# COVER STORY

# 主題文章

# An Overview of the Apology Ordinance from the Perspective of Property Managers

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## Introduction

The Apology Ordinance came into effect since 1 December 2017. The objective of the Ordinance, as stated in its section 2, is to "promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution". Sometimes, a person who intends to apologize to another may have some concern or worry that the apology would be used against him in future legal proceedings as his admission of fault or liability, or the court may at least draw some adverse inferences against him. This may prevent him from tendering the desired apology, although had he actually done so, the party who receives that apologetic message might have dropped the idea of suing him altogether. The Ordinance was enacted to give some protection to the person apologizing, so that his legal position may not be prejudiced under certain circumstances.

## Legal definition of Apology

Section 4 of the Ordinance provides that an apology means "an expression of the person's regret, sympathy or benevolence in connection with the matter" and includes "an expression that the person is sorry about the matter". It is not necessary for the person tendering the apology to admit liability expressly, but some people may be under the impression that whenever you apologize, you are impliedly saying that you have done something wrong to the detriment of the person to whom the apology is conveyed. Of course, "an express or implied admission of the person's fault or liability" may also be an apology within the meaning of the Ordinance.

The expression may be oral or written. The Ordinance extends the meaning to cover apologies by conduct. For instance, the conduct of offering to pay for the medical expenses or sending cards and flowers, etc. can be an apology as they may be expression of the person's sympathy or benevolence.

## Scope of Application

The Ordinance applies to judicial, arbitral, administrative, disciplinary and regulatory proceedings and other proceedings conducted under an enactment (e.g. ordinance or statutory rules and regulations).

However, it does not apply to criminal proceedings or those listed in the Schedule of the Ordinance, including those conducted under the Commissions of Inquiry Ordinance, the Control of Obscene and Indecent Articles Ordinance, etc.

## Statements of Apology are inadmissible as evidence

The Ordinance provides that evidence of an apology is generally inadmissible in proceedings for determining fault, liability or any other issue in connection with the matter to the prejudice of the person apologizing (section 8(1)). As said above, the objective is to encourage parties to make burden-free apologies with a view to facilitating settlement of the dispute. Indeed, legal actions are sometimes initiated out of burst of emotion, or due to misunderstanding between the parties. A timely apology may change everything, so that two persons become friends instead of enemies.

For example, when an accident occurs in an estate managed by a property management company, say some tiles falling off from the external wall of a building injuring a pedestrian who is hospitalized, the estate manager, whether out of personal feeling like sympathy or sorrow, or with a view to enhancing the corporate image or reputation of the management company, may want to send some gifts and regard to the victim, or visit him and say a few kind words to him expressing regret and apology. In the past, he might hesitate whether he could do so bearing in mind the possibility that the victim might in future sue the management company for loss sustained in the accident. What he has done might then be construed unfavourably against the property manager. Indeed, his public liability insurer would likely tell him that he should do nothing of that sort, or else he might be considered as having breached the condition contained in the insurance policy that the insured should not make any admission of liability. After the Apology Ordinance has come into effect, such acts and statements would likely be inadmissible as evidence in any future legal proceedings and the property manager and his insurer may be more willing to apologize. We will discuss below in more details how the Ordinance copes with such a scenario.

It should be noted, however, in an exceptional case, the decision maker (e.g. a court, a tribunal, and an arbitrator) may exercise a discretion to admit a statement of fact contained in an apology as evidence in the proceedings if it is just and equitable to do so, having regard to the public interest or the interests of the administration of justice (section 8(2)).

As the Apology Ordinance has only been enacted recently, there has not been any decided case in Hong Kong on when exactly the court may ignore the primary objective of the Ordinance as explained above, and nevertheless take into account words or conduct showing apology in determining liability. Hence, this provision might have created some uncertainties. Only one example has been cited in the Ordinance, which is "where there is no other evidence available for determining the issue". There is no further illustration as to what constitutes "an exceptional case" but it seems that this power would rarely be invoked. Otherwise, the whole purpose of enacting the Apology Ordinance will be defeated altogether. Moreover, judges are familiar with phrases *"just and equitable"*, *"public interest"* and *"the interests of the administration of justice"*. We would expect the court to come to some sensible judgment when a plaintiff seeks to adduce apology as evidence in reliance upon this exception, although other decision makers like arbitrators might not be legally trained and might not be able to exercise discretion in a consistent and logical manner.

