



THE HONG KONG INSTITUTE OF
SURVEYORS

Our Ref: P/029/0703

Your Ref.: (5) in L/M(2) to HAD/IV/5/1

23 July 2003

BY FAX AND BY POST
(Fax No. 25748639)

Director of Home Affairs
Home Affairs Department
29th and 30th Floors
Southorn Centre
130 Hennessy Road
Wan Chai
Hong Kong

Attention: Ms Grace LUI

Dear Ms LUI

**Consultation Paper on Proposed Amendments to the
Building Management Ordinance (Cap.344)**

Thank you for your letter of 12 May 2003 inviting our Institute (HKIS) to provide comments on the proposed amendments to the Building Management Ordinance (BMO) (Cap 344). Subsequent to the discussion between our Mr Gary YEUNG with your Department and various professional institutes during the exchange forum of 11th June 2003, I would like to summarize HKIS's views for your consideration.

**1. Personal liabilities of the members of a management committee for the
decisions of an owners' corporation (OC)**

HKIS objects the proposed amendment considering the following views.

- The positions of the management committee members of an OC are similar to the directors of a company. They shall be accountable to all owners while carrying out the building management duties. This is similar to the directors carrying out executive duties for the company's shareholders. If a director is personally liable under the Company Ordinance, it will be illogical if the management committee members are not.
- If any member disagrees, the collective decision of the management committee of an OC, he/she may resign from office instead of anticipating the escape of liability while staying in the power core. Every member shall owe a fiduciary duty to all owners of the building. The member may also exercise the power under Section 30 and Third Schedule of the BMO to dissolve the current management committee.



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- It is common that some management committee members are also members of political parties and its decisions are sometimes influenced by the prevalent behaviour of the political parties. Such behaviour may not be beneficial to the owners as a whole. It would be unfair to the owners if those making a political decision would not be liable.
- Members of management committees may share risk by the appointment of a professional building management agent who is able to provide advice on daily management and maintenance matters.

2. Power of an OC to borrow money from the Government in compliance with certain statutory notices, orders or other documents

The spirit of this amendment is generally supported, as this will help improving the conditions of a building. However, care must be taken to avoid causing unnecessary administrative burden on Government pursuing the outstanding debts.

As the OC is only acting as an agent on behalf of those individual owners and eventually the loan will need to be repaid by the individual owners, there should be provisions in the amendment to allow proper control on the application procedures as well as the use of the loan as payment to a contractor. It is suggested that there shall be a proper owners meeting to be conducted with resolution on how to handle the loan. The loan received can be deposited in a lawyer's office, while payment to a repair contractor can be made according to the certificate of an Authorised Person. Every effort shall be made to avoid the Seaview Estate case where the OC chairman absconded with several million dollars of owners fund.

Under Section 20 of the BMO, any OC may establish either a general fund or a contingency fund to meet the expenditure on repair. As an alternative to the proposed amendment, HAD may consider amending Section 20 to allow OC to commence legal action against those owners who default to contribute to the fund for meeting the expenditure for compliance with the statutory order. Application to the Small Claims Tribunal, and if necessary the Lands Tribunal is a common practice adopted by professional building management agents nowadays on pursuing outstanding payment.

3. Termination of appointment of the DMC manager by an OC

HKIS objects both the reduction of quorum to 20% of owners and the removal of the provision that not more than one manager's appointment can be terminated within any three consecutive years, as follows:-

- This is not an equitable amendment as it reflects, "A minority can rule the majority". This may also generate social instability within the building while 20% vote dominates the quiet 80%.



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- This may generate internal conflict among owners. Groups of owners could agglomerate striving for different objectives. Conflict would become severe if different political parties dominate the groups of owners.
- The DMC manager would become handicapped to plan long-term especially on maintenance strategy. The manager will look for short-term result by the containment of management fee level, which is the usual perception of its performance. This may also cause the manager to act with inclination to the decision of the Management Committee instead of for the benefit of all residents.
- The performance of the on-site staff of the DMC manager would be affected owing to job insecurity and absence of long-term motivation. High staff turnover rate is anticipated and this will eventually affect the continuity and quality of service.
- This is virtually the same situation as to paragraph 4 below, whereby two groups of owners would form two separate management committees as a result of the minority percentage required. The problem was subsequent to the BMO Amendment in 2000 by reducing the percentage of shares in owners' meeting from 50% to 30%; hence your Department will need to amend the current Ordinance. The current provisions should remain unchanged to ensure good property management.

