Response to Hon WONG Kwok-hing's Questions on the Building Management (Amendment) Bill 2005

Set out below is our response to the Hon WONG Kwok-hing's questions in his letter of 22 July 2005 concerning the Building Management (Amendment) Bill 2005 ("the Bill").

(1) Appointment of Management Committee (MC)

Question 1

1. Please refer to paragraphs 8 and 38 of the Administration's reply to the Assistant Legal Advisor of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2) 1550/04-05(03)), paragraph 5 of the Administration's reply to the Hon CHOY So-yuk's letter of 25 May 2005 (LC Paper No. CB(2) 1885/04-05(03)) and paragraph 2 of the reply to her letter of 16 June 2005 (LC Paper No. CB(2) 2192/04-05(02)). Relevant extracts are at Annex 1.

Question 2

2. Please refer to paragraphs 2 to 6 of the Administration's response to issues raised at the meeting on 23 June 2005 (LC Paper No. CB(2) 2617/04-05(02)). Relevant extracts are at Annex 2.

Question 3

3. We would like to make it clear in the Bill that owners have to follow the procedures set out in the Building Management Ordinance (BMO) in appointing a management committee (MC) under the BMO. Schedule 2 to the BMO provides for the composition and operational

procedures of MCs. We also propose to delete all references to the deed of mutual covenant (DMC) in Schedule 2 so that the operation of an MC will follow the requirements under the BMO, instead of those under the DMC. In fact, this is already provided for in paragraph 12 of Schedule 2, which stipulates that in the event of any inconsistency between Schedule 2 and the terms of a DMC, the former shall prevail. If the proposal is endorsed, then in appointing an MC, owners have to follow the procedures set out in the BMO, instead of those in the DMC.

4. We are aware that many DMCs lay down specific requirements for the composition of an MC. For example, some DMCs provide for a certain number of representative(s) to be elected from each block, while others set out the ratio of representatives from the residential and commercial portions. It must be stressed that the creature commonly referred to as a management committee (or an owners' committee) in a DMC is not a statutory one. The requirements for these committees as set out in the DMCs are not applicable to owners' corporations (OCs).

5. In fact, for some DMCs, requirements on the composition of an MC may not be based on the ratio of shares of owners in each block, or the ratio of shares between the residential and commercial portion. It is doubtful whether such requirements are fair and in line with the interests of all owners. From our experience, practical difficulties may also arise in implementing these requirements. For example, the DMC may provide for a certain number of representative(s) to be elected from each block of the estate, but the owners of one of the blocks fail to elect their representative(s); or the DMC may stipulate the ratio of representatives of owners from residential and commercial portions, but the owners of the commercial portion are not keen on building management issues. Under these circumstances, the committee so formed may be unable to meet the

requirements or even fail to operate properly.

Question 4

6. Please refer to paragraphs 2 to 4 of the Administration's reply to the Hon CHOY So-yuk's letter of 25 May 2005 (LC Paper No. CB(2) 1885/04-05(03)) and paragraph 6 of the Administration's response to issues raised at the meeting on 23 June 2005 (LC Paper No. CB(2) 2617/04-05(02)). Relevant extracts are at Annex 3.

Question 5

7. Section 3 of the BMO provides that a meeting of the owners to appoint an MC may be convened by the owners of not less than 5% of the shares. If an individual owner owns 5% of the shares or above, he can convene a meeting of the owners on his own. However, to convene an owners' meeting in the capacity of a convenor for passing a resolution on the formation of an OC is just the first step in forming an OC under section 3 of the BMO. Successful formation of an OC depends ultimately on whether the resolution concerned is passed by the owners of not less than 30% of the shares.

Question 6

8. Statistics from the Land Registry shows that as at 31 July 2005, the great majority of OCs is formed according to the required percentage of shares[1] under section 3(2)(b) of the BMO. On the other hand, a total of 61 OCs have been formed under the respective DMCs of their buildings (not the BMO) and the year of their formation are as follows:-

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[1] Prior to 1 August 2000, section 3(2) of the BMO provided that an MC may be appointed by a resolution of the owners of not less than 50% of the shares. The Building Management (Amendment) Ordinance 2000 revised the threshold to 30%.

Year of Formation	Number of OCs Formed under DMCs
1970 – 1974	6
1975 – 1979	13
1980 – 1984	10
1985 – 1989	4
1990 – 1994	18
1995 – 1999	7
2000 – Present	3
Total	61

9. Given the ambiguities in the existing provisions in respect of the appointment of an MC, there were cases where owners, in forming an OC, followed some procedures in the BMO and some in the DMCs (The most common case is some DMCs allow non-owners, for example spouse of an owner, to participate in the work of an MC). We also found that among the 7,500 OCs or so in Hong Kong, about 200 OCs cannot provide comprehensive information about their formation. Therefore, if the proposed amendments are endorsed, district office staff will brief all OCs (not just the 61 OCs formed under DMCs)on the requirements in the amended Ordinance.

(2) Appointment of Proxy by Owners

Question 1

10. Please refer to paragraph 35 of the Administration's reply to the Assistant Legal Adviser of Legislative Council dated 13 May 2005 (LC

Paper No. CB(2)1550/04-05(03)), paragraphs 12 to 13 of the Administration's reply to the Hon CHOY So-yuk's letter of 25 May 2005 (LC Paper No. CB(2)1885/04-05(03)), paragraph 12 of the reply to the Hon CHOY So-yuk's letter of 16 June 2005 (LC Paper No. CB(2)2192/04-05(02)), and paragraph 10 and Annex A of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)). Relevant extracts are at Annex4.

Question 2

11. Please refer to paragraph 27 of the Administration's response to issues raised at the meeting on 2 June 2005 (LC Paper No. CB(2)2017/04-05(02)), the extract of which is at Annex 5.

Question 3

12. Paragraph 4 of Schedule 3 to the BMO provides that at a meeting of the OC, the votes of owners may be given either personally or by proxy. There is no requirement in the existing BMO for owners or proxies to provide their Hong Kong Identity Card number in the proxy instruments. Such a requirement may contravene the Data Protection Principles of the Personal Data (Privacy) Ordinance (Cap. 486).

13. In the case *The Incorporated Owners of Tropicana Gardens v. Tropicana Gardens Management Limited and Cheong Ming Investment Company* (LDBM 374/1998), the trial judge held that "…if an owner is willing to provide his/her Hong Kong Identity Card number in the written authorisation, it will offer greater convenience and assurance for those responsible for verifying the identity of the owner. However, even if the owner has not provided his/her Hong Kong Identity Card number, there are still adequate means to verify his/her identity, such as conducting a search of the land records maintained by the Land Registry or even

paying a home visit to the owner. The BMO has never required that the owner's Hong Kong Identity Card number must be included in the written authorisation for attending owner's meeting …". Hence, the proxy instrument which does not bear the Hong Kong Identity Card number of the owner or the proxy cannot be deemed invalid.

