政府總部民政事務局的信頭 Letterhead of GOVERNMENT SECRETARIAT HOME AFFAIRS BUREAU

本局檔號 OUR REF : L/M(16) in HAB/V/BM/2/12

來函檔號 YOUR REF : H/Office

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2 September, 1999

The Hon Albert HO Chun-yan Room 15 & 22, G/F Hing Fai House, Tai Hing Estate, Tuen Mun, N T

Dear Mr. HO,

Building Management Ordinance (Cap.344)

Further to my letter dated 17.6.99, I wish to respond to your proposed amendments to the Building Management Ordinance (Cap.344) (the BMO) in the following paragraphs, using the same paragraph numbering as in your letter.

A. Under section 3A of the BMO, the Authority (the Secretary for Home Affairs (SHA)) may, upon application by owners of not less than 30% of the undivided shares, order that a meeting of owners be convened, by such owner as the Authority may direct, to appoint a management committee (MC). Under Section 4, the Lands Tribunal may make the same order upon application by owners of not less than 20% of the shares. The meeting of owners may, by a resolution passed by a majority of the votes of the owners voting either

personally or by proxy, appoint a MC, pursuant to Sections 3A(3) and 4(4).

If owners cannot successfully form an OC at a meeting convened under Section 3, they may alternatively consider invoking either Section 3A or 4. We therefore do not consider it necessary to lower the threshold requirement as you proposed. Further, as we informed the LegCo Panel on Home Affairs at its meetings on 12.4.99 and 29.6.99, we are considering a proposal for automatic formation of owners' corporation (OC) in new buildings. We aim to introduce an amendment bill in the 1999/2000 legislative session. Upon enactment, this will be a fourth channel to form OCs under the BMO.

- B. We appreciate that it might be costly to advertise in two newspapers. We will favourably consider amending the BMO with a view to requiring advertising in one newspaper only. We intend to incorporate this into the amendment bill to be introduced into LegCo in 1999/2000.
- C. By the time the owners convene a general meeting to appoint a MC under Sections 3, 3A or 4, the OC is not yet formed as the MC needs to go through the registration procedure with the Land Registrar under Section 7. The power to terminate a manager under paragraph 7 of the Seventh Schedule to the BMO can only be invoked by an OC after its formal establishment. As the power of termination is not exercised by the owners before the OC is established, your proposal is not supported.
- D. In reply to a similar question from the Hon Cheng Kai-nam in the LegCo on 12.5.99, SHA explained the policy intent behind the requirement of 50% of the owners' shares to terminate a manager. We consider that the requirement is appropriate. I take the opportunity to enclose a copy of SHA's reply for your reference.

- E. You have proposed that all the undivided shares in land which are not attached with any obligation to pay management shares shall be disregarded for the purpose of counting the quorum or the votes in owners' meeting. Our considered view is that an owner of an undivided share in land on which there is a building is an owner of the building, whether he needs to pay management fees or not. We do not consider it appropriate to prohibit such an owner from attending and voting at an owners' meeting for the reason that he is not required to pay management fees.
- F. Deeds of mutual covenant (DMCs) are private contracts to which Government is not a party. Any proposal for the BMO overriding the terms and conditions of existing DMCs needs to be treated with caution. SHA is not in a position to determine whether the terms in a DMC are unfair or unreasonable.
- G. The existing provision under paragraph 3(5) of the Third Schedule to BMO concerning the casting of votes by co-owners of a share has generally worked well. If a convenor of a general meeting cannot contact the first named owner, he may leave the proxy form with the other co-owners for the first named owner to sign and return. A review of this provision is therefore not considered necessary.
- H. As regards whether proxies will be counted towards the quorum under paragraphs 5(a) and 5(b) of the Third Schedule to BMO, SHA explained this point in detail when he replied to a LegCo question by the Hon Ambrose Cheung Wing-sum on 2.6.99. Please refer to SHA's reply as enclosed.

Further, under section 2 of the BMO, "owner" means a person who for the time being appears from the record at the Land Registry to be the owner of an undivided share in land on which there is a building. As such, an owner holding undivided shares in a building, which in turn means (say)

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five flats, will be regarded as an owner, but not as five owners. Your

proposal to count each flat to be owned by one individual owner is therefore

not supported.

