

立法會
Legislative Council

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**Paper for the House Committee meeting
on 9 June 2000**

**Report of the Bills Committee on
Building Management (Amendment) Bill 2000**

Purpose

This paper reports on the deliberations of the Bills Committee on Building Management (Amendment) Bill 2000.

Background

2. A public consultation document on “Proposals to improve fire safety in private buildings” was published in June 1998 setting out various recommendations for improving fire safety and management of private buildings. Having considered the views received during the public consultation, the Administration formulated a number of specific measures. The Bill aims at taking forward the measures relating to the management of private buildings as proposed in the consultation document.

Object of the Bill

3. The object of the Bill is to amend the Building Management Ordinance (Cap. 344) (the Ordinance) to provide for -

- a) specification of building management and maintenance standards for compliance by owners’ corporations (OCs);
- b) mandatory management of buildings with serious management and maintenance problems;
- c) simplifying the manner for owners of new buildings to convene meetings to appoint management committees (MCs); and
- d) miscellaneous matters relating to insurance, auditing of OCs’ accounts, notice of an owners’ meeting and quorum at a meeting of OC.

The Bills Committee

4. At the House Committee meeting on 11 February 2000, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

5. Hon CHAN Kam-lam and Hon Edward HO Sing-tin, SBS, JP were elected Chairman and Deputy Chairman of the Bills Committee respectively. The Bills Committee held 11 meetings and received submissions from ten organizations and two individuals. It also met deputations from seven of these organizations. A list of organizations and individuals from whom written submissions were received is in **Appendix II**.

Deliberations of the Bills Committee

6. The Bills Committee has discussed in detail the proposals set forth in the Bill. The major deliberations of the Bills Committee are summarized in the following paragraphs.

Formation of owners' corporations for new buildings

7. Under the existing Ordinance, in order to form an OC, owners have to first convene a meeting to appoint an MC in one of the following ways -

- a) in accordance with the deed of mutual covenant (DMC), if the DMC provides for the appointment of an MC (section 3(2)(a)); or
- b) by a resolution of the owners of not less than 50% of the shares if there is no DMC, or the DMC does not provide for the appointment of an MC (section 3(2)(b)); or
- c) by a resolution passed by a majority of the votes of the owners voting either personally or by proxy at an owners' meeting convened under an order of the Secretary for Home Affairs (the Authority) having considered an application of the owners of not less than 30% of the shares (section 3A); or
- d) by a resolution passed by a majority of the votes of the owners voting either personally or by proxy at an owners' meeting convened under an order of the Lands Tribunal having considered an application of the owners of not less than 20% of the shares or an application by the Authority (section 4).

8. To simplify the way for owners of new buildings to convene meetings to appoint MCs, the Administration has proposed to add a section 3(3) to provide that the quorum of such meetings shall not be less than 10% of the owners, i.e.

the quorum requirement as that for re-appointment of MCs of existing OCs. An MC may be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy. When an MC is appointed, it will have to register with the Land Registry.

9. Members are concerned that the quorum requirement under the new section 3(3) is prescribed in terms of a “head count” of the owners, while there is no provision in the Bill expressly stating the legislative intent. They are worried that the “one vote in respect of each share” requirement under section 5(5)(a) of the Building Management Ordinance which applies to a meeting to appoint an MC convened under sections 3, 3A and 4 may be ruled by the court to be equally applicable to a meeting convened under the proposed section 3(3). In the light of members’ views, the Administration agrees to introduce Committee Stage amendments (CSAs) to add a new section 3(5) and to amend the Third and Eighth Schedules to the effect that the reference to “10% of the owners” shall not be construed as the owners of 10% of the shares and shall have no regard to their ownership of any percentage of shares.

10. Several members consider that the proposed quorum requirement for meetings convened to form OCs for new buildings under the Bill is too low. These members have pointed out that at present, many new buildings are part of large-scale property developments and they are normally managed by management companies appointed by the developers. Such being the case, these buildings do not have any serious management or fire safety problems. They query the great discrepancy in the policies adopted by the Government in respect of existing and new buildings. These members are worried that the management of new buildings with a small number of flats will be subject to the manipulation of very few owners and the resolution passed at an owners’ meeting with an attendance of only 10% of the owners can be easily overturned by another group of owners.

