



THE HONG KONG INSTITUTE OF
SURVEYORS

香港測量師學會

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& post

Division V, Home Affairs Department
31/F Southorn Centre
130 Hennessy Road
Wan Chai, Hong Kong

Dear Sirs,

**Public Consultation on Review of the Building Management Ordinance
(Cap. 344)**

On behalf of the Hong Kong Institute of Surveyors (HKIS), I have much pleasure in submitting our views on the consultation paper.

1. Bid-rigging and Disputes relating to Large-scale Maintenance Projects

- 1.1 The HKIS supports the principle of raising greater participation by owners in implementing Large-scale Maintenance Projects in general. However, if proxy instrument is continuously accepted for voting in owners' meeting, the simply raising of quorum from 10% to, say 20%, is predominantly handicapped to serve such purpose. More proxy instrument does not equate to more personal participation, but physically present in an owners' meeting considered otherwise. The HKIS proposes that there shall be a prescription in the amended Ordinance requiring a certain minimum percentage of owners present in an owners' meeting during the resolution of any important decision, such as the large-scale maintenance project. Whilst proxy instrument can concurrently be accepted, a minimum of 5% of shares of owner shall be required to present in person at such meeting, out of the existing 10% quorum requirement. The rationale behind such suggestion is whenever there is a conflict between the management committee (MC) and individual owners, the Ordinance provides that a 5% of shares of owner may require the MC Chairman to conduct an owners' meeting.
- 1.2 The proposal of raising the percentage of shares of votes for the passage of the resolution from 50% to, say 75%, will only generate uncertainty for Owners' Corporation (OC). A decision made by more than 50% of shares of owner has already represented the majority. If any owners' meeting or any of its adjourned meeting, and its resolution is only supported by 74%

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(or below) of shares, are we going to suspend the large-scale maintenance project even if a mandatory order has been received by OC? Given the fact that there is estate with uneven distribution of shares between domestic and non-domestic uses and it is also not uncommon that domestic and non-domestic owners possess different or even opposite views on the maintenance and repair works. It would be extremely difficult to agree the works if the percentage of shares to pass resolution is significantly increased. The HKIS opines that the suggestion in 1.1 above has already served the purpose of greater owners' participation, hence the existing requirement of 50% of shares of votes has been adequate and able to reflect the majority view of owners.

- 1.3 It is technically difficult, and probably impractical to define "Large-scale Maintenance Projects". A large-scale project for a small building indeed will only be considered as a small-scale project for a sizable estate as far as the contract sum is concerned. If a certain percentage of the total annual budget of the OC, or a certain amount of contribution is set as threshold, and becoming the benchmarking standard of defining such kind of project, this will only complicate the situation, and may arouse consequential dispute. Needless to say, the community will be doubtful on the rationale why other service contract, with similar amount of contract sum, (e.g. lift maintenance, security and cleaning service contracts, etc.), that ought to be governed by the identical procurement mechanism under the same ordinance will be exempted.
- 1.4 The proposed extension of issuing notice of meeting from 14 days to 21 days is supported so as to allow more time for individual owners to consider any special resolution. However, as aforesaid in 1.3, if "Large-scale Maintenance Projects" cannot be clearly defined, HKIS proposes such extension shall also be applicable to other owners' general meeting in order not to complicate the situation.
- 1.5 HKIS welcomes that any tendering process for "Large-Scale Maintenance Projects" shall be openly and squarely communicated to individual owners effectively. Such communication process shall also be applicable to other procurement of major goods and services. However, it may not be appropriate if too much detail of such kind of requirements is listed in the Ordinance. It is therefore suggested that this kind of administrative requirements can be stipulated in the Code of Practice.
- 1.6 The HKIS opines that the manipulation of tenders for repair and maintenance works in private buildings is a social problem and the



amendment of BMO is unable to avoid bid-rigging entirely. The HKIS suggests establishing a Building Repair and Maintenance Works Authority (樓宇維修工程監管局) for multi-ownership properties. The roles and duties of this proposed Authority may include:

- Monitoring the services of trade practitioners, including maintaining register of qualified building consultancy practices and contractors
- Setting up necessary legislative framework to encourage good professional practices in the industry
- Collaborating with other Government Departments to promote positive building care culture in Hong Kong

2. Convening of an OC General Meeting at the Request of Owners

- 2.1 The HKIS supports requiring the MC Chairman placing higher priority on the agenda for any special request by the owners.
- 2.2 HKIS supports the proposed nomination procedure of the Chairman to convene an owners' general meeting at the request of owners.

3. Counterfeit Proxy Instruments and Improper Practices

- 3.1 The HKIS supports a more stringent requirement on collection of proxy instrument as a valid proxy is able to influence the decision made by OC. However, it may not be appropriate to stipulate a detail procedure in the Ordinance, hence it is suggested that such additional requirements can be set out in the Code of Practice.
- 3.2 In respect of the verification of proxy instruments, the HKIS supports the extension of display period so as to allow ample opportunity for any individual owner to review this information. If a more stringent proxy handling procedure will be enforced, more time shall be concurrently reserved for the OC or the property management agent for undertaking such verification process. Whilst considering the appointment of third party to inspect invalidated proxy instruments and handling of appeal may exhibit a more objective role, such appointment shall not cause the OC excessive finance burden especially for small building.
- 3.3 The HKIS supports a more stringent requirement on administrative measures as proposed in the consultation document is in place. However, such detail procedures shall preferably be listed in the Code of



Practice instead of in the amended Ordinance. Besides, the additional requirements shall not cause the OC any unreasonable finance burden.

