立法會 Legislative Council

Ref : CB2/PL/HA LC Paper No. CB(2)694/17-18

(These minutes have been seen

by the Administration)

Panel on Home Affairs

Minutes of special meeting held on Thursday, 4 May 2017, at 2:30 pm in Conference Room 1 of the Legislative Council Complex

Members: Hon MA Fung-kwok, SBS, JP (Chairman)

present Hon Jimmy NG Wing-ka, JP (Deputy Chairman)

Hon Tommy CHEUNG Yu-yan, GBS, JP

Hon Starry LEE Wai-king, SBS, JP Hon CHAN Hak-kan, BBS, JP Hon Paul TSE Wai-chun, JP

Hon LEUNG Kwok-hung

Hon Claudia MO

Hon YIU Si-wing, BBS Hon CHAN Chi-chuen

Hon LEUNG Che-cheung, BBS, MH, JP Dr Hon Fernando CHEUNG Chiu-hung

Dr Hon Helena WONG Pik-wan

Hon IP Kin-yuen Hon Alvin YEUNG

Hon Andrew WAN Siu-kin

Hon CHU Hoi-dick

Dr Hon Junius HO Kwan-yiu, JP

Hon HO Kai-ming

Hon Holden CHOW Ho-ding

Hon SHIU Ka-fai Hon SHIU Ka-chun

Hon Wilson OR Chong-shing, MH

Hon YUNG Hoi-yan Hon HUI Chi-fung Hon LUK Chung-hung Hon LAU Kwok-fan, MH

Hon Kenneth LAU Ip-keung, MH, JP

Hon KWONG Chun-yu

Hon Nathan LAW Kwun-chung

Dr Hon YIU Chung-yim Dr Hon LAU Siu-lai

Members attending

Hon WU Chi-wai, MH Hon KWOK Wai-keung Hon LAM Cheuk-ting

: Hon James TO Kun-sun

Members absent

: Hon LEUNG Yiu-chung

Hon Steven HO Chun-yin, BBS

Hon CHAN Han-pan, JP

Hon Christopher CHEUNG Wah-fung, SBS, JP

Hon Tanya CHAN

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public Officers: attending

Miss Janice TSE Siu-wa Director of Home Affairs

Miss Vega WONG Sau-wai

Assistant Director of Home Affairs (4)

Mr Indiana WONG Man-chung Senior Administrative Officer (4)

Home Affairs Department

Attendance by : invitation

Session One

Mr MAK Ip-sing

Member of Yuen Long District Council

Miss Liza NG

Democratic Alliance for the Betterment and Progress of Hong Kong

Mr PUN Hau-man

Deputy Spokesperson on Home Affairs

Mr TSANG Wai-hin

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Mr NG Chun-yu

Ms CHING Chi-hung

Mr CHAN Tsim-heng

Mr Paul NG

Mr David CHAN Tsan-fai

The Hong Kong Institute of Housing

Dr Johnnie Casire CHAN Chi-kau President

Mr CHAN Kwok-kwong

Mr TSE Chun-man

Ming Yin Building Owners' Corporation

Mr HO Kam-kam Chairman

The Democratic Party

Mr Winfield CHONG Representative

The Property Owners Anti-bid rigging Alliance

Miss Bonnie NG Spokesperson

Chartered Institute of Housing Asian Pacific Branch

Mr Edmond CHEUNG Shu-yan Chairperson, Professional Practice Committee

Mr LAU Ming-tak

Heng Fa Chuen Owners' Committee Residental Sub-Committee

Mr CHAO Shing-kie Chairman

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Session Two

Mr LAU King

Mr CHAN Edmund

Western District Building Owners Association

Mr Simon LAM Yiu-man Executive Member

Ms WAN Lee-ling

Mr LI Ki-fung

Mr WAN Yuk-sum

Tierra Verde Owners' Committee

Mr Alex WU Hok-biu Chairman

Mr LAI Yat-chor

Mr LEE Kun-hin

景盛苑業主立案法團

Mr AU Wai-kai Chairman

Ms YIU Tak-chung

Mr CHAN Kwok-kai

Mr CHAN Tong-wing

The Civic Party

Mr Joshua LI Chun-hei Representative

New People's Party / Civil Force

Mr Stanley TAM

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The Incorporated Owners of Fu Tor Loy Sun Chuen Stage 1

