

**Paper for the Legislative Council Bills Committee on
Building Management (Amendment) Bill 2000**

Building Management Ordinance (Cap. 344)

Introduction

With regard to the committee stage amendments (CSAs) to the Building Management (Amendment) Bill 2000 that the Democratic Alliance for the Betterment of Hong Kong (DAB) and the Democratic Party (DP) intend to propose, the Administration held meetings with representatives of both parties respectively to convey its views on the proposals. The Administration's views are set out in the table at Annex.

Committee Stage Amendments proposed by the Administration

2. As we indicated at the previous Bills Committee meetings, we accept a substantial number of suggestions made by Members and will move CSAs to give effect to those suggestions. The draft CSAs are being prepared and a copy of the proposal will be submitted to Members as soon as possible.

**Home Affairs Bureau
April 2000**

Building Management (Amendment) Bill 2000

Government's response to committee stage amendments proposed by DAB & DP

Subject	DAB proposal	DP proposal	Government's response
To change the existing percentage of shares thresholds in sections 3, 3A and 4 for appointing a management committee.	<ul style="list-style-type: none"> - New clause to amend section 3(b). - New clause to amend section 3A(1). - New clause to amend section 4(a). 	<ul style="list-style-type: none"> - Amendment to clause 3(a). - New clause to amend sections 3A & 4(1). 	We <u>will propose</u> a CSA along the lines of the DAB proposal. We do not agree to the DP proposal that the basis of counting should be changed from percentage of undivided shares to percentage of owners for existing buildings.
To require the establishment of a contingency fund and deposit at least 5% of management fees collected into the fund.	<ul style="list-style-type: none"> - New clause to add section 20(2)A. 		We do not agree to mandatory establishment of contingency funds. The existing practice of allowing OCs to decide for themselves is considered appropriate.

Subject	DAB proposal	DP proposal	Government's response
To establish a procedure for amending the terms of deeds of mutual covenant.	– New clause to add section 34M.	– New clause to add section 34M.	We consider that amending the terms of private contracts such as DMCs without the explicit agreement of all parties to contract has significant legal, pecuniary and practical implications. We cannot agree to this CSA and do not consider the issue to be appropriate in the context of this exercise.
To establish that shares allocated to common areas shall have no vote at meetings of owners' corporations.	– New clause to amend paragraph 3(5)(b) ¹ of the Third Schedule. – New clause to add paragraph 3(5)(aa) to the Third Schedule.	– New clause to amend section 34I.	We will move a CSA so that only shares which are not required to pay management fees under DMCs will not be eligible to vote on a resolution to terminate the appointment of the building manager. We see this as a fairer approach.
To change the quorum requirement of meeting of OCs by adding thresholds using number of persons and a quorum shall be reached when the lesser of the two requirements is reached.	– New clause to amend paragraph 5(a) of the Third Schedule. – New clause to amend paragraph 5(b) of the Third Schedule.		We consider that this is undesirable as it will introduce unnecessary complexity into the procedures and significantly lower the quorum requirement, particularly for large estates.

¹ We believe the correct reference to Cap. 344 here should be paragraph 3(5)(a) of the Third Schedule.

Subject	DAB proposal	DP proposal	Government's response
To add a requirement of authenticating the identity of owners at meeting of owners' corporations using HKID card numbers.	– New clause to add paragraph 5A to the Third Schedule.		The owners can decide to implement such procedures under the existing ordinance. No need to mandate this by law.
To add an option of payment in lieu of 3 months' notice when the appointment of the building manager is terminated under paragraph 7 of the Seventh Schedule..	– New clause to amend paragraph 2(b) of the Third Schedule ² .		We <u>agree</u> that an option of payment in lieu of 3 months' notice should be available and will move a CSA in this regard.
To change the requirement for the termination of the appointment of a building manager.	<ul style="list-style-type: none"> – New clause to amend paragraph 5(a) of the Third Schedule. – New clause to amend paragraph 7(1) of the Seventh Schedule. 	– New clause to amend the Seventh Schedule.	Both suggestions will have the effect of lowering the existing 50% requirement significantly. We consider that the decision to terminate the appointment of a building manager should be supported by a majority of the owners' undivided shares. We do not support the DAB's and DP's proposals to lower significantly the existing requirement of not less than 50% of the shares. As mentioned above, we will move a CSA to bar shares which do not pay management charges from voting on a resolution to terminate the appointment of the building manager. The resolution will be carried by a vote of not less than 50% of the shares eligible for voting.

² We believe the correct reference to Cap. 344 here should be paragraph 7(2)(b) of the Seventh Schedule.

Subject	DAB proposal	DP proposal	Government's response
To change the proxy requirement in section 5(5)(c)(iii).		– Amendment to clause 4 for the amendment of section 5(5)(c)(iii).	We agree to the proposal and will move a CSA to amend section 5(5)(c)(iii) and similar requirements under other sections of Cap. 344.
To specify how the number of owners shall be enumerated under sections 3, 3A and 4.		– Amendment to clause 4 to add section 5(7).	We will move a CSA in this regard but we do not agree to DP's proposal for counting developers or owners of multiple units differently.
To specify that the secretary and treasurer of an owners' corporation shall retire from office at the same time as members of the OC's management committee.		– New clause to amend the Second Schedule.	We do not consider that there is a need for the proposed amendment. The existing requirements provide a practical option for OCs which would like to appoint hired staff or outsiders to the posts of the secretary and treasurer. Furthermore, OCs can terminate the appointments of the secretary and the treasurer by either specifying the term of office in the original resolution or resolving to terminate the offices at an owners' meeting.