Thank you, once again, for your valuable comments and suggestions on the

provisions of the Building Management Ordinance (Cap.344). We need to count on your

support in the processing of the Building Management (Amendment) Bill which we intend

to introduce into the Legislative Council in the 12999/2000 session.

Yours sincerely,

(David Tsui)

for Secretary for Home Affairs

Enclosures

(i) SHA's reply to LegCo Question No.4 by the Hon Cheng Kai-nam on 12.5.99

(ii) SHA's reply to LegCo Question No.7 by the Hon Ambrose Cheung Wing-sum on

2.6.99

c.c. Director of Home Affairs (Attn: Mr. LUI Hau-tuen)

立法會四題:私人大廈物業經理人

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以下爲今日(星期三)在立法會會議上程介南議員的提問及民政事務 局局長藍鴻震的答覆:

問題:

香港法例第 344 章《建築物管理條例》有關公契的條款,強制規定業主立案法團如想終止物業經理人的委任,須召開業主大會,並在會上獲得業權份數不少於百分之五十的業主通過有關決議。就此,政府可否告知本會:

- (一) 當局根據甚麼準則及理據訂定該百分比;有否研究該百分比是否要求過高,引致經常有業主立案法團因未能湊足份數而無法終止不稱職的物業經理人的委任;若有,研究結果爲何;
- (二) 當局會否檢討該百分比是否仍然合乎時宣;若會,檢討時間表爲何;若不會,原因爲何;及
- (三)有否評估現時當局向業主立案法團就終止經理人的委任所提供的 協助是否足夠;若有,評估結果爲何?

答覆:

主席女士

本人對上述問題的答覆如下:

(一)《建築物管理條例》附表七第七段第一節規定,業主立案法團在 爲有關目的而召開的業主大會上,可藉業權份數不少於百份之五十的業主 決議,通知經理人終止其委任,而無需給予補償。我想藉此機會解釋制定 這百份比的準則及理據。

多年前政府發現許多私人多層大廈的公契存有不公平條款,例如發展 商有權委任經理人永久性地管理物業,小業主作爲經理人的僱主則無從過 問,權益受到剝奪。因此政府著手研究如何糾正這情況。 我們於 1991 年草擬了《多層建築物(業主法團)(修訂)條例草案》, 於同年五月以白紙草案形式刊憲,進行公眾諮詢。其中一項修訂建議,是 容許業主立案法團在業主大會上,由擁有不少於三分之二業權份數的業主 通過決議,將公契內委任的經理人解僱。

在諮詢過程中,我們收到 340 份意見書。公眾普遍支持草案是項建議。 對於解僱經理人所需的業權份數的百分比,公眾提議由百分之三十三至百 份之七十五不等。但大多數意見認爲,只要有不少於百分之五十業權的業 主同意,便可解僱經理人。

我們審慎考慮各方面的意見後,覺得百分之五十業權份數,作爲決定是否解僱經理人,是可以接受的。因爲若需要大部份的業權份數才可解僱不稱職的經理人的話,解僱可能變成遙不可及,在實際情況下很難達到。若只需要少數的業權份數,則解僱過程可能變得太容易,影響了僱員(即經理人)的權益,也可能導致發生大廈管理權頻頻易手的情況,影響有效管理。因此我們修訂了草案,將三分之二業權的規定,改爲不少於百分之五十,於1992年提交與前立法局審議,條例草案於1993年獲得通過。

就我們所知,自1993年條例實施以來,共有156個業主立案法團,成功地引用這條例解僱公契內委任的經理人。另一方面,並沒有証據顯示經常有業主立案法團因未能湊足份數而無法終止不稱職的物業經理人的委任。因此,我們認爲目前的條例是行之有效,當年的立法精神得以落實。

(二) 我們認爲,終止委任經理人是一項大廈管理上的重大決定,這項決定必須由業主們共同作出。若有不少於百份之五十業權份數的業主支持解僱經理人,足以反映這是大多數業主的共同意願。此外,業主除可親身出席業主大會外,亦可用授權書形式委托他人代爲投票。因此,要取得百分之五十業權份數業主的支持,應該並不太困難。我們認爲百分之五十這百份比是合理和行之有效的。如果降低這百分比,則不能反映解僱經理人的決定是大多數業主的意願,代表性不足。但若需要大部份的業權份數才可解僱經理人的話,解僱可能變成遙不可及,在實際情況下很難違到,因此我們認爲目前的百份比是恰當及可行的,在現階段並沒有需要對這個百分比作出檢討或修改。