Mr Julius LAU Ming-sum Chairman

Miss LEE Po-sim

Mr Simon LI Wing-kuen

Ms Esther WONG May-wai

Session Three

Ms D K TONG

Mr MAN Chi-wah

Liberal Party

Mr LEE Chun-keung

Ms Christine FONG Kwok-shan Member of Sai Kung District Council

Liberal Party Youth Committee

Ms CHAN Wai-chun Member

Ms FONG Sau-sum

The Incorporated Owners of Grenville House

Mr Stanley WONG Tak-keung Chairman, Management Committee

Mr WU Chi-kin

The Incorporated Owners of Chungking Mansions

Ms LAM Wai-lung Chairlady

Mr Raymond CHOW Wai-man

東九龍居民委員會

Mr WONG Chun-kin Deputy Chairman

Mr Graham CHAN Ho-yin

Ms LAU Lai-chun

Shatin Castello Owners Committee

Miss Gloria TANG May-yin Chairlady

Mr Sam CHAN

Clerk in attendance

: Ms Joanne MAK

Chief Council Secretary (2) 3

Staff in attendance

: Mr Richard WONG

Senior Council Secretary (2) 6

Mrs Fonny TSANG

Legislative Assistant (2) 3

Action

I. Review of the Building Management Ordinance

[LC Paper Nos. CB(2)1038/16-17(03) and (04)]

The Panel received views from a total of 52 deputations/individuals on the Administration's legislative proposals to update the Building Management Ordinance (Cap. 344) ("BMO") and the related administrative measures. A record of the 52 deputations/individuals and the submissions received is in the **Appendix**.

Administration's response to deputations' views

- 2. <u>The Director of Home Affairs</u> ("DHA") gave a consolidated response to the views and concerns raised by the deputations/individuals as follows:
 - (a) the purpose of the proposal to raise the quorum of the general meeting for passing resolutions on large-scale maintenance

projects from 10% to 20% of the owners was to encourage owners' participation in making such important decisions, and the proposal had received majority support in the public consultation exercise. The additional proposal that at least 10% of the owners had to attend the meeting in person ("the Additional Quorum Requirement") aimed to address concerns about potential manipulation of such meeting outcome by persons holding a large number of proxy instruments;

- (b) to make any manipulation of proxy instruments more difficult, the proposed requirements sought to enhance the transparency of the use of proxy instruments and facilitate owners to check against the proxies appointed. Furthermore, the Administration would consider providing a template proxy form for use at general meetings of owners' corporations ("OC");
- (c) as regards the proposed new penalty provisions, there would be a defence clause for the parties concerned. It would be a legitimate defence if the party concerned proved that (i) the offence was committed without his/her consent or connivance; and (ii) he/she had exercised all such due diligence to prevent the commission of the offence as he/she ought to have exercised in the circumstances;
- (d) in view of the concerns raised by various individuals/deputations regarding the proposed amendment to empower the Authority, at the request of not less than 5% of the owners, to dissolve a non-performing management committee ("MC"), the Administration would further examine whether the 5% threshold was suitable;
- (e) the Administration would put forward various building management administrative support measures, e.g. the Building Management Dispute Resolution Service ("BMDRS")and the Pre-Meeting Advisory Services for OCs; and
- (f) the Administration would take into account different views and consider refining the legislative proposals as appropriate, including the definition of large-scale maintenance projects and the Additional Quorum Requirement. Given the time required to amend BMO, subject to advice of the Department of Justice,

the Administration intended to include those proposals which were not in conflict with BMO in the Code of Practice ("CoP") to be issued under section 44 of BMO.

