



香港房屋經理學會 The Hong Kong Institute of Housing

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Home Affairs Bureau /
Home Affairs Department
Division IV
21/F, China Overseas Building
138 Hennessy Road,
Wanchai,
Hong Kong.

Attn: Mrs. Angelina Cheung
Assistant Director of Home Affairs

Dear Mrs. Cheung,

Building Management (Amendment) Bill 2005

Your Brief for the Legislative Council – Building Management (Amendment) Bill 2005 refers.

The members of our Institute have managed over 70% of estates and properties in Hong Kong. After deliberation by our Council Members who are veteran housing management practitioners, we would like to feedback 7 support and 2 reservations opinions for your kind consideration.

We outline below our feedback in details for your ease of reference:

1. Appointment of an MC

We **support** your amendment that “the appointment of a Management Committee (MC) to follow the BMO mandatory rather than the DMC”.

But we note that there is the difference in nos. of office bearers of the OC under the BMO (chairman, secretary, treasurer) and DMC (chairman, vice-chairman, secretary, treasurer). Therefore, we suggest retaining the Vice-chairman in the BMO for the obvious reason of the growing important future role of Vice-chairman in the OC acting during the absence of the Chairman in conducting business and the foreseeable increasing tendering activities, etc. arising from this ordinance amendment exercise.

2. Protection for MC Members

We **support** your amendment that “the OC member who is ‘acting in good faith’ shall not be held personally liable for any act done or default made by or on behalf of the OC”.



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But we suggest that this exemption of liability should be cautioned against who is acting 'ultra vires' or with 'willful negligence'.

3. Qualification of MC Members

The current BMO stipulates that no person shall be appointed as a member of an MC if this person has been declared deficient of being bankrupt; or into composition with his creditors; or previously sentenced to imprisonment for three months or more.

We worry your amendment to "waive the ban after 5 years of conviction". The reason is that from the ICAC statistics, there have been as high as 40% suspected corruption cases belonged to the building management sector especially to those relating to the OCs. Bearing in mind that the OC of large estate may have operationally got control of millions of cash and work orders, it would be high risk to compromise on expanding the participation with the less integrity of people.

On the contrary, for your information, our Institute members are strictly free from the above-said deficiencies in order to register as professional housing manager and serve the estates and community in general.

Therefore, we suggest retaining the above-said current BMO stipulations.

4. Appointment of proxy by owners

We support your amendment regarding the proxy.

But we suggest setting at least 24 hours decided by the MC in proportional to the size of the estate because those over thousand units may require longer time to verify the validity of the owner names. The reason is that the manager requires time to verify the latest owner's name from the land search and occasionally the manager will require longer time to verify the validity of authorization from the company registrar if the owner's name is a corporate.

Besides, we suggest also having the standard requirement elements for the proxy instead of fixing standard format. The reason is that from our experience there may be various combination of resolution and agenda items happened in any AGM or EGM of owners meeting.

We suggest the standard requirement elements of the proxy shall include:

- i) the date, time, venue, and resolution purported to vote of a particular owners AGM or EGM;
- ii) the date and time of the returned proxy certified by the manager or owners corporation;
- iii) the premises and the owners' undivided share stated in the DMC;
- iv) name of owner and the signature or joint signatures if it is jointly owned, or name of the owner and company chop and authorized signature of director level if it is a corporate;
- v) the authorized person's name and HKID;



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- vi) the clear authorization to attend and to vote, or to attend only in the meeting;
- vii) the clear authorization to vote for a particular resolution, or all resolution agenda items;
- viii) the name and contact telephone no. if there is enquiry arise from the proxy, etc.

5. Termination of the appointment of manager

We **support** for paying due respect to commercial contract under the rule of law.

6. Procurement by OCs and the managers

We **worry** that the concept of mandatory (with a pre-approved exemption list) procurement of goods or services with a value exceeding \$200,000 or 20% of the annual budget through tendering has the following demerits:

- (a) It **deprives the freedom of choice of majority residents** in choosing the renewal of existing satisfactory and good performed service contracts. It is always usual that by negotiation with the current contractor we can obtain the win-win situation and value for money contract.
- (b) It **is operationally impracticable for a large estate** to execute the concept because
 - (i) It is so easy to exceed the expenses limit of say \$16,667 per month for a 12-months contract in buying even the ordinary items, e.g. plastic refuse bags.
 - (ii) It is difficult to obtain comparables in supplier-driven contract, e.g. lift maintenance. It is not advisable to swift to non-supplier contractor whom may not get hold of the original parts supply and familiarity of the design. We are concerned that the non-supplier contractor may cause the safety risk due to sub-standard spare parts and workmanship of certain models of the original brand. Hence, it is the general phenomenon to have the single tendering obtained in the lift maintenance contract.
- (c) It is **also operationally impracticable for individual small OC** ("single private residential building" under the meaning of Security and Guarding Services Ordinance Cap. 460) to execute the concept because

The definition of procurement of services in "employment contract" requires clarification. The current direct employment of security guards (for salary and benefits \$8,500 x 2 guards = \$17,000 per month) by the individual small OC will possibly infringe the new legal requirement. At the end of the day, the OC is forced to outsource (tender) the security guards to outside licensed security company and thereby increase the management expenses in the future.

7. Financial arrangements for OCs and managers

We **support** the proposal that the manager shall open and maintain segregated trust / client accounts in respect of the management of the buildings with the different OCs.



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In fact, we understand that most management companies with professional housing managers have already conducted such practices as far as practicable.

8. Procurement of third party risks insurance

We **support** the procurement of 3rd party risks insurance.

But, from our experience, the proposed \$10 million insured amount is far below the standing compensation amount in recent common law cases regarding body injuries. We suggest setting up a mechanism to review the insured amount annually by independent valuation. Besides, the notice to the Land Registrar seems only beneficial to those potential purchaser(s) of certain targeted premises. It is, however, cumbersome administratively because it creates paperwork every year to the majority obedient OCs but cannot help to plug the loophole of those few negligent OCs.

9. Delegation of Powers and Duties by SHA

We **support** this amendment.

Yet, there are other issues related to building management remain undecided in your Brief. We would be grateful if you could send us any draft position paper once they are available for comment:

1. Fund in relation to compensation for third parties
2. Liability of OCs
3. Borrowing power of OCs
4. Formation of OCs in house development
5. Mandatory management and maintenance of buildings

Finally, may we reiterate that the Hong Kong Institute of Housing supports the Government determination to fine-tune the current BMO for the fairer and more transparent society.

Yours sincerely,
For and on behalf of
The Hong Kong Institute of Housing

Kelvin M. F. YAU
President