The Bill provides for the establishment of a board of discipline to deal exclusively with minor offences. No formal judicial or quasi-judicial procedures will be involved, and the board may recommend a range of lesser sanctions. A provision for appeal is included. These measures should enable less serious incidents to be handled expeditiously, effectively and fairly.

Other provisions included in the Bill include:

(a) granting to an officer conducting a preliminary inquiry certain powers, for example, powers to call for witnesses and to demand the release of relevant documents;

(b) formalizing the current administrative arrangements whereby the Pilotage Authority may grant an extension of service beyond compulsory retirement age to a pilot for a maximum of three years, subject to satisfactory medical fitness; and

(c) designating a "dockyard approach" area at North Lantau so that ships navigating to and from docks located there will be subject to the same exemption from compulsory pilotage as the existing dockyard approach area near Tsing Yi Island.

Mr President, the proposed amendments have been formulated in consultation with the shipping industry, the Hong Kong Pilots Association and the Pilotage Advisory Committee. All parties support the proposals.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 15 July 1992

Question on Second Reading proposed.

MR ALLEN LEE: Mr President, the Bill before us aims to facilitate the formation of owners' corporations and to repeal those provisions in the existing Deeds of Mutual Covenants which are unfair to flat owners. In view of the complicated nature of the Bill and its impact on the general public the ad hoc group set up to study the Bill has spent many hours of working, scrutinizing the Bill. Altogether we have had 16 meetings and considered 22 public representations. As convenor of the group I wish to express my warm appreciation to the contributions of all the parties concerned. I would like to thank the Law Draftsman for his efficient and invaluable support in tackling the Bill.

The immediate issue that the ad hoc group has spent a lot of effort in pressing for is the setting up of a Building Management Tribunal which will adopt informal and inexpensive procedures to deal with the disputes between property managers and flat owners as well as disputes arising generally from the provisions in the Deeds of Mutual Covenants and the Building Management Ordinance. The proposal was not included in the Bill initially despite popular demand. The ad hoc group is adamant that a tribunal for building management matters is essential to the effective operation of the Bill.

In light of the Administration's advice about the complications in the setting up of a Building Management Tribunal which can only be dealt with by a separate Bill, the ad hoc group has agreed that as an interim measure the jurisdiction of the Lands Tribunal should be extended to embrace building management matters and to consider any disputes arising from the Deeds of Mutual Covenants and the Building Management Ordinance. The arrangement, I hope, will be in place by April 1994. The need for setting up a separate Building Management Tribunal should then be reviewed in the context of the effectiveness of the Lands Tribunal in dealing with building management matters. I look forward to the Secretary for Home Affairs' comments in this regard.

Unified management of some estates is another important issue discussed by the ad hoc group. The group is of the view that such estates with complex and wide-ranging common facilities should probably be under unified management. The existing definition of "building" in section 2 of the Ordinance applies to a building of two or more levels together with the land on which it is built and any land in common ownership. We recognize that in some such estates the common parts, the communal facilities and services are not in common ownership, although they are for the common use, enjoyment and benefits of all the flat owners and occupiers. When flat owners of such estates incorporate themselves they will be unable to form one owners' corporation for the whole estate. I am glad that the Administration will propose to amend the existing definition of building at the Committee stage so as to give flat owners of such estates the option to form one owners' corporation for the sake of integral estate management.

The ad hoc group also considers that a degree of control over the management of large estates is necessary. If different phases of a large estate were allowed to employ their own management companies it would have undesirable effects on the integrity of the estate and may create problems in managing communal facilities. To address this concern a new schedule, at present blank, will be added to the Bill so that the Secretary for Home Affairs can include estates in the schedule and the estates so included must be under unified management. However, an estate would not be included in the schedule if owners holding 50% or more shares in the estate object to the inclusion.

The Bill also introduces a procedure whereby flat owners may be able to terminate a manager's appointment. On the other hand, new section 34E(4) of the Bill enables the Secretary for Home Affairs to exclude a building from the application of the termination procedure. The Administration has explained that the provision is intended to deal with specific circumstances that warrant continued management of an estate by the developer or his appointed management company. The ad hoc group considers that there may be a need for exemption to be granted in some unforeseen circumstances but the flat owners should also have a say in the choice of management companies. Amendments will be made to include a provision in the Bill so that an application for exclusion under section 34E(4) shall not be granted if the owners holding 50% or more shares of the building object to the application. There is also a limit that the period of such exclusion will not be more than three years.

Apart from the above main issues the ad hoc group has also proposed some other amendments to the Bill which will be moved at the Committee stage. The ad hoc group realizes that even with the proposed amendments there may still be areas which need to be looked into. However Members are equally concerned that the Bill should be enacted as soon as possible in order to bring about the desired improvement in building management. The group has therefore urged the Administration to conduct a review following the enactment of the legislation to consider in the light of operational experience whether the Building Management Ordinance is efficient in furthering the better management and maintenance of private buildings.

Mr President, with these remarks I support the Bill subject to the amendments to be moved at the Committee stage.

MR TAM YIU-CHUNG (in Cantonese): Mr President, after a profusion of arguments, discussions and revisions, the Multi-Storey Buildings (Owners Incorporation) (Amendment) Bill is now set to go through the final stage of its legislative process to become law. Although this Bill is not perfect, I believe it will do the great majority of private property owners proud.

The present Bill represents an improvement on the existing Ordinance in that it confirms an owner's right of control over the management of his property. However, it has been very difficult to strike a balance and achieve smooth co-ordination between the owner's right of control over management of his property and the management company's enforcement powers in management matters. It is necessary for management companies to have a certain degree of autonomy in management, particularly those companies involved in complicated management problems. But how can management companies be given sufficient autonomy while not prejudicing the interests of the owners? This subject attracted much controversy throughout the drafting process of the Bill. After consultation among various parties coupled with an exercise in collating and balancing the views from these parties, the present Bill has been finalized in its present form with a clause 34(E)(4) included.

Clause 34(E)(4) provides exemption of not more than three years from termination of appointment for certain management companies, unless the companies' application for exemption is objected to by owners holding between them not less than 50% of the undivided shares in the housing estate.

This exemption arrangement is questioned by many owners' committees. The response from owners of properties in Mass Transit Railway Corporation (MTRC) housing developments has been particularly strong. They have three major worries. Firstly, technically speaking, it is almost impossible for owners' corporations of sizeable housing estates to organize owners holding 50% of undivided shares to object to the management company's application for exemption. Therefore, it is indeed practically impossible for owners to prevent an application for exemption by the management company. Secondly, during the period of exemption, owners are disabled from exercising their power of terminating the appointment and stopping all management operations of a management company even if it abuses its powers. Thirdly, the Bill has not stipulated the criteria according to which the Secretary for Home Affairs will approve an application for exemption. Nor is a set of guidelines published as to what criteria to be used. People cannot help getting worried that the Secretary may be vested with too much power to protect those management companies which have close ties with the Government. It is understandable that owners of properties in MTRC housing developments will have particularly profound worries because they, on the one hand, represent owners of large housing estates while, on the other, they also represent owners of properties managed by companies which have close ties with the Government. Given that continued and unified management is essential to large housing estates and that it is a known condition for the granting of exemption, MTRC housing developments are most likely to be exempted, having regard to the special position of the Mass Transit Railway Corporation.

The tribunal to be set up under the present Bill will help towards dispelling the first two worries of owners. But since the tribunal will not come into operation until April next year, we can only wait and see how it will exercise its functions in actual practice. At present, any discussions about its functions remain at the conceptual level. As to the third worry, it is hoped that the Government will as quickly as possible formulate and publish an impartial and objective set of criteria so as to put owners at ease.

Mr President, although the Bill has not taken full account of all the opinions of property owners, it is after all a great improvement. It may not be in the interest of most of the owners if the passage of the Bill is delayed again. Therefore, taking the opportunity of the passage of this Bill, let me say that I hope the Secretary for Home Affairs will continue to have concern for owners' worries about the Bill, with a view to studying and amending in future all provisions which are unfavourable to owners.

With these remarks, I support the Bill in its amended form.

MR EDWARD HO: Mr President, most of the people in Hong Kong live in multi-storey buildings which are owned by a multitude of owners. Therefore the passage of this Bill, which would facilitate the formation of owners' corporations to enable them to be responsible for the proper management of their own properties, is very important and it has naturally attracted immense interests from members of the public ever since a White Bill was published for public information and comment in May 1991. These interests, often diverse viewpoints from developers, property managers or individual owners, have continued unsubsided despite the fact that the Administration has made amendments to the White Bill before it was introduced to this Council as the Bill in its present form.