4. Formation of Owners Corporations

- 4.1 In respect of the proposed lowering of threshold of percentage of shares in aggregate required for the formation of OC, the HKIS disagree with this proposal. The previous amendment of this Ordinance lowering this particular threshold from the original 50% to 30% of shares as mentioned in Section 3 had already generated a lot of concern in various OC formations. Example of dispute while two groups of owners, each supported by more than 30% of aggregated shares, may organize two separate owners' meeting for the formation of OC, and may cause a lot of inherent conflict within the same building. Further lowering of this threshold will only add to the problem of inherent dispute if a mutual compromise between different owners' groups cannot be reached.
- 4.2 The HKIS supports the introduction of a technical amendment stipulating that shares without voting right will not be counted as part of the total shares for any of the OC decision. This is indeed a common phenomenon of an organization holding a general meeting.
- 4.3 The HKIS supports imposing the same eligibility criteria on the convener, while conducting an owners' meeting, as the MC members.

5. Termination of the Appointment of DMC Managers

- 5.1 As aforesaid in 4.1 above, the lowering of threshold of shares in aggregate while holding any owners' meeting will only generate inherent conflict among owners of the same building/estate. Besides, only the vote supported by 50% of shares could demonstrate the majority view of the owners. The HKIS opines that the current requirement shall not be changed.
- 5.2 To limit the term of appointment of DMC Manager to 5 years will further relax the requirement than lowering the threshold as discussed in 5.1 above. It indicates an automatic termination of the DMC Manager at the end of the 5th year without the need of holding an owners' meeting. The HKIS opines that this is unacceptable. A more stable and long term appointment of the DMC Manager is more capable for formulating a long term planning for the building/estate in respect of fund accumulation, provision and planning for large-scale maintenance projects and



maintenance of a much healthy account as contract manager is used to be short-sighted. A secure appointment, with the support of the majority view of owners, will also be able to reduce the risk of political influence by the management committee, and probably individual MC Members who may be involved in potential bid-rigging.

- 5.3 DMC, apart from being a covenant restricting owners' rights and privileges, it is also a private agreement for the appointment of the DMC Manager. It may not be appropriate imposing any statutory restriction to change the conditions of any incumbent private agreement unless it is supported by both contract parties and majority view of the owners.

6. Remuneration of DMC Manager

- 6.1 As aforesaid in 5.3 above, DMC is a private agreement. Any proposed lowering of the manager remuneration shall be mutually agreed between the contract parties and supported by majority view of the owners. The Government shall not intervene in altering the condition of private agreement. The concept of diminishing workload starting from the second year after take-over and onward year by year is a misconception. Starting from second year when the defects liability period is expired and when the building is getting older, the effort put on maintenance is even much higher than the first year. Besides, when OC or owners' committee has been formed, usually in the second or third year (according to the LACO Guideline), and because of its tightened monitoring and influence, the workload of the DMC Manager will surely be increasingly heavier than before. It will not be reasonable if its remuneration is progressively reduced, not to mention the linked consequences of affecting incentive/morale of the Manager.
- 6.2 Nowadays, it is a prime concern of the DMC Manager to continuously source for any opportunity to reduce the recurrent management expenses thus to counteract the pressure of raising management fee and its consequential owners' reaction. Energy and water conservation will usually be put on the highest agenda. To exclude any of the electricity and water charges from the expenditure items while calculating the manager remuneration undermines the effort of the DMC Manager in this respect. Indeed, any exclusion of the expenditure items, as can be included under the DMC, will only cause complication on the account calculation and may result disputes.



- 6.3 The HKIS supports that the DMC Manager shall provide more detailed breakdown of its headquarter expenses subject to such requirement will not infringe the personal data privacy requirements.
- 6.4 Echo with the opinion in 5.3 above, any alteration of the conditions of the private agreement shall be supported by both contract parties and majority view of the owners.
- 6.5 For changing the conditions of appointment of the incumbent DMC Manager under existing DMC, the HKIS opines that this shall be undergone a proper negotiation process between the OC and the Manager. The HKIS proposes that a new Code of Practice can be derived to set out a guiding principle for reference. A proper negotiation or mediation process can be conducted and thereafter any change of the conditions of appointment shall be mutually agreed and recorded in a written supplementary agreement.

The introduction of any new measures may inevitably result in extra burdens to OCs/owners who are only laymen and run the building management in voluntary capacity. The HKIS considers that support and assistance to owners are critical in order to avoid them from falling into the technical trap during routine management and/or in the processing of the planning of maintenance work. Such assistance is especially crucial for those owners who are not able to commission for the professional building management services.

Please contact the HKIS Secretariat on 2526 3679 if you require more information.

Thank you very much for your attention.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Vincent Ho', written over a horizontal line.

Sr Vincent Ho
President
The Hong Kong Institute of Surveyors

cc The Hon Sr Tony Tse, Legislative Councillor (Fax no.: 2880 5128)