

Views Presented at the Joint Discussion Forum of CIH and HKIHL on Building Management and Maintenance on 19 February 2004

1 Most of the views go for government intervention and legislation in the area of:

- a) mandating the formation of owners' committee (OC);
- b) mandating the maintenance/renovation of buildings in cases of need;
- c) fee collection for management and maintenance through compulsory means like rates if the owners remain inert.

2 In mandating the formation of OC, members

- a) propose the inclusion of tenants in the case of absentee owners or owners' absolute inertia. Tenants can pay on behalf of the owners and deduct the expenses from the rent payable for respective premises;
- b) opine that we could explore the possibility of empowering tenant organizations like the Mutual Aid Committee to function as OC to solve immediate problems like large scale repairs and dissolving it when the problem is solved;
- c) propose that the government could choose to mandate the OC formation of a building only when large scale repairs are required like target buildings under CMBS.

3 The government could define an area with problem buildings and appoint a manager (an individual or a company) to follow through the formation of OC, management and maintenance initiatives, etc. for that area.

After setting up a work pattern, the owners could choose to manage their buildings by themselves or hire a company to do so in the long run. Expenses for this manager should be paid by the customers.



Members participated actively in discussion



Chairman's welcoming speech

- 4 In mandating the maintenance/renovation of buildings, members:
 - a) appreciate the effectiveness of Coordinated Maintenance of Buildings Scheme (CMBS) currently carried out by the Buildings Department in bringing owners to action but that it incurs huge resources and hence a slow rate in solving the problem;
 - b) propose that the Buildings Department could partner up with private companies in dealing with CMBS and/or outsource the scheme, with the costs chargeable to the owners;

- c) opine that if the government is going to leave this issue of building management and maintenance to market forces, it still has to exert at least the same amount of pressure like that of the CMBS does on the inert owners in order to bring them into action, or else the market forces will never work out on itself.

- 5 Since the number of flats in each of the problem buildings is normally small, it will not be cost-effective to manage each building by itself. Members propose setting up a minimum number of units and/or a manning scale for management and maintenance to make it commercially viable.
- 6 Members propose that the government should specify the amount of contribution by owners to the sinking fund. We could adopt what is being done in China where owners are bound by legislation to contribute to the sinking fund:
 - a) by a percentage of the property price when they buy the properties which are being sold for the first time (or in some cases the contribution is being made by the developer) and
 - b) by a set scale of contribution if the properties are old ones.
- 7 In circumventing owners refusing to pay for the management and/or maintenance charges due, members propose:
 - a) more drastic action like imposing closure orders on their properties and selling the properties to pay off such charges;
 - b) collecting such charges through compulsory means like rates.

Information supplied by Professional Practice Committee

“英式物業管理是國際主流”

深圳報章訪問英國特許房屋經理學會總會會長 雷女士(Ms Yvonne Leishman)

2004年11月5日，來自英國、香港、北京、上海、重慶、廣州、南京、鄭州等地的物業管理專家齊聚深圳商報大廈國際會議廳，參加深圳市物業管理協會成立10周年慶祝大會和物業管理發展戰略(深圳)國際研討會。其中有記者一直計劃採訪英國特許房屋經理學會總會會長雷女士。在該會亞太分會主席黃傑龍的協助下，雷女士接受了記者的專訪。以下節錄了當日訪問內容。

關於英國物業管理行業

記者：在英國，物業管理有沒有作為一個獨立的行業存在？

雷：有的，英國當然有物業管理行業，包括住宅樓的物業管理，這在英國很早就有了。我們都統稱這作“房屋管理”(Housing Management)。

記者：英國的物業管理模式是怎樣的？“業主自管”的情況很普遍嗎？

雷：英國的樓盤都是由專業的物業管理經理來管理。但以管理模式上分析，存在兩種情況，一是業主直接聘請專業的物業管理公司來幫他們管樓；還有就是由業主自己去請一些專業的經理人過來，組成自己的管理隊伍。不過，英國的公營房屋通常都是請物業管理經理來管理的，因為這些房屋都屬國家所有。

