

立法會
Legislative Council

LC Paper No. CB(2)2098/05-06

(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/04

**Bills Committee on
Building Management (Amendment) Bill 2005**

**Minutes of meeting
held on Thursday, 6 April 2006 at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Andrew CHENG Kar-foo
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon TAM Heung-man
- Members absent** : Hon Abraham SHEK Lai-him, JP
Hon WONG Kwok-hing, MH
Hon Patrick LAU Sau-shing, SBS, JP
- Public Officers attending** : Home Affairs Department
Mr Isaac CHOW
Deputy Director of Home Affairs (2)
Mrs Angelina CHEUNG
Assistant Director of Home Affairs (4)

Department of Justice

Mr Michael LAM
Senior Government Counsel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Joanne MAK
Senior Council Secretary (2)2

Action

I. Confirmation of minutes
[LC Paper No. CB(2)1614/05-06]

The minutes of the meeting on 9 March 2006 were confirmed.

II. Meeting with the Administration

2. The Bills Committee deliberated –

- (a) Administration’s paper on “Owners’ rights to request the Chairman of an owners’ corporation (OC) to convene a general meeting of the corporation” [LC Paper No. CB(2)222/05-06(02)]; and
- (b) Administration’s paper on “Matters arising from meetings on 4 October and 10 October 2005” [LC Paper No. CB(2)222/05-06(01)].

Index of proceedings is at **Annex**.

Whether the duty to convene a general meeting of an OC under paragraph 1(2) of the Third Schedule to the Building Management Ordinance (BMO) should remain with the chairman of the management committee (MC)

3. Mr Albert CHAN suggested that in case of refusal of the chairman of an MC in acceding to a request raised in accordance with the above provision, the owners concerned, instead of taking litigations against the chairman, should be

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allowed to apply to the Secretary for Home Affairs, who might order that the building manager concerned must convene an owners' meeting within a reasonable period of time. The Chairman requested the Administration to confirm whether section 40B(1)(b) of BMO could apply in such a case. The Administration agreed to revert to the Bills Committee on the issue later.

Admin

Whether the time limit for the chairman of an MC to actually hold a general meeting of an OC upon receiving such request of not less than 5% of the owners should be stipulated in paragraph 1(2) of the Third Schedule

4. Members present in general supported the Administration's proposal of stipulating a time limit for the actual holding of the general meeting in paragraph 1(2) of the Third Schedule. Mr Albert HO considered that a time limit within 30 days to 60 days would be reasonable. The Chairman was in favour of a time limit within 42 days to 60 days. He considered that there might not be sufficient preparation time for a large housing estate if the meeting was required to be held within 28 days on receipt of the request.

Whether the right of owners in making the request for a general meeting of an OC to be convened should be limited

5. Members had no objection to the Administration's view that BMO should not empower the 5% of the owners to convene a general meeting of an OC themselves under paragraph 1(2) of the Third Schedule. Some members, however, considered that their right to make such a request should not be limited.

6. Mr Albert CHAN and Mr Albert HO suggested that a non-judicial mechanism to determine whether the owners had reasonable grounds in making such request should be put in place, and the determination made would serve to give protection to the chairman of MC in case he was sued by civil proceedings on the grounds of his refusal to convene the owners' meeting. They further considered that the District Officers should be responsible for making the determination.

7. The Chairman suggested that the chairman of MC could take the case to the court for a determination. If the court considered that the conduct of the owners concerned amounted to an abuse of proceedings, it could order that the chairman of MC did not need to convene the owners' meeting. In order not to deter owners from exercising their rights under the said provision, the owners making the request should not be ordered to pay for the litigation costs unless these owners had abused the proceedings in a very extreme manner. The Chairman requested the Administration to consider the suggestions and explore possible ways to avoid abuse of owners in exercising their rights under paragraph 1(2) of the Third Schedule.