11. The Administration has advised that at present, many new buildings are part of large-scale property developments which take years to complete. Moreover, it takes time for all the flats to be sold out when the property market is stagnant. Under these circumstances, it will be very difficult for owners of new buildings to meet the quorum requirement for convening an owners’ meeting to form an OC if it is set too high. The Administration has further pointed out that the proposed quorum requirement of not less than 10% of the owners to convene an owners’ meeting to form an OC aims to facilitate early formation of OCs by owners who are willing to shoulder the responsibility of building management. The Administration has explained that the quorum requirement of 10% of the owners is only the minimum requirement, and convening a meeting with the minimum quorum does not mean that the resolutions of an OC can be manipulated by those owners present at the meeting, as all resolutions of an OC have to be determined by a majority vote of the owners. The Administration has added that the proposed quorum requirement of not less than 10% of the owners under the Bill also applies to buildings with serious management and

maintenance problems, so as to facilitate the formation of OCs by a resolution passed by the owners concerned at a meeting convened under an order made by the Lands Tribunal.

12. Some organizations including the Real Estate Developers Association of Hong Kong (REDA) have expressed opposing views on the proposed quorum requirement of 10% of the owners to convene an owners' meeting for the purpose of appointing an MC. They are worried that the requirement which allows the formation of an OC prior to the full completion of a phased property development may lead to a minority group of owners dominating the resolutions of the OC, hence affecting the long-term design, planning and implementation of the development. The Administration holds the view that at the early stage of its large-scale property developments, the developer, as a major owner, still owns most of the shares under the master DMC. It may exert great influence on the voting on resolutions by the OC to protect its own interests. In addition, as the drafter of the DMC, the developer may include in the DMC terms which prevent owners in general, during the construction of all phased property developments concerned, from exercising their power of management over the development of the remaining uncompleted common areas or interfering with such development through their OC. Moreover, as the development concerned has to comply with the requirements as provided in the land lease and the master layout plan, owners in fact have no power to make any alterations.

13. These organizations disagree with the Administration's response. They have pointed out that unnecessary disputes will arise if the developer exerts influence on the voting on resolutions by the OC with its shares. They are also worried that as legally, the Building Management Ordinance prevails over the DMC, the inclusion of relevant terms in the DMC may not be effective. Given the strong views of these organizations, some members have asked the Administration to explore solutions to address their concerns.

14. REDA has subsequently proposed that for buildings constructed by the private sector, the method for convening an owners' meeting to appoint an MC under the new section 3(3) should be applicable only after occupation permits in respect of all the buildings in a single property development (including a multi-phased property development) have been issued under the Buildings Ordinance (Cap. 123). Owners who take possession of their flats at the early stage of a multi-phased property development can still be able to convene an owners' meeting to appoint an MC under sections 3, 3A or 4 of the Building Management Ordinance. According to REDA's proposal, should the owners of the multi-phased property development be unable to convene an owners' meeting under sections 3, 3A or 4 of the Ordinance, they can resort to the method prescribed under the new section 3(3) to convene an owners' meeting to appoint an MC only after occupation permits in respect of all buildings have been issued.

15. After consideration, the Administration agrees that REDA's proposal is acceptable. The Administration has explained that the proposal can address

the special circumstances of multi-phased property developments without unduly affecting owners' rights and ability to form OCs. Accordingly, the Administration has proposed to include new provisions in the Bill to give effect to the proposal. The Administration has pointed out that the application of the proposed CSA will be limited to multi-phased private developments only. Single phase property developments and developments which do not require the issue of occupation permits such as those under the Home Ownership Scheme and exempted houses in the New Territories can still be able to form OCs under the new section 3(3).

16. Some members are dissatisfied with the Administration's decision and question why it has changed its original position. These members have pointed out that it will be unfair to small real estate developers if the new quorum requirement of 10% of the owners to convene an owners' meeting for the purpose of appointing an MC is only applicable to single phase developments. Moreover, owners who take possession of their flats at the early stage of a multi-phased property development still have to convene an owner's meeting under sections 3, 3A or 4 of the Ordinance in order to form an OC. As such, the proposal goes against the original objective of the Bill which is to simplify the manner for owners of new buildings to convene meetings to appoint MCs. Members belonging to the Democratic Party (DP) have indicated that they disagree with the Administration's CSA and will consider proposing a CSA in this respect.