The points that I will be mentioning in my speech today in fact have been raised by me in the Legislative Council ac hoc group in its meeting as long ago as August of last year. Similarly, other areas of disagreement between the ad hoc group and the Administration have surfaced since around that time. Most of these disagreements were also subjects of representations that I have personally received from members of my functional constituency. Whilst I am pleased that, after many meetings with the Administration, we have convinced the Administration that most of our proposed changes would now be incorporated in the amendments at the Committee stage, I should say that it was only possible through hard work and persistence of Members of the ad hoc group. The fact that there was a strong consensus from Members was also crucial.

In particular, I would like to raise three points:

(i) Many housing projects in Hong Kong are of such sizes that in other countries they would be equivalent to townships. These projects have population of tens of thousands. They are usually divided into blocks of buildings or stages but they have shared community facilities and common infrastructure such as roads and drains. Under the Bill, owners can form owners' corporations to manage their own individual block of building. However, problems would occur if there is no proper consensus between owners' corporations of different blocks in the management and maintenance of the common facilities. Such problems, if occurred, would not only adversely affect the living environment of the residents, but they also would cause great nuisance to the public. This is a problem that I believe was not originally considered in the Bill and was one of the issues that I raised for discussion in the ad hoc group in August 1992.

I am glad that the Administration finally recognized this potential problem and has agreed that a new Schedule would be provided in the Bill whereby the Secretary for Home Affairs could include estates which must be under unified management in the Schedule. To preserve the right of the owners, such an estate would not be

included in the Schedule if not less than 50% of the owners' shares of the estate object to the inclusion.

(ii) Due to the natural conflicting interests of developers, property managers and the individual owners, many representations, including those from members of my functional constituency, have urged for the setting up of an independent Building Management Tribunal to settle disputes between various parties. The Administration has resisted very strongly this request principally due to the reason of lack of resources. I and other members of the ad hoc group have found this reason unacceptable. If the Administration were to introduce legislation that regulate the activities of members of the public, it is not equitable that a tribunal cannot be set up to settle disputes informally and inexpensively, simply due to limitation of resources. I have reluctantly accepted the interim solution of extending jurisdiction of the Lands Tribunal to embrace building management matters and any other disputes arising from DMCs and the future Building Management Ordinance.

I note that the operation date of the provisions relating to the Lands Tribunal has not been specified and I urge that this date should be set as soon as possible and certainly no later than a year from now; and that the establishment of a separate Building Management Tribunal should still be the objective and that it should be reviewed in the context of the effectiveness of the Lands Tribunal in dealing with building management matters. I have noted that the Lands Tribunal, as it is, has great difficulties in coping with its present workload expeditiously. I would expect that the Administration would provide more resources to the Lands Tribunal in order for it to discharge its expanded duties efficiently and effectively.

(iii) Whilst it is right that owners, after forming themselves into owners' corporations, would have the right to appoint their own property managers, I would strongly urge for the setting up of a licensing system for property managers or managing companies. This is important to ensure that the required standard of property management service is provided. Licences may be graded according to the size of buildings or number of flats that the managers could handle and it should not be mandatory for small buildings to employ a licensed management company.

Mr President, due to a lack of proper management and maintenance of many buildings in Hong Kong, the appearance of our fair city in many built up areas has deteriorated to our regret. A proper standard of property management is not only important to the ordinary citizen whose ownership of a flat could be his most valuable asset, but also it is of great importance to the quality of our physical environment.

With these remarks, Mr President, I support the Bill with the proposed amendments at the Committee stage.

MR RONALD ARCULLI: Mr President, firstly, I would like to declare my interest as a director and honorary legal adviser of the Real Estate Developers Association (REDA) of Hong Kong, one of the three component organizations of the functional constituency which I represent in this Council.

REDA made a submission in September 1992 to the ad hoc group set up to examine this Bill and had the opportunity of meeting with members of the ad hoc group on 14 September to explain our comments. We are disappointed that the final amendments tabled today do not address most of our concerns. However, I shall not repeat all of them now but I wish to refer to some points which we believe, if not properly addressed or handled upon implementation, could lead to adverse consequences affecting owners, estate managers and developers.

(1) The first point concerns the period of exemption. As it is recognized that the sizeable and complex housing estates are usually constructed in phases and therefore may take many years to complete, it would have been preferable to have retained a flexible approach to the question of exemption under the proposed subsection 4 of section 34(E) rather than setting a time limit of three years. This time limit will doubtless necessitate subsequent applications in the case of large developments taking more than three years to complete. Such an approach would not have prejudiced the rights of owners to seek a termination of the exempt status under subsection 4(B) of section 34(E).

(2) Secondly, neither the Bill in its original form nor the final amendments have specified any conditions under which a development might qualify for exemption under the new Ninth Schedule.

I would like to impress upon the Secretary for Home Affairs the importance of working out the criteria as soon as practicable and to consult the public and the relevant industries and professionals before making a decision in this respect.

(3) Thirdly, as to the new section 34(L), it is somewhat unclear whether in the event of a dispute between a manager and some of the owners of an estate, for example, over the non-payment of management fees, the manager is entirely safeguarded in respect of his costs. After all the manager is just trying to do his duty and job for the benefit of those owners who have paid.

In conclusion, Mr President, it is indeed unfortunate that this Bill is so complex. It is difficult to balance the interests of all. I hasten to add that this is not intended as criticism of those involved in the drafting. Indeed, some of the difficulties might have been as a result of patchwork amendments from time to time over a long period. It is also a matter of regret that there are as yet no quality controls in estate management, an industry which affects all of us. There is a case for some form of registration and qualification for estate managers and this should be brought in by the industry as soon as practicable.

Mr President, subject to the above reservations, I give my qualified support.

MR LEE WING-TAT (in Cantonese): Mr President, on the whole I support the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill which is tabled for this Council's endorsement today. I hope the Bill, after being endorsed, can achieve the following five aims:

(1) to enable flat owners to repossess their entitled power and establish an owners' corporation with statutory power for deciding upon management matters of their own housing estates;

(2) to improve management of private buildings through the amended Ordinance;

(3) to enable developers, flat owners and estate managers to have a better idea about their own power and responsibilities;

(4) to settle disputes that cannot be resolved between owners or between owners and estate managers through the Lands Tribunal; and

(5) to enable flat owners to understand the importance of good building management through the Government's promotion efforts.

The present Bill, which seeks this Council's endorsement today, puts an end to the practices of developers and management companies to deprive flat owners of their power of managing their own buildings. This is an improvement on the existing Ordinance. However, the amendments to this part of the Ordinance are not flawless. The main problem lies in the fact that flat owners' power of changing their management companies is greatly curtailed in some large housing estates such as the property developments atop the Mass Transit Railway (MTR) stations, where the developers take up a large share of the ownership.

Under clause 34 of the Amendment Bill, permission is given to management companies to apply to the Secretary for Home Affairs for exemption so that management companies can retain the management power of the buildings in spite of the fact that it is provided in the Amendment Bill that

the exemption shall become null and void if over 50% of flat owners holding the undivided shares of the ownership raise objection. Mr President, in a meeting held by the ad hoc group to study the Bill, I queried the City and New Territories Administration (CNTA) whether it was aware of the fact that, notwithstanding the provision, it was virtually impossible for flat owners of most private estates to oppose the management company for its application for exemption if the developers concerned were holding a decisive or crucial share of the ownership. I also pointed out that flat owners might not be able to round up sufficient support of over 50% owners to apply for the dismissal of the manager. Unfortunately, the representative of CNTA told us that they had no data concerning the developers' share of ownership in all the private housing estates throughout the territory. Developers which hold a large share of an estate can employ their affiliated management companies. This is a serious problem and indeed a time bomb. Yet, the Bill fails to address this problem.

We learnt from the information which CNTA supplied to the ad hoc group set up to study the Bill the share of ownership of property developments atop the MTR stations. The Mass Transit Railway Corporation (MTRC) holds a decisive share of ownership of several housing estates. For example, the MTRC holds 76% of the ownership of Telford Garden, 74% of Luk Yeung Sun Chuen and 57% of New Kwai Fong Garden. As regards these three housing estates and other estates where the flat owners only hold a small share of the ownership, the proposed amendments still fail to enable the flat owners to dismiss the incompetent managers.

Mr President, under such circumstances, we must not leave the matter unsettled in this way. We have three proposals in this respect:

(1) in view of the fact that it is the Secretary for Home Affairs who has the authority to grant exemption, I propose that the Secretary should not rigidly stick to the criterion of 50% ownership when he considers whether to grant exemption to the management companies of this particular type of housing estates. The Secretary should judge the matter in terms of the total ownership and set great store on whether over half of the flat owners in a property development oppose the management company or are not satisfied with its service;

(2) since the flat owners of such housing estates are, in each and every case, unable to dismiss their managers under the proposed amendments, it is expected that there will be bound to have more disputes among the flat owners, developers and management companies than other housing estates. For this reason, I propose that CNTA should send more staff from its district offices to make frequent visits to the owners' organizations of such housing estates and, where necessary, assist the flat owners in bringing the disputes to the Lands Tribunal for settlement as well as offer them appropriate help; and

(3) the Administration should review this part of the Ordinance half a year after its enactment. One feasible measure that offers more protection to the interests of flat owners is that the management company must obtain the consent of the developer and the flat owners who all together hold 50% of the share of the estate ownership for the renewal of its contract.

