



THE HONG KONG INSTITUTE OF
SURVEYORS

LC Paper No. CB(2)2102/04-05(01)

Your Ref: CB2/BC/8/04

24 June 2005

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

By Fax & By Post
2509 9055

Dear Sir,

Re: Building Management (Amendment) Bill 2005

We refer to your request for submissions, and would like to address the following salient points regarding this bill. The proposals are in general moving in a right direction to improve the building management operations and remove some grey areas in the ordinance. However, we are also deeply concerned with the adverse implications of certain parts of this bill especially how it is going to affect the normal building management operations, if implemented.

1. Protection for Management Committee (MC) members acting in "Good Faith"

We see a serious problem here and we do not agree with the approach to limit the liability of MC members acting in good faith. In fact, as far as surveyors' are concerned, it works well as existing. To serve as a member of the MC is a very serious matter, especially where the consideration of million of dollars of owners money and care for people's homes are concerned.

Owners' Corporations (OCs) are the 'de facto' management company of a property. Members of any management committee are in a similar position to the board of directors of a company and have clear duties to all the owners. They have put themselves into this situation freely, and must accept the fact that they can be liable and accountable for the decisions they make.

"Acting in good faith" is a rather broad term and not self-explanatory in nature, this could include acting in "a negligent manner", and failing to carry out a proper duty of care to owners. What is proposed does not support **good and responsible management philosophy**, in our opinion. There is no need for this clause. After all, the issue here is about how to strike the balance between "Authority and Accountability".

香港中環康樂廣場1號怡和大廈8樓801室

Suite 801, 8/F Jardine House, 1 Connaught Place, Central, Hong Kong

Telephone: 2526 3679 Facsimile: 2868 4612 E-mail: info@hkis.org.hk Web Site: www.hkis.org.hk



As a matter of fact, members of OCs could be better protected by arranging a Directors and Officers Liability Insurance coverage which is a rather common insurance policy similar to Professional Indemnity insurance.

We are not familiar with the operations of the Hospital Authority, but feel a direct comparison may not be appropriate and valid. The Hospital Authority has a separate management structure, while the management committee of an owners' corporation is a management structure, and must be treated accordingly.

2. Qualifications of MC Members

Any self declarations must include adequate disclosures to avoid any conflicts of interest.

3. Procurement by OCs and Managers

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 the unnecessary rules. Major contracts are always tendered out. What is proposed could have a major impact on the renovation projects within estates and delay much needed maintenance works. No good justification of this measure has been put forward.

We understand also that the Housing, Planning and Lands Bureau are to bring separate mandatory maintenance requirements forward for discussion by the end of this year. What happens if a major renovation project to comply with statutory maintenance requirements is blocked by residents at an open meeting? This proposal should be withdrawn. Residents elect a management committee to look after their interests. Managers are required to 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 well in advance. Opening up these proposals for major scrutiny again could lead to totally unnecessary delays and additional workload, especially where 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 a normal budget. They take a long time to organize and collect money for. One approval under Section 21 is adequate. After that, the OCs can deal with the tender, as the residents have already given the go ahead.

The suggestion that OCs, can "opt out" of these provisions merely underlines that there should not have been introduced in the first place, and their bureaucratic nature. How to define a list of urgent matters is also another unclear proposal that may likely



arise dispute. OCs are unlimited companies with all the liabilities that come with it, management committees of such organizations, are very unlikely to use this mechanism to avoid liabilities.

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 their time on something they have already passed. This proposal should be removed from the bill as it is unnecessary.

4. Procurement of Third Party Risk Insurance

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, 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. Instead, Government may want to step in to help out those exceptional old and small residential buildings with great difficulty to obtain the third party insurance, and where the residents cannot afford reasonable insurance.

I hope the above is useful. Our submission is also submitted in Chinese. We would be happy to explain in due course. Two representatives of the Institute will attend on 30 June 2005.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T T Cheung', is written above the typed name.

AP
T T Cheung
President (2004-2005)

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