關於英國物業管理公司

記者：英國的物業管理公司規模有多大？

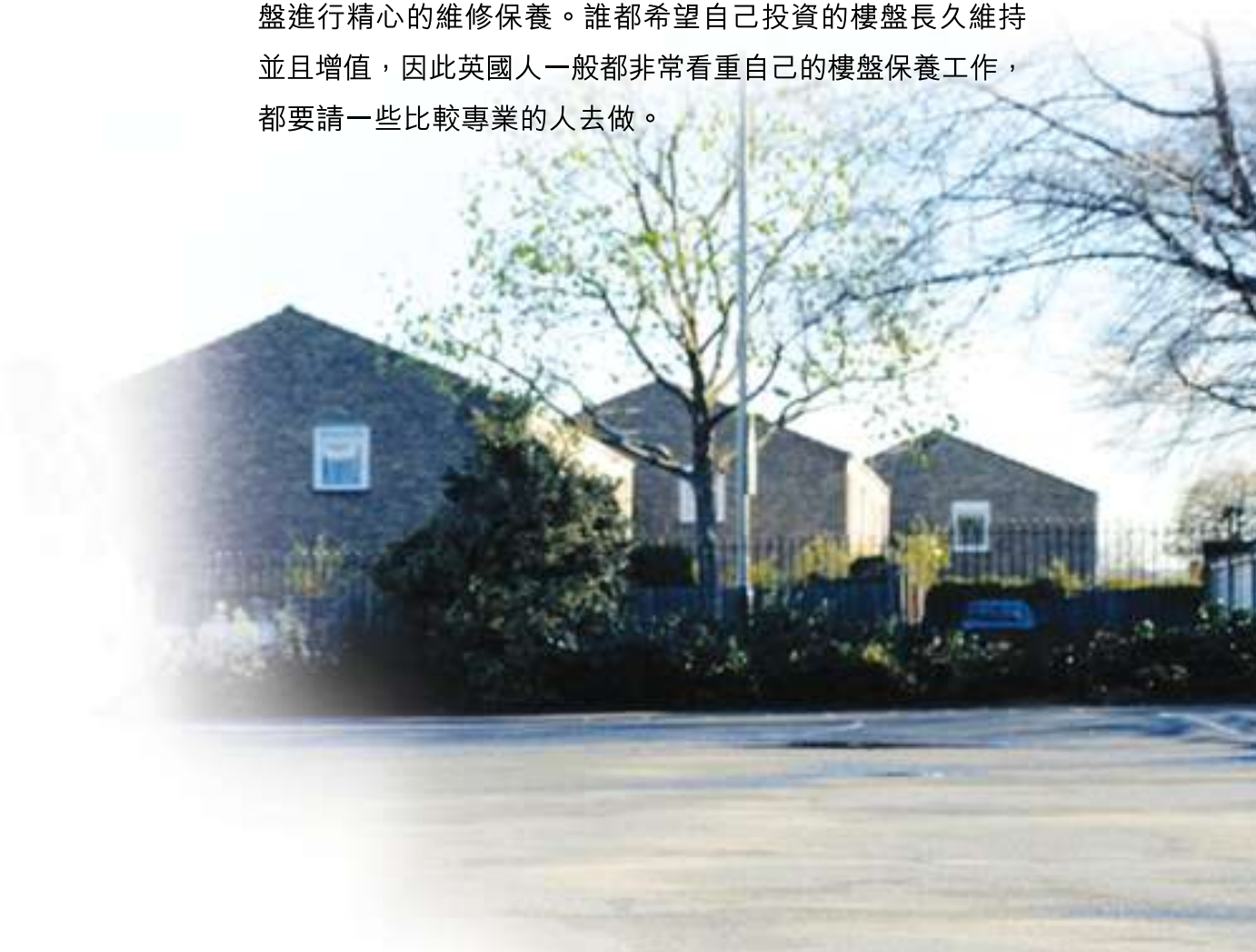
雷：英國的物業管理公司都是國際性的，其業務遍及歐洲各地。當然，如果是自己去請一些專業的經理人管理公營房屋的單位，其規模一般偏小。