Mr President, members from the United Democrats of Hong Kong (UDHK) serving in different boards/councils have all along been concerned about the interests of flat owners in the past 10 years. We have asked for the revocation of section 2A which oppresses the flat owners so that they can have the real power to manage their own housing estates. We have organized various seminars, residents' meetings, signature campaigns and petitions. Notwithstanding that the Bill signifies a small victory of the flat owners, the Administration must review the amended Ordinance to identify its inadequacies when it is put into effect and make the necessary amendments after a period of time. The UDHK will certainly stand on the side of the flat owners and continue to strive for them the reasonable rights to manage their buildings.

These are my remarks.

MR ERIC LI (in Cantonese): Mr President, I basically agree that the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 is generally welcomed by flat owners. As a matter of fact, the Bill has been dragging on for a rather long period of time and we should not keep on prevaricating. Here I must point out one thing in particular. Clause 34(E)(4) of the Bill stipulates that, in any particular estate, no less than 50% of flat owners' signatures are required if owners are to raise objection against the Administration for exempting developers and management companies from termination of appointment. To the flat owners, such an amendment is merely one that consoles them with false hopes.

It is an extremely harsh requirement for flat owners to obtain support of flat owners who have between them 50% of the share of an estate before they could raise objection against the Administration's exemption to the estate management company. Judging from practical experiences, management companies which might apply for exemption are usually those managing large housing estates with not less than several thousand flats. The flats of such large private housing estates are often used by people as investment instrument and subject to intense speculation. As a consequence, it is not uncommon for flats left vacant or being let out. And this would give rise to the following situations:

(1) The owners may not register the transactions with the Land Registry at once after they sell their flats, nor inform the management company;

(2) Even if the owners who have sold their flats report the transactions immediately, given the existing workload of the Land Registry, it will surely take over half a year before the Land Registry could provide updated information on the flat owners. Furthermore, the application fee for each search is $10. In other words, if flat owners in an estate want to obtain information on the flat owners of the whole housing estate through this open channel, the cost incurred will be forbiddingly high due to the large number of flats involved. Before anything can be done, flat owners have to raise a large sum of money in advance for getting hold of the necessary information but the information obtained may not necessarily be the most updated and accurate. And the information may not be the same as that held by the management company. Under such circumstances, it is not surprising at all that the voting results would be disputable. Some owners let out their flats and make it the responsibility of the tenants to meet the management fees. They would not care at all whether the tenants enjoy the deserved management services or quality of services. I trust that they would not show a keen interest, should these owners be requested to take an active interest in choosing the management company. In view of this, the availability of vacant or let out flats would definitely affect the respondent rate of any relevant opinion poll or survey. As a result, individual owners have to spend quite a huge amount of money, only to obtain outdated and inaccurate information about all the owners in their same estates, yet which may be different from that of the management company. And they have to rely on such information to reach the other several thousands of flat owners. The 50% target is, after all, "within sight but beyond reach". To put it more cruelly, it is really a practical joke which is of more kicks than halfpence.

As a matter of fact, it is not too much to give the flat owners a little bit of freedom in choosing their management company. If the Government has the *bona fide* respect for the owners' views, it should not put forwardamendments which border on fooling the flat owners. However, I believe that at the present stage, we can still make remedy to the Bill through administrative measures.

At the ad hoc group meeting, the Government has undertaken to formulate a set of guidelines laying down the basis on which the authority concerned exercises its discretion on exemption. I am of the opinion that the Administration should not entirely leave it to the flat owners to raise objections. The spirit of the guidelines should be to explain what the Government would take into account in exercising its discretion. The Government should at least take initiative to gather owners' views on their management companies. Therefore, I suggest that before the granting of exemption, an independent inquiry to find out the overall views of the owners in respect of the exemption of the management company has to be conducted, only if the Administration receives a petition bearing the signatures of 10% of the owners. It can be

conducted by the management company itself or an independent survey company commissioned by it, while staff of the district office may monitor the whole process. The cost is to be covered by the management fee. And all relevant information of the owners are to be supplied by the management company. Moreover, in view of the difficulties I have mentioned, many of the owners are unable to be contacted at all or have no comments on the choice of the management company. I feel that the Administration, when deciding on the exemption, should follow the principle of simple majority of the respondent owners rather than on the 50% required ratio of all owners, including those who abstain.

I believe that after the passage of the Bill, some management companies such as the Mass Transit Railway Corporation (MTRC) and the Taikoo Real Estates, would surely apply for the exemption at once. The maximum period of exemption is three years. I earnestly hope that the guidelines can be issued as soon as practicable, preferably before the granting of any exemption. Views on the guidelines should be sought from flat owners concerned. Before granting the second exemption three years later, a review should be carried out on the revised Ordinance to examine whether it would, in practical terms, be unfair to the flat owners. I also hope that colleagues of this Council will keep a close look on the implementation of the Ordinance and to urge the Government to make appropriate amendments if necessary. However, in order not to hinder the implementation of other proposals of the Bill, I am going to abstain from voting when amendment to section 34 is put. But I would support other proposed amendments and support the whole Bill in its amended form.

MR MAN SAI-CHEONG (in Cantonese): Mr President, the long-awaited Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 will eventually go through its third reading today. In fact, many local bodies and the United Democrats of Hong Kong (UDHK) have for a number of years fought for the introduction of the proposed amendments, especially the revocation of section 2A. I, as a member of UDHK and as one of those people who have been championing the flat owners' interests over the past seven years, naturally support most of the proposed amendments to the Bill. However, this does not mean that the Bill is beyond criticism. For instance, I am not satisfied with the provision in the Bill that the developer or the management company concerned may apply to the Secretary for Home Affairs for exemption so that the owners' corporation cannot terminate their service and in consequence the developer or management company could provide management service on a long-term basis.

It is proposed in the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 that the owners shall be vested with the power to dismiss the management company. Yet, the developer or the management company is also permitted to apply to the Secretary for Home Affairs for exemption from the termination of their service by the owners' corporation. And only owners between them holding over 50% share of an estate can apply for the overturning of the Secretary's decision.

Apparently the provisions seem to be fair to both the owners' corporation and the management company but actually the whole discretion of the flat owners becomes, as what some local bodies put it, something within sight but beyond reach. The ownership of most of the large housing estates, especially property developments atop the Mass Transit Railway stations as mentioned by many colleagues, is usually held by companies in which the developer or management company concerned has an interest. And it seems very unlikely for flat owners in an estate to round up the support of 50% of the owners to vote down the exemption granted by the Secretary for Home Affairs. It means that the owners' corporation cannot hold full power, or in other words, virtually no real power to employ a management company on its own at all. As a result, some management companies providing just passable services can keep on managing buildings for a long time free of any restriction.

In fact, it is the Government's objective of amending the existing Ordinance, as I believe, to protect the flat owners from being bound by any unfair Deed of Mutual Covenant so as to enable the owners' corporation to supervise or monitor the operation and administration of the management company in an effective way. However, the provisions in this respect are still far from adequate and in consequence the developer or management company concerned can enjoy inordinately great protection. I oppose to this part of the Bill and hope that the Government will, immediately after the enactment of the Bill, put the Secretary for Home Affairs's exemption power under regular review to see whether there are any loopholes in the operation and consider what amendments to be made so that some concrete remedies can be put in place.

In order to successfully deal with the crux of the estate management problem in Hong Kong, I think we have to start right from the root, that is to say, requirement must be set to ensure that management company shall have the recognized professional qualification and ability in estate management. For this reason, I hope the Government could formulate as soon as possible a sound system for registration and licensing inspection. Such a system is indispensable because only by doing so can we require each management company to employ a certain proportion of staff with professional qualifications. Under the system, the authority concerned should only grant approval for registration and issuing licences to the eligible applicants after inspection. In case any malpractices or serious mistakes are found in its management, the authority may revoke the licence. This is the only way to ensure a real professional estate management and monitor management companies more effectively while safeguarding flat owners' interests.

