THE HONG KONG INSTITUTE OF
SURVEYORS

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".

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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. <u>Procurement of Third Party Risk Insurance</u>

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,

T T Cheung
President (2004-2005)

Enc

有關 :2005 年建築物管理(修訂)條例草案

有關　貴局邀請本會對上述草案提交之意見，謹覆如下:

本會認爲有關草案整體方向正確有助改善大廈日常管理及掃除一些法例上的灰色地帶。　但同時本會亦深切關注部份草案條例(如實施)對大廈管理正常之操作會產生不良影響。

一.　對管委會委員的保障"真誠地辦事"

本會認爲此則條例有很大問題且並不同意用"真誠地辦事"此一方式作爲委員的免責條款。　事實上站在專業測量師的立場，現行條文運作良好。　身爲管理委員會的委員是一非常嚴肅的任務，往往牽涉數以百萬計的金錢利益瓜葛，不能視作等閒。

業主立案法團實際上等同物業管理公司。　管理委員會成員亦等同公司董事局，須要清楚地向所有業主負責。　況且，選舉是自由選擇參與，當然亦須要接受有"權"也有"責"的事實。

"真誠地辦事"此一用語包括之意議過於廣泛及不能簡單地從字面解釋，其中可能包括疏忽的行爲與及未能保護小業主的權益。　本會認爲有關建議未能支持**良好及負責任的管理哲學**，故建議刪去此條款。　總括上述，最終涉及如何平衡"權"與"責"的問題。

再者，保險業界有一種名爲"Directors and Officers Liability"的產品，概念與"Professional Indemnity"的性質相同既能保障委員會成員一般性的責任但又不須要政府立法保障免責。

我們並不認識醫管局的操作，但感覺上不能作出直接比較。　何況醫管局是有一分開的管理架構，但管理委員會只是一純管理組織而已。

二. 管委會委員資格

引入自我申報制度必須包括有足夠公開資料以避免利益衝突。

三. 法團及經理人的採購

本會並不同意有關修訂。 我們認爲現在的"有關供應、物料及服務的採購及選用事宜守則"已能有效運作並無須要作出修改。 此一修訂將進一步減少管理上的彈性。 事實上，所有主要合約也經過公開競投過程。 此修訂只會令大型翻新及保護工程受到不必要的延誤，並無合理理由支持修訂。

我們知悉房屋及規劃地政局正計劃於年終前推出強制性保養事宜。 是問如果在一業主大會上所建議配合新例的大型翻新工程被拉倒，那怎麼辦呢？ 所以此一建議修訂必須收回。 住戶推選管委會代其照顧業戶權益。 大廈經理人必須在進行有關大型工程之前，向有關委員及業主講解，並正式通過有關計劃之支出預算。

S.21 已規定所有支出超過預算案 50%皆須通過全體業主大會。 相信大部份大型工程均涉資均輕易超出正常預算案多倍。 由於籌備須時，相信 S.21 所規定的批出一次已經足夠。 得到業主支持後法團便有能力處理所有招標事宜。

有關建議修訂法團可以訂定一份緊急事故清單，列明事故無須按例規定程序處理。 經業主大會上過半數票通過即可，進一步證明這一官僚式的修訂是不必要的。 同時，此中更產生了如何設訂何爲緊急事故清單上並無解釋及設限，容易產生爭辯。 法團乃無限公司，所以管委會委員未必使用此機制去逃避責任。

是項建議亦忽視了收集會議法定人數的困難，如業主已同意工程進行，並已繳交工程費用，他們並不會願意再另花時間再同意一此已經同意的事項。 所以此一項建議應在草案中刪除。

四. 第三者責任保險規例草案

新例方向正確，但以 Albert House 的案例，賠償額超過二千五佰萬元看，我們十分懷疑一千萬元一宗最低索償之預算是否足夠，大部份物業管理公司所提供的保障均超過此數。 大約介乎三千萬至一億元不等，所以有關之保額應重新估計以合乎市場慣例。 除此，政府或許可以就一此特別的個案，如一些非常殘舊的單幢式住宅樓宇之業主，因無力購買有足夠保額的第三者責任保險，提供協助。

我們希望上述意見對立法計論有正面作用並歡迎有機會詳加解釋。 同時，本會將有兩名代表出席六月三十日舉行之會議。

此致

香港測量師學會
2005 年 6 月 24 日