

Bills Committee on Building Management (Amendment) Bill 2005

Quorum of a Management Committee and Other Related Matters

1. This paper sets out the statutory requirements regarding the quorum of a management committee and the Administration's proposed amendments to the BMO to facilitate the appointment of members to fill vacancies in a management committee in order to avoid its becoming defunct.

Legal Provisions

2. Paragraph 1 of Schedule 2, upon amendment¹, will provide that a management committee shall consist of not less than three persons where the building contains not more than 50 flats; not less than seven persons where the building contains more than 50 flats but not more than 100 flats; or not less than nine persons where the building contains more than 100 flats. Paragraph 9 of Schedule 2 (no amendment proposed in the Bill) stipulates further that the quorum at a meeting of the management committee shall be 50% of the members of the management committee².

Judgments Relating to the Quorum of a Management Committee

3. According to the judgment in *The Incorporated Owners of Blocks F1 to F7 of Pearl Island Holiday Flat and Wong Chun Yee and Others* (CACV 1911/2001), the reduction of the size of a management committee (as vacancies may arise due to the resignation of members or other reasons) to below the statutory minimum (i.e. three, seven or nine, depending on the number of flats in a building³) alone will not render the management committee invalid. If this happens, the management committee could fill the vacancies in accordance with paragraph 6 of Schedule 2.

4. On the other hand, it was held in *Chan Yip Keung and Leung Shiu*

¹ Clause 23 of the Bill deletes all references to DMC in paragraph 1 of Schedule 2.

² Or three members of the management committee, whichever is the greater.

³ See paragraph 2 of this paper.

Kuen 對 The Incorporated Owners of Belvedere Garden Phase II & Chiang Shu To (LDBM 54/2002) that once an owners' meeting has decided the number of members to be appointed to a management committee, the size will remain until another owners' meeting resolves to change it. It was held further that in the absence of a quorum (i.e. 50% of the members of the management committee), a management committee, albeit its continued existence, would not be able to convene any meeting in accordance with paragraph 8 of Schedule 2 to handle the business of the owners' corporation (OC). Any resolutions passed by such management committee would be regarded as invalid.

Inquorate Management Committee

5. Paragraph 1 of Schedule 3 to the BMO provides for two means to convene a general meeting of the OC. Paragraph 1(1) provides that the management committee shall convene a general meeting of the corporation at any time for such purposes as the management committee thinks fit. However, if the number of members of a management committee has dropped below the quorum (i.e. 50%), it would no longer be able to convene any general meeting of owners under paragraph 1(1). Paragraph 1(2) provides an alternative means where the chairman (not the management committee) shall convene a general meeting at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request.

6. Under the existing BMO, if the number of members of a management committee has dropped below the quorum (i.e. 50%), the owners could take either of the following course of action –

- (a) Where the chairman is still in post, the owners could request the chairman to convene an owners' meeting under paragraph 1(2) of Schedule 3 to appoint an administrator and thereafter dissolve the management committee under section 30(1) of the BMO.
- (b) Where the chairman is no longer in post or no owners' meeting is convened under paragraph 1(2) of Schedule 3, any owner could apply to the Lands Tribunal for an order to dissolve the management committee and appoint an administrator under section 31(1) of the BMO.

In accordance with section 30(3) of the BMO, upon the appointment of an administrator and dissolution of the management committee, the administrator could then convene an owners' meeting under paragraph 1 of Schedule 3 to appoint a new management committee.

7. Both options in paragraph 6 above involve the appointment of an administrator. Option (b) further requires the submission of an application to the Lands Tribunal. We consider that a simpler mechanism should be provided for owners to appoint members to fill the casual vacancies in case the size of the management committee drops below 50%.

Proposed Amendments to the BMO

Filling of Vacancies in a Management Committee

8. Paragraph 6(1) of Schedule 2 stipulates that a casual vacancy occurring in a management committee may be filled by the management committee. Paragraph 6(1B) provides that the vacancies for the chairman or vice-chairman posts could be filled either by a resolution passed at a general meeting of the corporation or from amongst members of the management committee. Paragraph 6(2) provides that the vacancies for the other office could be filled by the management committee. Table A below sets out more clearly the legal requirements –

Table A

Legal Provisions	Casual Vacancies	Method of Filling the Vacancies (1)	Method of Filling the Vacancies (2)	Terms of Appointment
Para.6(1), Sch 2	Any vacancy	By the management committee	-	No mention
Para. 6(1B), Sch 2	Chairman	By a resolution passed at a general meeting of the OC	Members of the management committee may appoint among themselves an owner to act	Till the next annual general meeting
Para. 6(1B), Sch 2	Vice-chairman	By a resolution passed at a general meeting of the OC	Members of the management committee may appoint among themselves an owner to act	Till the next annual general meeting
Para. 6(2), Sch 2	Other offices	The management committee may appoint an owner or any other person to fill the vacancy	-	Till the next annual general meeting

Table A shows clearly that the filling of the vacancies of the other offices could only be made by the management committee – not even a general meeting of the corporation could pass such a resolution.