In addition, I also support the setting up of a building management tribunal or a similar body to settle the disputes between owners' corporation and the management company. This is conducive to both solving the problems and protecting both parties' interests. Some of the disputes are simple in nature and involve only a small sum of money. Yet it would take much time to settle them. If such disputes can be handled by a building management tribunal for its fair

arbitration, it would keep the flat owners' legal costs to a minimum and they will not be placed at a disadvantage simply because they cannot afford to initiate legal proceedings. For this reason, we are looking forward to an early establishment of the tribunal.

Although it seems that the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 would be endorsed without much fanfare today, we still have to wait and see whether the Government would allocate sufficient resources and have determination to enforce this piece of legislation and whether it will review the Ordinance regularly to redemdy the inadequacies.

MR TIK CHI-YUEN (in Cantonese): Mr President, though the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 has undergone lengthy discussions, Meeting Point is yet of the view that the Bill is not yet perfect and there are several loopholes and issues which must be addressed.

Legislative intent

The legislative intent of the amendment Bill is to "return incorporation right to residents", which means returning the right of forming owners' corporation to flat owners, and "returning management rights" to flat owners. However, it is disappointing that this dual-return objective has not yet been fully realized in the amendment Bill. The Bill still has some loopholes, particularly in the aspect of enforcement. Meeting Point has the following comments:

(1) Right of exemption

Section 34(E) of the Bill provides that a management company or a housing development can apply to the Secretary for Home Affairs for exemption from being bound by paragraph 7 of the Seventh Schedule as regards the termination of the services of a manager, and the exemption will last for three years. The Bill does provide that if flat owners representing more than 50% undivided shares object, the Secretary for Home Affairs can reject the application of the management company. However, the Government does not specify any criterion in the Bill with regard to the granting of exemption. Moreover, it is basically impossible in sizeable housing estates to muster support from owners who hold between them 50% undivided shares. Neither does the Government make it a requirement that developers or the Government itself should be responsible for notifying flat owners. In this way, flat owners are being deprived of their right to know. Since the Bill does not state clearly the pertinent procedures, flat owners are put in an unfavourable situation.

(2) Vast ratio of ownership shares

Another problem of the Bill is how to tackle the vast ratio of ownership shares. In the paper submitted to this Council by the Government, it is mentioned that in some sizeable estates (actually several Members have quoted

this), it is impossible for flat owners to muster enough support to trigger a valid objection under the 50%-share rule. This will set a bad precedent for big developers to "go for" vast numbers of ownership shares in the future in order to procure permanent management of a building. The bill does not introduce any control in this respect.

Without addressing the aforesaid situation, the legislative intent of the Bill to safeguard the right of owners in managing the building in which their properties are located will not be completely achieved.

(3) Settlement of management disputes

After amendment, the Ordinance will extend the jurisdiction of the Lands Tribunal to deal with litigation related to building disputes. However, what makes one worry is that the current waiting time at the Lands Tribunal has an average of 80 days. Together with the building management disputes, the waiting time will be further prolonged. As common law says "Delay defeats equities", Meeting Point is disappointed at this.

Of course, we cannot deny that the Bill has its own merits. These include the repeal of section 2A, addition of Part VI A which enhances the overriding nature of the Bill, addition of the Seventh Schedule and other implied provisions. These amendments are welcomed by Meeting Point.

Meeting Point cherishes high expectations of the amended Ordinance, but it also detects the aforesaid loopholes, particularly with regard to "the right of exemption", which will certainly have the chance of becoming a reprint of section 2A of the original Ordinance. The Secretary for Home Affairs is granted an "imperial sword" under the amended Ordinance, which will enable him to have considerable power to exercise "discretion". At the present stage, we cannot see that when the Secretary for Home Affairs exercises this discretion, there will be any stipulated explicit guidelines or specific consultation and justification procedures.

Meeting Point does understand that the ad hoc group has spent a lot of effort in scrutinizing the Bill and has also discussed the above problems. Up to now, it has been over a year from the gestation of the Bill to its being introduced to this Council for scrutiny. As far as we understand, many concerned parties do hope that the Bill an be passed as soon as possible so that flat owners may enjoy autonomy over the building in which they are living.

As a Member of the Legislative Council, I would have wanted to support the Bill wholeheartedly. Nevertheless, the Bill has many loopholes which render flat owners unable to safeguard their rights adequately.

In the circumstances, Meeting Point is in something of a quandary and we shall abstain from voting on part of the provisions of the Bill.

As for plugging the loopholes in the Bill, my colleague Mr WONG Wai-yin will later on provide some follow-up suggestions with regard to the problem detected by Meeting Point.

MR JAMES TO (in Cantonese): Mr President, half of the population in Hong Kong are living in private buildings and large housing developments. Therefore it is very important that these properties be properly managed for the good of the environment, law and order and hygiene of Hong Kong. In fact, an improvement in these three aspects will reduce the direct and indirect expenditures of the Administration, especially those of the district offices and other relevant departments. The question of building management has long been the subject of criticism and complaint. I think the most serious and well known case is the Beacon Heights incident. This incident became a catalyst that led to a reform campaign by individual owners to fight for their rights. The amendment Bill before us today is, I think, a milestone. The flat owners' fight for their rights can generally be said to be successful, although they have yet to make more effort.

This amendment Bill seeks to revamp the system of unfair deeds of mutual convenant by repealing section 2A and other provisions that restrict the formation of owners' corporations so that flat owners will resume the right of managing their own buildings.

Today, I have heard a multiplicity of views from many of my colleagues. Being the co-convenor of the ad hoc group, I am very surprised — and I wonder whether Mr Allen LEE shares my feeling — to find that many Members, who had no opinion to offer in the ad hoc group, have made many suggestions today. If they had any suggestions, they should have raised them at the ad hoc group meetings so that the group could have worked on them together to make the provisions of the Bill even better. But they did not do so. I wonder what kind of attitude theirs is if they abstain from voting today. I must say this; it would be out of line with my character if I did not.

Regarding the question of exemption, some Members said that the Administration had not clearly laid down the relevant guidelines. I would like Members to refer to the letter from the Administration dated 11 August 1992, in which the guidelines are listed. So why are they saying there are no guidelines provided? Is it because they have not read the letter? If they think that the guidelines are not clear, they can speak out. I have read the guidelines and my comments are as follows: The Administration has said in the guidelines that in processing applications by management companies it will consider their past performance, that is, their performance in the aspect of management. In fact, it is a matter of subjective judgement for one to say if a company's past performance is good. As Mr Eric LI said, even if an independent investigation has been conducted, the result may well be that while the owners are not satisfied, the management company regards its performance to be very good. The situation will be like that of the Complaints Against Police Office, with the

complaining and the complained parties each sticking to its own version of the story. If individual owners wish to invoke the 50% share rule to overturn an application by the management company, they will find it very difficult. I am also living in a large housing estate. So I understand the difficulties involved, but I also understand the rationale behind laying down such a requirement. The fact is that even though the flat owners want to terminate the appointment of their management company, they cannot do so unless they can, according to the existing provisions, secure the agreement of owners holding 50% shares. If they cannot secure the agreement of owners holding 50% shares, and without any exemption given by the Secretary for Home Affairs, then they cannot terminate the appointment of the management company. Therefore, I think that the process of rallying the support of owners holding 50% or more shares, and the relevant planning and organizing work should be started earlier. I believe that this will require more effort from vast numbers of enthusiastic flat owners, as well as Members of this Council and social workers. Although it may not be very appropriate to insist that the criterion of 50% is unreasonable, I do hope that the Administration will not take the 50% criterion as a golden rule. If there is less than 50%, say, only 30% or 20%, or like what Mr LEE Wing-tat has just said, if all the individual flat owners together hold no more than 30% shares and among them those holding 25% approach the Administration, then in these circumstances, if the Administration still allows the management company to continue managing the property concerned, I believe that the Administration will be under great pressure.

Some people have suggested unified management, which means that what large housing estates need is one single management corporation instead of many such corporations. I find no conflict between this idea and the right of managing one's own property, because our main point is to get back the management right from the management company so that owners can make their own decision. Nevertheless, it is not necessary for housing estates comprising tens of blocks and each with tens of floors and a large number of flats to have one management corporation for each block, or one for each floor, or even one for each flat. This is not what we need. What we need is a good overall management system and the right to choose which management company to employ.

