

Date : May 19, 2001

Clerk to the Subcommittee on Review  
of the Building Management Ordinance  
Legislative Council Secretariat  
3/F, Citibank Tower,  
3 Garden Road, Central  
Hong Kong

Dear Sir,

Review of the Building Management Ordinance (BMO) Cap.344

We refer to the Legislative Council Subcommittee invitation on review of the Building Management Ordinance Cap.344.

Basically, we fully support Home Affairs Bureau's (HAB) views as stated in the paper (Appendix II) addressed the issue raised in the letter dated 04/04/2001 from the clerk to subcommittee to the HAB on

- i) formation of owners' corporation, (OC);
- ii) provisions of Deed of Mutual Covenant (DMC);
- iii) meetings and procedure of OC;
- iv) composition and procedure of Management Committee;
- v) liabilities of members of OC; and
- vi) ambit of the BMO;

However, we wish that the sub-committee could consider our views below :-

I) Appointment of Management Committee (MC)

- (1) BMO Part II clause 3 (2) (b) is not consistent with the majority rule in any sense as the MC may be appointed by a resolution of the owner of not less than 30% of the shares.

We are of the view that this clause be amended as "If there is no Deed of Mutual Covenant, or the Deed contains no provision for the appointment of a management committee, by a resolution of simple majority of owners of not less than 30% of the shares" vote for the appointment.

That means no management committee may be appointed if, say, 31% voted against and 30% voted for the motion. And no management committee can be formed if 28% voted against and 29% voted for the motion.

- (2) To avoid any conflict of interest, any member(s) of the convener for the formation of a management committee who, at the same time stand for election to the Committee, shall not chair the meeting to direct its proceedings.

II) Provision of Deed of Mutual Covenant

BMO Clause 4 of the seventh schedule - Mandatory Terms in DMC provides that : -

- (1) The manager shall establish and maintain a special fund to provide for expenditure of a kind not expected by him to be incurred annually.
- (2) If there is a corporation, the corporation shall determine, by a resolution of the owners, the amount to be contributed to the special fund by the owners in any financial year, and the time when those contributions shall be payable.

To be in line with the recommendations on Timely Maintenance made by the Task Force on Building Safety and Preventive Maintenance, we view that a minimum percentage of the management fee be set aside so that funds could be saved and be available for expenditure of non-recurrent or of capital nature instead of calling for contribution of a sizable sum in a short period of time.

- III) BMO Clause 5 (b) of the third schedule provides that the quorum at a meeting of the corporation shall be 10% of the owners. In the case of mixed development of commercial ( say 5% of the total no. of shares), carpark (3% of the total no. of shares) and residential (92% of the total no. of shares), the quorum of 10% cannot be met for an agenda item required resolution on an OC meeting (e.g. for expenditure > \$200,000) concerning the commercial or carpark portion only as the residential owners may not be keen enough to attend meeting of no concern to them. Therefore, we view that this clause could be amended to rectify the deficiency.

We shall be pleased to make oral representations to the Subcommittee and please contact our Ms. Xandria Chan at 2544 3111 if you have any queries.

Yours faithfully,

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President  
Hong Kong Association  
of Property Management  
Companies

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