

Bills Committee on Building Management (Amendment) Bill 2005

Scrutiny progress of the Bill

(as at 23 February 2006)

I. Proposals in the Bill

	Issues	Position
1.	Appointment of a management committee (MC) and its members and holders of office	<p>The Administration will introduce Committee Stage amendments (CSAs) to the effect that the “first past the post” voting system be adopted in the appointment of individual MC members in the Building Management Ordinance (BMO), i.e. those who receive the highest number of votes would be appointed as MC members.</p> <p>The Administration will introduce CSAs to amend the Chinese translation of the term “majority” in BMO to “過半數” and to set out clearly that abstention votes and invalid votes should not be counted.</p> <p>In response to members’ view that owners should be allowed to flexibly follow reasonable provisions in deed of mutual covenants (DMCs) regarding the composition of an MC, the Administration has proposed to introduce CSAs to clause 23(d)(i) (new paragraph 2(1)(a) of Schedule 2 to BMO and clause 23(g)(ii) (new paragraph 5(2)(a) of Schedule 2 to BMO, in the English text, so that at a meeting of owners, the owners shall appoint, from amongst the owners (instead of “from amongst themselves”), the members of MC. <u>The Administration’s response to be discussed [LC Paper No. CB(2)833/05-06(01)].</u></p> <p><u>The Administration’s proposed amendments to facilitate the appointment of members to fill vacancies in an MC in order to avoid its becoming defunct to be discussed [LC Paper No. CB(2)1182/05-06(01)].</u></p>

	Issues	Position
2.	Personal liabilities of members of an MC for the decision of an owners' corporation (OC)	The Administration will introduce CSAs to the effect that members of an MC be required to act in good faith as well as in a reasonable manner in order to invoke the protection under the proposed new section 29A.
3.	Qualifications of MC members	No detailed discussion on the proposal in the Bill.
4.	Appointment of proxy	<p>Members have agreed that BMO should allow no flexibility for owners to indicate their voting instructions or to alter the statutorily-stipulated format.</p> <p>The Administration will introduce CSAs to amend Schedule 3 to BMO requiring the secretary of an MC to acknowledge receipt of the proxy instruments submitted by depositing a receipt slip into the letter box of the owner before the owners' meeting and post the information in respect of those flats where a proxy has been appointed in a prominent place of the meeting throughout the owners' meeting.</p> <p>The Administration will consider setting the absolute deadline for submission of proxy at 48 hours before the owners' meeting.</p>
5.	Termination of the appointment of manager	The Administration will introduce CSAs to the effect that the mechanism for termination of the appointment of managers under paragraph 7 of Schedule 7 to BMO shall apply to the first manager (i.e. the DMC manager) and subsequent contract manager whose contract with OC does not specify a termination mechanism.
6.	Procurement of supplies, goods and services by OCs and managers	<u>The Administration's response to be discussed – LC Paper No. CB(2)2617/04-05(05).</u>

	Issues	Position
7.	Financial arrangements for OCs and managers	<p>No detailed discussion on the proposal in the Bill.</p> <p>The Administration has been requested to consider introducing a penalty clause for the new requirement that the manager shall open and maintain one or more segregated trust/client accounts for holding money received in respect of the management of the building with OC as a client.</p>
8.	Procurement of third party risks insurance	<p>No detailed discussion on the proposal in the Bill.</p> <p>The Administration has been requested to consider setting up a statutory body, similar to the Hong Kong Export Credit Insurance Corporation, to undertake insurance for buildings which are unable to get insurance coverage due to the presence of unauthorised building structures and for buildings without OCs.</p>
9.	Delegation of powers and duties by the Secretary for Home Affairs	<p>No detailed discussion on the proposal in the Bill.</p>
10.	Composition and procedure of MC/Meetings and procedure of corporation	<p>The Administration will introduce CSAs to the effect that the chairman of an MC shall issue a notice of meeting within 14 days and that the meeting should be held within 28 days on receipt of the request of not less than 5% of the owners.</p> <p><u>The Administration's responses to other issues raised by members regarding owners' rights to request the chairman of an OC to convene a general meeting of the corporation to be discussed [LC Paper No. CB(2)222/05-06(02)].</u></p>

	Issues	Position
		<u>The Administration’s responses to issues raised by members regarding power of the chairman of an MC and appropriateness of the chairman to preside over owners’ meetings when there is conflict of interest to be discussed [LC Paper No. CB(2)222/05-06(01)].</u>

II. Proposals not covered in the Bill

	Issues	Position
1.	Borrowing powers of OCs	<u>The Administration’s new proposal to be discussed – LC Paper No. CB(2)1049/05-06(01).</u>
2.	Existing requirement for termination of the appointment of the DMC manager	The Administration has been requested to consider lowering the existing requirement for termination of the appointment of the DMC manager to 30% of the shares of owners.
3.	Formation of OCs in house development	<p>The Administration has been requested to consider resorting to the concept of “notional attribution of shares” in working out a basis of shares to resolve the problem of lack of undivided shares for the formation of OCs in house development, and whether the common parts of house developments (which are owned by the developer) would fall within the scope of the meaning of the word “building” as defined in BMO.</p> <p><u>The Administration’s response to the requests is awaited.</u></p>
4.	Setting up a Building Management Tribunal	The Administration has undertaken to pass on the suggestion relating to the proposed Building Management Tribunal to the Housing, Planning and Lands Bureau which is now seeking public views on its second round of consultation on Building Management and Maintenance.

	Issues	Position
5.	Regulation of property management companies	The Administration has informed the Bills Committee that a two-phase study on the feasibility of introducing a regulatory scheme for property management industry would be launched and it would not be feasible for the Administration to give a timeframe at the present stage as to when a decision would be made.
6.	Mechanism to amend provisions of DMC	The Administration has undertaken to study the issue in consultation with the Department of Justice, Lands Department and the Land Registry and report to the Panel on Home Affairs.

III. Other papers to be discussed

	Paper number	Issues
1.	LC Paper No. CB(2)222/05-06(03)	The Administration's response to views of the professional bodies in the building management sector.
2.	LC Paper No. CB(2)342/05-06(01)	The Administration's response to the views of the public.