Also, some have mentioned the question of a freeze period. I think that the nine-month freeze period should be shortened, because the whole legislative process has, from the issue of the White Bill up until this moment, already taken many months. If the management companies need time to make improvements and to put things right, they should have already finished doing so. If they now want to make improvements so that things will not look too bad because there has been a change in the law, I think it is already too late for them to do so. So I think this nine-month freeze period can be accepted, though with great reluctance. As the Building Management Tribunal cannot be set up earlier, it would be a waste of time and very troublesome for the many flat owners to recourse to litigation in order to terminate the management right of their management company. Therefore, this nine-month freeze period can be useful

(useful perhaps because of a fortuitous coincidence) in the present situation where the Building Management Tribunal is not yet established. What worries me most is that some management companies would seize the opportunity of this transition period and "fish in troubled waters". In recent months, I have received many complaints that many management companies have suddenly incurred expenditures that are many times what they used to incur, or have suddenly run into deficits that have never occurred before. I hope that after this Bill has been passed (if it is passed), gazetted and duly signed by the Governor, the Administration will as soon as possible deploy more staff to the district offices to help the flat owners solve their problems, now that the Administration has a right to interfere which it did not have before. Section 40A empowers the relevant authority to monitor and investigate the situation concerned and audit the relevant accounts. I believe that after the passage of the Bill, Members of this Council, members of other boards and councils, communal organizations, or organizations in liaison with flat owners will approach the relevant authority who, I think, will then be very busy. Therefore, the Administration should allocate sufficient resources to the authority.

Meanwhile, some have questioned how these owners' corporations and management committees are to be administered and monitored in order to avoid mismanagement. Firstly, I think that section 44 has made it clear that the Administration has laid down special codes of practice and regulations to be followed by management companies whenever there is a large expenditure (like the repainting of the outer walls that costs over $1 million); this is also a kind of monitoring. Secondly, a general meeting can be convened at the request of owners who together hold 5% shares; so the decision of convening general meetings will not rest entirely with the management committees. Thirdly, the most important factor is of course participation; there used to be no opportunity to participate because flat owners had no say under the restrictions of the management company, but now flat owners have a right to participate in the general meeting of owners and exercise their rights by way of voting, just as voters can monitor the performance of the councillors whom they voted into office.

I therefore call upon flat owners to actively take part in the management of the affairs concerning their own buildings. I would also like to give a piece of advice to management companies. There are in fact many business opportunities under the present system, since not every building has the ability to manage its own affairs. Therefore, if management companies have been performing well, they should be able to defeat their competitors and their business should be flourishing. For those with poor management who rely on using tricks and false accounts, they will of course have good reason to worry. For these reasons, I hope that management companies will put their house in order and improve the quality of their services.

Finally, I am supportive of the licensing system, because the deposit involved is at least a few million dollars. Therefore, whether or not the Bill can be passed today, a sound capital base and good professional standards will always be essential prerequisites of management companies.

MR WONG WAI-YIN (in Cantonese): Mr President, as pointed out by Mr TIK Chi-yuen just now, Meeting Point takes a positive view in respect of the spirit behind the Bill. Nevertheless, certain obvious loopholes can still be detected from the amended version. Meeting Point has submitted a written presentation to the ad hoc group earlier. To our disappointment, our views have not been given due consideration. Here Meeting Point would like to recapituate some of our points and earnestly urge the Government to give them serious thinking so as to fully observe the spirit of the Amendment Bill.

Firstly, the question of exemption. Meeting Point is of the opinion that it is imperative for the Secretary for Home Affairs (SHA) to lay down in black and white the concrete procedures whereby managers apply for exemption from termination. And the following three criteria should be included:

(1) The exemption application procedures should embody the spirit of "returning management rights to flat owners". Meeting Point suggests that when the manager applies for exemption, he has to obtain the support of a certain portion of the shares of the estate as a recommendation. In this way, the application would not merely be submitted from a commercial point of view. And this condition would forestall the occurance of a situation similar to that brought about by section 2A.

(2) Meeting Point considers that there should be a time lag of at least half a year from the receipt of application by SHA to the approval of the application. This would allow ample time for the flat owners to arrange for owners' meetings. The proposed measure would ensure that flat owners can fully express their views.

(3) It should be clearly specified that SHA is required to be accountable to the flat owners in the vetting of the application for exemption. This is to acknowledge owners' right to know. Meeting Point is of the opinion that upon receipt of a manager's application for exemption, SHA should notify every individual flat owner in the estate of the application by means of a formal letter, rather than claiming it to have completed the consultation process by merely gazetting the application or putting up relevant notices in certain government departments. In doing so, owners would be able to take timely actions. SHA should account for his discretion by letting every individual owner have a clear picture about the way he exercises his discretion. The Secretary should explain to them why he grants the exemption and what the rationale behind the decision

is. In this way, the well-briefed flat owners may have detailed information to work on and to take appropriate actions. Meeting Point feels that, in the long run, these administrative guidelines should, at the end of the day, be enshrined in the law through proper legislative procedures so as to safeguard flat owners' interests.

Secondly, the future roles of the Lands Tribunal. Meeting Point would like to reiterate that the Government should appropriate ample resources for the Lands Tribunal so that the waiting time for hearing would not be drastically lengthened due to an increase of cases concerning building management. According to the common law, "Delays defeat equities". In view of this, Meeting Point feels that immediate consideration should be given to the appropriation of fund so that fund will be made available by 1 April next year, the latest. More resources may enable the Lands Tribunal to exercise the duties as proposed in the Bill as soon as practicable. Meeting Point holds that it is merely an interim measure to have the Lands Tribunal hearing cases of building management. This arrangement is made to serve the purpose that the Ordinance would be implemented by a law enforcement body as soon as practicable. Since the nature of building management cases is different from that of tenancy disputes, it is expected that a lot of management problems will come to the surface and lead to legal proceedings after the passage of the Bill. For this reason, it is necessary to set up an independent Building Management Tribunal in the long run.

Thirdly, on the question of developers holding a majority share of an estate. This issue involves a balance in the relationship between the developers' interests and the flat owners' interests and the right to use and manage the commercial units, domestic units and the common utilities. It is a rather complicated issue and cannot be resolved by means of a blanket approach. At the moment, it calls for different professional advice to exert collective efforts in dealing with, and monitoring, the distribution of shares in respect of different types of Deed of Mutual Covenants.

Finally, Meeting Point proposes that the Government should re-establish the Private Building Advisory Committee immediately after the enactment of the Bill so that the Committee can carry out discussions and take follow-up actions to plug the aforesaid loopholes in the law. The Committee can then examine the administrative guidelines relating to SHA's processing of exemption application and to put forward proposals as well. For this reason, Meeting Point is going to abstain from voting in respect of clauses 34 and 33A of the Bill but will support other amendments in the Bill.

Mr President, these are my remarks.

SECRETARY FOR HOME AFFAIRS: Mr President, I am most grateful to the Honourable Allen LEE and his colleagues on the ad hoc committee to study the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 for their wise counsel and the time they have spent in examining the Bill.

This Bill addresses the multifarious aspects of building management which impacts on the quality of life of a significant part of our population. Its main purpose is to facilitate the creation of owners' corporations and to increase controls over management committees of owners' corporations. It demands the concerted efforts of building owners, tenants, managers and other parties to each play their own part within the framework provided by this Bill in order to enhance the standard of building management in Hong Kong.

As a result of the meticulous attention which Members of the ad hoc group have given to the scrutiny of this Bill, many amendments have been made. Some of the Committee stage amendments which will be introduced later on are complex. We would not have been able to accomplish the amendment exercise in time without the unfailing support and the hard work of the Law Draftsman.

As mentioned by a number of Honourable Members, the ad hoc group supports the extension of the scope of the Lands Tribunal to deal with building management matters as an interim measure; their long-term aim being the setting up of a building management tribunal. While I have no wish to disagree with the ad hoc group's long-term aim, it is important that we take a realistic approach. This is because we have yet to secure the necessary resource to extend the jurisdiction of the Lands Tribunal to cover building management with effect from 1 April 1994. However, Members will be pleased to note that the Judiciary has indicated that it will bid for the additional resources as appropriate to implement this proposal in the context of the 1994-95 Estimates.

If we take things a step at a time, our first priority in this regard must be to extend the jurisdiction of the Lands Tribunal by the target date, that is, 1 April next year. With that accomplished and in the light of the actual working experience which has accrued, we would then consider our way forward in the way suggested by Members.

A few Members have raised the point that some developers hold more than 50% of the share of an estate. I regret that we do not have precise figure as to how many buildings there are in this category but we believe that such numbers are relatively few. It is true that in such cases the other owners may find it difficult to dismiss the manager if the need for it arises. However it is important to note that under this Bill the owners can still incorporate themselves under the amended Ordinance and present the collective views on management of their estate to the manager. I am sure that the manager will not take this collective view of the owners lightly. Members will have noted that under section 34E(5) the Secretary for Home Affairs is required to publish in the Gazette guidelines relating to the exercise of the authority discretion under

subsection 4 as noted by the Honourable James TO. We have already prepared draft guidelines and they are being finalized and will be published in due course in the Gazette as provided for in the law. The various suggestions which have been put forward by Members this afternoon will be taken into consideration before we finalize those guidelines.