記者：英國的物業管理公司都是由專業的管理人員組成嗎？管理人員與實際操作人員是分開的嗎？

雷：在英國，有一批專業的經理在公司上層，其他比較前線的工作，如清潔、保安等通常都是外判的。

記者：英國的物業管理公司僅限於做物業管理工作嗎？有沒有做一些別的業務，如設計規劃、物業代理等？

雷：在英國，物業管理公司做規劃、測量、代理等業務是很普遍的。一個物業管理公司下面有很多不同的業務分組，有一些分組是做物業代理的，有一些則是做測量業務的，等等。一般來說，英國的物業管理最注重的工作還是對業主投資的樓盤進行精心的維修保養。誰都希望自己投資的樓盤長久維持並且增值，因此英國人一般都非常看重自己的樓盤保養工作，都要請一些比較專業的人去做。



關於英國的業主委員會

記者：在英國，有沒有業主委員會和業主大會這樣的組織？

雷：業主委員會這樣的組織一定是有的，因為物業管理公司有自己的利益，它不一定代表業主的立場，但它提供的服務一定要讓業主及業主委員會滿意。業主委員會這樣的組織通常與物業管理經理商量一些具體事務，如房屋管理費的高低等。

關於英國物業管理糾紛的處理

記者：在英國，關於物業管理的投訴和糾紛多不多？

雷：不多。業主委員會與物業管理公司之間有一個合約，如果物業管理公司做得不好，業主委員會可以合法終止合約，很簡單。

記者：英國的物業管理投訴和糾紛不多，是不是與英國民眾的民主意識和契約意識有關？

雷：主要原因應該是，物業管理在英國的歷史很長。如果有糾紛，大家根據合約很容易就解決了，不會有那麼多糾紛。有時，某個樓盤的業主對那裡的物業管理經理本人有意見，這是人的問題，很容易解決，物業管理公司把這個經理換掉就行了。



記者：在英國，如果發生物業管理糾紛，有甚麼方法和途徑解決？

雷：通常用兩類方法。一是和解，即調停和解(Arbitration)。一般由我們學會推薦一些專業的獨立調停人員，他們可以居間調停糾紛，希望能達到一個雙方都滿意的結果；二是由申訴專員(Ombudsman)裁定的方法。如果經過調停仍未能解決，雙方可選擇到申訴專員那裡。申訴專員是由政府委任的，他依據雙方的實際情況所做的裁定，對雙方都有約束力。

記者：在英國有沒有通過司法途徑解決物業管理的糾紛？

雷：這種情況，如果要司法解決，通常是在合約的內容雙方有不同的演繹，要不然很少有人願意通過這種方式解決問題，因為都要花很多時間和訴訟的費用。而且經過訴訟後，雙方的關係也變得差了。

關於國際物業管理

記者：作為英國特許房屋經理學會總會會長，您在世界各地交流得比較多，請談談您對國際物業管理發展現狀和趨勢的一些認識。

雷：這個課題比較複雜，需要多一點時間才可以討論清楚。這裡我只談一點簡單的感受。近來我常常與英國、加拿大、香港等地的同行交流，感覺每一個地方都有自己的特性，所以很難說將來發展會怎麼樣，但我覺得英式物業管理是國際主流，因為它的發展歷史久，而且在制度，培訓，尊業各方面都較完善。

記者：您對中國的物業管理有甚麼印象和評價？

雷：我對現在新落成的物業印象很好，覺得這些物業無論是在設計上或是在其他方面都很好，物業管理方面也在不斷進步。我想今後我們學會在這方面可以與中國的同行再多做一些交流和合作。

Consultation on Proposed Amendments to the Building Management Ordinance (Cap 344)

Home Affairs Department (HAD) issued a paper at the Legislative Council Panel on Home Affairs Meeting on 28 November 2003 regarding the outcome of their consultation on the proposed amendments to the BMO. (A summary of the proposed amendments, members' feedback and the Branch's reply to HAD had been published in our previous issue of Housing Express)

Major points of the panel paper is summarized below for members' reference.