**Effect on limitation period**

Under the Limitation Ordinance (Cap.347), where the right accrued on or after 1 July 1991, if a squatter has been in adverse possession of some landed property continuously for 12 years or more without the owner's consent, intentionally excluding other people including the owner during such period, the owner's title to the land may be extinguished (section 17), and the squatter would acquire title to the land instead through adverse possession. In Hong Kong, adverse possession has occurred not only in the New Territories, but also in urban areas.

For example, in *Yeung Mau Cheung v Ka Ming Court, Castle Peak Road (IO)* [2013], from about October 1969, the 1st Plaintiff and his mother had exclusive possession of two portions of the common parts on the ground floor of the building to run a refreshments shop. Subsequently in about 1983, the 2nd Plaintiff took over in running the shop. In about 2009, the incorporated owners (IO) of the building sought to evict the Plaintiffs who refused to go and claimed a possessory title. The court held that the IO's right to recover possession the suit portions had extinguished by section 17 of

the Limitation Ordinance. Similarly, in *Lee Theatre Realty Ltd v Tong Wah Jor* [2013], the Plaintiff, the owner of part of the lane located next to Lee Theatre in Causeway Bay, brought an action to recover the land. The court found in favour of the Defendant, holding that the Defendants were in possession of the relevant area since the mid 1970's, which is more than the 20 years required to establish adverse possession.

Under section 23 of the Limitation Ordinance, however, if the squatter acknowledges the owner's title (i.e. admits that the owner is indeed the owner of the land) during the 12-year period, time will run afresh from the date of the acknowledgment. Sometimes, therefore, if a squatter is found to be in occupation of your land, you may seek to enter into some agreement (e.g. licence or tenancy) with him for the use of the land even at nominal consideration. If he agrees to do so, he will likely be acknowledging your title in law. As far as the Apology Ordinance is concerned, section 9 of the Ordinance provides that an apology does not constitute an acknowledgement for the purpose of the Limitation Ordinance. Hence, for example, if the squatter writes a letter to apologize for having trespassed onto the owner's land, the letter may not constitute an acknowledgment causing the 12 years' period to run from the beginning again. When deciding whether certain message conveyed by the squatter of land under his management (e.g. managers of the buildings referred to in the said decided cases), property managers should bear this in mind, and should not act on the basis that the squatter's apology will necessarily prejudice his legal position. It will of course be advisable to seek legal opinion on the effect of any apparent apology or acknowledgment and the step to be taken in response in a case of this kind.

**Effect on contract of insurance or indemnity**

Section 28 of the Building Management Ordinance (Cap. 344) now makes it compulsory for incorporated owners of a building to take out third party liability insurance. Indeed, prior to the said section 28 coming into force, property managers often insure the building they manage against various risks. As mentioned above, a liability insurance policy would invariably provide that the insured should not admit fault or liability without the insurer's consent. The rationale is that it is the insurer who is to satisfy the claim or part of it. Any admission of liability made by the insured will be against the insurer's interest. It should be noted that most insurance policies in Hong Kong contains a "condition precedent" clause to the effect that due observance by the insured shall be a condition precedent for the insurer's obligation to provide insurance coverage under the policy to arise. If the insured incorporated owners or property manager is in breach of any policy condition, it will not be necessary for the insurance company to prove any actual loss flowing from the breach before it may refuse to indemnify the insured.

The effect of a "condition precedent" clause has already been recognized by Hong Kong courts. In *Chan Yiu Sun v Yip Kim Cheung & Others & Euro-America Insurance Ltd (Third Party)* [1990], the Plaintiff was a passenger in a car owned by the 1st Defendant and driven by the 2nd Defendant. The Plaintiff suffered serious injuries as a result of traffic accident between the car and a taxi driven by the 3rd Defendant. Although the 3rd Defendant was made aware of the allegation that he was responsible for the accident, he did not inform the third party insurer until he received a letter from the Plaintiff's solicitors making the claim. The insurer repudiated liability on the ground that the 3rd Defendant failed to comply with the condition precedent to give notice to the insurer when the accident occurred. The court held that the 3rd Defendant was obliged to give early notice to the insurer under the policy and a breach of condition precedent by the 3rd Defendant entitled the insurer to repudiate liability even if the insurer did not prove any loss caused by the delay in giving notice.