As regards the related point made by a few Honourable Members in respect of owners being kept informed of an application under this section, that is section 34E(4), by the manager of the building to exclude the application to the building of paragraph 7 of the seventh schedule, the short answer must be that the owners will have to be informed. They will indeed be notified by a suitable means under a notification scheme. We will in due course publish for general information the notification scheme in implementing this particular section. We will take into account the very useful suggestions which Honourable Members have put forward before we finalize this particular scheme.

The expression of concern over CNTA's capability to implement the provisions under the new section 40A is noted. I should make clear that this new section simply reflects the ongoing duties of our Department. These are not particularly onerous duties as the powers are only invoked for the purpose of ascertaining the manner in which a building is being managed. This is not a requirement which normally applies to buildings under proper management. However I do take the point that some companies might be tempted to take advantage of the present hiatus.

Mr President, with these remarks, I recommend to Honourable Members the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 subject to the amendments to be moved at the Committee stage.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of Bill

Council went into Committee.

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992

Clauses 4, 6 to 9, 11, 12, 14, 15, 17, 18, 20, 22 to 25, 28 to 31, 33 and 38 to 48 were agreed to.

Clauses 1 to 3, 5, 10, 13, 16, 19, 26 and 34 to 36

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 1 is amended by adding a new subclause 1(2) to provide that the Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette and that different days may be so appointed for different provisions. This subclause will enable those parts of the Bill relating to the Lands Tribunal to be brought into effect at a later date.

Clause 3 is amended, *inter alia*, by providing a new definition of "building". The purpose is to enable owners of a large housing estate to form one owners' corporation for the estate. This will facilitate unified management.

Clauses 16 and 19 are amended by including "avoidance of doubt" provisions to ensure that in the event of any inconsistency between the Ordinance and the terms of a deed of mutual covenant or any other agreement, the Ordinance shall prevail.

Clause 16 on section 18 stipulates, *inter alia*, that any specified holder of an office of a management committee may receive an allowance as specified in the Fourth Schedule.

Clause 19 on section 21 relates to the determination of the amounts to be contributed by the owners to funds, and provides that the new Fifth Schedule shall govern the preparation of budgets and related matters.

Clause 34 is amended to include in the First Schedule "Slopes, gradients and retaining walls including sea walls (if any) comprising or forming part of any land which is in common ownership with the building." Some owners are unaware of their responsibilities for maintaining slopes and retaining walls within their private lots. This amendment simply reflects the on-going responsibilities of the owners.

Clause 35 amends the Second Schedule on "Composition and Procedure of Management Committee." Clause 36 amends the Third Schedule on "Meetings and Procedure of Corporation." The opportunity is taken to include "avoidance of doubt" provisions in them to ensure that in the event of any inconsistency between the Ordinance and the terms of a deed of mutual covenant or any other agreement, the Schedules shall prevail.

The other amendments are largely technical refinements and consequential amendments.

Mr Chairman, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended —

(a) by renumbering the clause as clause 1(1).

(b) by adding -

"(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette and different days may be so appointed for different provisions.".

Clause 2

That clause 2 be amended, by deleting "of the Multi-storey Buildings (Owners Incorporation) Ordinance (Cap. 344)".

Clause 3

That clause 3 be amended —

(a) by adding -

"(ba) by repealing the definition of "building" and substituting -

""building" means -

(a) any building which contains any number of flats comprising 2 or more levels, including basements or underground parking areas;

(b) any land upon which that building is erected; and

(c) any other land (if any) which -

(i) is in common ownership with that building or land; or

(ii) in relation to the appointment of a management committee under Part II or any application in respect thereof, is owned or held by any person for the common use, enjoyment and benefit (whether exclusively or otherwise) of the owners and occupiers of the flats in that building;";".

(b) by adding -

"(ca) by repealing the definition of "court";

(cb) by adding after the definition of "deed of mutual covenant" -

""estate" means the buildings or groups of buildings the subject of an application under section 34E(4B);

"exempt estate" means -

(a) any estate specified in the Ninth Schedule;

(b) any estate added to that Schedule under section 34E(4B);";

(cc) in the definition of "Land Registrar" by repealing "an Assistant Land Registrar appointed under section 9 of the New Territories Ordinance" and substituting "the Authority";".

(c) in paragraph (f) by adding after the proposed definition of "tenants' representative" -

""tribunal" means the Lands Tribunal established under section 3 of the Lands Tribunal Ordinance (Cap. 17).".

Clause 5

That clause 5 be amended, in the proposed section 3A(6) by deleting "court" in both places where it occurs and substituting "tribunal".

Clause 10

That clause 10 be amended, in the proposed section 10(1) (a) by deleting "Officer" and substituting "Registrar".

Clause 13

That clause 13 be amended, by deleting "Officer" and substituting "Registrar".

Clause 16

That clause 16(2) be amended, by adding after the proposed section 18(3)—

> "(4) No provision in a deed of mutual covenant or other agreement shall operate to prevent a person who is otherwise entitled to receive an allowance under this section from receiving that allowance and any such provision, including a provision purporting to substitute some lesser allowance (howsoever named) for that allowance, shall be void and of no effect.".

Clause 19

That clause 19(1) be amended, in the proposed section 21(1A) by adding "such amount (so determined under that subsection)" after "first".

That clause 19(2) be amended, by adding after the proposed section 21(4)—

> "(5) In the event of any inconsistency between this section (which shall be construed to include the Fifth Schedule) and the terms of a deed of mutual covenant or any other agreement, this section shall prevail.".

Clause 26

That clause 26 be amended —

(a) in the proposed section 34A -

(i) in subsection (1) -

(A) in paragraphs (a) and (b) by deleting "court" and substituting "tribunal"; and

(B) by deleting "Office" and substituting "Registry";

(ii) in subsection (2) -

(A) by deleting "Officer" and substituting "Registrar"; and

(B) in paragraph (b) by deleting "Office" and substituting "Registry"; and

(iii) in subsection (3) by deleting "court" and substituting "tribunal".

(b) in the proposed section 34B, in paragraph (a) of the definition of "relevant owner" -

(i) by deleting "Officer" and substituting "Registrar"; and

(ii) by deleting "Office" and substituting "Registry".

Clause 34

That clause 34(c) be amended, by adding after the proposed paragraph 14 —

"15. Slopes, gradients and retaining walls including sea walls (if any) comprising or forming part of any land which is in common ownership with the building.".

Clause 35

That clause 35(a) be amended, in the proposed paragraph 2(1) (c) by deleting "however" and substituting "howsoever".

That clause 35(j)(v) be amended, in the proposed paragraph 10(4B) by deleting "14" and substituting "28".

That clause 35(k) be amended, by adding after the proposed paragraph 11—

"12. In the event of any inconsistency between this Schedule and the terms of a deed of mutual covenant or any other agreement, this Schedule shall prevail.".

Clause 36

That 36(e) be amended—

(a) in the proposed paragraph 6(3) by deleting "14" and substituting "28".

(b) by adding after the proposed paragraph 7 -

"8. In the event of any inconsistency between this Schedule and the terms of a deed of mutual covenant or any other agreement, this Schedule shall prevail.".

Question on the amendments proposed, put and agreed to.

Question on clauses 1 to 3, 5, 10, 13, 16, 19, 26 and 34 to 36, as amended, proposed, put and agreed to.

Clauses 21, 27 and 37

MR ALLEN LEE: Mr Chairman, I move that the clauses specified be amended as set out in the paper under my name circulated to Members.

Clause 21(1) is amended so that the corporation's income and expenditure account and balance sheet should be signed by both the Chairman and the Treasurer or the Secretary of the Management Committee.

Regarding clause 27, I have already explained during the Second Reading debate of the Bill why it is considered necessary to amend section 34E concerning unified management of large estates and the Secretary for Home Affairs' powers to grant exemptions. I will concentrate on the remaining amendments.

The amendment to the proposed section 34D(1) is a purely technical amendment in view of the different commencement dates for the Ordinance.

The proposed addition of new section 34L seeks to nullify any unfair clauses in Deeds of Mutual Covenants which provided for the owners to indemnify the manager of a building in respect of any legal costs arising out of litigation between such owners and the managers.

Turning to clause 37, the proposed Fourth Schedule is amended to make it clear that the maximum allowance payable under the third column of the Fourth Schedule is in respect of each holder of office of a management committee.

The proposed paragraph 5(5)(a) of the Seventh Schedule is amended to provide that in case of a corporation formed before the commencement of the Building Management Ordinance, the period of notice given for the termination of a manager's appointment under paragraph 7 of the Seventh Schedule shall be a period of nine months from the commencement of the new Ordinance instead of a year. If any person has given a written undertaking or agreement to the Government to manage and be responsible for the management of a building and the corporation has appointed a new manager, that person shall not be held liable for the new manager's acts or omissions.