Formation of owners' corporations for existing buildings

17. Some members are disappointed that the Government's proposal of lowering the quorum required to convene an owners' meeting as discussed above fails to address the management problems encountered by existing buildings, particularly older ones. They consider that the requirements for convening an owners' meeting to form an OC under the Ordinance are so strict that existing buildings are often unable to form OCs.

18. The Administration is of the view that the relevant provisions of the current legislation governing existing buildings are appropriate and have been operating well since their implementation in 1993. The Administration has advised that it will continue to encourage owners of existing buildings to form OCs in accordance with the existing Ordinance. As explained by the Administration, the various management problems encountered by existing buildings originate from the failure to form OCs at an early stage of their occupation. As such, the proposal is intended to facilitate early formation of OCs by owners of new buildings.

19. Some members disagree with the Administration and consider that the current legislation should be improved having regard to the situation of those existing buildings which have not been able to form OCs because of excessively strict requirements. In this connection, members belonging to the Democratic

Alliance for the Betterment of Hong Kong (DAB) have proposed to relax the share percentage requirements under the circumstances referred to in paragraph 7 (b) to (d) above by lowering the percentages from the current 50%, 30% and 20% under sections 3, 3A and 4 to 30%, 20% and 10% respectively. Members belonging to the DP have also indicated that they will consider proposing CSAs to amend sections 3A and 4 to the effect that the requirement for the owners of not less than a certain percentage of shares to convene an owners' meeting to appoint an MC as provided in the two sections will be amended to not less than 20% and 10% of the owners respectively.

20. The Administration has advised after consideration that it will propose a CSA along the lines of the DAB's proposal in paragraph 19 above to amend the share percentage requirements under sections 3, 3A and 4 of the Ordinance.

21. Several members consider that under the Building Management Ordinance, a percentage of owners can be calculated either on the basis of the number of shares or the number of owners. The lack of clarity as to the way of calculation has in fact given rise to lawsuits. Members belonging to the DP have indicated that they will consider moving a CSA to specify how the number of owners should be calculated under sections 3, 3A and 4.

22. As members consider that the way of calculating the number of owners is unclear, the Administration agrees to move a CSA to incorporate by way of a Schedule the interpretation of quorum and vote counting of owners in the Ordinance.

23. Some members are also concerned that as the owners of residential units of a house development hold "divided shares", their shares cannot be determined in the manner prescribed in section 39 of the Ordinance on "determination of owner's shares". These owners are thus unable to form an OC. The Administration has advised that with the focus of the Ordinance on the management of multi-storey and multi-ownership buildings, such house developments are outside the ambit of the Ordinance. In view of members' concerns, the Administration has undertaken to look into this matter outside the context of the Bill.

24. Members belonging to the DP maintain that the problem of owners of house developments not being able to form OCs should be addressed by this legislative exercise. They have indicated that they will move a CSA to amend the manner of determination of the shares of the owners concerned (Appendix V refers). In respect of a house development, an owner's share shall be determined in proportion to the total number of buildings owned by the owner within the development whereas each building in the development shall carry one share. While agreeing with the direction of the DP's proposal, several members express concern over whether it is technically feasible.

25. The Administration has pointed out that the DP's proposal has the effect of extending the regulatory ambit of the Building Management Ordinance. Apart from the question of the availability of resources, consideration has to be given to the need for thorough consultation. The Administration also considers that the CSA falls outside the ambit of the Bill.

Specific management and maintenance standards

26. Members note that the Bill proposes to empower the Authority to prepare, review and publish in the Gazette a Code of Practice on Building Management and Maintenance (the Code) for compliance by OCs. The Code will refer to the existing legislation dealing with building safety, fire safety, gas installations, lift, electrical installations and slope safety in respect of the common parts of buildings. The departments concerned will continue to enforce their respective Ordinances such as the Buildings Ordinance and Fire Services Ordinance, and there will not be any duplication of enforcement efforts. One of the aims of the Code is to provide an objective basis for the Authority to evaluate whether or not to enforce mandatory management of buildings with serious management and maintenance problems.