In the past, therefore, there should always be strict compliance with the policy conditions including the provision prohibiting admission of liability. Whenever a breach occurs, the insurance company may be entitled to decline indemnity even if they suffer no actual loss as a result. It would therefore be unwise for property managers to tender any apology or do anything along such line. At least he should not do so without his insurer's consent which consent may never be forthcoming. As a result, the Property Manager/Management Committee were reluctant to make any apology or express any regret or sorrow towards the victims however much they would love to, for fear that the apologies would adversely affect the insurance cover or right to compensation. This may arouse some dissatisfaction or misunderstanding on the part of the victims who might be determined to take legal action.

Section 10 of the Apology Ordinance now provides that an apology does not avoid or otherwise affect any insurance cover, compensation or other form of benefit for any person in connection with the matter under a contract of insurance or indemnity. This may, in appropriate cases, allow the property manager to convey an apologetic message to the victim without affecting its insurance coverage. Moreover, under section 8 of the Apology Ordinance, the apology may well be inadmissible in any future legal proceedings when the victim seeks compensation from the owners or the property managers of the relevant building or estate. Nevertheless, the property manager should seek proper advice from its insurance brokers and lawyers as to whether he could make the intended apology in a particular case despite the above statutory provisions. After all, each insurance policy may contain different conditions, and the Apology Ordinance is a relatively new piece of legislation and the precise legal effect of the above provisions has not been discussed in any local decided case.

**Effect on defamation and mediation proceedings**

Section 11(b) of the Apology Ordinance makes it clear that the Ordinance does not affect the operation of sections 3, 4 or 25 of the Defamation Ordinance (Cap.21). It means that apologies made to the plaintiff may continue to be admissible in the mitigation of damages (section 3 of the Defamation Ordinance). Also, the defendant may still plead a defence that he had published an apology in newspaper and such libel was made without malice or gross negligence (section 4 of the Defamation Ordinance). In addition, where a person published words alleged to be defamatory of another person, if he claims that the words were published by him innocently, he can still make an offer of amends in accordance with the procedures in section 25 of the Defamation Ordinance. All those apologies and offers to amend will be taken into account by the court notwithstanding the Apology Ordinance.

Section 11(c) provides that the Ordinance does not affect the operation of the Mediation Ordinance (Cap.620). A person must not disclose a mediation communication, whether or not apology related, save in exceptional circumstances (section 8 of the Mediation Ordinance). Therefore, such mediation communication will continue be protected from disclosure by the Mediation Ordinance without being affected by the Apology Ordinance. Therefore where there is a dispute between the incorporated owners and an individual owner and the parties attempt to settle the matter through mediation, if either party makes an apology during the mediation session, such communication cannot be disclosed and cannot be used as evidence against that party.

**Conclusion**

Compared to other jurisdictions which have introduced apology legislation earlier, the apology law in Hong Kong is still very new and it is the first piece of such legislation in force in Asian jurisdictions. Its application and operation will need to be further clarified by case laws as time goes by. The new law does not exclude all apologies from evidence. Care must be taken when drafting apologies to ensure that any such apologies would enjoy the protection of the new Ordinance. We are optimistic that the Apology Ordinance will enable a well timed and well drafted apology to assist in preventing dispute escalation and encourage amicable settlements. We would encourage building managers to seek professional legal advice in appropriate circumstances on how to take advantage of the new law, such as when issuing pre-action letters or revising internal protocol on handling complaints. Apologetic and empathetic messages always sound good to the ears, and may create a more harmonious environment in the housing estate.

# Defamation Relating to Housing Management

**By Chung Pui Lam G.B.S., J.P.**
**December, 2018**

**What is Defamation?**

In simple words, any person publishes false statements (either orally or in writing or by conduct) relating to a particular person and/or corporation while injuring the reputation of the same may be liable for defamation.

