

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

**Further Interpretation of the Term “Majority” –  
How Abstention Votes should be Counted**

**PURPOSE**

1. This paper sets out the Administration’s views on how abstention votes should be counted under the Building Management Ordinance (BMO) (Cap.344) and our proposal to amend the BMO to clarify the policy intent.

**BACKGROUND**

2. Paragraph 3(3) of Schedule 3 to the BMO stipulates that all matters arising at a meeting of the corporation at which a quorum is present shall be decided by a majority of votes of the owners<sup>1</sup>. LC Paper No. CB(2)2617/04-05(04) – *Interpretation of the Term “Majority”* sets out the Administration’s views on the interpretation of the term “majority” in the BMO and the proposed legislative amendments regarding the method of voting for appointment of members of management committee. It remains, however, unclear how abstention votes should be counted. Abstention votes include blank votes as well as those who are present at an owners’ meeting but do not vote at all.

3. According to Black’s Law Dictionary (8th edition), “simple majority”<sup>2</sup> means “*a majority of the members who vote, a quorum being present, disregarding absent members, members who are present but do not vote, blanks, and abstentions*”. “Majority rule” means, among others, “*governance by the majority of those who actually participate, regardless of the number entitled to participate*”. According to the same dictionary, “abstention” means “*the act of withholding or keeping back (something or oneself); especially the withholding of a vote*”.

---

<sup>1</sup> Clause 24(d)(iii) of the Building Management (Amendment) Bill 2005 proposes to replace “majority of votes of the owners” in this provision by “majority of the votes of the owners voting either personally or by proxy”.

<sup>2</sup> According to the Black’s Law Dictionary (8th edition), a “majority” without further qualification usually means a simple majority.

4. Some law books have also touched on the subject of how abstention votes should be counted. It must however be stressed that they only represent the views of the authors concerned. Their views are set out below –

“When a motion is put to a meeting a person present may take one of the three courses. He or she may vote for or against it, or may abstain from voting at all. A person who is present and abstains may affect the result where, for a motion to be passed, there is required to be cast in its favour a proportion of the votes of those present. It is otherwise where the proportion is of those voting.” (*The Conduct of Meeting, Mandy Burton, 23rd ed., p.32*)

“Unless otherwise stated, “majority” means a majority of those actually voting either “yes” or “no” (a phrase sometimes need in this context is “present and voting”). The term does not refer to:

- (1) a majority of the quorum (provided that, in the case of a meeting, a quorum is present);
- (2) a majority of those present (which might include abstainers);
- (3) a majority of the total membership.

If concepts such as these are desired, then they must be explicitly spelt out in the organisation’s constitution.” (*Guide for Meetings and Organisations, N E Renton, 7th ed. volume 2, para. 12.101*)

“Majority is a term signifying the greater member. In legislative and deliberative assemblies, it is usual to decide questions by a majority of those present and voting. This is sometimes expressed as a “simple” majority, which means that a motion is carried by the mere fact that more votes are cast for than against, as distinct from a “special” majority where the size of the majority is critical.” (*Shackleton on the Law and Practice of Meetings, Ian Sherman, 9th ed., para. 7-27*)

“It would be rare for a rule to be so imprecise as to state merely ‘a majority’ but in such a case it appears that this requires a

majority of those present who are entitled to vote....” (*Horsley’s Meetings Procedure, Law and Practice, 4<sup>th</sup> ed., para. 14.15 A.D. Lang*)

“So where a single majority of those present was necessary and, of the 35 present, 16 voted for the motion and eight against it, while 11 did not vote at all, the motion was lost.... Unless a particular majority is prescribed, for example, a majority of those present, the majority means the majority of those who choose to take part in the proceedings of the meeting....” (*Joske’s Law & Procedure of Meetings in Australia, 9<sup>th</sup> ed, p.74*)

5. In *Fung Yuet Hing and The Incorporated Owners of Hing Wong Mansion & Ors* (LDBM 367/2004), having considered the arguments put forward by the counsels, including, amongst others<sup>3</sup>, the above textbook views (which provide rather conflicting views on the issue), the judge held that there is no reason at all to exclude abstention in the case of “simple” majority. He considered it logical to count the abstention both in the case of “special” majority and in the case of “simple” majority.

