



THE HONG KONG INSTITUTE OF
SURVEYORS



27th September 2004

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

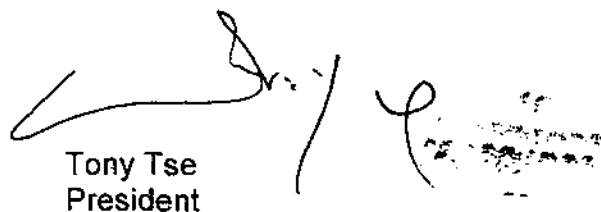
Re: Proposed Amendments to the Building Management Ordinance (Cap. 344)

We refer to our previous correspondence regarding the public consultation on the proposed amendments to the Building Management Ordinance (Cap.344) particularly the further amendments suggested at the Legislative Council Panel on Home Affairs Meeting on 28 November 2003.

We note that the Administration is planning to introduce an amendment bill into the Legislative Council in the legislative year of 2004-05 and would take the opportunity to submit our further comments on the proposed further amendments to the Ordinance for your consideration. We hope that our views could be taken into account for your preparing the final draft of the amendment bill.

Should you have any queries or wish to discuss the matter further please feel free to contact us.

Yours sincerely,



Tony Tse
President



HKIS's Views on the Proposed Amendments to the Building Management Ordinance (Cap. 344) after public consultation (Ref. Legislative Council Panel on Home Affairs Meeting on 28 November 2003)

Personal liabilities of members of a management committee for the decision of an OC

Proposal : To add an express provision in the BMO that MC members of an OC shall not be held personally liable for any collective decision of the OC, which is neither ultra vires nor tortious, simply because they are members of the MC.

HKIS's Views :

1. Object to the proposed amendments. Our views had been clearly expressed in our letter to the Director of Home Affairs Department on 23 July 2003 (Ref. (5) in L/M(2) to HAD/IV/5/1 issued by our ex-President Mr. Kenneth Chan Jor Kin (hereinafter called HKIS letter).
2. Need further details about the meaning of collective decision.

Power of an OC to borrow money from the Government in compliance with statutory notices and orders

Proposal : To amend the BMO to specifically empower an OC to borrow from the Government, for the purpose of complying with statutory notices and orders which relate to the common parts of the building an amount equivalent to the costs which should be borne by the owners who fail or refuse to pay. In borrowing from the Government, the OC will be acting as an agent on behalf of those individual owners who fail or refuse to pay, instead of all owners of the buildings. In other words, only those owners who fail or refuse to pay will be liable for the loan from the Government, and the liability for the loan will not be transferred to the OC or to any other owners who have already contributed their shares of the costs.

HKIS's Views :

1. Not support to relay the duty of individual owner to pay his due share of contribution to OC and the Government. It will only induce chances of abuse and add cost on government administration.
2. Support to follow the current Building Safety Loan Scheme.



Termination of appointment of the manager specified in the DMC by an OC

Proposal : To specify in the BMO that paragraph 7(1) of the Seventh Schedule shall only be used to terminate appointment of the DMC manager. To remove the provision in the Seventh Schedule that not more than one manager's appointment can be terminated within any three consecutive years. To propose a simple majority of owners present at the general meeting with a quorum of 20% of owners.

HKIS's Views :

1. Strongly object the proposed amendment as the minimum shares required to pass a resolution to terminate the DMC manager is just over 10% of the total shares. Despite this is the worse case scenario, it will only be a decision of minority owners. The will of the majority should prevail at all times.
2. It will induce chances of Professionalism being compromised as the will of the minority owners becomes more easily manipulated.
3. Support to remove the provision in the Seventh Schedule that not more than one manager's appointment can be terminated within any three consecutive years. We see no point to overly protect the manager's appointment for 3 years period. Emphasis should be put on their performance and professionalism.

Appointment of a management committee

Proposal : To amend the BMO such that an MC may be appointed by a resolution of the owners of not less than 30% of the shares, and the resolution must also be passed by a majority of the votes of the owners voting either personally or by proxy at the same meeting. Following this amendment, all references to the DMC in the Second Schedule to the BMO concerning the composition and procedure of a management committee should also be deleted.