The key elements of defamation are (1) the words must be defamatory; (2) the words defamatory in nature are conveyed to third parties i.e. published; and (3) the particular person and/or corporation is "injured" by the defamatory words.

Defences are available to defamatory action. The most common ones are justification, fair comment and qualified privilege. Justification means that the defendant needs to prove what he or she published is true in fact or in substance. If the statement is a "comment" based on facts which are true, relates to matter of public interest and is one which could have been made by an honest person, the defendant can raise the defence of "fair comment". The defendant may choose to defend on the basis of privileged publication under sections 13 and 14 and schedule of Defamation Ordinance (Cap.21) or common law. "A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of the Consumer Council[1] or a copy or fair and accurate report or summary of any report made or published under section 16 or 16A of The Ombudsman Ordinance (Cap. 397)[2]" are examples of privileged publication. In *Adam v Ward* [1917] AC 309, at 318, Lord Finlay LC stated that:

"If the communication was made in pursuance of a duty or on a matter in which there was a common interest on the party making and the party receiving it, the occasion is said to be privileged. This privilege is only qualified and may be rebutted by proof of express malice."

The abovementioned are better to be illustrated through the cases cited below.

**Case Law**

The law on defamation can be very complicated. Nonetheless, we shall explore "defamation" under the context of housing management through the two cases decided by the Courts of Hong Kong.

(A) *Kwan Kang Hung & Others v Ho Ping Chiu & Others* [2015] CHKEC 813

In this case, the Plaintiffs are the Chairperson of the Owners' Committee and Management Company of Shatin Centre respectively. They sued against the Defendants alleging that on 25th December 2009, the Defendants posted and published a letter named "沙田中心「大申訴」事件簿" ("the Letter") which contained defamatory matters to various third parties such as the Chief Executive of the Hong Kong Special Administrative Region, the Chairperson of the Developer Group and other government authorities.

1 Section 13 of Part II of Schedule (Statements Privileged Subject to Explanation or Contradiction) of Defamation Ordinance Cap.21

2 Section 14 of Part II of Schedule (Statements Privileged Subject to Explanation or Contradiction) of Defamation Ordinance Cap.21

The Court looked closely into the article and held:

"17. 將該事件簿整體解讀，有關的誹謗性言詞傳達給普通、明理及持平的讀者的自然和通常涵義，沒有疑問可言，就是指：原告人與承辦商及顧問「勾結」及「串通」來「欺騙」及「瞞騙」屋苑的業主；有作出「欺騙」業主的行為；原告人「不守[法]紀」、「知法犯法」、「藐視法紀」；「不負責任」;「觸犯法紀」、「涉及嚴重刑事行 」十多年；從中取得「利益不少」；由他們負責的屋苑「財務管理和帳目報表亂七八糟，一塌糊塗」，「帳目不為人知」；更將眾業主的部分公款「嗒吞」或據為己有。這些全是涉及不誠實、不稱職、刑事責任及濫用職位的嚴重指控，若非真實，便顯然及毫無疑問是誹謗。"

At the end, the Court entered judgment for the Plaintiffs and held that the Defendants shall pay handsome damages, legal costs to the Plaintiffs and shall refrain from publishing the Letter under the injunction order.

The settled rule is that the Court will read the article as a whole[3] and determine what meaning would the allegedly defamatory words convey to *the mind of the ordinary reasonable, fair-minded reader*[4]. The emphasis is on the "reasonableness" that the intention of the publisher is irrelevant.



