



THE HONG KONG INSTITUTE OF SURVEYORS

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**BY FAX & POST
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Your ref.: LACO 4/316/2000 Pt.V

Deputy Director/Legal LACO/HQ, Lands D
Legal Advisory and Conveyancing Office
Lands Department
20/F North Point Government Offices
333 Java Road, North Point
Hong Kong

Attn.: Ms A. LI

Dear Ms LI

Building Safety & Timely Maintenance Guidelines for Deeds of Mutual Covenant

Thank you for your letter (Ref.: LACO 4/316/2000 Pt. V) of 6th December 2004 inviting our Institute to render comment on your proposed amendments of the DMC Guidelines.

In principle, the Institute supports the proposed formulation of "**Maintenance Schedule and Manual**", and establishment of "**Special Funds**" for maintenance works as expressed provisions in the DMC considering that such amendments will foster awareness of good building safety and timely maintenance on new and stratified buildings in Hong Kong.

Besides, we would like to offer the following comments under respective headings for your consideration.

1.0 Maintenance Schedule and Manual

- 1.1 It is recommended that particular emphasis shall be stipulated in the Guidelines that the said Maintenance Schedule and Manual shall refer to the common areas and common facilities only. This is to avoid misinterpretation by individual owner resulting dispute with the Manager and/or the Owners' Corporation on the maintenance of private facilities.
- 1.2 In addition to the listed items of Appendix I, paragraph 31.(a), it is suggested that the Schedule shall also include roofing material, central air-conditioning and ventilation system, escalators and enclosed service ducts (especially those which will be built inside assigned premises). These installations, if fall within the scope of common facilities, shall also be examined and maintained regularly.
- 1.3 Concerning the Maintenance Manual of paragraph 31.(b), it shall be prepared by the Authorized Person "**in consultation with the future Manager of the development**". The purpose is to ensure all as extra maintenance strategy and procedural requirements will be taken into consideration while formulating the management and maintenance budgets by the Manager.



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- 1.4 It is well understood in paragraph 31.(c) that the cost of preparation of the First Maintenance Schedule and Manual shall be borne by the developer, however, provisions shall be included in the DMC specifying clearly that it is all owners' responsibility to share the costs and expenditures on future maintenance and improvement works in response to the said schedule and manual.
- 1.5 It appears that Appendix I refers to the requirement of the First Maintenance Schedule and Manual for any new building development. To ensure continuous building safety, it is proposed that there shall also be stipulation to require the Manager to prepare the subsequent maintenance schedule and manual or to amend/adapt the First Maintenance Schedule and Manual periodically to enable the maintenance strategy and procedures are kept up-to-date and complied with the prevailing statutory requirements. All costs incidental to the updating the first or preparing the subsequent maintenance schedule and manual, including the appointment of Authorized Person and the expenditure of works in connection thereof, shall be borne by all owners.
- 1.6 The Maintenance Manual shall list out all contractor guarantee (e.g. waterproofing materials, etc.) and contacts for future reference by the Manager and owners.

2.0 Special Fund

- 2.1 In Appendix II, paragraph (e) (ii) A and B, it is stipulated that the contribution of Special Fund shall be approved by a resolution of owners at a general meeting of the Owners Corporation. This requirement is contradictory to Section 21 and Fifth Schedule of the BMO which allows the Management Committee to determine the level of fund (although subject to a maximum of 150% on preceding amount) and the yearly management budget.
- 2.2 It is common that in the establishment of any yearly management budget, the Management Committee or the Manager will set aside a certain portion of sinking fund, although it may not be called Special Fund, to pay for capital maintenance expenditure of a nonrecurring nature. Hence, the extra requirement of a resolution of all owners will also violate this conventional norm of property management.
- 2.3 To deal with this mismatch, provision can be stipulated in the DMC that the Management Committee or the Manager may be allowed to approve a certain amount of fund contribution (e.g. amount not exceeding 20% on annual management budget), and in excess of which the resolution of owners at a general meeting will be required.



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As the extra requirement under the new DMC Guidelines will only be effected on new buildings, the safety problem of the aged building stock which was indeed the prime concern of the community has not been taken into consideration. In this connection, it is proposed that similar provisions can be imposed on the Building Management Ordinance. We understand that the Home Affairs Bureau is in the course of amending the BMO, the Lands Department may take this opportune time to request the Bureau to effect similar amendment.

Hoping that the above comments will be useful to your Department but should you have any further enquiry, please feel free to contact our Secretary-General, Mr. Gordon Ng at 25263679.

Yours sincerely

T T Cheung
President (2004-05)