HKIS's Views :

1. Support both amendments as the first one is only a procedural amendment and the second one can clear confusion arisen from whether to follow BMO or DMC provisions regarding the composition and procedure of the management committee.



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

Proposal : To specify in the Second Schedule that members and holders of office of the MC shall be appointed by a resolution passed by a majority of the votes of the owners voting either personally or by proxy at the same owners' meeting at which the first MC has been successfully appointed, provided that there is a quorum of 10% of owners at that meeting. For an owners' meeting convened with a view to appointing an MC for the formation of an OC under section 3, 3A and 4, the quorum of 10% of owners should apply from the start of the meeting; and once a resolution has been passed on the appointment of an MC under sections 3, 3A and 4, the appointment of the members and office bearers of the MC shall be appointed by a resolution passed by a simple majority of shares. The 10% quorum requirement remains.

To amend the Second Schedule so that owners should be given the discretion to decide whether a vice-chairman is needed in the MC.

HKIS's Views :

1. Support the 10% of owners as quorum for the formation and election of MC.
2. Support to add flexibility in the Second Schedule to allow the MC to choose their appointment of Vice-Chairman. MC should not be prohibited to appoint their Vice-Chairman as no provision is made in the DMC.

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

Proposal : To amend the Second Schedule by stating that the corporation shall, by a resolution passed by owners at an annual general meeting of the corporation at which the MC retires, appoint a new MC, a treasurer (if vacant) and other holders of office.

HKIS's Views :

1. Generally support the proposed amendment. All members of the MC retire at the AGM and it should also include the secretary and treasurer without exception.



Procurement of supplies, goods and services by an OC

Proposal :

1. To delete paragraph 1 from the Code of Practice on procurement of supplies, goods and services so that any such procurement with a value exceeding the prescribed threshold has to be done through tendering in accordance with section 20(A)2 of the BMO;
2. To lower the minimum % of an OC's annual budget for the purpose of tendering from the existing 20% to 10% while retaining the specified sum of \$100,000 or such other sum in substitution therefore as the Authority may specify by notice in the Gazette (***later refined to any procurement of supplies, goods and services which exceeds the sum of \$200,000 or sum which is equivalent to 20% of the annual budget, whichever is the lesser, shall be done by invitation to tender***);
3. To include a requirement that any tender of a value exceeding a sum which is equivalent to 10% of the annual budget of an OC shall be accepted or rejected by a resolution passed at a general meeting of the OC (***later refined to any procurement of supplies, goods and services which exceeds the sum of 20% of the annual budget of an OC shall be accepted or rejected by a resolution passed at a general meeting of the OC***); and
4. To insert a punitive clause that any member of an MC who contravenes the requirements shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$50,000, unless he proves that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the *circumstances* (***later proposal is to do away with such a clause due to too many comments were strongly against this insertion***).

HKIS's Views:

1. To put the tender requirement into the BMO is fine but the problem here is that it has to follow the requirement of tendering and endorsement at owners' meetings. Although HAD proposes to work out a list of urgent matters which do not need to go through the process of tendering and owners' meeting, we consider it is too rigid and not practical. As a matter of fact, it will not be possible to amend the BMO in a bid to cover all possible scenarios but instead owners' rights could be best protected via the existing legal system.



2. To set a percentage based on units are the best solution. Our recommendations are the same as previously stated in the HKIS's letter.
3. Support to do away the punitive clause.

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

Proposal : To provide for the owners' rights to obtain copies of minutes of meetings of both the OCs and MCs upon payment of reasonable copying charges as the MC concerned may determine (*later extend to cover the auditor's report*).

HKIS's Views :

1. Fully support the proposal.

Other proposals not contained in the consultation paper

Appointment of proxy

Proposal :

1. To amend the requirement of having a common seal to a rubber stamp of a body corporate together with an authorized signature.
2. To set the deadline in the BMO for submission of proxy at 24 hours before the holding of the meeting and not allow neither the person presiding at the meeting nor the chairman to accept the proxy after the 24-hour limit.

HKIS's Views :

1. Support the amendment as it can clear the confusion arisen from the existing common seal requirement for the proxy form.
2. Support the strict 24-hour timeline for submission of proxy.

End