

BY FAX AND POST

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3 March 2000

The Chairman
The Bills Committee on
Building Management (Amendment) Bill 2000
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Hon Chan Kam-lam,

Building Management (Amendment) Bill 2000

We refer to the captioned Bill and the Legislative Council Brief written by the Home Affairs Bureau of 12 January 2000 in connection thereof and your letter dated 28 February 2000 with Ref.CB2/BC/9/99.

)As a professional institution heavily involved in building management and maintenance, we would like to express our concerns from the trade practitioner's point of view for your reference. We opine that the underlying principle of the proposed Bill as set out in paragraph 2(a), 2(b) and 2(c) of the LegCo Brief are generally welcome and worth support. Our specific comments on various sections are appended here-below.

Proposed Code of Practice (COP)

1. Section 2.0(b) refers to the First Schedule of the current Building Management Ordinance (BMO) concerning "common parts". It is usually read with doubt that

“toilets, water closets, etc.” at paragraph 7 are common parts if they are constructed within an exclusive unit, e.g. residential flat. It is suggested to add “in common use by 2 or more owners” at the end of the paragraph.

2. Section 3.10.3 refers to the disclosure of Deed of Mutual Covenant (DMC) to owners. We suggest adding, at the end of the paragraph: “A Chinese/English translation of the original DMC shall also be made available for inspection”. This is indeed a requirement as set out in the DMC Drafting Guideline written by LACO of Lands Department.
3. Notes 2 and 3 of Section 5 gives a non-enforceable advice to owners to engage qualified building professionals and Registered Building Contractors to conduct inspection and repairs. Since the Bill intends to improve the safety standard of problematic buildings, these advices shall be prescribed as statutory requirements.
4. As described in the LegCo Brief, the Code of Practice (COP) shall be written in “user-friendly layman’s terms”. However, if the government intends to make reference to the Code in evaluating whether a building is a problematic building in terms of its management and maintenance, a comprehensive and sufficiently clear written Code shall be required. It will not be practical for such Code be written in “user-friendly layman’s terms” whilst it could contain sufficient professional and technical content. In fact, a Code written in a professional manner setting down clear and comprehensive means in achieving acceptable management and maintenance of buildings would be more useful. A guideline summarising the overall requirements and criteria of what is proper management and maintenance of buildings for the use and reference of the owners. The owners or OC could refer to the guideline in monitoring the performance of their building management and maintenance agent. In this connection, the format and content of the Code should be further reviewed.

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5. Paragraph 6 requires the Authority to issue an order to the management committee (MC) of an owners’ corporation (OC) of a problematic building to

employ a building management agent (BMA) and the existing district Building Management Co-ordination Committees (BMCC) shall be responsible for identifying such problematic buildings.

Since a MC may wish to manage the building itself rather than by a BMA, and as an alternative to comply the Authority's order, the MC shall be allowed to appoint a maintenance consultant, such as an architect, engineer or surveyor, to restore the problematic building in lieu of the appointment of BMC. To enable BMCC to equip with all necessary expertise for the identification of the problematic buildings, it is also suggested that professionals from various discipline and experienced in building repairs shall be deployed to these BMCC.

6. Paragraph 7 empowers the Authority to apply to Lands Tribunal to order the owner(s) to appoint a BMA if an OC cannot be formed. This compulsory arrangement may generate confrontation between the owner(s) and the BMA. The knot of problematic buildings is a social problem. It would be more appropriate if the government could appoint the BMA directly. The appropriate bodies equipped with these management capacity shall either be the Home Affairs Department (HAD), Housing Authority or the future Urban Renewal Authority. We consider this should not be a long term burden to the government as the amount of current problematic building shall be definable and would be diminishing considering the increasing number of OC formed as a result of rising government intervention.
7. Paragraph 8 requires a list of BMA shall be established which mirrors the Housing Department's PMA list. Since the BMA will need to manage problematic buildings which shall have fallen into serious dilapidation, a more stringent requirement on building maintenance shall be required. The employment of experienced building maintenance professionals, e.g. building surveyors and building services engineers by the BMC is a must.
8. Paragraph 10 proposes to reduce the quorum of OC formation meeting from 50%, 30% and 20% of the shares as required by Section 3, 3A and 4 of the current Ordinance to 10% of the owners. It is opined such amendment would create the following problems:

- (a) The 10% requirement is less than the quorum to dissolve a MC under current Ordinance which is 20% of the owners.
- (b) It is unfair to owners who own relatively large portion of shares.
- (c) Owners may use different subsidiaries to hold different residential and commercial units as well as carpark spaces in order to dominate the OC meeting easily particularly in small development.
- (d) It is practically very difficult to evaluate the exact number of owner, especially in a large and complex development, as any single person may own several units and many carpark spaces. Even Land Search record will provide owners' name only without any identity.

In summing-up, it is suggested that the quorum to appoint MC of OC shall not be less than that of dissolving MC, i.e. 20%, and the counting of quorum shall preferably be by means of shares instead of by the number of owner.

- 9. Paragraph 13 requires OC to effect third party insurance but no specific coverage limit has been suggested. It is recommended that the Authority shall prescribe a minimum coverage considering the impact of the Sun Hing Building case.
- 10. Paragraph 15 proposes to reduce publication from two to one newspaper. As some newspapers only concentrate on a particular group of audiences, e.g. financial readers, which may be missed out by the remaining majority, and considering the possibility of language discrimination, the Authority shall prescribe an approved list of popular newspaper that the owners shall use. Both Chinese and English translations must also be used for publication.

Other Suggestions

- 11. Owing to the proposed reduction of quorum for owners meeting, it is also suggested to tighten up the requirement on putting notice to owner to avoid the possibility of the activities being influenced and dominated by a small interested group. We would recommend using registered post on top of the requirements in

the current Eighth Schedule.

12. Since the enactment of the Multi-storey Buildings (Owners Incorporation) Ordinance in 1970, the Building Management Ordinance has indeed been revised several time, we suggest to form a BMO Review Committee, with adequate representatives from the property management and maintenance professionals, shall be formed to monitor the implementation of the proposed amendment and any future revision.

The Hong Kong Institute of Surveyors has a long history in practising building management and maintenance. We are pleased to offer professional input and assistance for the finalisation of the Bill and drafting of the COP.

Our Mr. S. K. Kwan, Chairman of Property Management Committee, W. L. Mak, Mr. Francis Lam and Mr. Gary Yeung, Mr. Committee Member of Property Management Committee, (關兆佳先生,物業管理小組主席;麥永隆先生,林家輝先生及楊文佳先生,物業管理小組成員) will attend your meeting on 9 March 2000.

Yours sincerely,

S.K.Kwan
Chairman, Property Management Committee
Hong Kong Institute of Surveyors

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