## CONSIDERATIONS

6. The existing BMO provision is unclear on how abstention votes should be counted. This is not satisfactory. We propose to set out clearly our policy intent in this legislative amendment exercise.

7. As to whether abstention votes should be counted or not, we consider there are pros and cons with either option. Our considerations are set out below –

- (a) Whilst the law books quoted in paragraph 4 above give contrary views on the matter, it is clear from the Black’s Law

---

<sup>3</sup> The judge had also taken into account the judgment of *Labouchere v. Earl of Wharncliffe* (1879) 13 Ch D 346 where the judge said that “when a resolution is put to a meeting, the persons present may take one of these courses. They may vote for or against it, or, not wishing to express a positive opinion on the question, refrain from voting at all. This being so, those who do not vote may, by not doing so, turn the scale in favour of the accused member of the club.” It must, however, be noted that the club concerned in the *Labouchere* case had in its club rules a specific provision which required a resolution of “two-thirds” of “those present” to expel a member from the club. The judge’s comment should therefore be confined to the club referred to in the case.

Dictionary (8th edition) that “simple majority vote” means “*a majority of the members who vote, a quorum being present, disregarding absent members, members who are present but do not vote, blanks, and abstentions*”.

- (b) If abstention votes should be counted, there will be the practical difficulties of whether those present at the commencement of the meeting or when the votes are cast should form the denominator. In fact, either option will cause practical problems to the management committee.
- (c) Some owners might join or leave the meeting before a particular resolution is put to vote. It would be extremely difficult to obtain the requisite majority if the denominator of the formula is based on the number of shares of owners present at the commencement of the meeting.
- (d) While it seems more reasonable to count the number of shares of owners present at the meeting when the resolution is put to vote, it will mean that the management committee and/or the building manager will have to count the number of shares of owners present every time a resolution is put to vote. This will add a huge administrative burden to the management committee (and especially for large estates with thousands of owners).
- (e) If abstention votes were not counted, it is for consideration whether they should be regarded as voting “*for*” or “*against*” a particular resolution. While it seems logical not to regard them as supporting votes, neither do we think the owners concerned are opposed to the proposal.
- (f) We have explained in LC Paper No. CB(2)2617/04-05(04) that all matters arising at a meeting of an owners’ corporation would have to be passed by more than 50% of the votes present at the meeting. If abstention votes are to be counted, there will be grave difficulties for an owners’ corporation to pass any resolutions at a general meeting. This is again a

practical concern.

- (g) If it is set out in the BMO that abstention votes should not be counted, we consider it will provide a strong urge for the owners to indicate clearly their views on the resolution instead of abstaining from voting or submitting a blank vote.

8. We are aware that disregarding abstention votes might be objected by some owners on the ground that it will take away their rights from abstention. This is especially the case when the owners are only allowed to choose from amongst a few options (e.g. contractors who have submitted tenders with regard to a renovation project) without the choice of objecting to the project itself. We could not dispute such an argument. However, we consider that these owners will be urged to indicate their clear intention on whether they support or object to the proposal put forward at the owners' meeting. If they really could not decide that the proposal concerned should be supported, they have the right to vote against it (e.g. if they want to obtain more information about the proposal). This is to facilitate the work of an owners' corporation in the management and maintenance of the building. As to the case where the owners are only given the choice of contractors (without the option of voting against the project), we consider such situations will be improved with the enactment of the legislative amendments to the procurement procedures in the BMO.

9. As a related matter, given the definition of the terms "majority rule" and "abstention" in paragraph 3 above, invalidated votes cast by voters who have the intention to vote could not be regarded as abstention votes. However, for the same consideration in paragraph 7(e), (f) and (g) above, we also propose that invalid votes should not be counted.

## **RECOMMENDATION**

10. Having considered the above factors, we propose to set out clearly in the BMO that abstention votes and invalid votes should not be counted. Subject to Members' views, we will introduce Committee Stage Amendments as appropriate.

## **VIEWS SOUGHT**

11. Members are invited to give their views on the above proposals.

Home Affairs Department  
January 2006