The proposed paragraph 7(7) of the Seventh Schedule is amended so that the corporation shall be deemed to have given such an indemnity to that person to be liable for any act or omission by the new manager.

There are two new schedules which are proposed to be added to the Bill. The Ninth Schedule, initially a blank one, will include the exempt estates and any estates so added by the Secretary for Home Affairs under section 34E(4b) of the new Ordinance.

The Tenth Schedule provides for the jurisdiction of the Lands Tribunal deal with the building management matters. The background of these amendments has already been explained by me earlier during the Second Reading debate of the Bill.

Mr Chairman, I propose to move.

Proposed amendments

Clause 21

That clause 21(1) be amended, in the proposed section 27(1) by adding "and the secretary or the treasurer" after "chairman".

Clause 27

That clause 27 be amended —

(a) in the proposed section 34D(1), in the definition of "material date" by adding "of section 27" after "commencement".

(b) in the proposed section 34E by deleting subsection (4) and substituting -

"(4) The Authority may -

(a) subject to subsection (4A), upon application by the manager of the building or any other person having an interest in the management of the building; or

(b) in the case of an exempt estate, upon the application of the person ("the single manager") who for the time being is, for the purpose of the deed of mutual covenant in respect of the buildings or groups of buildings comprising the estate, managing that estate,

from time to time by notice in the Gazette, exclude the application to the building, or to the buildings or groups of buildings comprising the exempt estate, as the case may be, of paragraph 7 of the Seventh Schedule for a period not exceeding 3 years and subject to such conditions (if any) as he sees fit.

(4A) The Authority shall not exclude the application to the building of paragraph 7 of the Seventh Schedule under subsection (4)(a) if the Authority receives (in aggregate) a number of notices of objection from owners of not less than 50% of the shares in respect of that building, such notices opposing the application under that subsection.

(4B) Subject to subsection (4C), the Authority may, upon application by any owner, manager, person referred to in section 3(1)(a) or (b), any other person having an interest in the management of a building or any single manager, specify by order published in the Gazette the addition of any estate to, or the deletion of any estate (being an exempt estate) from, the Ninth Schedule.

(4C) No estate may be so specified under subsection (4B) if -

(a) the Authority receives (in aggregate) a number of notices of objection from owners of not less than 50% of the shares in respect of the buildings or groups of buildings comprising the estate, such notices opposing the addition of that estate to, or the deletion of that estate (being an exempt estate) from, the Ninth Schedule;

(b) the conditions (if any) imposed under subsection (4) are not met or complied with; and

(c) in the case of the proposed addition of an estate to the Ninth Schedule, the buildings or groups of buildings comprising the estate are not being managed by a single manager.".

(c) by adding after the proposed section 34K -

"34L. Indemnity of manager in respect of legal costs, etc.

No provision in a deed of mutual covenant or other agreement shall operate to entitle the manager of any building to be indemnified by a corporation or by the owners of the flats in that building in respect of any legal costs, charges, expenses or fees relating to any civil or criminal proceedings (whether successful or otherwise) between or in respect of that manager and that corporation or those owners and any such provision shall be void and of no effect.".

Clause 37

That clause 37 be amended —

(a) in the proposed Fourth Schedule by deleting "THE HOLDERS" and substituting "EACH HOLDER".

(b) in the proposed Seventh Schedule -

(i) by deleting paragraph 7(5) (a) and substituting -

"(a) in the case of a corporation in respect of which a certificate of registration was issued under section 8 prior to the commencement of section 37 of the Multi-

storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 (of 1993), by a notice that expires before the end of a period of 9 months from that commencement;

(aa) in any other case, by a notice that expires before the end of a period of 1 year from the commencement of section 37 of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 (of 1993);"; and

(ii) by deleting paragraph 7(7) and substituting -

"(7) If any person has given an undertaking in writing to, or has entered into an agreement with, the Government to manage or be responsible for the management of the building, and the corporation has appointed a manager under subparagraph (6)(b), the corporation shall be deemed to have given to that person an instrument of indemnity under which the corporation shall be liable to indemnify that person in respect of any act or omission by the manager appointed under that subparagraph that may otherwise render that person liable for a breach of that undertaking or agreement.".

(c) by adding after the proposed Eighth Schedule -

"NINTH SCHEDULE [ss. 2, 34E & 42]
EXEMPT ESTATES

TENTH SCHEDULE [s. 45]

HEARING AND DETERMINATION
OF SPECIFIED PROCEEDINGS
BY TRIBUNAL

1. Proceedings relating to the interpretation and enforcement of the provisions of this Ordinance.

2. Proceedings relating to the interpretation and enforcement of the terms and provisions of a deed of mutual covenant, including such terms or provisions

impliedly incorporated into a deed of mutual covenant under Part VIA.

3. Proceedings relating to the use, occupation, enjoyment, possession or ownership of the common parts or any other part of a building in which the owners have a common interest.

4. Proceedings relating to the calculation or apportionment of -

(a) any sums payable or purported to be payable under a deed of mutual covenant (if any);

(b) the funds and contributions referred to in sections 20 and 21;

(c) any management expenses or charges (howsoever named);

(d) any other outgoings, payments, debts or liabilities due or liable under this Ordinance or in accordance with the terms and provisions of an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).

5. Proceedings relating to any question of law concerning the powers and duties of -

(a) a corporation;

(b) a management committee, and of the chairman, secretary and treasurer thereof;

(c) a manager within the meaning of section 34D(1);

(d) an owners' committee within the meaning of that section;

(e) the tenants' representative, including such powers and duties (if any) of a financial, pecuniary or fiduciary nature.

6. Proceedings relating to any question of law concerning ownership, occupation or possession of the whole or any part of the building, including ownership of an undivided share in a building or in land on which there is a building.

7. Without prejudice to paragraph 6 and subject to section 45(3), proceedings relating to any question of law concerning the extent and applicability or otherwise of any contractual or proprietory right enjoyed by owners and occupiers or otherwise referred to in the terms and provisions of an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).

8. Proceedings relating to any question of law concerning any breach or alleged breach of any covenant, term or condition specified in an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).

9. Proceedings relating to the enforcement of any contractual or proprietory right referred to in paragraph 7 or any covenant, term or condition referred to in paragraph 8, as the case may be, whether by way of specific performance, injunction, declaration, damages or otherwise.".

Question on the amendments proposed, put and agreed to.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be further amended as set out under my name in the paper circulated to Members.

Clauses 21 and 27 are amended by including "avoidance of doubt" provisions in them.

Clause 21 on section 27 relates to the accounts of an owners' corporation. The clause requires the income and expenditure account and balance sheet prepared by a management committee to be properly audited, and provides that the new Sixth Schedule shall have effect with respect to the maintenance by a management committee of proper books of account and records.

Clause 27 on section 34J provides for the right to establish an owners' corporation and conduct business.

The "avoidance of doubt" provisions are added to ensure that in the event of any inconsistency between these sections and the terms of a deed of mutual covenant, the sections shall prevail.

The amendments to clause 37 are largely technical refinements.

Mr Chairman, I beg to move.

Proposed amendments

Clause 21

That clause 21(3) be amended, by adding after the proposed section 27(4) —

"(5) In the event of any inconsistency between this section (which shall be construed to include the Sixth Schedule) and the terms of a deed of mutual covenant or any other agreement, this section shall prevail.".

Clause 27

That clause 27 be amended, in the proposed section 34J —

(a) by deleting the heading and substituting -

"Right to establish corporation and conduct business";

(b) by renumbering it as section 34J(1); and

(c) by adding -

"(2) No provision in a deed of mutual covenant (whether such provision is of a procedural nature or otherwise) shall operate to prevent any business relating to the management of a building being conducted at any meeting by any owner or any person managing the building and any such provision shall be void and of no effect.

(3) Any provision in a deed of mutual covenant relating to a quorum at any meeting the attainment of which is in practice impossible or virtually impossible to achieve and which has the effect of preventing or frustrating the consideration at that meeting of any business relating to the management of a building by any owner or any person managing the building shall be void and of no effect.

(4) The reference to "any business relating to the management of a building" in this section shall be construed to include any such business relating to -

(a) the appointment of a management committee under Part II; or

(b) the termination of a manager's appointment in accordance with the Seventh Schedule.".

Clause 37

That clause 37 be amended —

(a) in the proposed Fifth Schedule by adding "& (5)" after "21(4)" within the square brackets.

(b) in the proposed Sixth Schedule by adding "& (5)" after "27(4)" within the square brackets.

(c) in the proposed Seventh Schedule -

(i) by adding ", 34J" after "34E" within the square brackets;

(ii) in paragraph 1(1) by deleting "and (6)" and substituting ", (6) and (8)";

(iii) in paragraph 7(6) (b) by deleting ", subject to subparagraph (7),"; and

(iv) in paragraph 7(8) by adding at the end -

"but does not apply to any single manager referred to in that section".