Mandatory management of buildings with serious management and maintenance problems

27. The Bill proposes to empower the Authority to order the MC of the OC of a problematic building, that is, a building with serious management and maintenance problems and without a manager, to employ a building management agent from a list specified by the Authority in the Gazette to take charge of the management of the building. The Code will contain the objective criteria for the Authority to evaluate whether or not to issue such orders. In practice, the existing district Building Management Co-ordination Committees, which are inter-disciplinary committees, will be responsible for identifying such buildings and recommending them to the Authority for considering the issuance of orders. If the OC or owners fail to comply with the Authority's order within the period specified without reasonable excuse, it will commit an offence.

28. If the owners fail to form an OC, the Authority or an authorized officer may apply to the Lands Tribunal which may then order an owner to appoint a building management agent from the list specified by the Authority in the Gazette to take charge of the management of the building.

29. Several members express concern that owners may refuse to pay management fees after a building management agent has been appointed as ordered by the Authority or the Lands Tribunal, thereby causing difficulties to the work of the building management agent. They suggest that the Administration should consider setting up a fund to finance the mandatory management of buildings in the form of advance payment and recovering such disbursements from the owners concerned afterwards.

30. A member holds a different view. He has pointed out that as the Bill will empower the Authority to enforce mandatory management of buildings and the court can make an order charging against the relevant owners' interest in the properties if they refuse to pay management fees, it seems unnecessary for the Government to make such disbursements.

31. The Administration believes that under mandatory building management, owners have to take up their long-neglected responsibilities, including financial ones. If the Government pays the expenses (particularly recurrent expenses) for owners, they will be less willing to take up responsibilities and the chances of success of the mandatory building management scheme will be reduced. The Administration has pointed out that in case of default of payment, the building management agent has at least two ways to recover the outstanding payments from the owners concerned. First, the building management agent may seek to recover the outstanding payments through proceedings at District Court or the Small Claims Tribunal under the existing legislation. Second, if the building management agent is appointed by an order made by the Lands Tribunal under the proposed section 40C, the remuneration to which he is entitled and the management expenses involved will also be specified in the order in accordance with the proposed section 40D. Owners failing to pay the management fees will be in breach of the court order and may be charged with contempt of court.

32. The Administration has also advised members that two loan schemes are in place to provide financial assistance to those OCs and owners willing to improve building management and safety. These schemes are the Building Safety Improvement Loan Scheme and the Fire Safety Improvement Loan Scheme. Sufficient funds are available under the two schemes to provide financial assistance to eligible applicants.

33. To allay members' concern about the jurisdiction of the Lands Tribunal in respect of building management, the Administration agrees to move a CSA to amend section 45 of the Ordinance to the effect that the Lands Tribunal shall not have any jurisdiction other than civil jurisdiction and that the Authority is allowed to institute legal proceedings at the Lands Tribunal.

Meetings and procedure of an OC

34. Members note that paragraph 5 of the Third Schedule to the Ordinance provides for the quorum at a meeting of an OC. However, this provision does not expressly state whether proxies appointed by owners under paragraph 4 of the same Schedule should be counted towards the quorum required. The Administration considers that paragraph 5 of the Third Schedule should be amended to explicitly provide that proxies appointed by owners under paragraph 4 should be counted towards the quorum at an OC meeting.

35. Several members opine that it goes against the principle of law if a proxy is counted towards the quorum of the meeting. They are concerned that if an owner is appointed as a proxy by other owners to vote on a resolution concerning the appointment of an MC, in theory, his presence alone at the meeting can satisfy the quorum requirement and he alone can resolve on matters concerning the appointment of an MC at that meeting. They have pointed out that a proxy should only have the right to vote and should not be treated as being an owner present at the meeting for the purpose of calculating the quorum. The original intent of the Bill is to facilitate early formation of OCs by owners who are willing to shoulder the responsibility of building management. If there is a possibility that the policy allows a single owner, under the authorization of other owners, to decide all by himself on such matters as the formation of an OC at a meeting, it will be contrary to the purpose of the Bill to encourage the participation of owners in building management.

