



16th June 2005

By Fax to 2509-9055
and e-mail

Clerk to Bills Committee
On Building Management (Amendment) Bill 2005
Legislative Council Secretariat
3/F, Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Sir,

Building Management (Amendment Bill) 2005

May we submit our views on the subject.

The proposals in the main are of benefit, but we see a need to look at the practical implications of certain parts of this bill and the effects they will have on normal building management operations, if implemented.

1. Proposal to remove Management Committee members acting in "Good Faith" from liability.

We believe the proposal to limit the liability of members of a management committee, is very problematical. Membership of any management committee is a very serious matter and commitment, especially where the consideration of millions of dollars of owners money and the care and maintenance of people's homes are concerned. Owners Corporations are the 'de facto' management company of a property, and have all the powers necessary to fulfill that function. Owners Corporations are in essence unlimited companies.

Members of management committees are in a similar position to the directors of a company or any other property management organization, and have clear duties to all the owners they are elected to represent. They have put themselves into this situation freely, and must accept the fact that they can be liable and accountable for the decisions for which they are responsible.

Much has been made about the point, of "acting in good faith", but this may cover acting in "a negligent manner", and failing to carry out a proper duty of care to owners. It is too general a term.

Swire Properties Limited

21/F Cityplaza Three 14 Taikoo Wan Road Taikoo Shing Island East Hong Kong
Tel (852) 2844 4988 Fax (852) 2885 8305 www.swireproperties.com



What is proposed does not support good responsible management, in our opinion. Certainly there can be no defence where actions have been taken with criminal intent, for the specific advantage of any member of a management committee, or to circumvent provisions in areas such as the acquisition of supplies, by splitting tenders into smaller parts.

There is no need for this clause, the existing situation is adequate. There are in any case practical measures that can be taken to limit the impact such as the taking out of Professional Indemnity Insurance, and through the employment of a professional manager. It would help if the liability implications of forming an owners corporation are known to owners at the onset, also that they can easily access training and advice on their responsibilities. This is preferable to providing unnecessary protection.

2. Membership of Management Committees

Any self declarations must include adequate disclosures to avoid, and show up any conflicts of interest. Owners who have not paid their management fees should be barred from voting at meetings.

3. Proposal to put approval of tenders to an open meeting

We do not agree with this proposal. In our opinion, the code of practice as written is already adequate for this purpose. What is proposed will further remove flexibility in management that any property management organization may have, through the forced use of unnecessary rules. Major contracts are always tendered out. What is proposed could have a major impact on renovation projects within estates and delay much needed maintenance works. No proper justification of this measure has been put forward.

We understand also that the Housing, Lands and Planning Bureau are to bring separate mandatory maintenance requirements forward for discussion by end of this year. What happens if a major repair project to comply with statutory maintenance requirements is blocked by residents at an open meeting? Residents elect a management committee or an owners committee to look after their requirements. Managers explain, and ensure the acceptance and approval of committees, and residents, before proceeding with major works. Budgets and detailed plans have to be drawn up. Opening up these proposals for major scrutiny again will lead to totally unnecessary delays and additional workload, especially where some owners unreasonably dissent.

Section 21 already has a requirement for approval via general meetings for any budget increase greater than 50%. Large renovation works can easily cost many times over normal budget. They take a long time to organize and collect money for. One approval under Section 21 is adequate. After that, the owners representatives can deal with the tender, as the residents have already given the go ahead. This proposal should be withdrawn.



The suggestion that owners incorporations, can "opt out" of these provisions underlines that this proposal should not have been introduced in the first place, and its' bureaucratic nature. Owners incorporations are unlimited companies with all the liabilities that come with it, their management committees are very unlikely to use this mechanism so as to avoid any further possible liability themselves.

The proposal also ignores the difficulties in obtaining quorums at meetings. If owners have already agreed to the works, and paid the money for them, they do not want to again waste time on something they have already passed. This proposal should be removed from the bill as it is unnecessary.

4. Insurance – Building Management (Third Party Risk Insurance) Regulations 2005, Insufficiency of claim amount per event.

The new regulations are a move in a right direction, however in the light of Albert House case, where compensation exceeding \$25 million, it is highly questionable that a minimum claim provision of \$10 million per event will be adequate. The majority of property management companies hold policies well in excess of this, usually in the range of \$30 million to \$100 million per event.

There can be no support for a figure as low as \$10 million and it should be re-considered in line with recent compensation awards, and market practice.

I hope the above is useful.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Michael Roland Price', written over a horizontal line.

Michael Roland Price
Group Estate Manager
Tel. 2844-4915

MRP/rt