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

By fax and e-mail

Dear Miss Tai,

Building Management (Amendment) Bill 2005

We would like to submit our views on the subject.

On the whole, the proposed Bill is a step in the right direction in facilitating the management of buildings in Hong Kong, but we need to examine the practical implications of certain proposals in this Bill and the effects they have on the building management operations.

1. Proposal to Exempt MC Members from Personal Liability

The proposal to provide a member of an MC doing anything in good faith in the performance of the functions of an OC incurs no personal liability should be treated with utmost care. MC members acting in the similar capacity of directors of a company are expected to be aware of their liabilities and accountabilities for the decisions they make. It is a mythical assumption that owners would be encouraged to participate in the work of an OC by relieving their personal liability. "Acting in good faith" is often too ambiguous a term to be interpreted by members of an MC, in particular those without the knowledge to manage their buildings.

We are deeply concerned that a blanket exemption of liabilities would encourage MC members to make unreasonable decisions which may not be in the interest of owners. MC members should be encouraged to make collective decisions which are neither tortuous nor ultra vires in order to be exempted from liabilities. The Institute would rather prefer training and advice to MC members for acquiring the knowledge to properly conduct their building management operations.

2. Procurement of Goods and Services

In looking at this proposal, consideration must be given to the proprietary nature of certain supplies and services, a good example would be the maintenance of lifts and escalators which requires the supply of original spare parts, control circuits of computers and the expertise of repair technicians on the unique engineering quality of the brand product.

The proposal would encourage frequent change of service contractors, even property managers. This is in contradiction to the initiatives of the Government to proactively address the environmental issues, building quality standards and public hygiene. Small and maverick contractors with short term business objectives will seek to undercut prices in order to secure the contracts. Unless there is a reasonable security of tenure, service contractors can hardly be expected to have commitment in future planning for advancing and investing in the quality of services.

The proposal also ignores the difficulties in obtaining quorums at owners meetings and the subsequent arrangement in the event of insufficient quorum to pass the resolution on selection of tenders. To avoid corruption and abuse of power by the MCs, legislations should be introduced to make their decision process as transparent as possible. The Institute is in favour of retaining the existing Code of Practice on the procurement of supplies, goods and services as stipulated in the BMO.

3. Building Management (Third Party Risks Insurance)Regulation

We are supportive of the new regulation as a risk averse measure to safeguard the interest of building owners and the public, however, in the light of the Albert House incident, where compensation exceeding \$25 million, it is arguable that a minimum insured amount of \$10 million per event will be adequate. The figure should be re-considered in line with recent compensation awards and market practice.

4. Licensing of Property Management Companies and Practitioners

This amendment bill has not recognized the importance of professional property management in Hong Kong. The onslaught of SARS in 2003 and the many recent incidents of building safety have proved beyond doubt the indispensable role of professional property management in protecting environmental hygiene, public safety and living quality of the people of Hong Kong. It is imperative that we must have a licensing system to regulate the conduct and behavior of practicing property management companies and individuals in order that the quality and standards of the industry can be enhanced.

The Institute is supportive of other amendments in the Bill and shall be glad to participate in future consultative activities to be organized by the Home Affairs Department on this issue.

Yours sincerely,

Ricky Yuen
Chairman
The Chartered Institute of Housing Asian Pacific Branch