DS(HA)2 explained that if a building requiring mandatory management did not have an MC, the Lands Tribunal was empowered under the Bill to order the owners of the building to appoint a building management agent under specified circumstances.

Clause 11 (new section 40D) - Powers of building management agent appointed following order of tribunal

42. In response to a question raised by Mr LEE Wing-tat, DS(HA)2 said that the order of the Lands Tribunal might specify the building management agent's tenure and determine such terms and conditions as the remuneration and expenses payable by owners. Senior Liaison Officer (Building Management) added that if owners refused to pay management fees and the amount was less than $50,000, the management agent could seek to recover the outstanding payments from the owners concerned through proceedings at the Small Claims Tribunal. If the amount exceeded $50,000, the agent could submit an application to the District Court.

43. In response to a further question raised by Mr LEE Wing-tat, DS(HA)2 said that owners could employ a building management agent from the list specified by the Authority in the Gazette.

IV. Date of next meeting

44. The Chairman informed members that the next meeting would be held at 4:30 pm on 6 April 2000. Representatives from the Real Estate Developers Association of Hong Kong would attend the meeting to give their views.

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45. The meeting ended at 10:33 am.

Legislative Council Secretariat
22 August 2000

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