I. To assist Owners' Corporation (OC) in the performance of duties and exercise of powers

(A) The public generally supported the proposal on adding an express provision that management committee (MC) members shall not be held liable for any collective decision of the OC, which is neither ultra vires nor tortious.

(B) The public generally supported empowering 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 those who fail or refuse to pay. To address public concerns, HAD would restrict the OC's borrowing power to cases involving statutory orders and notices only and would review the cost recovery methods.

(C) HAD had made several proposals on termination of appointment of the manager specified in the Deed of Mutual Covenant (DMC) by an OC. Public reactions were controversial. HAD would continue to specify in the BMO that paragraph 7(1) of the Seventh Schedule shall only be used to terminate appointment of the DMC Manager. HAD would retain the proposal on removing the provision in the Seventh Schedule that not more than one manager's appointment can be terminated within any three consecutive years. HAD would reconsider the proposal to relax the existing requirements for termination of the BMC Manager.

II. To rationalize the appointment procedures of a management committee and its members

(D) To address public concerns, HAD would revise the proposal on Section 3(2) to : MC could only be appointed by a resolution of owners of not less than 30% shares, which must also be a majority of votes cast at the same meeting.

(E) Having considered the practical implications, HAD proposed that:

- (i) For owners' meeting convened with a view to appointing an MC for the formation of an OC under Sections 3, 3A and 4, a quorum of 10% owners should apply from the start of the meeting.
- (ii) Once resolution has been passed on the appointment of an MC under Sections 3, 3A and 4, the appointment of members and office bearers shall be by a resolution of simple majority of shares. The 10% quorum requirement remains.

(F) The public generally supported requiring an OC, at an annual general meeting at which the MC retires, shall appoint a new MC. HAD would further specify that if the secretary and treasurer are not persons appointed as members of the MC, they will not become MC members, and all secretaries and treasurers irrespective of whether they are MC members, should retire together with other members of the MC.

III. To afford better protection for the interests of property owners

(G) The proposal on procurement of supplies, goods and services had attracted heated debates. Having considered all views, HAD revised the proposals as follows.

- (i) Procurement exceeding the sum of \$200,000 or 20% of the annual budget, whichever is the lesser, shall be done by invitation to tender.

- (ii) Procurement exceeding 20% of the annual budget shall be accepted or rejected by a resolution passed at a general meeting of the OC.

- (iii) To address practical difficulties, OC's could be allowed to formulate a list of urgent matters which do not need to go through tendering and endorsement at OC meeting

(H) The public greatly supported allowing owners to obtain copies of minutes of both OC's and MC's upon payment of reasonable copying charges. HAD would expand the scope to cover auditors' report as well.