14. Please also refer to paragraph 13 of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)), the extract of which is at Annex 6.

Question 4

15. Please refer to paragraph 53 of the Administration's reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03)), paragraphs 9 to 11 of the Administration's reply to the Hon CHOY So-yuk's letter of 16 June 2005 (LC Paper No. CB(2)2192/04-05(02)) and paragraphs 2 to 8 of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)). Relevant extracts are at Annex 7.

Question 5

16. The format of the proxy instrument stipulated in the proposed Schedule 1A of the Bill is modeled after the format of relevant documents under the Companies Ordinance (Cap. 32). The Bill does not require the signature on the proxy instrument and that on the title deed to be the same. There is also no similar requirement in the Companies Ordinance. However, anyone who makes a fake proxy instrument is in breach of the Crimes Ordinance (Cap. 200).

17. Regarding the 24-hour deadline for lodging a proxy instrument, please refer to paragraph 14 of the Administration's reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper

No. CB(2)1550/04-05(03)), the extract of which is at Annex 8.

Question 6

18. Since there is no specific requirement on the collection of proxy instruments in the existing BMO, many OCs make their own arrangements for the collection of proxy instruments. Some OCs place a collection box in the lobby to collect proxy instruments submitted by the owners. Some OCs designate persons such as staff of the management company to collect proxy instruments on behalf of the OC secretary and have them verified before/during the meeting. To assist OCs in managing their buildings, Home Affairs Department (HAD) has published a booklet entitled "How to Form an Owners' Corporation and Achieve Effective Building Management", which contains a sample proxy form and notes on the appointment of proxy. Copies of the booklet have been widely distributed to owners and are available from District Offices and Building Management Resource Centres. It can also be downloaded from the HAD Homepage on Building Management. With regard to the collection of proxy instruments, please refer to paragraph 16 of the Administration's response to issues raised at the meeting on 23 June 2005 (LC Paper No. CB(2)2617/04-05(02)), the extract of which is at Annex 9.

Question 7

19. Please refer to paragraph 13 of the Administration's reply to the Hon CHOY So-yuk's letter of 16 June 2005 (CB(2)2192/04-05(02)), the extract of which is at Annex 10.

Question 8

20. Regarding the electoral procedure for OC members, it is stipulated that members of a management committee have to be

appointed by votes at the owners' meeting. Paragraph 5(2) of Schedule 2 to the BMO requires that members of the management committee shall retire under paragraph 5(1) and that owners shall appoint a new management committee at the annual general meeting of the OC. The Bill proposes to amend paragraph 5 of Schedule 2 to stipulate that all members of the management committee (except those who are appointed in the capacity as the tenants' representatives) shall retire at the annual general meeting of the OC and that the owners shall, from amongst themselves, appoint members of a new management committee at the same meeting. It is clear that the Bill seeks to provide for the retirement of the incumbent management committee and the appointment of the new management committee at the same meeting. Please also refer to paragraph 6 of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)), the extract of which is at Annex 11.

Question 9

21. Please refer to paragraph 14 of the Administration's reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03)), the extract of which is at Annex 12.

Questions 10-11

22. Regarding the handling and the determination of the validity of a questionable proxy instrument, please refer to paragraph 15 of the Administration's reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03)) and paragraphs 19 to 21 of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)). Relevant extracts are at Annex 13.

Question 12

23. Please refer to paragraph 22 of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)), the extract of which is at Annex 14.

Question 13

24. We understand that some OCs post the information in respect of those flats for which a proxy has been appointed in a prominent place of the venue of the owners' meeting, while some put down those flats for which a proxy has been appointed in the minutes of meeting. Since the OCs have only disclosed the information on the flats but not the owners, this will not contravene the Personal Data (Privacy) Ordinance. Please also refer to paragraphs 16 to 18 of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)), the extract of which is at Annex 15.

Question 14

25. The Bill proposes to provide OCs with a sample form of the statutory proxy instrument, the format of which should not be adapted. In principle, the form can be photocopied for the use of the owners. However, some members have suggested at the meetings of the Bills Committee that the sample form should be provided as a reference only and that an OC should have the right to design its own proxy form to meet its particular needs. In response to members' comments, we have put forward proposals for members' consideration. Please refer to paragraphs 9, 10 and 16 of the Administration's response to issues raised at the meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03)), the extract of which is at Annex 16. The matter will be further discussed at future meetings of the Bills Committee.

(3) Procurement and Selection of Supplies, Goods and Services

Question 1

26. Please refer to paragraph 16 of our paper entitled "Procurement by Owners' Corporations and Managers" (LC Paper No. CB(2)2617/04-05(05)). Relevant extract is at Annex 17.

Question 2

27. Please refer to paragraphs 13 to 15 of our paper entitled "Procurement by Owners' Corporations and Managers" (LC Paper No. CB(2)2617/04-05(05)). Relevant extract is at Annex 18.

Question 3

28. Please refer to our paper entitled "Interpretation of the Term 'Majority'" (LC Paper No. CB(2)2617/04-05(04)).

(4) Setting up of Account for OCs

Question 1

29. Section 20 of the BMO provides that an OC shall maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building. The best practice in the interest of owners is of course for the OC to require the owners to deposit the management fee into the account of the OC (instead of the property management company's account) and for the OC to reimburse on a regular, say monthly, basis to the property management companies. This will avoid the property management companies from accumulating and holding a huge sum of management fees on behalf of the owners. This however may not be an efficient way for the OC, who has delegated the property management company to manage the building on its behalf.

In fact, many property owners are asked to deposit the management fees directly into the account of the manager.

30. Members may wish to note that there are existing provisions in the BMO which aim to protect the interests of owners and guard against the misuse of the owners' money by the property management companies. Schedule 7 to the BMO, which are mandatory terms impliedly incorporated into all DMCs, provides that the management company shall maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building. All money received by the management company shall be deposited into that account without delay.

31. To offer better protection for the owners, we propose to strengthen the requirements for property management companies under paragraphs 3 and 4 of Schedule 7. We will stipulate in the Ordinance that the manager shall establish and maintain one or more segregated accounts, with the OC as the client, for money received in respect of the management of the building. Each of these accounts shall be designated as a trust account or client account. On opening such bank account(s), the manager is required to display a copy of the document showing evidence of such segregated account(s) in a prominent place in the building. The proposal ensures that the manager keeps the management fees received in a bank account separate from his own monies. It also ensures that the manager does not deposit management fees received from different buildings into one single bank account.