4. Appointment of a management committee

If the percentage of 30% of shares will not be changed, and the proposed amendment requiring the resolution of the owners voting at the same meeting is just to avoid the situation of formation of two separate management committees by different group of owners, then the proposed amendment is generally acceptable. However, HAD shall not underestimate the possibility of conflict between groups of owners struggling to become the first convener of the owners' meeting.

5. Appointment of members and holders of office of the first management committee

According to Section 3, 3A, 4 or 40C, a management committee shall be appointed by a resolution of the owners of not less than 30%, 20% and 10% of the owners respectively. Pursuant to paragraph 2 of Second Schedule, the Chairman, Vice-chairman (if any), Secretary and Treasurer shall also be appointed at a meeting convened under Section 3, 3A, 4 or 40C. Hence, if the quorum of owners to appoint the office bearers shall follow Section 3, 3A, 4 or 40C, the proposed change of the stipulated quorum to 10% of owners will give a false representation to the owners that the management committee and the office bearers are appointed under different meetings. This may generate confusion and possibly dispute on the legitimacy and credibility of the office bearers. HKIS considers that this amendment is unnecessary.



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6. Appointment of members and holders of office of any subsequent management committee

The proposed amendment aims to clarify the current ambiguity in the BMO. HKIS in principle supports the amendment.

7. Procurement of suppliers, goods and services by an OC

The lowering of the minimum percentage for the purpose of tendering from 20% is not needed and retaining the specified sum of \$100,000 will remain a tremendous administrative burden on the management committee and the property manager especially for the large residential estates. Take a typical estate of 3000 units, the number of procurement exceeding the amount of \$100,000 each year would likely to be more than 20 incidents resulting the need of management committee/owners' meeting almost twice every month. Such arrangement will be highly ineffective and inefficient especially for urgent repair works, not to mention the difficulty of getting sufficient quorum each time for the repetitive owners' meeting. HKIS suggests a scaleable amount whereby small, medium and large size residential estates can be treated differently. The proposed scale is as follows.

- Not exceeding 500 units - Not less than \$100,000
- 500 to 3000 units - Not less than \$250,000
- 3000 units and above - Not less than \$500,000

Besides, the mandatory requirement of invitation to tender for procurement exceeding a specified amount has disregarded and discouraged the effort and quality service of the current contractor/supplier. It will also affect the continuity of service especially of a specialist nature if the selection process is based on price alone. The several lift breakdown incidents causing injury/casualty upon the change of maintenance contractors are typical examples. HKIS suggests that there shall be provisions to allow OC or property manager to renew the existing contract if the performance of the contractor/supplier is satisfactory.

Similarly, the proposed change of tender acceptance value by the management committee can also be treated by means of a scaleable percentage to reflect the small, medium and large size residential estates. The above-suggested scales could be suitable for consideration in this respect.

The spirit of inserting a punitive clause is generally supported. This echoes with our recommendation in paragraph 1 above to retain the personal liability of the management committee members. Notwithstanding that care need to be taken not to discourage owners from forming OC because of the consequential liability of criminal offence.



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8. Individual owners' rights to obtain copies of certain building management documents from an OC

The proposed amendment is supported. Indeed, it is now the common provision as stipulated in the DMC.

Hoping that the above views will be useful to you for your proposed legislative work but should you require further clarification or assistance, please feel free to contact our Secretary General, Mr. Gordon Ng, at 25263679. We would be happy to elaborate our views further with you, at your convenience.

Thank you for your attention.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Chan', is written over the signature line.

Kenneth CHAN Jor Kin
President

KC/st

c.c. Hon. P C LAU
HKIA
HKIE
HKIH
HKAPMC