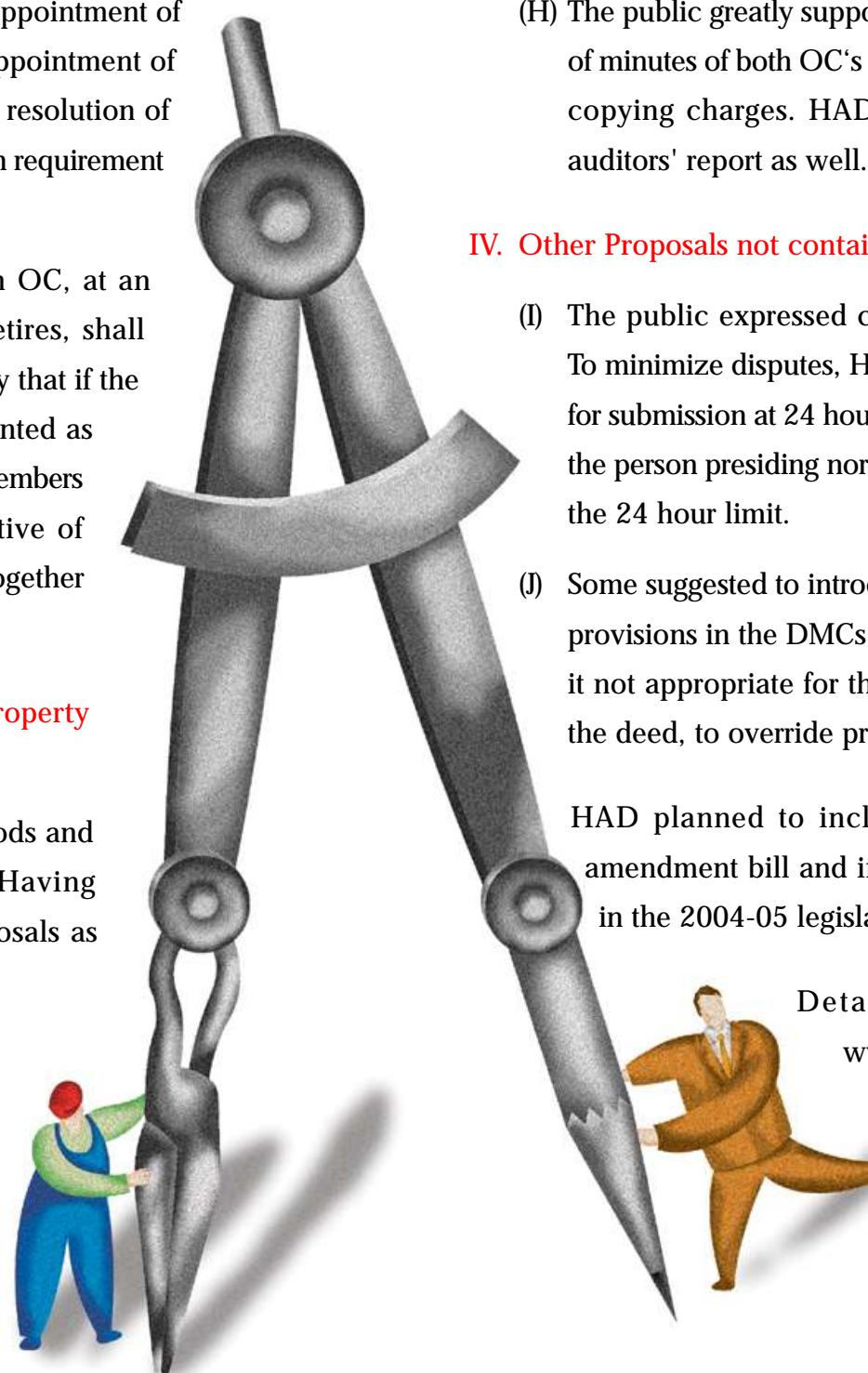
IV. Other Proposals not contained in the consultation paper


- (I) The public expressed concern about appointment of proxy. To minimize disputes, HAD would propose to set the deadline for submission at 24 hours before holding the meeting. Neither the person presiding nor the chairman could accept proxy after the 24 hour limit.
- (J) Some suggested to introduce mechanism for owners to amend provisions in the DMCs which they find unfair. HAD thought it not appropriate for the Government, who is not a party to the deed, to override provisions set out in the DMC.

HAD planned to include the proposals in a composite amendment bill and introduce it to the Legislative Council in the 2004-05 legislative session.

Details are available on website:
www.buildingmgt.gov.hk

Reference: LC Paper no.CB(2)
430/03-04(01)





Consolidated views of Chartered Institute of Housing Asian Pacific Branch Members presented to Housing, Planning and Lands Bureau on 7 April, 2004

Views presented in response to the public consultation on building management and maintenance by members of Chartered Institute of Housing, Asian Pacific Branch are as follows:

1. There is a general understanding that the business of management and maintenance of old buildings is not viable commercially in view of the absence of owners' corporation in most cases, large number of absentee and owners' affordability, widespread existence of illegal structures, and many owners' expectation government implementing urban renewal, etc.
2. Most of the views support government intervention and legislation in the area of:
 - (a) mandating the formation of owners' committee (OC);
 - (b) mandating the maintenance/renovation of buildings in cases of need;
 - (c) fee collection for management and maintenance through compulsory means like rates if the owners remain inert.