<u>Questions 2 and 3</u>

32. The proposal regarding the introduction of a statutory regime to regulate the management companies is noted. We are going to conduct a

study on the subject. Follow-up action will be taken once the results are available.

(5) Termination of Appointment of DMC Manager

Question 1

33. Please refer to paragraphs 12 to 16 of our paper entitled "Mechanism for Terminating the Appointment of Managers" (LC Paper No. CB(2)1885/04-05(01)) and paragraph 3 of our response to issues raised at the meeting on 14 June 2005 (LC Paper No. CB(2)2192/04-05(01)). Relevant extracts are at Annex 19.

(6) Personal Liabilities of an MC Member for the Decisions of an OC

Question 1

34. Please refer to our paper entitled "Proposed New Section 29A – Protection of Members of Management Committee" (LC Paper No. CB(2)1885/04-05(02)). Please also refer to paragraphs 16 to 19 of our response to issues raised at the meeting on 14 June (LC Paper No. CB(2)2192/04-05(01)). Relevant extracts are at Annex 20.

Question 2

35. The proposed new section 29A of the Bill seeks to expressly provide that the liability of an OC shall not be transferred to an individual MC member if he discharges the management duties for or on behalf of the OC. MC members will have to prove that they have acted in good faith and in a reasonable manner in order to invoke the indemnity provision.

36. There is case law[2] showing that the court, when deciding whether a charge of defamation can be established, will consider whether there are sufficient reasons or evidence to substantiate the allegation. Whether an individual MC member, in the face of a charge of defamation, can invoke the new section 29A of the Bill to defend against such claim depends largely on whether the act is done for or on behalf of the OC in the exercise or performance of the powers or duties imposed by the BMO on the OC. It is also important that the member concerned must have acted in good faith.

37. During the public consultation period, there were views in support of introducing a new provision on the exemption of MC members from the charge of defamation. We have reservations on this proposal. It will be too lax to exclude OCs or individual MC members from their civil or criminal liability in this way. This will also impose a procedural bar on an individual's right to institute legal proceedings before a court. We consider that members of a management committee, in discharging building management duties, should act prudently and take care not to breach the law.

Question 3 and 4

38. Section 8 empowers an OC to sue and to be sued. It is normal practice for lawyers to give the recipients reasonable time to reply to their letters. When an OC has received such letter, its management committee will usually hold a meeting to discuss the matter and seek legal advice. Depending on the circumstances of the case, the MC will convene an owners' meeting to discuss the matter and follow-up actions. MC members may approach the four Building Management Resource Centres under HAD for free legal advice from volunteer lawyers of the

[2] *日訊物業管理有限公司 v. 王文侃* (HCA 8876/1998)

Hong Kong Law Society by appointment. For procurement of legal service, OCs have to follow the procedures set out in section 20A of the BMO. Please refer to paragraphs 4 to 8 and 16 of our paper entitled "Procurement by Owners' Corporations and Managers" (LC Paper No. CB(2)2617/04-05(05)). Relevant extract is at Annex 21.

39. Under the existing Ordinance, if an individual MC member has incurred legal liability in performing duties of the OC/MC or in exercising the statutory powers, he can apply to the court for striking out of his name from the legal proceedings[3]. It will be clearly stipulated in the Bill, by virtue of the proposed section 29A, that the liability of an OC will not be transferred to an individual member of its management committee if the latter can prove that he has acted in good faith and in a reasonable manner.

Home Affairs Department
September 2005

[3] *葉大永建築師有限公司 v. 金明閣業主立案法團及黃文賢* (CACV 143/1999)

Annex 1

Paragraphs 8 and 38 of the Administration's Reply to the Assistant Legal Advisor of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03))

8. Under the existing section 3(2) of the Ordinance, a management committee may be appointed, amongst others, by a resolution of the owners of not less than 30% of the shares. The percentage required was previously 50% and was lowered to the present 30% by virtue of the Building Management (Amendment) Ordinance 2000 (69 of 2000) in order to facilitate the formation of OCs. This amendment has given rise to the question of whether, despite a resolution voted in favour by the owners of not less than 30% of the shares, it would be possible for other owners with 30% or more of the shares to vote against the appointment of a management committee at the same owners' meeting. The question was raised in the case of *Kwan & Pun Company Limited v Chan Lai Yee and others* (CACV 234/2002). We would therefore like to make it clear that the resolution on the appointment of a management committee under section 3 must be supported by not less than 30% of the shares and that there must also be a majority of votes of the owners in the same meeting.

38. The Guidelines for DMC issued by the Legal Advisory and Conveyancing Office of the Lands Department provide that the manager of a building shall call the first meeting of owners as soon as possible, but in any event not later than nine months after the date of the DMC, which meeting shall appoint a chairman and committee of owners or shall appoint a management committee for the purpose of forming an OC under the Ordinance (Guideline No.10). In practice, we note that most managers will initiate the appointment of an owners' committee. Upon enactment of the legislative amendment, owners are free to choose to form a statutory OC under the Ordinance or a non-statutory body under the DMC. So long as there is the support of 30% of the shares of owners in appointing a management committee (as provided under the new section 3 of the Ordinance), and there is not another group of 30% or more of the shares of owners objecting to the resolution (see paragraph 8 above), a management committee could be appointed under the Ordinance. In the example you have quoted, if there is the support of 30% of the

shares of owners in appointing a management committee under the Ordinance, and the other 70% not only want to appoint a non-statutory body under the DMC but also indicate their clear objection to the appointment of a management committee under the Ordinance at the owners' meeting convened for such purpose, then the resolution could not be passed and no management committee is formed under section 3 of the Ordinance. However, it must be noted that once a management committee has been appointed, as provided under section 34K of the Ordinance, the members of the management committee shall be deemed, for the purposes of the DMC, to be the owners' committee and shall to the exclusion of any other persons have all the functions, powers and duties of the owners' committee under the DMC.

Paragraph 5 of the Administration's Reply to Hon CHOY So-yuk's Letter of 25 May 2005 (LC Paper No. CB(2)1885/04-05(03))

5. In addition to the proposed amendments to section (3)2 of the Ordinance to clearly stipulate that the resolution on the appointment of a management committee under section 3 must be supported by owners of not less than 30% of the shares, the Bill requires that the resolution must also be passed by a majority of votes of the owners at the same meeting. This in effect means that the resolution on the appointment of a management committee must be supported by not less than 30% of the shares and that there must be a majority of votes of the owners in the same meeting.

