

立法會
Legislative Council

LC Paper No. CB(2)2197/04-05
(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 Tuesday, 14 June 2005 at 4:30 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-yee, GBS, JP Hon Miriam LAU Kin-yee, GBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk 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 Patrick LAU Sau-shing, SBS, JP Hon TAM Heung-man
Member attending	: Hon LEE Wing-tat
Members absent	: Hon Jasper TSANG Yok-sing, GBS, JP Hon Abraham SHEK Lai-him, JP Hon WONG Kwok-hing, MH

Public Officers : Department of Home Affairs attending

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. Meeting with the Administration
[LC Paper Nos. CB(2)1885/04-05(01) to (04)]

The Bills Committee deliberated (Index of proceedings at **Annex**).

Admin 2. The Administration was requested to provide information and written response to the following issues raised by members –

Mechanism for terminating the appointment of managers

- (a) In the case that a property management company engaged by a building was the subsidiary company of the developer concerned, to clarify –
 - (i) whether the developer was required to declare interests in this regard; and
 - (ii) whether the developer, even though it was liable to pay management expenses, could still vote in the resolution of termination of the manager specified in the Deeds of Mutual Covenant (DMC);

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- (b) to consider a suggestion that penalty clauses should be introduced under the Building Management Ordinance (BMO) to address offences of non-compliance with paragraph 8 of the Seventh Schedule to BMO on “Obligations after manager’s appointment ends”;
- (c) to re-consider a suggestion, in collaboration with the Lands Department (LD), that the appointment of first managers appointed by developers by way of a DMC should end after two years, and re-appointment should follow the current requirement for appointing a manager i.e., a simple majority voting at a general meeting attended by not less than 10% of owners;
- (d) to consider a suggestion that clause 28 should be revised to the effect that the proposed mechanism for the termination of the appointment of a DMC manager under paragraph 7 of the Seventh Schedule to BMO should also be applicable in relation to a manager other than a DMC manager if the management contract of the manager contained harsher terms than the proposed termination mechanism;
- (e) to re-consider some members’ strong view that the termination mechanism for DMC managers should be relaxed, as they considered that it would be practically difficult for an owners’ corporation (OC) to obtain a resolution of the owners of not less than 50% of the undivided shares for the purpose;
- (f) to confirm whether there were any kinds of property the DMCs of which were allowed not to adhere to the LD’s Guidelines for DMCs (the DMC Guidelines) or the Guidelines for the drafting of DMCs issued by the Law Society of Hong Kong;
- (g) to address some unfair cases in which the voting rights possessed by developers were not proportionate to the very small amount of management expenses payable by the developers;
- (h) to consider a member’s suggestion that a mechanism should be put in place under BMO to rectify cases of “unfair” allocation of undivided shares and management shares in the same buildings between the owners and the developers;
- (i) to provide the timeframe for introducing legislation to resolve problems arising from old DMC provisions which were unreasonable and unfair to owners; and

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- (j) to confirm whether or not, according to the DMC Guidelines, the developer's use of any "reserved or retained areas" in the building had to first be approved by the owners' committee or OC concerned;

Proposed new section 29A – Protection of members of management committee

- (k) to explain how section 44 of BMO was related to the application of the proposed new section 29A in exempting a member of a management committee (MC), acting in good faith, from incurring liability for any act done or default made by or on behalf of the OC;
- (l) to address the concern that the present policy of holding an MC member personally liable for failure to perform any duty imposed on the member by BMO regardless of whether he had been misinformed by a property management company might discourage owners from participating in the work of MCs;
- (m) to consider a suggestion that the proposed new section 29A should be amended to the effect that MC members acting in good faith and reasonably would not be held personally liable for any act done or default made by or on behalf of the OC;
- (n) to consider, from the point of view of policies, whether protection should be given to an MC chairman who had failed to comply with paragraph 1(2) of the Third Schedule to BMO only because the other MC members had been uncooperative; and
- (o) in the event that an MC member failing to discharge his statutory duties imposed on him under BMO due to the fact that the other MC members had been unwilling to render the necessary support to him, to explain whether the court would take this into account in considering the MC member's liability. Any relevant precedent court cases should be provided for illustration.

3. Members noted that the next meeting would be held on Thursday, 23 June 2005 at 4:30 pm to continue discussion with the Administration.

