



Property & Facility Management Division Chairman's Message



Sr Dr Edmond Cheng PFMD Council Chairman

Kung Hei Fat Choy! I wish you and your family a healthy and prosperous Year of the Goat.

Conference 2015 cum 10th Anniversary

The PFMD will organise a conference cum 10th anniversary celebration on 15 May 2015 (Friday) in Grand Ballroom I & II, 1/F Crowne Plaza Hong Kong, Tseung Kwan O. Members are encouraged to register for the conference to show their support for the Division. The details of the conference are shown in the flyer below:



Guest of Honour

Prof Anthony CHEUNG, GBS, JP
Secretary for Transport and Housing
Transport and Housing Bureau, HKSARG

Speakers

Sr Dr Daniel HO
Associate Professor
Faculty of Architecture
The University of Hong Kong

Ms Florence HUI, SBS, JP
Under Secretary for Home Affairs
Home Affairs Bureau, HKSARG

Sr Nelson HO
Senior Manager,
Facilities Management
Hong Kong Science & Technology
Parks Corporation

Mr HUI Siu Wai, JP
Director of Buildings
Buildings Department, HKSARG

Ms Anissa WONG, JP
Permanent Secretary for the
Environment
Environment Bureau, HKSARG

Mr George HONGCHOY
Executive Director &
Chief Executive Officer
The Link Management Limited

Mr WONG Kit Loong
Chief Executive Officer &
Executive Director
Hong Kong Housing Society

*In alphabetical order by surname
*The final list of speakers may be subject to change

**15th May 2015 (Friday),
9:00am-5:00pm**

1/F, Grand Ballroom I & II, Crowne Plaza Hong Kong, Kowloon East

Registration Fee

Early Bird Rate <small>(Register on or before 31st March 2015)</small>	HK\$1,180
Standard Rate (HKIS Members / 50s)	HK\$1,350
Standard Rate (Non-members)	HK\$1,650
Student Rate <small>(Lunch not included)</small>	HK\$200

Enquiries

Conference Secretariat
Mr Geoffrey WONG / Ms Tiffany WONG
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Remarks:

- Official language is English.
- The organiser reserves the right to cancel or reschedule the Conference at their discretion.
- No refund can be made for cancellation but a substitute delegate is permitted.
- Registration fee includes two coffee breaks and a lunch, **except student rate.**

Comments on the Review of the Building Management Ordinance (Cap. 344)

The PFMD held a forum on 16 January 2015 to review the Building Management Ordinance (BMO) Cap. 344. On 2 February, 2015, the HKIS expressed its views on the issues and proposals set out in the consultation paper to the Home Affairs Department as follows:

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

1.1 The HKIS generally supports the principle of greater participation by owners to implement large-scale maintenance projects. However, if a proxy instrument is continuously accepted for voting in owners' meetings, simply raising the quorum from 10% to, say, 20% would largely negate such a purpose. More proxy instruments do not equate to more personal participation, but physical presence at an owners' meeting suggests otherwise. The HKIS proposes an amended Ordinance requiring a certain minimum percentage of owners to be present at every owners' meeting that makes an important decision, such as whether or not to commence a large-scale maintenance project. Whilst a proxy instrument can be accepted, a minimum of 5% of owners' shares out of the existing 10% quorum requirement should be represented in person at such meetings. The rationale behind this suggestion is that when a conflict exists between the management committee (MC) and individual owners, the Ordinance states that 5% of owners' shares require the MC chairman to conduct an owners' meeting.

1.2 The proposal to raise the percentage of votes from just above 50% to, say, 75% to pass a resolution



will only generate uncertainty for the owners' corporation (OC), as a decision made by more than 50% of owners' shares already represents a majority. If at any owners' meeting or adjourned meeting a resolution is supported by no more than 74% of owners' shares, should that suffice to suspend a large-scale maintenance project even if the OC receives a mandatory order to initiate it? Given the fact that there are estates with an uneven distribution of shares between domestic and non-domestic users and it is not uncommon for domestic and non-domestic owners to possess different views on maintenance and repair works, it would be extremely difficult to agree on such works if the percentage of shares needed to pass a resolution is significantly increased. The HKIS opines that the suggestion in 1.1 above has already served the purpose of greater owner participation. Hence, the existing requirement of a simple majority of shares is considered adequate and reflective of the majority of owners.

- 1.3 It is technically difficult and probably impractical to define a "large-scale maintenance project". One for a small building would probably be considered a small-scale project for a larger estate as far as the contract sum is concerned. If a certain percentage of the OC's total annual budget or a certain amount of contributions is set as a threshold and becomes the benchmarking standard for such a project, this will only complicate the situation and may arouse subsequent disputes. Needless to say, the community will doubt the rationale as to why other service contracts with similar contract sum amounts (e.g. lift maintenance, security, cleaning services, etc.) should be governed by an identical procurement mechanism under the same ordinance.
- 1.4 Extending advance notices of meetings from 14 days to 21 is supported, as it would allow more time for individual owners to consider any special resolution. However, as mentioned in 1.3, if "large-scale maintenance projects" cannot

be clearly defined, the HKIS proposes that such extensions shall apply to other owners' general meetings in order to not complicate the situation.

- 1.5 The HKIS wants any tendering process for a "large-scale maintenance project" to be openly and effectively communicated to individual owners. Such a communications process should also apply to other planned procurements of major goods and services. However, it may not be appropriate if too many details of such requirements are listed in the Ordinance. Therefore, the HKIS suggests that such administrative requirements 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 amending the BMO cannot prevent bid-rigging entirely. Therefore, the HKIS suggests establishing a Building Repair and Maintenance Works Authority (樓宇維修工程監管局) for multi-owned properties. The roles and duties of this proposed Authority should include:
 - Monitoring the services of trade practitioners, including maintaining a register of qualified building consultancy practitioners and contractors.
 - Setting up a legislative framework to encourage good professional practices in the industry.
 - Collaborating with other government departments to promote a positive building care culture in Hong Kong.