Paragraph 2 of the Administration's Reply to Hon CHOY So-yuk's Letter of 16 June 2005 (LC Paper No. CB(2)2192/04-05(02))

2. According to the existing section 3(2)(b) of the Building Management Ordinance (BMO) (Cap.344), a management committee may be appointed by a resolution passed by the owners of not less than 30% of the shares in aggregate at a meeting of owners duly convened for the appointment of a management committee. However, it is not clearly stated in the existing provision whether the appointment shall be valid if other owners of 30% of the shares vote against it. The question was raised in the case of *Kwan & Pun*

Company Limited v Chan Lai Yee and others (CACV 234/2002). We therefore propose to amend the existing section 3(2)(b) to clearly stipulate that the resolution on the appointment of a management committee must be supported by owners of not less than 30% of the shares and that, by virtue of the amended section 3(2)(a), to expressly state that such resolution must also be passed by a majority of votes of the owners at the same meeting. This is in line with the proposal of Hon CHOY So-yuk in her letter, i.e., to specify clearly the statutory requirement clear that the resolution on the appointment of a management committee must be supported by owners of not less than 30% of the shares and that there must also be a majority of votes of the owners at the same meeting.

Annex 2

Paragraphs 2 to 6 of the Administration's Response to Issues Raised at the Meeting on 23 June 2005 (LC Paper No. CB(2)2617/04-05(02))

2. Members were generally concerned on whether there are sufficient provisions under the Ordinance to avoid the formation of more than one owners' corporation (OC) in a building.

3. Section 7 of the Ordinance provides that a duly appointed management committee shall within 28 days of such appointment apply to the Land Registrar for the registration of the owners as a corporation under the Ordinance. Section 8 further provides that the Land Registrar shall, if satisfied that the legal requirements have been complied with, issue a certificate of registration. With effect from the date of issue of the certificate of registration, the owners for the time being shall be a body corporate with perpetual succession and the management committee appointed shall be deemed to be the first management committee of the OC. Section 16 provides that when the owners of a building have been incorporated, the rights, powers, privileges and duties of the owners in relation to the common parts of the building shall be exercised and performed by the corporation to the exclusion of the owners. Reading these provisions together, it is clear that only one OC can be formed in a building.

4. Administratively, the Land Registrar will issue only one certificate of registration to one building under section 8 of the Ordinance. The Land Registry has an effective mechanism in preventing the registration of more than one OC in a building. The Registry has a control register for receipt of applications for registration as OC. In processing the applications, the Land Registrar will verify the name and address of the building against the control register to ensure that only one OC is registered. Each application will be considered on its own merit.

5. It must also be stressed that the term "building"1 in the Ordinance does not refer only to the building structure itself but also the land upon which the building structure is erected. Furthermore, the building (together with the land) has to be in common ownership or held for the common enjoyment of owners and occupiers. The

basis of common ownership (or common enjoyment) among owners is set out in the deed of mutual covenant (DMC) of the building. It is thus more accurate to say that only one OC could be formed for one DMC.

6. Some Members asked if the Government could introduce measures at the stage when different groups of owners (of not less than 5% of the shares) are preparing for the owners' meeting under section 3 of the Ordinance. This is not viable. Section 3 of the Ordinance provides that the owners of not less than 5% of the shares, amongst others, may convene a meeting of owners to appoint a management committee. Whilst this is, under most circumstances, the first step for OC formation, its is not guaranteed that the first group of owners with 5% shares could meet the requirement under the existing/amended section 3(2)(b), i.e. the resolution to appoint a management committee is supported by the owners of not less than 30% of the shares in aggregate. As such, we could not specify, whether through statutory or administrative measures, that only the first group of owners with 5% shares, no matter they are the first group to convene an owners' meeting under section 3, or that they are the first group to apply to the District Office for a certificate of waiver for the land search fees, could be allowed to register with the Land Registrar.

Annex 3

Paragraphs 2 to 4 of the Administration's Reply to Hon CHOY So-yuk's Letter of 25 May 2005 (LC Paper No. CB(2)1885/04-05(03))

2. Clause 4 of the Bill proposes to amend Section 3(1)(c) of the Building Management Ordinance ("BMO") (Cap. 344) by replacing "the owners of not less than 5% of the shares" with "an owner appointed to convene such a meeting by the owners of not less than 5% of the shares". Before convening an owners' meeting for the purposes of appointing a management committee and setting up an owners' corporation ("OC"), the owners concerned have to obtain updated records of all owners in the building from the Land Registry in order to issue a notice of meeting of owners and facilitate voting at the owners' meeting.

3. To relieve the financial burden of the meeting convenors (i.e. owners of not less than 5% of the shares who convene an owners' meeting), they could apply to the District Officer of the respective district for an exemption certificate so as to enable them to obtain a set of the owners' records from the Land Registry for free. Information such as the units owned by the owners concerned, names of the owners/companies, number of shares owned, as well as signatures of owners or company chops, together with a copy of the deed of mutual covenant (DMC), must be provided in the application. The meeting convenors must also undertake in writing to obtain the owners' records from the Land Registry and convene, in the capacity of the convenors, an owners' meeting to appoint a management committee within 60 days after the approval of the application and the issue of the exemption certificate by the District Officer. No matter whether an OC is formed, the convenors must return the owners' records to the District Office on expiry of the 60-day period. As the convenors may encounter difficulties in convening an owners' meeting, the District Officer may, on request, consider granting an extension on a case by case basis.

4. For the effective use of public resources, our practice is to provide the fee-waiver once for each building or estate. The Hong Kong Housing Society has recently introduced the "Building Management Incentive Scheme" to provide an accountable subsidy up to $3,000 to owners of buildings for the formation of OCs. Owners who want to form an OC may apply to the Housing Society for the subsidy.

Paragraph 6 of the Administration's Response to Issues Raised at the Meeting on 23 June 2005 (LC Paper No. CB(2)2617/04-05(02))

6. Some Members asked if the Government could introduce measures at the stage when different groups of owners (of not less than 5% of the shares) are preparing for the owners' meeting under section 3 of the Ordinance. This is not viable. Section 3 of the Ordinance provides that the owners of not less than 5% of the shares, amongst others, may convene a meeting of owners to appoint a management committee. Whilst this is, under most circumstances, the first step for OC formation, it is not guaranteed that the first group of owners with 5% shares could meet the requirement under the existing/amended section 3(2)(b), i.e. the resolution to appoint a management committee is supported by the owners of not less than 30% of the shares in aggregate. As such, we could not specify, whether through statutory or administrative measures, that only the first group of owners with 5% shares, no matter they are the first group to convene an owners' meeting under section 3, or that they are the first group to apply to the District Office for a certificate of waiver for the land search fees, could be allowed to register with the Land Registrar.