(B) *The Incorporated Owners of Hiu Tsui Court and Another v Lai Sing On* [2014] HKEC 1313

This is a District Court case which was an action arose out of management of the estate, Hiu Tsui Court ("the Estate") and related to renovation work undertaken in 2008. The Plaintiffs, the incorporated owners and chairman of the management committee, claimed that the Defendant had published 3 letters ("the 3 Letters") in 2009 with the following words which are defamatory by sending them to all other owners of the Estate:

(1) The 1st Letter

"法團揀選10月6號下午6時在本苑舉行業主大會的時間不適當，相信大部份上班一族很難於6時後下班兼能趕到登記及開會。法團及管理委員會是否故意令大家未克出席呢？本人曾去信要求改至晚上7時後，可惜被主席來信拒絕，…"

"在處理上述遷移污水渠工程中，我們不相信現任管理委員會的能力，尤其是在與工程公司簽約前，未有設立徵詢期，今天我們終於接到一個遲來的通告，就是顧問公司的測量師[…]於九月二十四日晚七時到本苑開始了解或解答我們各業戶的問題。但可惜的是在未弄清一切前便與工程公司簽訂近8百萬元的工程合約。我們是否再容許他們繼續負責該項工程的往後運作？如果他日需要各業戶集資〔如最終工程超支〕，我們願意額外科錢嗎？又或他們做的工程是有違香港建築條例而要把近來所做的工程還原本來面貌，我們可承担這一切嗎？本人早前已致信給屋宇署及房屋署獨立審查組詢問就本苑的情況是否有違反香港建築條例，而他們的回覆是在研究中。"

"我們曾到管理處翻閱工程合約內容，發覺部份合約內容不合理及令人費解，由於主席不同意提供副本給我們詳閱及須辦公時間到管理處查閱，時間安排上令我有些困難，現時難以掌握合約全文，我們不清楚合約是否充分保障業戶利益；…"

(2) The 2nd Letter

"如果您是大或細單位的業戶而您的單位已經開始了搬渠工程，您有沒有不滿意的地方？有沒有有冤無路訴的感覺？如果是，您便要參加我們下一輪的〝內部〞會議。"

"如果您是大或細單位的業戶，但單位仍未開始搬渠工程，您更要參予。只有對今次工程認識更多才不會被賣豬仔。"

3 *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130
4 *Next Magazine Publishing Ltd v Oriental Daily Publisher Ltd* (2000) 3 HKCFAR 150

"討論點：…

2. 無論大，中，小單位，如果工程在進行中令到室內建設有所破壞或毀壞而要重新裝修，誰付這單位的裝修費？據我所知合約上有一筆是作賠償用的。但主席或法團或顧問公司至今都未提一字。

3. 今次的搬渠工程，有否違反公契條款，現時大廈保險是否仍然生效？我查閱過法團的所有例會會議記錄都沒有提及保險，非常擔心。

4. 顧問公司費用才約2萬多元，以今天香港的生活指數我們能期望怎樣的顧問服務呢？

5. 我們是否有信心讓現時的管理委員會繼續管理這八百萬的工程？

6. 我們現在的工程是不尋常的，因為法團如果要做公眾維修，九成九應該在公眾地方，但現在全部單位都要入屋內工作；最後要說的無論是顧問公司或業主提出的方案也好，我覺得在開工前，法團應得到政府有關部門及顧問拿取專業書面保証，弄清楚給各業主，保証進行中的工程是不違法及不違大廈公契的，如沒有以上兩點重要保証，各業主應該不允許工程人員進入室內開工，因為如果我們在法律上被迫還原時，在精神上及金錢上的損失將是非常嚴重的。"

(3) The 3rd Letter

"本人重申，說本人接觸的各業主都表示，如渠管損壞滲漏，絕對同意更換渠管，問題是先確定工程必須是合法合理地進行及不違反大廈公契，避免不合法工程進行引致損失，最佳保障是得到有關政府部門或機構提供書面証明，不是用口講…"

"其後在24/9晚工程答問會，出席各業主已看到主席的言行，對其他業主的傲慢態度，已不適合作為曉翠苑法團代表。加上2007年尾更換鋁窗事件，整個工程費用約$1,500,000.00元，更換電梯大堂鋁窗共134隻，每隻4x8呎，地下大堂鋁窗2隻，以粗略計算，鋁窗每隻$11,000.00元。

你認為這是合理價？超貴價錢？

良好管理，有賴各業主積極參與，起監察作用，才可減少流弊事件。"

A point worth to mention here is that the Court held that an owners incorporated may not maintain an action for defamation as a matter of law[5] because it does not carry on any business for profit and cannot be injured in its pocket nor its feelings.[6] A defamatory imputation will not have the effect of lowering an incorporated owners in the estimation of others.[7]