36. The Administration has explained that a proxy is normally appointed for the purpose of voting and will not be treated as an owner present at the meeting and counted towards the quorum. However, the new section 40C(3)(a) and the new paragraph 5(2) of the Third Schedule concerning meetings and procedure of OCs in the Bill clearly provide that a proxy will be treated as an owner present at the meeting. As a matter of policy, the Bill allows the proxy appointed to vote on behalf of the owner concerned as well as to be counted towards the quorum in both cases mentioned above.

37. Members belonging to the DAB are of the view that the existing quorum requirement for convening an owners' meeting under the Ordinance is rather strict. In this connection, they have indicated that they will move a CSA to amend paragraph 5 of the Third Schedule to propose that for a meeting convened for the purpose of resolving on the dissolution of an MC under section 30, the required quorum should be 20% of all the owners or 200 owners, whichever is smaller in number, and as for meetings convened for other purposes, the required quorum should be 10% of all the owners or 100 owners, whichever is smaller in number (Appendix IV refers). The Administration considers the proposal undesirable as it will render the procedure unnecessarily complicated and significantly lower the quorum requirement, particularly for large housing estates.

38. Members belonging to the DAB have also pointed out that the present procedure of checking the signatures of owners for the purpose of identity authentication at a meeting is time-consuming and also poses difficulties. They have suggested that the Third Schedule should be amended by adding a new paragraph to simplify the procedure of authentication, so that the person-in-charge of an owners' meeting only needs to check the identity card numbers of the attendees instead of checking their signatures. The Administration is of the view that it will be up to the owners to decide whether to implement such an authenticating procedure and there is no need to mandate this by law.

39. Some members consider that whilst common areas are put under the ownership of the developers in name, they only act as trustees holding the shares of these common areas for all owners and hence cannot exercise the right to vote in respect of those shares without the authorization of the owners. Moreover, other members consider that some developers allocate in the DMCs the vast majority of the undivided shares to common parts which are then put under their ownership and the developers are not liable to pay management fees in respect of these shares. In doing so, developers obviously seek to retain their control over the buildings, which is very unfair to owners of individual flats. In this connection, members belonging to the DP have indicated that they will move a CSA to provide that shares which are allocated to common parts and do not attract the liability to pay management fees shall not carry any voting rights at an owners' meeting and shall not be taken into account for the purpose of calculating the quorum of any meeting (Appendix V refers).

40. The Administration considers that a fairer approach is to provide that shares which are not required to pay management fees under DMCs will carry no voting rights in respect of a resolution to terminate the appointment of the building manager. The Administration will move a CSA to this effect.

41. Some members consider it too strict and unreasonable to require the consent of owners of not less than 50% of the shares for terminating the appointment of a building management agent under the existing Ordinance. These members have pointed out that it will be difficult to obtain the consent of owners of 50% of the shares in buildings where many flats are let out and the developer concurrently holds the shares of commercial units and common parts.

42. The Administration has advised that the termination of the appointment of a building management agent is an important decision. Lowering the required percentage of shares will render it impossible to reflect that the decision to terminate the appointment of a building management agent is made according to the wishes of the majority of the owners. Moreover, apart from attending an owners' meeting in person, an owner can authorize a proxy to vote on his behalf. Therefore, it should not be difficult to obtain the support of owners of 50% of the shares. The Administration has further explained that terminating the appointment of a building management agent is a highly controversial subject. For example, owners may have different views as to the performance of a building management agent. While some owners may consider the performance of a building management agent satisfactory, others may demand the agent be dismissed. If these two groups of owners are close in numbers, a lower percentage requirement may easily result in the two groups of owners overturning each other's resolution passed at different meetings. The Administration considers that the existing percentage requirement can reflect the wishes of the majority of owners and is appropriate and practicable.

43. Notwithstanding the Administration's explanation, some members still consider that the percentage requirement under the existing legislation in

respect of the owners' shares for terminating a building management agent's appointment is too high. Members belonging to the DAB have indicated that they will propose a CSA to the effect that the existing requirement for the consent of the owners of 50% of the shares will be amended to provide that for a meeting at which a resolution for the termination of a building management agent's appointment is decided, the quorum of that meeting shall be 20% of the owners or 200 owners, and that the resolution shall be decided by a majority vote of the owners (Appendix IV refers). Members belonging to the DP have also indicated their intention to move a CSA to amend the existing requirement to the effect that the consent of the owners holding not less than 30% of the shares shall suffice for the purpose (Appendix V refers).