Annex 4

Paragraph 35 of the Administration's Reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03))

35. We note the view of some Members of the Subcommittee on the Review of the BMO that owners should be given the option to elect to give a proxy to another person to attend and vote at the owners' meeting or only to attend the meeting. This was in fact the original proposal of the Administration which was discussed at the Subcommittee meetings on 6 February and 4 March 2004. However, there were also comments at the Subcommittee meetings that allowing the owners such an option would render the proxy instrument a voting paper and would create a lot of extra work for the management committee in counting the votes. Having considered the various views of the Subcommittee, and strongly believing that an owner should carefully consider appointing someone he/she trusts to be his/her proxy, we put forward the present proposal in the Bill.

Paragraphs 12 and 13 of the Administration's Reply to Hon CHOY So-yuk's Letter of 25 May 2005 (LC Paper No. CB(2)1885/04-05(03))

12. We note the view of some Members of the Subcommittee on the Review of the BMO that owners should be given the option to appoint a proxy to attend and vote at the owners' meeting or just to appoint the proxy to attend the meeting only. This was in fact the original proposal of the Administration which was discussed at the Subcommittee meetings on 6 February and 4 March 2004. However, there were also comments at the Subcommittee meetings that allowing the owners such an option would render the proxy ssinstrument a voting paper and would create a lot of extra work for the management committee in counting the votes.

13. Having considered the various views of the Subcommittee, and strongly believing that an owner should carefully consider appointing someone he/she trusts to be his/her proxy, we put forward the present proposal in the Bill, stipulating that an owner may cast a vote personally or by proxy at a meeting convened under sections 3, 3A, 4 or 40C. The instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A. Subject to the enactment of the legislative amendment, the Form shall become the specified form

of the BMO and could not be amended.

Paragraph 12 of the Administration's Reply to Hon CHOY So-yuk's Letter of 16 June 2005 (LC Paper No. CB(2)2192/04-05(02))

12. The format of the proxy instrument has been drawn up by the Subcommittee on the Review of BMO after careful deliberation. The proposal of including a standard format of the proxy instrument in the principal Ordinance seeks to provide owners with a standardized form so as to achieve consistency and avoid any dispute over the format of the proxy instrument. However, there were comments at the Bills Committee meeting on 14 June that some flexibility should be provided in the proxy instrument. The Administration has an open mind on the matter and welcome any suggestions.

Paragraph 10 and Annex A of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

10. We are aware that Members have diverse views on the format of the proxy instrument to be stipulated in the BMO. There are two issues at stake: (a) flexibility for owners to indicate their voting instructions to the proxy on the proxy instrument; and (b) flexibility for owners to alter the statutorily-stipulated format. As explained at the Bills Committee meetings, the Administration has no strong views on any format from both the legal and policy point of view. Annex A compares the various options for Members' consideration.

(Please refer to Annex A of the paper.)

Annex 5

Paragraph 27 of the Administration's Response to Issues Raised at the Meeting on 2 June 2005 (LC Paper No. CB(2)2017/04-05(02))

27. Under the present proposal in the Bill, even an authorization letter issued by a legal practitioner appointed by an owner would not be acceptable other than the standard proxy format provided in the law.

Annex 6

Paragraph 13 of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

13. *The Code of Practice on the Identity Card Number and Other Personal Identifiers* issued by the Privacy Commissioner for Personal Data provides that before a data user seeks to collect from an individual his Identity Card number, the data user should consider whether there may be any less privacy-intrusive alternatives to the collection of such number, and should wherever practicable give the individual the option to choose any such alternative in lieu of providing his Identity Card number. It is for consideration whether the first four digits of the Identity Card number (instead of the full number) may be regarded as a "less privacy-intrusive alternative". Nonetheless, even though this may not constitute violation of the Data Protection Principles under the Personal Data (Privacy) Ordinance (Cap.486), if such information is to be used for verification purpose, the OC must possess the full Identity Card number of the owner concerned. There may also be complication if the owner concerned does not possess an Identity Card.

Paragraph 53 of the Administration's Reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03))

53. The chairman of a meeting has a common law power to adjourn the meeting so as to give all persons entitled a reasonable opportunity of speaking and voting at the meeting. An adjournment, if bona fide, is only a continuation of the meeting and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. If however, the meeting is adjourned without a date for the adjourned meeting having been fixed, a fresh notice must be given.

Paragraphs 9 to 11 of the Administration's Response to Hon CHOY So-yuk's Letter of 16 June 2005 (LC Paper No. CB(2)2192/04-05(02))

9. The power to adjourn a meeting rests with the meeting itself. Generally, the meeting should vote to decide whether the majority of owners agree to the adjournment. If nobody objects at the meeting, it could be taken that the meeting agrees to the adjournment. However, according to the law books, the chairman may adjourn the meeting if a quorum is not present.

10. According to paragraph 56 of Table A of Schedule 1 to Companies Ordinance (Cap. 32), if within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

11. That said, in actual practice, in the case of meetings convened for the purpose of appointment of a management committee (i.e., an OC has not yet been formed) and in the case of insufficient quorum, the DO staff attending the owners' meeting will normally recommend to the convenor and the owners to arrange afresh another owners' meeting in order to avoid any legal dispute in future.

Paragraphs 2 to 8 of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

2. In accordance with law books, an adjournment of a meeting, if bona fide, is only a continuation of the meeting and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. If however, the meeting is adjourned without a date for the adjourned meeting having been fixed, a fresh notice must be given. If a quorum is not present or when there is a failure to muster a quorum, the chairman may adjourn the meeting to another date. Proxies deposited prior to the original meeting may be used at the adjournment, for in the absence of any provision to the contrary, an adjourned meeting is a continuation of the original meeting.

3. According to a recent judgment of the Lands Tribunal, the right to adjourn an owners' meeting rests with the meeting, and not the chairman alone. If there is the need, the meeting has to vote to decide whether the majority of owners agree to the adjournment. But if nobody objects at the meeting, it could be taken that the meeting agrees to the adjournment.

4. It is also useful to make reference to Table A in the First Schedule to the Companies Ordinance (Cap.32). Regulation 56 of Table A provides that if within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

5. That said, in actual practice, no matter it is a meeting of owners convened for the purpose of appointment of a management committee (i.e. before the owners have been incorporated) or a general meeting of owners convened after the owners have been incorporated, the District Office staff attending the meeting will normally recommend to the convenor/chairman and the owners to arrange afresh another owners' meeting in order to avoid any legal dispute in future. This is especially the case when there is insufficient quorum at the owners' meeting as the remaining handful

of owners may not be able to pass on the message about the details of the adjourned meeting to other absentee owners. This means that a fresh notice for the re-convened meeting will have to be issued to owners in accordance with section 5 (for meetings convened for the purpose of appointment of a management committee) of or Schedule 3 (for OC meetings) to the Building Management Ordinance (BMO).

