

CHARTERED INSTITUTE OF HOUSING ASIAN PACIFIC BRANCH
英國特許房屋經理學會亞太分會

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Director of Home Affairs
Home Affairs Department
Division IV
21st Floor, China Overseas Building
139 Hennessy Road
Wan Chai
Hong Kong

Attn : **Mrs Angelina Cheung, JP**

Dear *Angelina,*

The Borrowing Power of Owners' Corporations in Building Management (Amendment) Bill 2005

Thank you for your letter dated 24 April 2006 consulting the opinions The Chartered Institute of Housing Asian Pacific Branch (The Institute) on the above subject. I am pleased to express our views as below:

1. The Principle

The Institute is in principle supportive of the proposed amendment in facilitating the process of rehabilitating dilapidated buildings, maintaining public safety, and reducing social costs as a result of the rapid decay of our built environment. We consider the proposed loan arrangement a prudent mechanism with good intention to mitigate the problem. Owners' corporations will be encouraged to carry out repairs to their buildings in order to comply with statutory orders. In aged buildings where missing owners are common, this could be one of the solutions to finance contribution to common repairs.



2. Concerns

- 2.1 It is anticipated that disputes will arise in determining the cost allocation on repair items which are not directly related to the statutory order. There is little restriction on OCs borrowing loan to repair items which are not for safety or public hygiene.
- 2.2 The proposed amendment does not address the problem of owners who deliberately refuse to pay the loan, the appeal mechanism will enable them to delay the whole process for a long time. Furthermore, the defaulting owner may appeal to the Court of Appeal on the ground that the decision errs on a point of law within 21 days from the date of decision by the Lands Tribunal.
- 2.3 There are many buildings with no OCs and they comprise the bulk of problematic buildings in Hong Kong. In case of missing owner, the loan will be outstanding forever.
- 2.4 We are not certain that the proposal will be acceptable under the Common Law that someone may raise a loan on behalf of a third party, or it is an intrusion to the human rights of individual owners.

3. Suggestions

- 3.1 To mitigate the risk of abuse by OCs, it is suggested to introduce a mechanism whereby an OC is required to collect at least 80% of owners' contribution for the repair costs (the proposed % is in line with the proposed Land Resumption Ordinance currently under public consultation) before it can apply for the loan.
- 3.2 The Institute also suggests to levy interest on the outstanding loan to deter abuse. The loan is to cover fees for registration of legal charge.
- 3.3 The proposal of registering a charge against the property of the defaulting owner, though helps to facilitate the collection of fund for repairing buildings under statutory orders, is a rather passive penalty. We wonder if Government would consider the requirement for the tenant of the subject property, if any, to pay the rent directly to Government until such time the outstanding contribution is fully settled.