Admin

Action

Appropriateness of the chairman to preside over owners' meetings when there was conflict of interest

8. Miss CHOY So-yuk expressed the view that the Administration's position that there was no need to make express provisions prohibiting the chairman from presiding the owners' meeting when there was possible conflict of interest was acceptable. Some members considered that it was inappropriate for the chairman of an MC to preside at a meeting of corporation if he had apparent conflict of interests over an agenda item to be discussed, e.g. proposed removal of the chairman from office. They, however, appreciated that there were many practical issues to be addressed if the chairman was not allowed to preside over the meeting and it might not be possible to pursue the issue in the current legislative exercise.

Minority owners to sue OC or members of an MC

Admin

9. The Administration was requested to consider the following concern and suggestion raised by members –

- (a) whether the mechanism of making of a prospective pre-emptive costs order in favour of minority owners could be subject to abuses by law firms in collaboration with individual owners to initiate proceedings; and
- (b) whether the Administration would consider amending BMO to the effect that an OC would be bound to bear the legal costs if it was sued by a certain percentage of owners.

III. Any other business

Date of next meeting

10. Members noted that the next meeting would be held on Thursday, 20 April 2006 at 2:30 pm.

11. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
24 May 2006

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Thursday, 6 April 2006 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000520	Chairman	<u>Confirmation of minutes of meeting on 9 March 2006</u> [LC Paper No. CB(2)1614/05-06]	
000521 - 003914	Chairman Mrs Selina CHOW Admin Mr Albert CHAN Mr Albert HO	<u>Administration's paper on "Owners' rights to request the Chairman of an owners' corporation (OC) to convene a general meeting of the corporation"</u> [LC Paper No. CB(2)222/05-06(02)] - Whether the duty to convene a general meeting of an OC under paragraph 1(2) of the Third Schedule should remain with the chairman alone and whether the Administration should empower the 5% owners to convene a general meeting of an OC themselves under paragraph 1(2) of the Third Schedule [Paragraphs 8 to 10 and 14 to 17 of LC Paper No. CB(2)222/05-06(02)]	
003915 - 004020	Chairman	- Whether the Administration should stipulate in paragraph 1(2) of the Third Schedule the time limit for actually holding the meeting? [Paragraphs 11 to 13 of LC Paper No. CB(2)222/05-06(02)]	
004021 - 005459	Chairman Mr Albert HO Mr Albert CHAN Ms Emily LAU Admin	- Whether the duty to convene a general meeting of an OC under paragraph 1(2) of the Third Schedule should remain with the chairman alone [Paragraphs 8 to 10 of LC Paper No. CB(2)222/05-06(02)]	Admin to consider Mr Albert CHAN's suggestion (para. 3 of minutes)
005500 - 006208	Chairman Mr Albert HO	- Whether the Administration should limit the right of owners in making such request (e.g. the same request should not be repeated within a certain period) to avoid abuse by owners [Paragraphs 18 to 20 of LC Paper No. CB(2)222/05-06(02)]	Admin to consider the Chairman's suggestion and explore possible ways to avoid abuse of owners (para. 7 of minutes)

Time marker	Speaker	Subjects	Action required
006209 - 012911	Chairman Admin Ms Emily LAU Miss CHOY So-yuk Mr Albert CHAN Mr Albert HO Mr LEUNG Kwok-hung	<u>Administration's paper on "Matters arising from meetings on 4 October and 10 October 2005"</u> [LC Paper No. CB(2)222/05-06(01)] - Appropriateness of the chairman to preside over owners' meetings when there was conflict of interest [Paragraphs 5 to 11 of LC Paper No. CB(2)222/05-06(01)]	
012912 - 015459	Chairman Mr LEUNG Kwok-hung Admin Mr Albert HO Mr Albert CHAN Miss CHOY So-yuk	- Minority owners to sue OC or members of an MC [Paragraphs 12 to 17 of LC Paper No. CB(2)222/05-06(01)]	Admin to provide written response to concerns raised by members (para. 9 of minutes)
015500 - 015516	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
 24 May 2006