(三)業主立案法團是根據《建築物管理條例》註冊成立的法定組織,使私人大廈業主可有效處理大廈公用部份的管理、行政和維修等事務。一般而言,業主立案法團若覺得有需要解僱公契委任的經理人,可引用上述法例召開業主大會,進行討論及投票決定。法團的管理委員會須負責籌備及召開業主大會,例如發出會議通告與每一業主,擬定議程及投票表格等。這些工作必須由法團管理委員會

親自執行。政府不能越俎代庖處理法團的工作。各區民政事務處的同事可爲法團就《建築物管理條例》的一般規定及業主大會的程序作出指導。作爲一個公正的政府,在解僱經理人這類事情上必須保持中立,不能也不適宜參與業主大會的討論或左右業主的決定。可能有些意見認爲,在一些大型屋苑內,要籌集百份之五十業權份數的業主支持以解僱經理人,技術上有困難,因而要求政府協助。我認爲,無論是小型樓宇或大型屋苑,只要大多數的業主的意願傾向支持解僱不稱職的經理人,他們便很自然地滙聚一起投票贊成。反之,若解僱經理人的建議只能取得少數業主支持,即表示大多數業主都對議決有所保留。我重申在這類問題上,政府不應及不宜介入,以免干預業主的意願。

我想補充一點,業主立案法團在考慮是否解僱公契內委任的經理人時,可能須研究公契的有關條款,以及委任經理人的僱傭合約內容。這方面可能需要一些法律知識。法團應聘用法律顧問仔細研究這些文件,以保障業主的權益。

民政事務總署設於九龍油麻地的首間大廈管理資源中心,得到香港律師會等多個專業團體支持,派出會員於中心內為市民義務提供大廈管理的初步專業意見。市民可儘量利用中心的服務。

政府目前各項協助業主立案法團的措施,我們認爲是適當和足夠的,在私人大廈業主必須負責管理及維修他們的私人物業的原則下,我們樂意聽取意見及構思改善服務的方法。我們會貫徹「協助業主自行管理大廈」的原則,繼續積極向業主立案法團及私人大廈業主提供協助,以達致「安居之所,必先穩固」的目標。

多謝主席。

完

一九九九年五月十二日(星期三)

以下爲今日(星期三)在立法會會議上張永森議員的提問及民政 事務局局長藍鴻震的書面答覆:

問題:

香港法例第 344 章《建築物管理條例》附表 3 第 5 段就業主立案法團會議的法定人數作出規定。就此,政府可否告知本會,在計算法定人數時:

(一) 是以業主總人數環是他們所擁有的業權份數作爲計算基礎:及

(二)獲業主授權出席法團會議的代表是否亦計算在內;若然,是以獲授權代表的總人數、委任該等代表的業主人數,還是委任該等代表的業主所擁有的業權份數,作爲計算基礎;換言之,當 100 位業主委任同 1 人代表他們出席法團會議,在計算會議法定人數時,該代表是被視爲 1 人抑或是 100 人;另外,當 100 位業主委任 35 人爲他們代表出席該會議,該等代表是被視爲 35 人抑或是 100 人?

答覆:

主席女士:

本人對上述問題的答覆如下:

- (一) 根據香港法例第 344 章《建築物管理條例》(下稱條例)第 3 附表第 5 段,業主立案法團召開法團會議的法定人數,須符合下列的規定。
- (i) 如會議有決議規定根據第 30 條解散管理委員會,須爲全部業主的 20%的人數;或
- (ii) 如屬其它情況,須爲全部業主的 10%的人數。

上述法例所提及的百份比,是以業主人數,而非他們所擁有的業權份數,作爲計算基礎的。

(二)條例第3附表第4段第1節訂明,業主可親自出席或委任代表出席法團會議投票。我已徵詢律政司的意見,得知獲業主授權代其出席法團會議的代表,亦被計算在條例第3附表第5段的法定人數之內,而且是以委任該等代表的業主人數作爲計算基礎。

在張永森議員所列舉的例子裏,當 100 位業主因未能親自出席法團會議而委任同 1 人代表他們出席,在計算會議法定人數時,該位代表是被視爲 100 人的;同樣地,當 100 位業主因未能親自出席法團會議而委任共 35 位代表出席時,該等代表是被視爲 100 人。

多謝主席。