Discussion

Legislative proposals

- 3. Mr LAU Kwok-fan and Mr KWOK Wai-keung expressed support for the legislative proposals in general and the Administration's plan to include those proposals which were not in conflict with BMO in CoP and guidelines. Mr LAU however, considered that OCs might have practical difficulties in implementing the Additional Quorum Requirement. He urged the Administration to put forward measures/penalty provisions to ensure that the proxies would vote in accordance with the owner's voting instructions, and to prohibit involvement of monetary interests in soliciting proxy instruments from owners. He further suggested that all owners who voted on resolutions on large-scale maintenance projects should be required to make declaration of interests.
- 4. <u>Ms YUNG hoi-yan</u> expressed concern about the feasibility of implementing the Additional Quorum Requirement, particularly on venue arrangement for housing estates with a large number of flats. <u>Mr SHIU Ka-fai</u> expressed support for the legislative proposals, adding that it was important to encourage owners to attend OC meetings without making it too difficult to fulfil the quorum requirement.
- 5. <u>DHA</u> advised that while the Additional Quorum Requirement might lead to difficulties such as venue arrangement of OC meetings for some large housing estates, experience had shown that such difficulties should not be insurmountable. The proposal could enhance owners' participation in such meetings and reduce the likelihood of subsequent disputes among owners over large-scale maintenance projects. The Administration did not consider it justified to give up the proposal solely due to technical issues. <u>DHA</u> added that the Administration would further examine the feasibility of further tightening the proposed requirement of "declaration of interest".
- 6. <u>Dr YIU Chung-yim</u> expressed objection to the Administration's proposed new penalty provisions for property management companies ("PMCs"). He considered that as PMCs were employed to execute decisions made by MCs, it would be unfair for PMCs to bear the criminal

liabilities. In addition, he considered it necessary for the Administration to assume a more proactive role in building management, particularly regarding the collection and verification of proxy instruments at OC meetings.

- 7. <u>DHA</u> advised that the Administration had come across many cases where the managers of deeds of mutual covenant ("DMC Managers")/PMCs were responsible for the preparation of the annual audited accounts. proposed new penalty provisions would deter out-going Manager/PMCs from refusing to hand over the financial records. Furthermore, there was a proposed amendment to empower the Authority to issue a warning to specify an extended date for compliance taking into account any reasonable excuse and the circumstances of each case before invoking the penalty provisions. DHA added that there would be practical difficulties for the Administration to take up the responsibility of collection and verification of proxy instruments at all OC meetings.
- 8. Mr LAM Cheuk-ting expressed support for the Administration to take forward the legislative proposals, including increasing the quorum requirement and extending criminal liability to PMCs. He considered that there should be further amendments to BMO, i.e. the requirement that the list of flats with proxy instruments lodged should be displayed at least 24 hours before the meeting should be lengthened to, say, 72 hours, and the MC Secretary should disclose the name of any person holding proxy instruments of more than a certain number of flats (say, two or three).
- 9. <u>The Chairman</u> also expressed support for the Administration's legislative proposals. He urged the Administration to take measures to enhance the transparency of large-scale maintenance projects before such projects were discussed at OC meetings, e.g. by requiring that the design plans should be uploaded to the internet or sent to owners by e-mail, and that the number of owners required to form the quorum of an OC meeting including those using proxies and attending personally should be made known to all owners. He also suggested that if the cost of a maintenance project reached a certain amount, the OC concerned should be required to engage an authorized person to follow through the project.
- 10. <u>Mr Wilson OR</u> suggested that the Administration should ensure that the procedures for engaging consultants to assist OCs in taking forward large-scale maintenance projects were transparent, and provide assistance in the verification of proxy instruments at OC meetings.