6. Paragraph 2 of Schedule 2 to the BMO provides for the appointment of the chairman, vice-chairman, secretary, treasurer and members of a management committee (after the resolution to appoint a management committee has been passed). The amended paragraph 2 stipulates that at a meeting of owners convened under sections 3, 3A, 4 or 40C, after a management committee is appointed, the owners shall by a resolution passed by a majority of the votes of the owners appoint the various members of the management committee. The above provision clearly indicates that the appointment of members of a management committee is a matter to be discussed and resolved at the same meeting when the management committee is first appointed.

7. If an owners' meeting convened under sections 3, 3A, 4 or 40C resolves only to appoint a management committee and for whatever reasons (e.g. insufficient time, insufficient quorum, etc), could not resolve to appoint the members, while it is arguable that the chairman and/or the meeting may have a common law power to adjourn the meeting under certain circumstances, as explained in paragraph 5 above, the District Office staff attending the owners' meeting will normally recommend to the convenor and the owners to arrange afresh another owners' meeting in order to avoid any legal dispute about the legality of the resolutions passed.

8. Taking into account the above factors (paragraphs 5 – 7), we consider that as there is a common law power for the adjournment of meetings, this should be applicable to owners' meetings convened under the BMO as well. However, in order to ensure that owners are aware of the details of any adjourned meetings, we propose to make specific provisions in the BMO to the effect that all adjourned meetings should comply with the requirements set out in Schedule 3 to the BMO. In particular, the requirement of issuance of notice at least 14 days before the meeting should also apply to all adjourned meetings. Furthermore, we propose to amend Form 1 and Form 2 of Schedule 1A in the Bill to the effect that the original proxy

instruments cannot be used at adjourned meetings. Subject to Members' views, we will introduce Committee Stage Amendments as appropriate.

Annex 8

Paragraph 14 of the Administration's Reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03))

14. Under the existing BMO, the proxy instruments should be lodged not less than 24 hours before the time for the holding of the meeting at which the proxy proposes to vote, or within such lesser time as the convenor of the owners' meeting or chairman of the management committee (as the case may be) shall allow. Our proposal is to make the 24-hour deadline an absolute one. We have not extended it further to a 48-hour deadline because –

(a) setting a 48-hour deadline may cause it difficult, in some cases, for the convenor of the owners' meeting or the chairman of the management committee (as the case may be) to attain sufficient quorum for the meeting; and

(b) the Multi-storey Buildings (Owners Corporation) Ordinance enacted in 1970 actually provided for a 48-hour deadline for the submission of proxy, but that was amended to 24 hours in the 1993 legislative amendment exercise because the 48-hour requirement was considered too stringent.

Annex 9

Paragraph 16 of the Administration's Response to Issues Raised at the Meeting on 23 June 2005 (LC Paper No. CB(2)2617/04-05(02))

16. According to the current 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. The manager of a building has a general duty under the DMC to manage the building and this includes, amongst others, the avoidance of nuisance caused to the owners/residents of the building. We are aware that some property management companies have made house rules which are related to publicity activities conducted by owners (e.g. distribution of leaflets and household visits) on the ground that some owners/residents may consider such activities a nuisance. We consider that whether such publicity activities are to be regarded as "nuisance" should best be decided by the owners themselves. It is, therefore, in the best interests of owners to form an owners' committee or an OC as soon as possible so that they could pass resolutions regarding the house rules in accordance with the majority wish of the owners. According to the current Guidelines for DMC (Guideline No.10), the manager of the building shall call the first meeting of owners as soon as possible, but, in any event, not later than nine months after the date of the DMC, which meeting shall appoint a chairman and committee of owners or shall appoint a management committee for the purpose of forming an OC under the BMO.

Annex 10

Paragraph 13 of the Administration's Reply to Hon CHOY So-yuk's Letter of 16 June 2005 (LC Paper No. CB(2)2192/04-05(02))

13. Regarding the example quoted by Hon CHOY, if an owner appoints more than one proxy to attend the owners' meeting, then the proxy who was last appointed by the owner should be valid. Clarification has to be sought from the owner if it is not clear whom of the proxies was last appointed. If the owner attends the meeting and casts a vote in person, all the proxy instruments he made will be deemed invalid.

Annex 11

Paragraph 6 of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

6. Paragraph 2 of Schedule 2 to the BMO provides for the appointment of the chairman, vice-chairman, secretary, treasurer and members of a management committee (after the resolution to appoint a management committee has been passed). The amended paragraph 2 stipulates that at a meeting of owners convened under sections 3, 3A, 4 or 40C, after a management committee is appointed, the owners shall by a resolution passed by a majority of the votes of the owners appoint the various members of the management committee. The above provision clearly indicates that the appointment of members of a management committee is a matter to be discussed and resolved at the same meeting when the management committee is first appointed.

Paragraph 14 of the Administration's Reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03))

14. Under the existing BMO, the proxy instruments should be lodged not less than 24 hours before the time for the holding of the meeting at which the proxy proposes to vote, or within such lesser time as the convenor of the owners' meeting or chairman of the management committee (as the case may be) shall allow. Our proposal is to make the 24-hour deadline an absolute one. We have not extended it further to a 48-hour deadline because –

(a) setting a 48-hour deadline may cause it difficult, in some cases, for the convenor of the owners' meeting or the chairman of the management committee (as the case may be) to attain sufficient quorum for the meeting; and

(b) the Multi-storey Buildings (Owners Corporation) Ordinance enacted in 1970 actually provided for a 48-hour deadline for the submission of proxy, but that was amended to 24 hours in the 1993 legislative amendment exercise because the 48-hour requirement was considered too stringent.

Paragraph 15 of the Administration's Reply to the Assistant Legal Adviser of the Legislative Council dated 13 May 2005 (LC Paper No. CB(2)1550/04-05(03))

15. The existing BMO is silent on who should have the power to determine the validity of a proxy instrument. The Administration has proposed at the meetings of the Subcommittee on Review of the BMO on 6 February 2004 and 4 March 2004 either the chairman of the management committee or the whole management committee to have such power. Both suggestions were not accepted by the Subcommittee and no suitable person was proposed. We have therefore dropped the amendment from the Bill.

Paragraphs 19 to 21 of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

19. The existing BMO is silent on who should have the power to determine the validity of a proxy instrument. In the absence of such an express provision, reference should be made to paragraph 3(3) of Schedule 3 which provides 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. Paragraph 7 of Schedule 3 further provides that the procedure at a general meeting shall be as is determined by the corporation. However, it will be cumbersome, if not unrealistic, to require the owners' meeting to decide the validity of each questionable proxy instrument. As such, we consider there is a need to stipulate in the BMO which person(s) has/have the power to determine the validity of the questionable proxy instruments lodged with the secretary.

