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Building Management (Amendment) Bill 2000

COMMITTEE STAGE

Amendment to be moved by the Secretary for Home Affairs

Clause

Amendment Proposed

3

(a) By adding before paragraph (a) -

“(aa) in subsection (1), by deleting “A” and substituting -

“Except in the case of a meeting to be convened
under subsection (3), a”;

(ab) in subsection (2) (b), by repealing “50%” and
substituting “30%”.

(b) In paragraph (b) -

(i) in proposed new subsection (3), by adding after
“building” -

“which may be occupied without the issue, in
respect of that building, of an occupation permit or a
temporary occupation permit, under section 21(1)
(a) or (b) of the Buildings Ordinance (Cap. 123)
and”;

(ii) by adding after proposed new subsection (3)

“(4) In the case of a building, the deed of mutual covenant of which is executed by the parties to it after the commencement of section 3 of the Building Management (Amendment) Ordinance 2000 (of 2000) and which may not be occupied without the issue, in respect of that building, of an occupation permit or a temporary occupation permit under section 21(1) (a) or (b) of the Buildings Ordinance (Cap. 123), a management committee may be appointed in accordance with subsection (3)

-

(a) where the building does not form part of an estate or a group of buildings, at any time after the issue of the occupation permit or the temporary occupation permit in respect of that building, as the case may be;

(b) where the building does

form part of an estate or a group of buildings, at any time after the issue of an occupation permit or a temporary occupation permit in respect of all of the buildings in that estate or group of buildings, as the case may be.

(5) For the purposes of subsection (3) -

(a) the expression “10% of the owners” -

(i) means 10% of the number of persons who are owners without regard to their ownership of any particular percentage

of the total number of shares
into which the building is
divided; and

(ii) does not mean the owners
of 10% of the shares;

(b) subsection (1) (c) shall not apply to a
meeting to be held under subsection

(3) and for any such meeting -

(i) the meeting may be
convened by not less than
10% of the owners;

(ii) notice of a meeting
convened under paragraph

(i) may be served by an owner nominated by the convenors.

(6) Where a meeting of owners convened under subsection (3) has passed a resolution to appoint a management committee, the members of the management committee are to be appointed by a resolution passed by a majority of the votes of the owners of the shares voting either personally or by proxy.”

New Section 3A is amended by repealing “30%” wherever it appears and substituting “20%”.

New Section 4(1) (a) is amended by repealing “20%” and substituting “10%”.

4 By deleting the clause and substituting -

“Notice of and voting at meetings

Section 5 is amended -

(a) in subsection (1), by repealing “or 4” and substituting “, 4 or 40C”;

(b) in subsection (3) (b), by repealing “an English language newspaper, and in a Chinese language” and substituting “a”;

(c) in subsection (5) -

(i) by repealing “or 4” and substituting “, 4 or 40C”;

(ii) by repealing paragraph (c) (iii) and substituting -

“(iii) if no appointment has been made under sub-paragraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the

co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid.”.

New

The following is added -

“5A. Application of section 5 to meetings held under section 3(3) or 40C

For the purposes of the application of section 5 (notice of and voting at meetings) to meetings held under section 3(3) or 40C -

- (a) a reference in section 5, to an “owner” shall be construed as a reference to a person who is an owner of any particular percentage of the total number of shares into which the building is divided;
- (b) section 5(5) (a) shall apply to a meeting to be held under section 3(3) or 40C, as if the words “shall have one vote” were substituted for “shall, save where the deed of mutual covenant otherwise provides, have one vote in respect of

each share which he owns”;

(c) section 5(5) (c) shall apply as if it were deleted and the following substituted -

“(c) in the case of joint ownership, the vote may be cast -

(i) by a proxy jointly appointed by the co-owners;

(ii) by one co-owner appointed by the others; or

(iii) if no appointment has been made under sub-paragraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote, only the

vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in the register kept at the Land Registry shall be treated as valid.

5B. Enumeration of owners

The Eleventh Schedule shall have effect with respect to the enumeration of the percentage of owners referred to in the provisions of the Ordinance specified in that Schedule in the case where, in those provisions as so specified, a reference to a percentage of the owners is -

- (a) to be construed as a reference to the total expressed percentage of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and
- (b) not to be construed as the owners of the

total expressed percentage of the shares.”.

6 Section 27 is amended -

(a) in proposed subsection (1A), by deleting everything after “accountant shall” and substituting -

“report as to whether such account and balance sheet present fairly the financial transactions of the corporation during the period to which the income and expenditure account and balance sheet relate; and the financial position of the corporation at the end of that period, subject to such qualification, if any, as he may think fit.”;

(b) by adding -

“(1B) In subsection (1A), “flats” does not mean any garage, carpark or carport.”.