44. Members belonging to the DAB have also proposed to amend paragraph 7(2)(b) of the Seventh Schedule to allow an OC to make payment in lieu of notice as the compensation for immediate termination of the management company's appointment with a view to preventing it from acting against the interests of the owners upon its dismissal (Appendix IV refers). The Administration agrees that the OC should have an option of making payment in lieu of three months' notice. It has indicated that a CSA will be moved to the effect that the OC is allowed to make an agreement with the management company in lieu of notice that, it will be paid a sum equal to the amount of remuneration accrued during that period.

Notice of and voting at meetings

45. Members note that in addition to serving notice of an owners' meeting convened for the purpose of appointing the first MC to individual owners, section 5(3)(b) of the Ordinance stipulates that the notice should be published in both an English and a Chinese language newspapers from amongst a list of newspapers specified by the Authority. To reduce owners' initial expenses incurred in convening the meeting, the Administration considers it sufficient to publish the notice of an owners' meeting in one newspaper. In this connection, section 5(3)(b) has to be amended accordingly.

46. Members note that under section 5(5)(c)(iii) of the Ordinance, if a share is jointly owned by two or more persons and if no proxy is appointed by the co-owners in advance, the vote in respect of that share may be cast either personally or by proxy by the co-owner whose name stands first in relation to that share in the register kept by the Land Registry (the first co-owner). Members belonging to the DP consider that the provision creates unnecessary difficulties as the first co-owner may be away overseas or difficult to reach. They therefore propose that under such circumstances, the vote may be cast either personally or by proxy by any of the co-owners. Should there be more than one proxy, only the vote cast by the proxy appointed by the first co-owner should be valid. The Administration has expressed support for members' proposal and will move a CSA to amend section 5(5)(c)(iii) and similar requirements under other sections of the Ordinance to provide that the vote may

be cast either personally or by proxy by a co-owner. In the case of any meeting where more than one of the co-owners seek 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.

Insurance

47. Members note the Administration's proposal that the existing Ordinance should be amended to require an OC to take out third party insurance in respect of the common parts in a building. The requirements of the insurance (e.g. scope of coverage, minimum level of indemnity, qualifications of insurers) will be provided in a regulation to be made by the Chief Executive in Council under this Ordinance separately. If an OC fails to comply with the mandatory insurance requirement without reasonable excuse, it will commit an offence.

48. Some members are worried that should there be unauthorized building works (UBWs) in the building, the insurance company may refuse to cover such works or ask for a huge sum of premium. To address members' concern, the Administration has provided members with a copy of the draft parameters of the Building Management (Insurance) Regulation. The Administration has pointed out that those UBWs which already existed at the time of inception of the policy should be included in the coverage subject to certification of safety by Authorized Persons or similar professional persons. Insurance companies should have the right of recovery against owners of the UBWs for liability or claims arising from or caused by the UBWs which are constructed after the inception of the policy. The Administration is of the view that if a higher premium is payable as a result of the existence of UBWs or if the required certification entails an expensive fee, OCs will be more motivated to remove those UBWs.

Accounts of an OC

49. Members note the Administration's proposal to amend section 27(1A) to delete the appointment of persons other than a qualified accountant to audit an OC's accounts. However, the Administration proposes to exempt an OC of a building with less than 50 flats from such a requirement. If an OC fails to comply with the mandatory auditing requirement without reasonable excuse, it will commit an offence.

50. Members note that the Hong Kong Society of Accountants (HKSA) has pointed out in its submission that the proposed section 27(1A) on the "certification" of an OC's financial records by an accountant cannot reflect the current scope of professional practice of auditors, and the HKSA has also proposed certain technical amendments to the section. Having consulted the relevant departments, the Administration agrees to accept the HKSA's suggestion and will move a CSA in this respect.

51. Members belonging to the DAB have indicated that they will move a CSA to amend section 20 to provide for the mandatory establishment of a contingency fund to be financed by part of the management fees, with a view to avoiding delays in some essential works as a result of default of payment by a small number of owners (Appendix IV refers). The Administration considers that OCs should decide for themselves whether to retain an amount of money out of the general fund to pay the cost of such essential works. Therefore, the inclusion of a mandatory provision is considered inappropriate.