20. The above issue has been discussed at the meetings of the Subcommittee on Review of the BMO on 6 February 2004 and 4 March 2004. Having considered Members' views at the Subcommittee meetings and the Bills Committee meetings, we propose for Members' consideration that the chairman of the management committee should be given the power to determine the validity of the questionable proxy instruments. In the case of meetings convened for the purpose of appointing a management committee, the person presiding at the meeting should be given such powers. Subject to Members' views, we will introduce Committee

Stage Amendments as appropriate.

21. There may be concern over the abuse of power by the chairman, especially when one of the resolutions to be passed at the owners' meeting is to dissolve the management committee or to terminate the appointment of the chairman. However, we consider that the chairman of the management committee, as the ex officio chairman of the meetings of the OC, is the most appropriate person to do so. Moreover, we have proposed to stipulate in the BMO the format of the proxy instrument. The chairman of the management committee, in determining whether the questionable proxy instruments are valid, should take into account the provisions in the BMO, which will, following the amendments, provide clearer and more definitive instructions on what should be regarded as a valid proxy instrument.

Paragraph 22 of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

22. There was a suggestion at the Bills Committee that if an OC wishes to appoint a professional to assist in verifying the proxy instruments received, the Administration should liaise with the chairman of the professional body concerned to seek his assistance in providing such a referral. Information about law firms and their areas of practice is available at the Building Management Resource Centres. OCs/owners who wish to appoint a professional who specialises in building management cases may seek assistance/advice from our Building Management Resource Centres.

Paragraphs 16 to 18 of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

16. To facilitate the appointment of proxy by owners, we have published in June 2004, in consultation with the Department of Justice, a set of guidelines for reference by the OC and owners. The guidelines are a matter of good practice and are not legally binding.

17. Members may wish to note in particular the following guidelines which are drawn up with a view to facilitating the cross-checking of proxy voting in an owners' meeting –

- As a matter of good practice, the secretary of an OC may consider to acknowledge receipt of all valid proxy instruments submitted by depositing a receipt slip (preferably with an authorized signature of the OC and/or the seal of the OC) in the letter box of the owner.

- After verifying the proxy instruments, the secretary of the OC may consider posting the information in respect of those flats where a proxy has been appointed in a prominent place of the venue of the owners' meeting for inspection.

- The OC may consider including the information in respect of those flats in the building where a proxy has been appointed in the minutes of meeting for owners' information. This should be displayed in a prominent place of the building within 28 days of the owners' meeting in accordance with paragraph 6 of Schedule 3 to the BMO.

- The secretary may disclose the proxy instruments to other owners for inspection upon their request provided that the owners/proxies concerned have been explicitly informed of this arrangement and consent obtained before they complete the forms through the statement of purpose attached to the proxy instruments.

18. Members are invited to consider whether any of the above good practices regarding appointment of proxy should be turned mandatory in the law.

Paragraphs 9, 10 and 16 of the Administration's Response to Issues Raised at the Meeting on 12 July 2005 (LC Paper No. CB(2)2617/04-05(03))

9. There is no common law right to vote by proxy, and such power must be conferred by statute (in our case the BMO) or by the regulations of the body concerned.

10. We are aware that Members have diverse views on the format of the proxy instrument to be stipulated in the BMO. There are two issues at stake: (a) flexibility for owners to indicate their voting instructions to the proxy on the proxy instrument; and (b) flexibility for owners to alter the statutorily-stipulated format. As explained at the Bills Committee meetings, the Administration has no strong views on any format from both the legal and policy point of view. Annex A compares the various options for Members' consideration.

(Please refer to Annex A of the paper.)

16. To facilitate the appointment of proxy by owners, we have published in June 2004, in consultation with the Department of Justice, a set of guidelines for reference by the OC and owners. The guidelines are a matter of good practice and are not legally binding.

Paragraph 16 of the Administration's Paper entitled "Procurement by Owners' Corporations and Managers" (LC Paper No. CB(2)2617/04-05(05))

16. There were also concerns among Members that it is not practical to do tendering for professional service, especially legal service. We have considered the matter but could not find strong justification for exempting professional service from the procurement requirements. Firstly, general retainer service should be below $200,000 or 20% of the annual budget of an OC and need not be tendered out. Secondly, for litigation fee that might be above the statutory thresholds, we consider that there is strong reason for the owners to be kept informed. In fact, we have received complaints from owners that the OC or the building manager has engaged lawyers in lawsuits without their prior knowledge. As the litigation fee could be a very huge amount, the owners have every right to know about and have a say on the procurement of the legal service.

Paragraphs 13 to 15 of the Administration's Paper entitled "Procurement by Owners' Corporations and Managers" (LC Paper No. CB(2)2617/04-05(05)).

13. During the public consultation, there were views that putting the tendering requirements into the BMO would reduce flexibility and create hindrances for the work of the OC, especially in times of emergency. Having considered such practical difficulties, we have included a provision in the Bill to allow OCs to pass a list of urgent items at the owners' meeting – the statutory procurement requirements for items included in the list could be waived.

14. We have re-considered the matter, taking into account views expressed by Members of the Bills Committee and the deputations from the public and the professional organisations. We foresee grave difficulties for the OCs and building managers to draw up such a list of urgent items for pre-approval at an owners' meeting. Firstly, there is always the possibility that the pre-approved list is not exhaustive. Secondly, there is high risk of abuse of this proposed system – OC could simply pass a list which is so general that all procurement could be regarded as urgent. Thirdly, even when the OC acts in good faith, the term "urgent" is still subject to interpretation. The proposal, which is aimed at giving flexibility to the work of an OC, might in the end create more disputes among owners.

15. We therefore seek Members' views on whether we should delete from the Bill the proposed provisions relating to urgent items. This means that all procurement (howsoever urgent) will need to go through the statutory steps (i.e. tendering and owners' meeting) if the thresholds have been reached. While this might be seen as reducing the flexibility of the work of an OC, our experience is that emergency works of a building will unlikely cost over $200,000 or 20% of the annual budget of an OC (which are the thresholds proposed in the Bill).

Paragraphs 12 to 16 of the Administration's Paper entitled "Mechanism for Terminating the Appointment of Managers" (LC Paper No. CB(2)1885/04-05(01))

12. While paragraph 7 of Schedule 7 has provided a mechanism for the termination of the appointment of the DMC managers, there were concerns at the Bills Committee that it would be practically difficult for an OC to obtain a resolution of the owners of not less than 50% of the relevant shares for the purpose.

13. We have sought the views of the public during the consultation exercise on the proposed amendments to the BMO. While most of the owners, OCs and District Councillors supported to relax the existing termination mechanism for DMC managers, real developers, property management companies and associations, some professional organisations and also some OCs strongly opposed the amendments.

14. Those on the supporting side considered that the existing arrangement of having 50% of undivided shares to terminate the appointment of a manager is too stringent and arduous to achieve. An alternative mechanism would allow freedom for owners to choose a manager based on their performance, which would in turn motivate them to do quality work.

