香港地產建設商會
THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG
香港中環德輔道中十九號環球大廈1403室
Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.
Tel: 2826 0111 Fax: 2845 2521

立法會 CB(2)153/07-08(01)號文件
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24 October 2007

Clerk to Subcommittee on
Building Management
(Third Party Risks Insurance) Regulation
Legislative Council Secretariat
8 Jackson Road
Central
Hong Kong

Attention: Ms. Flora Tai

Dear Ms. Tai

Legislative Council Subcommittee on Building Management (Third Party Risks Insurance) Regulation

We thank you for your letter of 15 October.

As pointed out in your letter, we have indeed provided our views on the procurement of third party risks insurance to the Bills Committee in 2005. We have reviewed such views and come to the conclusion that they remain just as valid today.

In this connection, we are attaching a copy of our previous submission for your information.

Yours sincerely

Louis Loong
Secretary General

c.c. Mr. Stewart Leung, Vice Chairman, Executive Committee

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29 June 2005 By fax & by post

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

Dear Ms. Tai

Building Management (Amendment) Bill 2005

We refer to your letter of 6 June and as requested, would like to offer our views as follows.

We believe that the proposals of the Bill are generally moving in the right direction in improving building management operations and removing some grey areas in the Ordinance. However, we are also deeply concerned on the adverse implications of certain parts of this Bill, in particular the impact on normal building management operations if implemented.

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

We do not consider the approach to limit the liability of MC members "acting in good faith" appropriate. To serve as a member of the MC is a very important matter, especially where the consideration of million of dollars of owners' money and care for people's homes are concerned. In our view the existing situation works adequately.

Owners' Corporations (OCs) are in fact the 'de facto' management company of a

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property. Members of any management committee are in a similar position to a 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 unfortunately a broad term and not self-explanatory in nature. It could include acting in "a negligent manner", and failing to carry out a proper duty of care to owners. In our opinion, the proposal does not support good and responsible governance and should be withdrawn. The current situation adequately reflects the need for responsibility and accountability.

As a mater of fact, members of OCs could be better protected by arranging appropriate indemnity insurance coverage. Pointing out the unlimited nature of owners' corporations at the outset of formation would also assist.

We are not familiar with the operations of the Hospital Authority but feel that a direct comparison could be inappropriate. The Hospital Authority has a separate professional management structure, while the management committee of an OC is the property's 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. Any owners not paying management fees should be barred from voting.

3. Procurement by OCs and Managers

We find this proposal problematic and believe that it will further impinge on the flexibility of management that any property management organization should enjoy through the forced use of unnecessary restrictions. Major contracts are always tendered out. What is now proposed could have a major impact on the renovation projects and major contracts within estates, causing delay to much needed maintenance works. Neither proper nor clear justification of this measure has been put forward by the Administration. In our opinion, the code of practice as written is functioning well and the status quo should be maintained.

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We understand that Government intends 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 provision should be withdrawn.

Residents elect a management committee to look after their interests. Managers and MCs 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 and approved well in advance of spending. Opening up proposals for major scrutiny yet again will lead to totally unnecessary delays and additional workload, especially where owners unreasonably dissent.

Section 21 of the Ordinance 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 and the logistics, such as the collection of funds from owners may take a long time. One approval under Section 21 is adequate. After that, the MCs should be allowed to deal with the tender, as the residents have already given the green light.

The suggestion that OCs can "opt out" of these provisions merely underlines that it should not have been introduced in the first place. How to define a list of urgent matters is also another unclear proposal likely to cause dispute. OCs are in the nature of unlimited companies with all the liabilities that come with that status. Management committees of such organizations are very unlikely to use this mechanism to avoid any liability or complaint against them. They will just follow the rules.

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 will not want to waste their time again 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 proposed regulations are a move in a right direction. However in the light

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of Albert House case where compensation exceeding $25 million, it is highly questionable that a minimum claim provision of $10 million per event would 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 is no support for a figure as low as $10 million and it should be reconsidered in line with recent compensation awards and market practice. Instead, Government may want to step in to help out those in exceptional circumstances: old and small residential buildings where residents may have great difficulty to obtain a third party insurance and where the residents cannot afford such.

We trust the above has adequately represented our position on the Bill and therefore would not be attending the meeting on 30 June 2005.

Yours sincerely

Louis Loong
Secretary General