3. In mandating the formation of OC, members
 - (a) propose the inclusion of tenants in the case of absentee owners or owners' absolute inertia. Tenants can pay on behalf of the owners and deduct the expenses from the rent payable for respective premises;
 - (b) opine that we could explore the possibility of empowering tenant organizations like the Mutual Aid Committee to function as OC to solve immediate problems like large scale repairs and dissolving it when the problem is solved;
 - (c) propose that the government could choose to mandate the OC formation of a building only when large scale repairs are required like target buildings under the Coordinated Maintenance of Buildings Scheme (CMBS) currently carried out by the Buildings Department (BD).
4. The government could launch a pilot scheme for one of the problem areas and set up a management model for demonstration to owners and the property services industry.
5. The government could define an area with problem buildings and empower the residents in the defined area with all the rights and obligations collectively stipulated the BMO. Residents there could form one OC, follow through, management and maintenance initiatives, etc. for that area. Professional property management companies would be more prepared to provide services when the scale is adequate.
6. In mandating the maintenance/renovation of buildings, members:
 - (a) appreciate the effectiveness of CMBS in bringing owners to action but that it incurs huge resources and hence a slow rate in solving the problem;
 - (b) propose that the BD could partner up with private companies in dealing with CMBS and/or outsource the scheme, with the costs chargeable to the owners;



- (c) opine that if the government is going to leave this issue of building management and maintenance to market forces, it still has to exert at least the same amount of pressure like that of the CMBS does on the inert owners in order to bring them into action, or else the market forces will never work out on itself.
7. In view of absence of sinking funds in many of the old buildings, members propose to the government that:
- (a) the fund could be set up through a surcharge in rates;
 - (b) the amount of contribution by owners to the sinking fund should be specified. We may make reference to what is being done in China where owners are bound by legislation to contribute to the sinking fund:
 - i) by a percentage of the property price when they buy the properties which are being sold for the first time (or in some cases the contribution is being made by the developer); and
 - ii) by a set scale of contribution if the properties are old ones.
8. In circumventing owners refusing to pay for the management and/or maintenance charges due, members propose:
- (a) more drastic action like imposing closure orders on their properties and selling the properties to pay off such charges;
 - (b) the collection of such charges through compulsory means like rates.
9. The government should line up other policies and efforts to close in on owners to take up management and maintenance of their own buildings such as :
- (a) nipping the false hope of redevelopment in the bud, i.e. make it clear to owners of old buildings that they will not be rewarded by a handsome sum of compensation through urban renewal if they let their buildings dilapidate without doing anything.
 - (b) strictly enforcing abatement orders on building safety and public hygiene, owners/occupiers failing such will be subject to penalty;
 - (c) enforcing mandatory inspection of old buildings to gauge the priority for maintenance;
 - (d) setting up a grading system for all buildings to let the public know about the general condition of buildings in Hong Kong. However, suggestions for this idea go for voluntary participation by owners;
 - (e) further relaxing the Building Safety Loan eligibility requirements to allow easier access to the loan by owners for repairs.
10. The government should align inter-departmental efforts to handle this problem since there are many departments involved like the Home Affairs Department, Fire Services Department, Buildings Department, Food Environment and Health Department, Environmental Protection Department, etc. In the long run, there should be one single department to take over all matters related to building management and maintenance for better efficiency and effectiveness.
11. The district boards can play the role of coordinating concerted actions of the government and owners in building management and maintenance on a district basis. The government could set up support centers to raise building management awareness and standard through proactive education, technical advice and guidance, etc.