- 11. In response to members' comments, <u>DHA</u> said that the set of proposed amendments in the Administration's paper sought to ensure that decisions on large-scale management projects would be more transparent and accountable. Pending amendments to BMO, the Administration would propose a new requirement for the MC Chairman and the DMC manager to sign a checklist confirming that the procedure for convening a meeting and the proper disclosure of the information on proxies for the OC meetings had been complied with, and there should be explanation for any deviation from the requirements in the guidelines in the checklist for the sake of transparency and accountability. Furthermore, the Smart Tender scheme of the Urban Renewal Authority ("URA") had widened its eligibility, so that more buildings and owners would have the option of procuring URA professional support in tendering their maintenance projects.
- 12. The Chairman considered that to ensure that the proposed amendments were practicable under different circumstances, the Administration should further adjust the proposed thresholds for various requirements, such as the quorum of relevant OC meetings and the requirement that financial statements of OCs had to be audited. Mr WU Chi-wai considered that such thresholds should be set with reference to both the cost level and the number of flats. In response, DHA said that the Administration noted that there were different views on the need to adjust the relevant thresholds, and would take on board these views when fine-tuning the legislative proposals.

(The Chairman left the meeting from 4:20 pm to 6:34 pm due to other urgent commitment and the Deputy Chairman took over the chair during that period of time.)

Other issues

13. Mr LAU Kwok-fan and Mr Wilson OR considered that the Administration should strengthen the enforcement of BMO. Mr LAU further suggested that the Administration should set up a specialized agency to assist OCs to follow through large-scale maintenance projects, and provide more training for Liaison Officers in respect of building management. Mr OR suggested that more training and guidelines should be provided for owners and MC members.

- 14. <u>DHA</u> advised that through the proposed Pre-Meeting Advisory Service for OCs, members of the District Building Management Liaison Teams in 18 Districts would advise MC members on the conduct of MC and OC meetings.
- 15. <u>Ms YUNG Hoi-yan</u> enquired about the anticipated effects of BMDRS, and suggested that the Administration should expand the scale and scope of the Free Legal Advice Service on Building Management.
- 16. <u>DHA</u> advised that BMDRS, which would be steered by a retired judge, was intended to be similar to a "pre-trial" of the building management case. This would hopefully help facilitate the resolution of dispute by enabling the parties to better assess the merits of their cases through objective opinions provided by the retired judge.

II. Any other business

17. There being no other business, the meeting ended at 7:10 pm.

Council Business Division 2
Legislative Council Secretariat
12 January 2018

Panel on Home Affairs

Special meeting on Thursday, 4 May 2017, at 2:30 pm "Review of the Building Management Ordinance"

Summary of views

No.	Name of Deputation/individual	Submission / Major views and concerns	
Sess	Session One		
1.	Mr MAK Ip-sing	• LC Paper No. CB(2)1291/16-17(01)	
2.	Miss Liza NG	• LC Paper No. CB(2)1291/16-17(02)	
3.	Democratic Alliance for the Betterment and Progress of Hong Kong	 Expressed support for the Administration's legislative proposals Suggested that the Administration should: (a) raise the required percentage of votes to pass resolutions on large-scale maintenance projects at general meetings; (b) put forward measures to ensure that proxy holders actually vote in accordance with the owners' voting instruction, and to prohibit involvement of monetary interests in soliciting proxy instruments from owners; and (c) set up a specialized agency to assist owners to take forward large-scale maintenance projects 	
4.	Mr TSANG Wai-hin	 Regarding "one building with multiple deeds of mutual covenant ("DMCs")", there were practical difficulties in forming owners' corporations ("OCs"), and those owners would have difficulties in taking forward large-scale maintenance projects. The Administration should explore ways to address building management problems in such buildings and buildings without OCs 	
5.	Mr NG Chun-yu	 The Administration's legislative proposals addressed some of the existing problems of the Building Management Ordinance (Cap. 344) ("BMO") Suggested that the Administration should: (a) add penalty provisions for non-compliance with the requirements regarding "declaration of interest" for procurement and large-scale maintenance projects; (b) provide a clear definition of a "non-performing management committee" ("MC"); and (c) put forward additional measures to ensure that proxy holders would follow the owners' voting instructions 	
6.	Ms CHING Chi-hung	• LC Paper No. CB(2)1308/16-17(01) (Restricted to Members only)	