New Section 7 is amended -

(a) in subsection (1), by repealing “or 4” and substituting “, 4 or 40C”;

(b) in subsection (3) (b), by repealing “4(1)” and substituting “4(1) or 40C”;

- (c) in subsection (3) (c), by repealing “or 4” and substituting “, 4 or 40C”;
- (d) in subsection (3) (d), by repealing “or 4 and section 5 have been complied with.” and substituting “, 4 or 40C and relevant provisions in section 5, 5A or 5B have been complied with.”.

New

Section B is amended -

- (a) in subsection (1), by repealing “or 4” and substituting “, 4 or 40C”;
- (b) in subsection (2) (b), by repealing “or 4” and substituting “, 4 or 40C”.

New

Section 34D(1) is amended in paragraph (a) of the definition “owners committee” by repealing “or 4” and substituting “, 4 or 40C”.

New

Section 34H(1) is amended by repealing “person owns” and substituting “person who owns”.

New

Section 34K is amended by repealing “or 4” and substituting “, 4 or 40C”.

11

(a) In the proposed section 40C -

- (i) in subsection (2) (b), by deleting “該決議不獲通過” and substituting “沒有通過該決議” ;

(ii) by deleting subsection (3) (b) (ii) and substituting -

“(ii) where a resolution of the description mentioned in subparagraph (i) is not passed, by appointment, directly, by the owner named in the order made under subsection (1).”;

(iii) by adding -

“(4) A meeting to be held under this section shall be convened in accordance with subsection (3) (a) and notice of any such meeting may be served by the owner named in the order made under subsection (1).”.

(b) In the proposed section 40D(2), by deleting “an indefinite period or for”.

New Section 45 is amended -

(a) in subsection (3), by adding before “jurisdiction” -

“any jurisdiction other than civil jurisdiction or any”;

(b) in subsection (4) by adding -

“(aa) the Authority;”.

New The Second Schedule is amended -

(a) by adding -

“1A. In paragraph 1, “flats” does not mean any garage, carpark or carport.”;

(b) by repealing “or 4” where it appears in paragraphs 2(1) and 3 and substituting “, 4 or 40C” in both places.

New

The Third Schedule is amended -

(a) by repealing paragraph 3(5) (b) (iii) and substituting -

“(iii) if no appointment has been made under subparagraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register maintained under section 38 shall be treated as valid.”;

(b) by adding -

“9. For the purposes of paragraphs

1(2) and 5, the references to a percentage “of the owners” in those paragraphs shall -

- (a) be construed as a reference to the total expressed percentage of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and
- (b) not be construed as the owners of the total expressed percentage of the shares.”.

New

Paragraph 7 of the Seventh Schedule is amended -

- (a) in subparagraph (1), by adding “and (5A)” after “(5)”; and
- (b) by repealing subparagraph (2) (b) and substituting -

“(b) provision is made in the resolution for a period of not less

than 3 months notice or, in lieu of notice, provision is made for an agreement to be made with the manager for the payment to him of a sum equal to the amount of remuneration which would have accrued to him during that period;”;

(c) by adding after subparagraph (5) -

“(5A) For the purposes of subparagraph (1)

-

(a) only the owners of shares who pay or who are liable to pay the management expenses relating to those shares shall be entitled to vote;

(b) in subparagraph (1), the reference to “the owners of not less than 50% of the shares” shall be construed as a reference to the owners of not less than 50% of the shares who are entitled to vote.”.

New The Eighth Schedule is amended by adding -

(a) by adding -

“11A. For the purposes of paragraph 11, the reference to “10% of the owners” in that paragraph shall -

(a) be construed as a reference to 10% of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and

(b) not be construed as the owners of 10% of the shares.”;

(b) by repealing paragraph 13(c) (iii) and substituting -

“(iii) if no appointment has been made under subparagraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more

than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid.”.

New The following is added -

“ELEVENTH SCHEDULE [s. 5B]

ENUMERATION OF OWNERS

For the purposes of section 5B -

- (a) sections 3(3), 3(5) (b), 40C(3) and paragraphs 1(2) and 5 of the Third Schedule and paragraph 11 of the Eighth Schedule are specified;
- (b) the enumeration of the percentage of owners mentioned in the provisions specified in paragraph

(a) shall be computed as follows -

	Form of ownership	Illustration	To be counted as
1.	Multiple ownership of 1 flat	1 flat with 3 co-owners	1 owner

	Form of ownership	Illustration	To be counted as
1.	Multiple ownership of 1 flat	1 flat with 3 co-owners	1 owner
2.	1 owner owning more than 1 flat	1 owner owning 35 flats	1 owner
3.	1 person or more than 1 holding proxies from more than 1 owner	(a) 1 person holding proxies from 100 owners (b) 35 persons holding proxies from 100 owners in aggregate	Voting rights equal to the number of valid proxies held. In the cases as illustrated, 100 owners.”