



21 September 2006

**URGENT BY HAND & BY EMAIL**

Our Ref. SMPC/ M43349

Ms. Flora Tai  
Clerk to Bills Committee  
Bills Committee on Building Management (Amendment) Bill 2005  
Legislative Council Building  
Jackson Road  
Central, Hong Kong

Dear Ms. Tai,

**Bills Committee on the Building Management (Amendment) Bill 2005  
- Borrowing Power of Owners' Corporations**

We refer to the captioned Proposal and would like to submit the comments of the Institute's Small and Medium Practitioners Committee and its Building Management Working Group as follows:-

**1. The Proposal**

We support the spirit of the proposal that empower owners' corporations (OCs) to borrow on behalf of those defaulting owners from the Government to carry out statutory works.

**2. Para. 8 – Scope of Borrowing Power of OCs**

Paragraph 8 stated that in borrowing from the Government, the OC, as the borrower of the loan, will be acting as an agent on behalf of those defaulting owners only, instead of all the owners of the building or itself.

We suggest that the document should be more explicit in spelling out the obligations of the OC and their respective liabilities and indemnities in their roles as agents where available, in the document.

**3. Para. 9 – Loan Amount for Each Individual Owner**

Ownership in properties takes various forms such as "Joint owners", "Owners in common" as well as "Corporate owners". There is lack of clarity in the document to address the respective responsibilities and liabilities of the fore mentioned ownership categories. We would suggest that the document should define more clearly the respective obligations and liabilities of the respective owner categories, which could have an impact on the timeline if the owners concerned opted to engage in the appeal process.

Furthermore, it is silent in the document to deal with defaulting owners who may hold more than one property which are subject to statutory repair work. Is the cap of the loan amount for \$50,000 applied on individual owner on each property in question, or is it applied on accumulated basis that the cap should be shared among all properties in default owned by the same individual owner?



#### **4. Para. 11 – Cap on the Loan Amount for Each Individual Owner**

Paragraph 11 mentioned that based on the experience of the HKSAR government, the share of costs of works relating to a building for individual owner should be lower than \$50,000. We consider that the estimation appeared on the low side that the \$50,000 estimate per owner may not reflect fairly the prevailing market price of the repair work in question.

Follow on paragraph 9 above, in the event where an owner had already taken out a loan from the HKSAR government on another default property, this owner would not be eligible for the second property. The OC of the second property would not be able to obtain loan on their behalf and consequently may stall the statutory repair work.

#### **5. Para. 23 – Concerns**

We support the intention of this document in addressing the need to avoid abuse by OCs and to safeguard the interests of individual owners thereby assisting the OCs only in situation where the owners are missing because they will not appeal. We recommend that the proposal should also allow the OCs to borrow for those owners who are not missing. This would enable the repair work to be carried out efficiently and the recoverability of the loan involved will be contingent on the decision of the appeal. This would prevent the default owner to delay the repair process using the appeal mechanism.

#### **6. Section D Para. 20 – Appeal by owners with the Land Tribunal**

As per our last submission dated 7 September 2005, we reiterate that a separate tribunal other than the Land Tribunal should be established to settle the disputes arising from building management on the grounds as follows:-

- (a) We consider that it would be time-consuming and costly to handle the arbitration of building management disputes by the Lands Tribunal. We suggest that a reference model should be made to the existing mechanism of labour disputes or the Board of Review process set up under the Inland Revenue Ordinance.
- (b) We consider that this proposed Tribunal should protect small property owners from the risk of paying unproportionate high legal costs in the event of losing lawsuits against the OC. As such, owners could pursue their rights effectively.
- (c) We understand that the Home Affairs Department (“HAD”) had consented to the suggestions made by The Office of the Ombudsman in their Report on “The Direct Investigation into the Role of Home Affairs Department in Facilitating the Formation of Owners’ Corporations” issued in March 2003, such that the HAD would consider a simpler, less formal and costly mechanism for resolving building management disputes. The proposed tribunal would position appropriately in such perspective.



Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會

Kindly refer to our letter of 7 September 2005 for suggested features of the proposed tribunal.

If you require any clarifications on our above comments, please do not hesitate to contact the undersigned at 2287 7233 or email [gary@hki CPA.org.hk](mailto:gary@hki CPA.org.hk).

Yours sincerely,

Gary Wong  
Director, Member Services

GW/tl

c.c. Amy Yung, Council Member and Convenor of Building Management Working Group