9. It follows that in the case where the number of members of a management committee has dropped below the quorum (i.e. 50%) and the chairman is still in post, he could convene an owners' meeting under paragraph 1(2) of Schedule 3 but such meeting could not appoint owners to fill the casual vacancies in the management committee (because only the management committee, and not the owner's meeting, is empowered to do so under paragraph 6 of Schedule 2).

10. We therefore **propose** to expand paragraph 6(2) of Schedule 2 along the line of paragraph 6(1B) so that a casual vacancy in a management committee could be filled either by the management committee or the corporation at a general meeting. Following the amendment, in the case where the number of members of a management committee has dropped below the quorum (i.e. 50%) and the chairman is still in post, he could convene, at the request of 5% owners, an owners' meeting under paragraph 1(2) of Schedule 3 to fill the casual vacancies in the management committee. This will save the OC the step to appoint an administrator or to seek an order from the Lands Tribunal to appoint an administrator.

11. It must be stressed that where no request is made to the chairman under paragraph 1(2) of Schedule 3 to convene an owners' meeting or that the chairman is not in post, the owners will need to seek an order from the Lands Tribunal for the appointment of an administrator.

Terms of the Members who are Appointed to Fill Vacancies

12. As a related matter, paragraph 5 of Schedule 2 stipulates that all members of the management committee shall retire from office at the *alternate* annual general meeting. The terms of appointment of the members filled under paragraph 6 of Schedule 2 (as shown in Table A above), however, will end at the next annual general meeting. This means that if the next annual general meeting is not an alternate annual general meeting referred to in paragraph 5 of Schedule 2, the members appointed under paragraph 6 of Schedule 2 have to retire even when the other members who were appointed under paragraphs 2 or 5 of Schedule 2 need not do so. If no re-appointment is made for those members appointed under paragraph 6 of Schedule 2, their appointment will become invalid. This will have implication on the validity of the management committee and decisions made by the management committee.

13. We therefore **propose** to amend paragraph 6(1B) and (2) to the effect that the corporation may, by a resolution passed at a general meeting of the corporation appoint an owner to fill the vacancy in the management committee (including the chairman, vice-chairman, secretary, treasurer or other members) and the terms of such appointment will end at the next alternate annual general meeting convened under paragraph 5 of Schedule 2 where all members shall retire. In other words, their terms

of appointment will be the same as those already serving in the management committee. However, in the case where no general meeting of the corporation has been convened and the appointments to fill casual vacancies (including the chairman, vice-chairman, secretary, treasurer or other members) were only made by the management committee, we consider they could only be regarded as acting appointments. Such acting appointments should end at the coming annual general meeting (i.e. a shorter term than those members who are appointed at a meeting of the corporation).

Size of a Management Committee

14. As explained in paragraph 4 above, it was held in *Chan Yip Keung and Leung Shiu Kuen 對 The Incorporated Owners of Belvedere Garden Phase II & Chiang Shu To* (LDBM 54/2002) that once an owners' meeting has decided the number of members to be appointed to a management committee, the size will remain until another owners' meeting resolves to change it. The size of a management committee is very important as it is the basis on which the quorum is calculated. It is clear that an owner's meeting convened under paragraph 5(2) of Schedule 2 where all members retire (i.e. the alternate annual general meeting) could change the size of a management committee. It is, however, unclear in the BMO whether the annual general meeting convened under paragraph 1(1)(b) of Schedule 3 and the extraordinary general meeting convened under paragraphs 1(1)(c) and 1(2) of Schedule 3 could pass a resolution to change the size of a management committee. Even if the answer is affirmative, the BMO is silent on the terms of appointment of the additional members (assuming the decision is to increase the size).

15. We consider that an owners' meeting, no matter it is an alternate annual general meeting, an annual general meeting or an extraordinary general meeting, should be allowed to change the size of the management committee through a valid resolution passed at the meeting. We therefore **propose** to include a new paragraph in Schedule 2 to the BMO to stipulate that all owners' meetings could pass resolutions regarding the size of a management committee (without prejudice to the statutory minimum stipulated in paragraph 1(a) of Schedule 2). The new paragraph will also stipulate that such new appointments should last till the next alternate annual general meeting when all members retire.

Views Sought

16. Members' views are invited on the above proposals. Subject to Members' views, we will introduce Committee Stage Amendments as appropriate.

Home Affairs Department
February 2006