15. Strong opposition was received from real estate developers, property managers, some professional organisations and some OCs. Arguments against the relaxation included the possibility of having frequent changes of managers and hence the lack of long-term planning and foresight in property management. To this camp of respondents (and some of them are OCs), owners might easily vote down the existing manager and this would cause instability and disruption to the normal operation of the building. Unnecessary conflicts among residents and the property manager would arise.

16. The proposal to relax the existing termination mechanism for DMC managers is most controversial. We have considered carefully the divergent views received. We consider that the legislative amendments in 2000 which specified that only owners of shares who pay or are liable to pay management expenses shall be entitled to

vote in the resolution of termination of DMC manager has already balanced the interests of the general owners and those of the DMC manager. Since the allocation of the undivided shares among owners and the common areas (usually held by the manager) is different amongst buildings, it is difficult to change the existing 50% to another threshold which will suit the circumstances of all buildings. We also note that there are OCs who have successfully terminated the appointment of their managers under the existing mechanism. We therefore consider that the existing mechanism of allowing owners of 50% of the shares to terminate the appointment of the DMC manager should remain.

Paragraph 3 of the Administration's Response to Issues Raised at the Meeting on 14 June 2005 (LC Paper No. CB(2)2192/04-05(01))

3. As to the current threshold of 50% of shares of owners for terminating the appointment of the manager, Members may like to discuss the matter further having regard to the views of the deputations given at the meetings on 25 and 30 June 2005.

Paragraphs 16 to 19 of the Administration's Response to Issues Raised at the Meeting on 14 June 2005 (LC Paper No. CB(2)2192/04-05(01))

16. Some Members considered that the protection provided for members of management committee acting on behalf of an OC under the proposed new section 29A should be extended to cover the statutory duty of individual members of a management committee. Members specifically discussed the provision in paragraph 1(2) of Schedule 3 which requires the chairman of a management commit to convene a general meeting of the OC at the request of not less than 5% of the owners for the purposes specified by such owners with 14 days of receiving such request. According to case law, the responsibility to convene an owners' meeting under paragraph 1(2) of Schedule 3 rests with the chairman of the management committee and not the management committee. As such, the proposed new section 29A will not offer immunity and protection to the chairman under such circumstances.

17. We have considered Members' views. The proposal to extend the immunity under the new section 29A to cover personal obligations imposed on a member of a management committee (i.e. to the effect if the member is acting in good faith, he shall not be liable for any act done or default made by him in the exercise or performance of the powers or duties imposed on him by the BMO) raises both human rights and Basic Law concerns. The effect of the proposal is that there will be a procedural bar on an individual's right to institute legal proceedings before a court in civil matters and a restriction on the court's jurisdictions and powers. If the proposal is adopted, it will mean that an aggrieved party under the BMO will not be able to obtain any relief in respect of the act or default of the member of the management committee if the latter could claim that he is acting in good faith. Because the act concerned is related to a statutory duty imposed on the particular member, neither could the aggrieved party obtain any relief from the OC. That will leave the aggrieved party with no access to the court to have his claim determined.

18. As explained at the Bills Committee meeting, if a member of a management committee has contravened the law, thereby resulting

in being convicted of an offence, then it will be extremely hard for him to seek protection under the proposed new section 29A against a claim because he was unlikely to be acting honestly. Section 44(2) of the BMO stipulates that a failure on the part of any person to observe any Code of Practice shall not of itself render that person liable to criminal proceedings of any kind but any such failure may, in any proceedings whether civil or criminal including proceedings for an offence under the BMO, be relied upon as tending to establish or to negative any liability which is in question in those proceedings. The Code of Practice issued under the BMO has somehow offered a defence for members of management committee through the evidential aspect to exonerate their personal liabilities.

19. There is case law showing that the court, when deciding whether the chairman or any member of a management committee or any particular owner should be held personally liable, will take into account different factors. As to paragraph 1(2) of Schedule 3 regarding the responsibility to convene an owners' meeting, whilst there is case law ruling that the responsibility rests with the chairman of the management committee and not the management committee, there are also precedent judgments showing that the court will take into account different factors in the context of the particular facts of the case when deciding whether the chairman has breached the law.

Paragraphs 4 to 8 and 16 of the Administration's Paper entitled "Procurement by Owners' Corporations and Managers" (LC Paper No. CB(2)2617/04-05(05)

4. Taken all the views into consideration, we have refined the proposal in the Bill as follows –

(a) Any procurement of supplies, goods and services which exceeds the sum of $200,000 ($100,000 in the existing BMO) or a sum which is equivalent to 20% (same as in the existing BMO) of the annual budget of the OC, whichever is the lesser, shall be done by invitation to tender.

(b) Any procurement of supplies, goods and services which exceeds the sum of 20% of the annual budget of an OC shall be accepted or rejected by a resolution passed at a general meeting of the OC.

5. The proposals in the Bill are set out more clearly in the table below –

Thresholds	Procurement Amount	Percentage of Annual Budget of OC
1. Tendering	>$200,000	>20%
2. Owners' Meeting	-	>20%

6. We believe that the revised proposals are closer to reality and have managed to strike a balance between the protection of owners' rights and the operation of OCs. There are now two questions to ask whenever an OC makes procurement: (i) whether the threshold for tendering has been reached; and (ii) whether the threshold for a resolution at an owners' meeting has been reached.

7. The threshold for tendering is set at 20% of the annual budget or $200,000, whichever is the lesser. For the large estates with a huge annual budget, it will mean tendering is required whenever the procurement is at or above $200,000. We consider this is a reasonable amount. Moreover, we have not specified that all

tenders have to be open tender and tendering itself should not be viewed as arduous or unachievable. After all, greater transparency of an OC's decisions would be beneficial to all the parties concerned.

8. As for the threshold for endorsement at owners' meetings, we have adjusted it to 20% of the annual budget (without a fixed monetary amount). We consider the owners will have the right to vote on the procurement since 20% will already mean some 2½ months' share of management fees on the part of individual owners. Any expenditure exceeding this amount merits the approval of the owners and an objective selection procedure.

16. There were also concerns among Members that it is not practical to do tendering for professional service, especially legal service. We have considered the matter but could not find strong justification for exempting professional service from the procurement requirements. Firstly, general retainer service should be below $200,000 or 20% of the annual budget of an OC and need not be tendered out. Secondly, for litigation fee that might be above the statutory thresholds, we consider that there is strong reason for the owners to be kept informed. In fact, we have received complaints from owners that the OC or the building manager has engaged lawyers in lawsuits without their prior knowledge. As the litigation fee could be a very huge amount, the owners have every right to know about and have a say on the procurement of the legal service.