



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

**The Hong Kong Institute of Housing's Submission
in response to Review of the Building Management Ordinance (Cap. 344)
Further Legislative Proposals and Administrative Measures**

This submission is made by The Hong Kong Institute of Housing ("HKIH"), a professional body incorporated since 1988 with qualified professional housing management executives under The Hong Kong Institute of Housing Ordinance (Cap 507), in response to the Public Consultation ("Consultation Document") carried out by the Home Affairs Department ("HAD") on updating the Building Management Ordinance (Cap. 344) (BMO) and the related administrative measures.

As the government addresses public concerns on building management, particularly the disputes arising from large-scale maintenance projects and the use of proxy instruments at owners' corporation (OC) meetings, HKIH would like to raise the following views and recommendations on some of the proposals from the perspective of Property Management professionals:

Paragraphs 4, 5, 6, 11 and 13 - Procurement and Large-scale Maintenance Projects

We note that the new proposal says that, of the 20% of owners required for forming the quorum, at least 10% of the owners have to attend the OC meeting in person when resolutions on large-scale maintenance projects are passed.

We also note that, in respect of the definition of "large-scale maintenance projects", the new proposal adds one more tier (Tier 1 - the buildings contain more than 500 flats) and sets an absolute amount of each of the three tiers.

HKIH's view:

1. It is unrealistic to have at least 10% of the owners to attend the OC meeting in person when resolutions on large-scale maintenance projects are passed. In Hong Kong, many homeowners work late. According to our experiences, most of them are reluctant to spend time on common affairs of their properties, despite repeated reminders and occasional door-to-door visits to encourage active participation at owners' meetings. While we support the notion that large-scale maintenance projects should be made after detailed discussion and active participation by owners, the 10% threshold is too ambitious and may deter implementation of some urgent projects which have structural safety and life hazard concern. The tragedy happened in To Kwa Wan in 2010 should not recur.
2. The attendance rate of at least 10% will substantially increase the meeting frequency due to insufficient quorum, coupling with the constant disputes in owners' meetings, it will be very difficult to find meeting venues for such large number of people and at this higher frequency.



3. HKIH also has concern over the definition of “large-scale maintenance project”. In the new proposals, for the newly added Tier 1 category of buildings, a “large-scale maintenance project” would be defined as any procurement at a cost of \$4 million or above, or 40% of the average audited annual expenditure of the OC for the past three years immediately before the maintenance proposal, whichever is the lesser. In reality, the majority of projects for buildings of this size will very likely exceed the stated threshold, potentially stopping or delaying many projects from proceeding.

HKIH’s recommendations:

1. HKIH fully supports the rationale of the new proposal in addressing the issue of fabricated proxies of absent owners during OC meetings when resolutions on large-scale maintenance projects are passed.
2. HKIH suggests to use total management fee receivables per year as the threshold. In addition, HKIH has identified more stringent control over proxies, such as requiring original signatures from absent owners, and proper safekeeping of correspondences between absent owners and OCs regarding the passage of the resolution.
3. Regarding the declaration on conflict of interest, owners or authorized person in proxy who bid or have any connection with the tender of renovation/maintenance projects should also be required to declare interest.
4. HAD should continuously educate the public on the importance of owners’ participation in property management issues such as repair and maintenance of their properties. The proposed district wide service supporting teams namely District Building Management Liaison Teams (DBMLTs) should have members competent in conveying proper property management practices to owners. Effective DBMLTs are useful in creating a harmonious relationship between owners, the MC and the manager. Good management will only be existed with trust among all stakeholders of the property.

Paragraphs 25 and 26 - Adding criminal sanctions

We note that the new proposal extends the criminal liability to the DMC Manager /Property Management Company/Management Committee (MC) Members of OC in case of:

1. failure to produce annual audited accounts or audited accounts as required by contract; and
2. non-compliance with the requirements for proper safekeeping and circulation of minutes of MC/OC meetings; and
3. non-compliance with the requirements for proper safekeeping of tender documents.



HKIH's view:

1. It is unfair to extend the criminal liability to the DMC Manager/Property Management Company in case of failure to produce annual audited accounts or audited accounts as required by contract. We have come across situations that DMC Manager/Property Management Company cannot control the failure, situations such as production of the OC audited account which is under the direct custody of OC; unreasonable disputes on expenses raised by the OC who holds up the management account for proper auditing and occasionally the delay of submission may be caused by the auditor who is appointed by the OC. Hence, the criminal sanctions on DMC Manager/Property Management Company who have no direct control on the production of the annual audited accounts or audited accounts as required by contract is totally unfair and unjustified. The proposal will discourage the existing genuine practices and will also deter entry of new practitioners for the property management industry. The available defence clauses in paragraph 27 do not sufficiently address the potential risks on DMC Manager/Property Management Company.
2. The added criminal liability to MC members of OC will also discourage owners to participate in building management work and take up OC duties, bear in mind that many of them are serving on a voluntary basis. The available defence clauses in paragraph 28 do not sufficiently protect the MC members too.

HKIH's recommendations:

1. Existing best practices adopted by DMC Manager/Property Management Company sufficiently safeguard the interest of owners at large.
2. HKIH believes the newly formed Property Management Services Authority (PMSA) is sufficient to review the conduct of DMC Manager/Property Management Company upon complaint. Possible cessation of property management services licence once convicted is more effective than imposing criminal liability which will only adversely affect those who are genuinely good practitioners.
3. HAD should play a more proactive and positive role in guiding the OCs and its MC members on compliance of statutory requirements, in particular, when the OC is first formed and/or when the MC members have been re-elected. HAD should communicate more with various stakeholders in those problematic properties.



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Further Comment on Annex C – Consolidated Proposal

Regarding the proposals in the HA Panel Paper in 2016, item 18 – Termination of the Appointment of DMC Managers:

HKIH's view and recommendation:

1. The term of appointment of DMC Managers should not be “automatically” terminated 5 years after the formation of OC. Instead, HKIH would advocate for a better-planned and executed mechanism for owners to convene an owners’ meeting to review the appointment after the 5-year term to ensure the best arrangement for the property in long run.
2. The new mechanism will give more options to owners who may want to extend the appointment of the good DMC manager. In fact, once the OC is formed, owners already have a right to terminate a DMC manager at any time, even without a 5-year appointment limit.
3. HAD should not under-estimate the adverse impact on the community. The enactment of automatic termination clause will result in unnecessary chaos on tendering for new manager and handover arrangement for the properties with OC formed on the same day. This “automatic termination of DMC manager ” proposal will cause societal disorder and interruption to the peaceful life of the general public.

Conclusion

HKIH appreciates the government's timely efforts in reviewing and updating BMO (Cap. 344) with a purpose to meet the practicality and the rising expectation of the general public. However, HKIH looks forward to a realistic and feasible improvement on the legislation and the related administrative measures based on our above-mentioned recommendations that are generated from our professional experiences and insights.

Dr. Johnnie C K Chan, BBS, JP
President
The Hong Kong Institute of Housing

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