

Bills Committee on Building Management (Amendment) Bill 2005

Matters Arising from Meeting on 26 January 2006

Communications among Owners

1. At the meeting of the Bills Committee on 26 January 2006, Members discussed LC Paper No. CB(2)2617/04-05(02) – *Matters Arising from Meeting on 23 June 2005* about the rights of owners to incorporate and communicate with other owners of the building. Some Members suggested that the Administration should consider imposing a statutory obligation on a building manager and/or the incumbent management committee that they had to allow communication among owners on matters relating to the management of their building, notably that they must not prohibit owners from depositing leaflets/letters relating to building management into the letter boxes of owner. Below are the responses of the Administration.

Views from the Professional Organisations

2. As agreed at the meeting, the Administration has sought the views from professional organisations which are involved in the management of private properties. They are the Hong Kong Association of Property Management Companies Limited, the Chartered Institute of Housing Asian Pacific Branch, the Hong Kong Institute of Housing, the Hong Kong Institute of Real Estate Administration, and the Hong Kong Institute of Surveyors (Property & Facility Management Division).

3. The professional organizations generally raised reservation on the proposal. Their views are set out below –

(a) Some owners may have very strong objection on receiving “junk mail” dropped into their letter boxes.

(b) Owners may distribute leaflets/letters that are not related to the management of the building. Misrepresented information or personal attacks may be included in the leaflets/letters. Some sort of screening/approval mechanism will be needed. It then begs the question of who should have the power to screen/approve the leaflets/letters for distribution.

- (c) The matter is already well dealt with by the *house rules* of the individual building which could be set by the owners.
- (d) By way of analogy, the Electoral Affairs Commission merely issues Guidelines on Electoral Activities for District Councils and Legislative Council elections.
- (e) Communication by post is already readily available to owners.
- (f) These organisations generally considered that the matter should best be decided by the owners themselves.
- (g) The organisations agreed to encourage their members to advise their employers, the property management companies, their clients, and their owners' corporations (OC) the importance of a fair and open election. The Hong Kong Institute of Surveyors (Property and Facility Management Division) advised that it is now preparing a Code of Practice for all its members regarding building management which will include the subject of election and communication among owners.

Case Studies

4. We have studied some 70 cases of buildings where the owners/incumbent management committee/building manager have imposed restrictions on communications among/with owners. The most common restrictions include depositing leaflets/appeal letters into the letter boxes of owner¹, posting of notice at the common parts of the building, meeting at venues controlled by the management committee/building manager, and household visits.

5. We note that the situation is more common in large estates. In most of the cases we have studied, the restrictions were imposed after consultation with the owners' committee or management committee, and for some, consultation with the owners' meeting.

¹ In certain cases, depositing of leaflets/appeal letters into the letter boxes of owner is allowed at a nominal charge which will be credited to the general management fund.

Possible Statutory Provision

6. Members have suggested that a statutory provision may be included in the Building Management Ordinance (BMO) regarding communications among owners. We have made reference to section 34J of the BMO which stipulates that certain provisions in a deed of mutual covenant (DMC) or other agreement shall be void and of no effect. A possible amendment would be a new sub-section in section 34J as follows –

“No provision in a deed of mutual covenant or other agreement shall operate to prevent owners of any building from communicating with each other through the depositing of materials into the letter boxes of owner on any business relating to the management of a building.”

7. The above provision is, however, not without problem. In addition to those raised by the professional organisations in paragraph 3 above, it begs the question of whether an individual owner will have the right to refuse leaflets/letters deposited by other owner(s). Communication among owners by way of depositing leaflets/letters into other owners’ letter boxes, if done in an uncontrolled manner, may amount to nuisance. In a defamation case heard in the High Court (HCA 2876/2003), the judge commented that the plaintiff was no doubt in the wrong when he insisted on inserting his reply letter into her (the defendant’s) letter box against her objection and the physical intervention of the management staff. Though the proposed provision does not go so far as to legitimize the act of nuisance, it undoubtedly encourages the act of depositing materials into the letter boxes of owners.