No.	Name of Deputation/individual	Submission / Major views and concerns
7.	Mr CHAN Tsim-heng	• LC Paper No. CB(2)1308/16-17(02) (Restricted to Members only)
8.	Mr Paul NG	• As regards the proposed quorum requirements of the general meeting for the passage of resolutions on large-scale maintenance projects set out in paragraphs 5 and 6 of the Administration's paper ("the Proposed Quorum Requirements"), there would be practical difficulties in forming the quorum as well as in arranging venues to accommodate the attendance of a large number of owners, particularly for large housing estates
		• A standardized procedure should be set out for the collection and verification of proxy instruments at OC meetings
		• The Administration should provide free consultancy services for OCs to take forward large-scale maintenance projects
9.	Mr David CHAN Tsan-fai	• LC Paper No. CB(2)1383/16-17(01)
10.	The Hong Kong Institute of Housing	• LC Paper No. CB(2)1291/16-17(03)
11.	Mr CHAN Kwok-kwong	• LC Paper No. CB(2)1291/16-17(04)
12.	Mr TSE Chun-man	 Expressed support for the Administration's legislative proposals There would be practical difficulties in implementing the following proposed requirements: (a) at least 10% of the owners had to attend the OC meeting in person when resolutions on large-scale maintenance projects were passed; and (b) the financial statements of OCs had to be audited, particularly for buildings with a small number of flats It was not necessary to empower the Authority to shorten the notice period for OC meeting in case of emergency
13.	Ming Yin Building Owners' Corporation	OCs of buildings with a small number of flats would have practical difficulties in complying with the Proposed Quorum Requirements as well as the proposed requirement that the financial statements of OCs had to be audited

No.	Name of Deputation/individual	Submission / Major views and concerns
14.	The Democratic Party	• Expressed support for the Administration to take forward the legislative proposals
		• The required percentage of shares of votes for the passage of the resolution on large-scale maintenance projects should be much higher than 50%, and there should be a requirement that only those owners who had to pay for large-scale maintenance projects would be entitled to vote on such project proposals
		• The "Building Management Dispute Resolution Service" should be provided with more manpower resources
15.	The Property Owners Anti-bid rigging Alliance	• There should be random checking by the Administration on proxy instruments used at OC meetings
		 As regards resolutions on large-scale maintenance projects, there should be an additional requirement that owners should cast their votes using ballot papers, and the Government should provide a template ballot paper
		• A cooling-off period, say 30 days or 45 days, should be provided for owners following the passage of a resolutions on large-scale maintenance projects at OC meetings
16.	Chartered Institute of Housing Asian Pacific Branch	• LC Paper No. CB(2)1291/16-17(05)
17.	Mr LAU Ming-tak	• LC Paper No. CB(2)1291/16-17(06)
18.	Heng Fa Chuen Owners' Committee Residental Sub-Committee	• LC Paper No. CB(2)1291/16-17(07)
Sessi	ion Two	
19.	Mr LAU King	• The Administration should set up a specialized agency to provide consultancy services for OCs to take forward large-scale maintenance projects, and provide MC members with more training on building management
20.	Mr CHAN Edmund	• LC Paper No. CB(2)1383/16-17(02)
21.	Western District Building Owners Association	• LC Paper No. CB(2)1291/16-17(08)

No.	Name of Deputation/individual	Submission / Major views and concerns
22.	Ms WAN Lee-ling	 The existing services provided by the relevant government departments and the Urban Renewal Authority were effective in helping owners to take forward large-scale maintenance projects in small housing estates It might not always be fair to require the MC chairman to convene an OC general meeting at the request of not less than 5% of the owners, e.g. when 5% of the owners requested to reopen the discussion of a resolution which had been passed by a vast majority of owners at a previous general meeting
23.	Mr LI Ki-fung	• LC Paper No. CB(2)1291/16-17(10)
24.	Mr WAN Yuk-sum	• LC Paper No. CB(2)1303/16-17(06)
25.	Tierra Verde Owners' Committee	 Requested to lower the threshold for terminating the appointment of DMC manager from 50% to 30% of shares in aggregate, and expressed support to the Government's proposal to set a time limit for the term of appointment of DMC managers. These arrangements should be applicable to new and existing developments Remuneration of DMC managers should be reduced, and DMC
		managers should be required to disclose more details on the expenditure items to owners
26.	Mr LAI Yat-chor	• LC Paper No. CB(2)1308/16-17(03) (Restricted to Members only)
27.	Mr LEE Kun-hin	• The Administration should co-ordinate among relevant government departments to provide owners with comprehensive advice and services on building management and maintenance
28.	景盛苑業主立案法團	• Some of the Administration's proposals might increase the difficulty for MC to carry out its duties, e.g. the Proposed Quorum Requirements, and those relating to the collection of proxy instruments and the minimum number of MC members
29.	Ms YIU Tak-chung	• LC Paper No. CB(2)1383/16-17(03)
30.	Mr CHAN Kwok-kai	• LC Paper No. CB(2)1291/16-17(12)
31.	Mr CHAN Tong-wing	• LC Paper No. CB(2)1291/16-17(12)
32.	The Civic Party	• LC Paper No. CB(2)1383/16-17(04)
33.	New People's Party / Civil Force	• LC Paper No. CB(2)1383/16-17(05)