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

- 2.1 The HKIS supports requiring the MC Chairman to place higher priority on any special request by the owners.
- 2.2 The HKIS supports the proposed nomination



procedure of the Chairman to convene an owners' general meeting at their request.

3. Counterfeit Proxy Instruments and Improper Practices

3.1 The HKIS supports more stringent requirements on collecting proxy instruments, as a valid proxy can influence an OC's decisions. However, it may not be appropriate to stipulate a detailed procedure in the Ordinance, so such additional requirements can be best set out in the Code of Practice.

3.2 In respect of the verification of proxy instruments, the HKIS supports the extension of the display period, so as to allow ample opportunity for any owner to review this information. If a more stringent proxy handling procedure is to be enforced, more time should be reserved for the OC or property management agent to undertake such a verification process. Whilst considering the appointment of a third party to inspect invalidated proxy instruments and handle appeals may indicate a more objective role, such an appointment should not strain the OC's finances, especially in a small building.

3.3 The HKIS supports more stringent requirements on administrative measures, as proposed in the consultation document. However, such detailed procedures should preferably be listed in the Code of Practice instead of in the amended Ordinance. Besides, the additional requirements should not impose any unreasonable financial burden on the OC.

4. Formation of Owners Corporations

4.1 Concerning the proposed lowering of the threshold of the percentage of aggregate shares required to form an OC, the HKIS disagrees with this proposal. The previous amendment of the Ordinance lowered this particular threshold from the original 50% to 30% of shares, as mentioned in Section

3. That generated a lot of concern over various OC formations, as two groups of owners, each supported by more than 30% of aggregate shares, can organise two separate owners' meetings to form an OC, which may cause a lot of internal conflict within the same building. Further lowering this threshold will only add to the problem of internal disputes.

4.2 The HKIS supports introducing a technical amendment stipulating that shares without voting rights will not be counted as part of the total shares in any OC decision. This is a common practice of any organisation that holds a general meeting.

4.3 The HKIS supports imposing the same eligibility criteria on the convener, while conducting an owners' meeting, as those for the MC members.

5. Termination of the Appointment of DMC Managers

5.1 As aforesaid in 4.1, the lowering of the share threshold in aggregate while holding any owners' meeting will only generate internal conflict among owners in the same building/estate. Besides, only a vote supported by over 50% of shares can demonstrate a majority of owners. The HKIS opines that the current requirement should not be changed.

5.2 Limiting the DMC manager's term to five years will relax the requirement further than lowering the share threshold. This indicates an automatic termination of the DMC manager at the end of the fifth year without the need for an owners' meeting. The HKIS opines that this is unacceptable. A more stable and long term appointment of a DMC manager allows for the formulation of a better long term plan for a building/estate in respect of fund accumulation, the provision of and planning for large-scale maintenance projects, and a much healthier account. A more secure appointment with the support of the majority of owners should



also reduce the risk of political manoeuvres by the management committee and probably individual MC members who engage in bid-rigging.

- 5.3 The DMC, apart from being a covenant that regulates owners' rights and privileges, is also a private agreement governing the appointment of a DMC manager. It may not be appropriate to impose any statutory restriction to change the conditions of any incumbent private agreement unless it is supported by both contract parties and the majority of owners.

6. Remuneration of the DMC Manager

- 6.1 As aforesaid in 5.3, a DMC is a private agreement. Any proposed lowering of the manager's remuneration must be mutually agreed to by the contract parties and a majority of the owners. The government will not intervene to alter the conditions of a private agreement. The concept of a diminishing workload starting from the second year after a takeover is a misconception. Instead, starting from the second year, when the defects liability period expires, while a building continues to age, the efforts put into maintaining it are much higher than during the first year. Besides, when an OC is 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 would surely increase. It would be unreasonable for a DMC manager's remuneration to be progressively reduced, which would affect his/her incentive and morale.

- 6.2 Nowadays, it is a prime concern of a DMC manager to continuously source for any opportunity to reduce recurrent management expenses, so as to counteract the pressure to raise management fees and the consequent owners' reaction. Energy and water conservation are usually prioritised. To exclude any electricity or water charge from a list of expenditures while calculating a manager's

remuneration undermines any savings s/he has generated in this area. Indeed, excluding any expenditure that can be included under a DMC will only complicate the calculation of a budget and may cause disputes.

- 6.3 The HKIS wants DMC managers to provide more detailed breakdowns of their headquarters' expenses so long as such a requirement does not infringe upon personal data privacy requirements.
- 6.4 Echoing the opinion in 5.3 above is the idea that any alteration to the conditions of a private agreement should be supported by both contract parties and a majority of owners.
- 6.5 Before changing the conditions of appointing an incumbent DMC manager under an existing DMC, the HKIS opines that the OC and manager should undertake proper negotiations first. The HKIS proposes that a new Code of Practice be derived to establish a guiding principle for future reference. Thereafter, a proper negotiation or mediation process can be conducted and any change to the conditions of appointment should be mutually agreed to and recorded in a written supplementary agreement.

The introduction of any new measure inevitably results in an extra burden to OCs/owners who are only laymen and manage a building voluntarily. The HKIS considers that supporting and assisting owners are critical to helping them avoid falling into technical traps in the course of their work. Such assistance is especially crucial for those owners who are unable to commission professional building management services. 