8. Furthermore, whether distribution of leaflets/letters into the letter boxes of owners should be allowed may best be decided by the owners themselves. Reference may be made to the Guidelines on Electoral Activities for District Councils and that for Legislative Councils. In the Guidelines, Electoral Affairs Commission advised that owners/OCs (if formed) are usually in control of and responsible for the management of the common parts of a building, and thus have the right to decide whether electioneering activities in the common parts should be allowed. Should the candidates wish to conduct electioneering activities in the common parts of the building, such as distribution of leaflets into the letter boxes of owners or display of posters, they must obtain prior approval from the owners/OCs. It is totally up to the owners/OCs to decide whether such activities are allowed.

9. Another possible point of reference in considering the matter may be the Circular Service provided by the Hongkong Post. Under this service, Hongkong Post sends mail to all addresses in the areas specified by the sender. Some recipients consider these mail as “junk mail” and express strong objection on receiving them. At present, if the owners have formed an OC, they could pass a resolution at the owners’ meeting and requested the Hongkong Post to delete the building concerned from the distribution list of Circular Service. Several OCs have made such requests already. Given the fact that OC has the right to refuse even certain kind of mail distributed by the Post Office, it begs the question of whether a provision should be made to forbid the owners in passing a resolution to impose restrictions over the distribution of leaflets/letters into the letter boxes by other owner(s). With such a provision, even if the act of distribution of leaflets/letters is considered as a nuisance by most of the owners, they are unable to stop such act.

10. Apart from the concerns over the right of the owners, there are other practical problems with the implementation of the proposed provision. Owners may distribute leaflets/letters that are not related to the management of the building (and whether they are related to the management of building or not is subject to interpretation). Misrepresented information or personal attacks may also be included in the leaflets/letters. To ensure that the owners do not distribute leaflets/letters in an irresponsible manner and cause nuisance to other owners, some screening/approval mechanism will be needed. It then brings up the question of who should be given the power to screen/approve the leaflets/letters for distribution.

11. With the screening mechanism, the management companies will have to help distributing the leaflets/letters into the letter boxes of owners, so as to make sure that those distributed are the same as those screened/approved. Help from management companies may also be required for large estates with thousands of flats. This will increase the workload of the management companies and also incur administrative expenses. Under the proposed provision, it is questionable whether the management committees/management companies should be allowed to impose a charge in relation to the distribution of leaflets/letters. If a charge can be imposed, then it naturally leads to the question of what should be the reasonable amount of charge.

Administration's Views

12. An OC is required under section 18(1)(c) of the BMO to do all things reasonably necessary for the enforcement of the obligations contained in the DMC for the control, management and administration of the building. The manager of a building has a general duty under the DMC to manage the building. Proper management includes, amongst others, the avoidance of nuisance caused to the owners/occupiers of the building. We consider that whether any publicity activities are to be regarded as "nuisance" should best be decided by the owners themselves.

13. We retain the view that owners are in the best position to determine how their buildings should be managed. It is in the best interests of the owners to form an OC. Once an OC has been formed, the owners could, through the general meeting, pass resolutions regarding the *house rules*² in accordance with the majority wish of the owners. If the owners are dissatisfied with the incumbent management committee, including the *house rules* or any restrictions posed which prohibit the effective communication of owners, they could request the chairman to convene a general meeting of the corporation under paragraph 1(2) of Schedule 3 to the BMO. The owners may resolve to appoint an administrator and dissolve the management committee at the owners' meeting. If the above does not work, the owners may also, in accordance with section 31 of the BMO, make an application to the Lands Tribunal to dissolve the management committee and appoint an administrator for the building.

Views Sought

14. Members' views are sought on the above.

Home Affairs Department
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² According to the Guidelines for DMC issued by the Lands Department (Guideline No.13), *house rules* may be made by the building manager with the approval of the owners' committee or the OC, if formed. Such house rules must not be inconsistent with the DMC of the building.