Composition and procedure of a management committee

52. Several members express concern about the absence of any provision in the Ordinance to require the secretary and the treasurer of an MC to be members of the MC or to stipulate their tenure. They consider that the Administration should amend the Ordinance to remove the anomaly that the secretary and the treasurer of an MC might still remain in office upon the dissolution of the MC.

53. The Administration has explained that paragraph 2(1) of the Second Schedule requires the appointment of a secretary and a treasurer of an MC. The persons appointed may, but need not, be members of the MC. An OC is free to appoint the secretary and the treasurer from amongst the members of the MC. In such a situation, the MC members appointed as the secretary and the treasurer are required to retire with other MC members under paragraph 5(1) of the Second Schedule. In other situations, the MC may decide to co-opt non-MC members such as staff of building management company, to work as the secretary and the treasurer. The provision in the existing paragraph 2(1) provides due flexibility for an MC to decide whether it will enlist assistance of non-MC members to facilitate the discharge of its duties. As a matter of principle, the appointments of the secretary and the treasurer should be terminated at the same time with the MC and this can be achieved by either specifying such a requirement in the original appointment of the secretary or the treasurer or by way of a resolution of the owners' meeting before its term expires.

54. Members belonging to the DP do not agree with the views of the Administration. They have indicated that they will move a CSA to specify that the secretary and the treasurer of an MC shall retire from office at the same time as MC members upon its dissolution (Appendix V refers).

Amendments to DMCs

55. Some members consider that in drafting DMCs, developers very often tend to make terms favourable to them and have no regard to the interests of owners of individual units. However, under the existing legislation, unless unanimously endorsed by all owners, the terms of DMCs cannot be amended. Notwithstanding the many unfair terms in DMCs, there is no remedy available to owners of individual units. In this regard, members belonging to the DAB and

the DP have indicated that they will move separate CSAs to establish a mechanism for amending the terms in DMCs. The DAB has proposed that a DMC may be amended by resolution passed by the owners of not less than 75% of the shares at a meeting, the notice of which shall not be less than 21 days (Appendix IV refers). According to the DP's proposal, owners of not less than 50% of the shares may apply to the Authority to vary provisions of a DMC. Subject to the consent of the Authority, owners of not less than 50% of the shares can apply to the Lands Tribunal for an order that provisions of the DMC be varied (Appendix V refers). The Administration considers that a DMC is a contract entered into by owners, and allowing the terms of a DMC to be amended without the explicit agreement of all parties to the contract will have significant legal, pecuniary and practical implications. As such, the Administration has expressed disagreement with those CSAs. It has also pointed out that it is also inappropriate to deal with this issue in the context of the Bill.

Committee Stage Amendments

56. Apart from its proposed CSAs mentioned above, the Administration will also introduce some technical amendments to the Bill for the sake of clarity and consistency. The CSAs to be moved by the Administration are in **Appendix III**. The CSAs proposed by members belonging to the DAB and DP are in **Appendices IV and V** respectively.

Recommendation

57. The Bills Committee recommends that the Second Reading debate on the Bill be resumed on 21 June 2000.

Advice Sought

58. Members are invited to support the recommendation of the Bills Committee in paragraph 57 above.

Legislative Council Secretariat

8 June 2000

Bills Committee on Building Management (Amendment) Bill 2000

Membership List

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

Total : 16 members
Date : 25 February 2000

Bills Committee on Building Management (Amendment) Bill 2000
List of organisations and individuals from
whom written submissions have been received

Hong Kong Association of Property Management Companies

Hong Kong Federation of Insurers

Hong Kong Institute of Housing/Chartered Institute of Housing (Hong Kong Branch)

Hong Kong Institute of Real Estate Administration

Hong Kong Institute of Surveyors

Hong Kong Society of Accountants

Ian Cullen & Associates

Law Society of Hong Kong

Mass Transit Railway Corporation

Real Estate Developers Association of Hong Kong

Mr Peter R Griffiths

Mr POON Chung-yuen, member of the North District Council