4. There being no other business, the meeting ended at 6:40 pm.

Council Business Division 2
Legislative Council Secretariat
11 July 2005

Annex

**Proceedings of the Bills Committee on
Building Management (Amendment) Bill 2005
on Tuesday, 14 June 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 001128	Chairman Admin	Briefing by the Administration on the paper entitled "Mechanism for terminating the appointment of managers". [LC Paper No. CB(2)1885/04-05(01)]	
001129 - 002625	Miss TAM Heung-man Admin Chairman Miss CHOY So-yuk	In the case that a property management company engaged by a building was the subsidiary company of the developer concerned, to clarify – <ul style="list-style-type: none">- whether the developer was required to declare interests in this regard; and- whether the developer, even though it was liable to pay management expenses, could still vote in the resolution of termination of the manager specified in the Deeds of Mutual Covenant (DMC). Request for the Administration's response to a suggestion that penalty clauses should be introduced under the Building Management Ordinance (BMO) to address offences of non-compliance with paragraph 8 of the Seventh Schedule to BMO on "Obligations after manager's appointment ends".	Admin to provide a written response (para. 2(a) of the minutes) Admin to provide a written response (para. 2(b) of the minutes)
002626 - 003326	Mr Albert CHAN Chairman Admin	Request for the Administration to reconsider, in collaboration with the Lands Department (LD), a suggestion that the appointment of first managers appointed by developers by way of a DMC should end after two years, and re-appointment should follow the current requirement for appointing a manager i.e., a simple majority voting at a general meeting attended by not less than 10% of owners.	Admin to provide a written response (para. 2(c) of the minutes)
003327 - 004056	Mr Albert HO Admin Chairman	The Administration was requested to consider a suggestion that clause 28 should be revised to the effect that the proposed mechanism for the termination of the appointment of a DMC manager under paragraph 7 of the Seventh Schedule to BMO should also be applicable in relation to a manager other than a DMC manager if the management contract of the manager contained harsher terms than the proposed termination mechanism.	Admin to provide a written response (para. 2(d) of the minutes)

Time marker	Speaker	Subjects	Action required
004057 - 004732	Ms Audrey EU Admin Chairman	Suggestion that the termination mechanism for DMC managers should be relaxed, as they considered that it would be practically difficult for an owners' corporation (OC) to obtain a resolution of the owners of not less than 50% of the undivided shares for the purpose.	Admin to provide a written response (para. 2(e) of the minutes)
004733 - 005659	Mr LI Kwok-ying Admin Chairman	<p>The Administration was requested to confirm whether there were any kinds of property the DMCs of which were allowed <u>not</u> to adhere to the LD's Guidelines for DMCs (the DMC Guidelines) or the Guidelines for the drafting of DMCs issued by the Law Society of Hong Kong.</p> <p>The Administration was requested to consider how to address some unfair cases in which the voting rights possessed by developers were not proportionate to the very small amount of management expenses payable by the developers.</p>	Admin to provide a written response (para. 2(f) of the minutes) Admin to provide a written response (para. 2(g) of the minutes)
005700 - 010440	Ms Audrey EU Admin Chairman	The Administration was requested to consider introducing a mechanism under BMO to rectify cases of "unfair" allocation of undivided shares and management shares in the same buildings between the owners and the developers.	Admin to provide a written response (para. 2(h) of the minutes)
010441 - 010850	Mr LEUNG Kwok-hung Admin Chairman	The Administration was requested to provide the timeframe for introducing legislation to resolve problems arising from old DMC provisions which were unreasonable and unfair to owners.	Admin to provide a written response (para. 2(i) of the minutes)
010851 - 011316	Mr LI Kwok-ying Chairman Admin Miss TAM Heung-man	The Administration was requested to confirm whether or not, according to the DMC Guidelines, the developer's use of any "reserved or retained areas" in the building had to first be approved by the owners' committee or OC concerned.	Admin to provide a written response (para. 2(j) of the minutes)
011317 - 011808	Admin	<p>Briefing by the Administration on the paper entitled "Proposed new section 29A – Protection of members of management committee".</p> <p>[LC Paper No. CB(2)1885/04-05(02)]</p>	
011809 - 012924	Mr Albert HO Admin Chairman ALA4	The Administration was requested to consider a suggestion that the proposed new section 29A should be amended to the effect that MC members acting in good faith and reasonably would not be held personally liable for any act done or default made by or on behalf of the OC.	Admin to provide a written response (para. 2(m) of the minutes)

Time marker	Speaker	Subjects	Action required
012925 - 013939	Mrs Selina CHOW Chairman Admin	The Administration was requested to explain how section 44 of BMO was related to the application of the proposed new section 29A in exempting a member of a management committee (MC), acting in good faith, from incurring liability for any act done or default made by or on behalf of the OC;	Admin to provide a written response (para. 2(k) of the minutes)
013940 - 015059	Miss TAM Heung-man Admin Chairman ALA4 Mr LI Kwok-ying	The Administration was requested to address the concern that the present policy of holding an MC member personally liable for failure to perform any duty imposed on the member by BMO regardless of whether he had been misinformed by a property management company might discourage owners from participating in the work of MCs.	Admin to provide a written response (para. 2(l) of the minutes)
015100 - 015701	Miss CHOY So-yuk Admin Chairman	<p>The Administration was requested to consider, from the point of view of policies, whether protection should be given to an MC chairman who had failed to comply with paragraph 1(2) of the Third Schedule to BMO only because the other MC members had been uncooperative.</p> <p>The Administration was requested to explain whether, in the event that an MC member failing to discharge his statutory duties imposed on him under BMO due to the fact that the other MC members had been unwilling to render the necessary support to him, the court would take this into account in considering the MC member's liability. The Administration was also requested to provide any relevant precedent court cases for illustration.</p>	Admin to provide a written response (para. 2(n) of the minutes) Admin to provide a written response (para. 2(o) of the minutes)
015702 - 015752	Chairman	Date of next meeting.	

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