No.	Name of Deputation/individual	Submission / Major views and concerns
34.	The Incorporated Owners of Fu Tor Loy Sun Chuen Stage 1	Expressed support for the Administration's legislative proposals OC should be required to bear the record of grown instruments.
		OC should be required to keep the record of proxy instruments used at OC meetings for six years
35.	Miss LEE Po-sim	• LC Paper No. CB(2)1291/16-17(13)
36.	Mr Simon LI Wing-kuen	• LC Paper No. CB(2)1383/16-17(06)
37.	Ms Esther WONG Maywai	• LC Paper No. CB(2)1291/16-17(14)
Sessi	ion Three	
38.	Ms D K TONG	• LC Paper No. CB(2)1383/16-17(08)
39.	Mr MAN Chi-wah	• LC Paper No. CB(2)1308/16-17(04) (Restricted to Members only)
40.	Liberal Party	DMCs of some large-scale developments stipulated that the required percentage of shares of votes for the passage of resolutions on maintenance projects included both owners of residential units and commercial parts, and it was unfair to owners of residential units
		The Administration should strictly regulate the collection and verification of proxy instruments
41.	Ms Christine FONG Kwok-shan	• LC Paper No. CB(2)1383/16-17(09)
42.	Liberal Party Youth Committee	Housing estates with a large number of flats would have practical difficulties in complying with the Proposed Quorum Requirements
		• The threshold for OC formation should not be lowered from 30% to 20% of shares in aggregate
		• The threshold for terminating the appointment of DMC manager should be lowered from 50% to 30% of shares in aggregate
43.	Ms FONG Sau-sum	Expressed support for the Proposed Quorum Requirements
		The Administration should step up its work in monitoring and regulating property management companies

No.	Name of Deputation/individual	Submission / Major views and concerns
44.	The Incorporated Owners of Grenville House	The Administration should step up its works in enforcing BMO and instigate prosecutions against non-compliance
45.	Mr WU Chi-kin	The proposed amendments to BMO should be taken forward as soon as practicable
		• For large-scale housing estates, the implementation of the Proposed Quorum Requirements might involve practical difficulties in venue arrangement
46.	The Incorporated Owners of Chungking Mansions	• LC Paper No. CB(2)1291/16-17(17)
47.	Mr Raymond CHOW Wai-man	• As owners served as MC members on a voluntary basis, it would be unfair to impose too many criminal liabilities on them
		• The Administration should step up its work in supporting the operation of OCs
48.	東九龍居民委員會	• LC Paper No. CB(2)1383/16-17(10)
49.	Mr Graham CHAN Ho-yin	• LC Paper No. CB(2)1291/16-17(18)
50.	Ms LAU Lai-chun	• LC Paper No. CB(2)1496/16-17(01) (Restricted to Members only)
51.	Shatin Castello Owners Committee	• LC Paper No. CB(2)1303/16-17(01)
52.	Mr Sam CHAN	• LC Paper No. CB(2)1314/16-17(01)

Council Business Division 2 <u>Legislative Council Secretariat</u> 12 January 2018