(d) in the proposed Eighth Schedule, in paragraph 13(c) (iii) by deleting "Office" and substituting "Registry".

Question on the amendments proposed, put and agreed to.

Question on clauses 21, 27 and 37, as amended, proposed, put and agreed to.

Clause 32

MR ALLEN LEE: Mr Chairman, I move that clause 32 be amended as set out in the paper circulated to Members.

Clause 32 is amended so that the Secretary for Home Affairs may amend the Ninth Schedule by order published in the Gazette. The Ninth Schedule contains the exempted estates and any estates so added by the Secretary under section 34E(4b) of the new Ordinance.

Mr Chairman, I propose to move.

Proposed amendment

Clause 32

That clause 32 be amended, in the proposed section 42 —

(a) in subsection (1) by deleting "Schedule" and substituting "and Ninth Schedules"; and

(b) by adding -

"(3) The Authority may, by order published in the Gazette, amend the Ninth Schedule.".

Question on the amendment proposed, put and agreed to.

Question on clause 32, as amended, proposed, put and agreed to.

New clause 1A Long title amended

New clause 49 Schedule amended

New clause 50 Annex amended

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 1A, 49 and 50 as set out in the paper circulated to Members be read the Second time.

A new clause 1(A) is introduced to amend the long title of the Ordinance. The long title will now read as follows: "To facilitate the incorporation of owners of flats in buildings or groups of buildings, to provide for the

management of buildings or groups of buildings and for matters incidental thereto or connected therewith". The amendments to the long title are necessary to bring it in line with the amended Ordinance.

New clauses 49 and 50 provide consequential amendments to the Schedule to the Clubs (Safety of Premises) (Exclusion) Order, and the Annex to the Interpretation and General Clauses (Chinese Version of Short Titles) Notice.

Mr Chairman, I beg to move.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 1A, 49 and 50 be added to the Bill.

Proposed additions

New clause 1A

That the Bill be amended, by adding —

"1A. Long title amended

The long title of the Multi-storey Buildings (Owners Incorporation) Ordinance (Cap. 344) is amended -

(a) by repealing "multi-storey" and substituting "buildings or groups of"; and

(b) by repealing "such" and substituting "buildings or groups of".".

New clause 49

That the Bill be amended, by adding —

"Clubs (Safety of Premises) (Exclusion) Order

49. Schedule amended

The Schedule to the Clubs (Safety of Premises) (Exclusion) Order (Cap. 376 sub. leg.) is amended in item 1 -

(a) by repealing "Multi-storey Buildings (Owners Incorporation)" and substituting "Building Management"; and

(b) in the Chinese text by repealing "多層建築物(業主法團)" and substituting "建築物管理".

New clause 50

That the Bill be amended, by adding —

Interpretation and General Clauses (Chinese Version of Short Titles) Notice

50. Annex amended

The Annex to the Interpretationand General Clauses (Chinese Version of Short Titles) Notice (L.N.(C) 1 of 1992) is amended in the item relating to Chapter 344 by repealing "多層建築物(業主法團)" and "Multi-storey Buildings (Owners Incorporation)" and substituting "建築物管理" and "Building Management" respectively.".

Question on the additions of the new clauses proposed, put and agreed to.

New clause 16A	Corporation may sell or register charges against flat in certain circumstances
New clause 30A	Powers of entry and inspection
New clause 33A	Part added
New clause 38A	Jurisdiction of the Tribunal
New clause 38B	Ordinances under which matters may be submitted to the Tribunal for determination

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MR ALLEN LEE: Mr Chairman, I move that new clauses 16A, 30A, 33A, 38A and 38B as set out in the paper circulated to Members be read the Second time.

New clause 16A extends the corporation's powers under the existing section 19 of the Ordinance to cover certain situations under section 40. Under

the existing section 19 the corporation may sell an owner's interest in the land or register a charge against such interest in the Land Registry in certain circumstances. The ad hoc group considers that such powers should be extended to provide an effective and affordable means for the corporation to recover any costs as incurred by the management committee in its exercise of power conferred by section 40(1)(a)(2) or section 40(1)(b).

New clause 30A makes minor amendments to section 40 which are consequential to the changes outlined above.

New clause 33A adds a new part VIII by vesting jurisdiction in the Lands Tribunal in dealing with building management matters.

New clauses 38A and 38B make some consequential amendments to the jurisdiction of the Lands Tribunal under section 8 of the Lands Tribunal Ordinance (Cap. 17).

Mr Chairman, I beg to move.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

MR ALLEN LEE: Mr Chairman, I move that new clauses 16A, 30A, 33A, 38A and 38B be added to the Bill.

Proposed additions

New clause 16A

That the Bill be amended, by adding —

"16A. Corporation may sell or register charges against flat in certain circumstances

(1) Section 19 is amended by renumbering it as section 19(1).

(2) Section 19 is amended by adding -

"(2) The reference in subsection (1) to "fails to pay any sum which is payable under the deed of mutual covenant" shall be construed to extend to the failure by an owner to pay the costs incurred by the management committee in connection with the exercise by it of the powers conferred by section 40(1) (a) (ii) or (b).".".

New clause 30A

That the Bill be amended, by adding —

"30A. Powers of entry and inspection

(1) Section 40(1) is amended by adding "owner or" before "occupier".

(2) Section 40(3) is amended by repealing "Any" and substituting "Notwithstanding section 19(2), any".".

New clause 33A

That the Bill be amended, by adding —

"33A. Part added

The following is added -

"PART VIII

JURISDICTION VESTED IN
LANDS TRIBUNAL

45. Jurisdiction of tribunal in relation to building management

(1) The tribunal shall have jurisdiction to hear and determine any proceedings specified in the Tenth Schedule.

(2) No person other than a person to whom this section applies shall be competent to commence any proceedings referred to in subsection (1).

(3) Subject to the provisions of this Ordinance, nothing in this section or the Tenth Schedule shall be construed to vest in the tribunal jurisdiction to make any order which would, if made, have the effect of rendering void, negativing or substantially varying in whole or in part any contractual or proprietory right enjoyed by any owner or occupier or otherwise referred to in the terms and provisions of an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).

(4) This section applies to the following persons, namely -

(a) an owner;

(b) a person referred to in section 3(1)(a) or (b);

(c) a management committee;

(d) a corporation;

(e) a manager within the meaning of Part VIA;

(f) an owners' committee within the meaning of that Part;

(g) a registered mortgagee;

(h) an administrator;

(i) with leave of the tribunal, the tenants' representative; or

(j) with leave of the tribunal, any other person specified in an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).

(5) In this section and the Tenth Schedule, "proprietory right" includes any such right express or implied whether specified in an easement, licence, permission or otherwise.".".

New clause 38A, 38B

That the Bill be amended, by adding —

"Lands Tribunal Ordinance

38A. Jurisdiction of the Tribunal

(1) Section 8(5) of the Lands Tribunal Ordinance (Cap. 17) is amended by adding "including any Ordinance specified in the Schedule" at the end.

(2) Section 8(9) is amended by repealing "District" and substituting "High".

38B. Ordinances under which matters may be submitted to the Tribunal for determination

The Schedule is amended by adding -

"344. Building Management Ordinance.

357. Electricity Networks (Statutory Easements) Ordinance.".

Question on the addition of the new clauses proposed, put and agreed to.

Schedule

MR ALLEN LEE: Mr Chairman, I move that the schedule be amended as set out in the paper circulated to Members.

The first proposed amendment is a consequential amendment related to the extension of the time limit of a management committee to apply for registration of an owners corporation with the Land Registry from 14 days to 28 days.

The remaining proposed amendments are consequential amendments relating to the extension of the jurisdiction of the Lands Tribunal.

Mr Chairman, I beg to move.

Proposed amendment

Schedule

That schedule Part 1 be amended —

(a) in the entry relating to section 7(1) by deleting "14" in column 3 and substituting "28".

(b) in the entry relating to section 7(3) (b) by adding ""court" (in both places where it occurs)" and ""tribunal"" in columns 2 and 3 respectively.

(c) by adding -

"4(1)	"court" (in both places where it occurs)	"tribunal"
4(2)	"court"	"tribunal"
16(b)	"court"	"the tribunal"
17(1)(b)	"court in which such judgment was given or order made"	"tribunal"
21(3)(a)	"a court"	"the tribunal"
30(3)(b)	"court"	"tribunal"
31(1)	"court"	"tribunal"
31(2)	"court"	"tribunal"".

Question on the amendment proposed, put and agreed to.

Question on schedule, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992

had passed through Committee with amendments. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.