After analyzing the imputations, the Court held that the words contained in the 3 Letters are defamatory but also upheld the Defendant's defences of qualified privilege, justification and fair comment and therefore dismissed the Plaintiffs' claim. At para 226, the Court held:

"The defendant being one of the requesting owners for the October Meeting had a *duty to provide information* on matters relating to the Renovation Work and the October [(General)] Meeting *to the other owners and the other owners had the reciprocal interests of receiving the same.* The matters raised in the Letters were matters of *common interest* to the defendant and the other owners." As a result, the publication is protected under qualified privilege because it relates to common interest of all the owners within the Estate.

The Court looked into evidence provided by both parties, agreed that the Defendant had proved the primary facts and matters substantiating all the imputations contained in the 3 Letters substantially true[8] and some were comments on matters of public interest which an honest person could have been made (fair comment).

5 Para 165
6 Para 162
7 Para 160
8 Para 331

As demonstrated by the above two cases, defamation is not uncommon under the context of management of estate and/or building. Owners of the estate and/or building are concerned with how their money was spent either on a routine basis or for renovation projects as the figure involved might be huge and involved third parties e.g. independent contractors. Defamatory actions are heavily dependent on the facts of each case.

**Way forward**

What we can learn from the highlights of the cases is that as members of management committee, they should be extra careful in carrying out their duties in managing and handling the matters relating to the estate and/or the building. Although there is protection under section 29A of the Building Management Ordinance Cap.344, the member may still be personally liable for default if he or she is not acting in good faith and in a reasonable manner[9]. Hence, the management committees and the management company should constantly review whether the existing policies or procedures are fair to the owners and ensure all decisions and resolutions are made or passed in accordance with the law and documented properly so as to avoid misunderstandings. Besides, as one of the registered owners of the building and/or the estate, he or she should proactively participate in attending general meetings to keep updated of the matters as well as exercising their rights of voting. If he has any query about the management, he should discuss and make relevant enquiries. Before lodging complaints or publishing any statement, the owners should consider modestly as they may need to bear the risk of being sued as well as paying significant damages and/or legal costs if the same are defamatory and damaged the reputation of others. All in all, this is a matter of balancing exercise.

[9] See *Wing Hong Investment Co Ltd v Fung Sok Han and Others* [2016] 1 HKLRD 1

# Green building development in China

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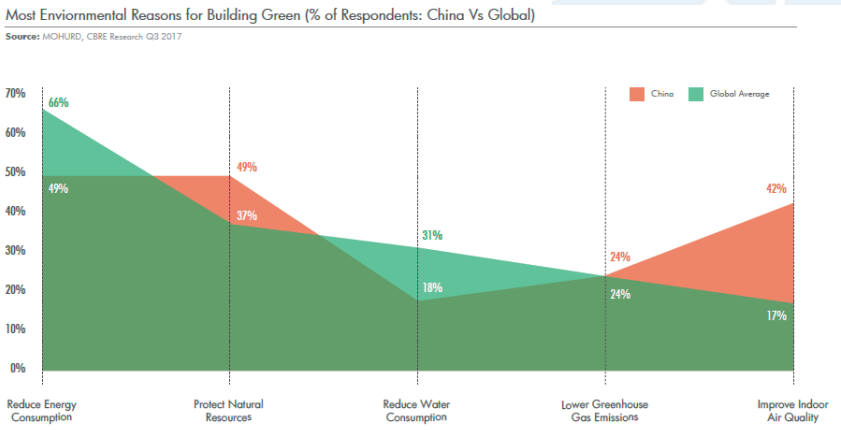
## 1. Why Green Buildings

**Green building** (also known as **green construction** or **sustainable building**) refers to both a structure and the application of processes that are environmentally responsible and resource-efficient throughout a building's life-cycle: from planning to design, construction, operation, maintenance, renovation, and demolition. This requires close cooperation of the contractor, the architects, the engineers, and the client at all project stages. The Green Building practice expands and complements the classical building design concerns of economy, utility, durability, and comfort.

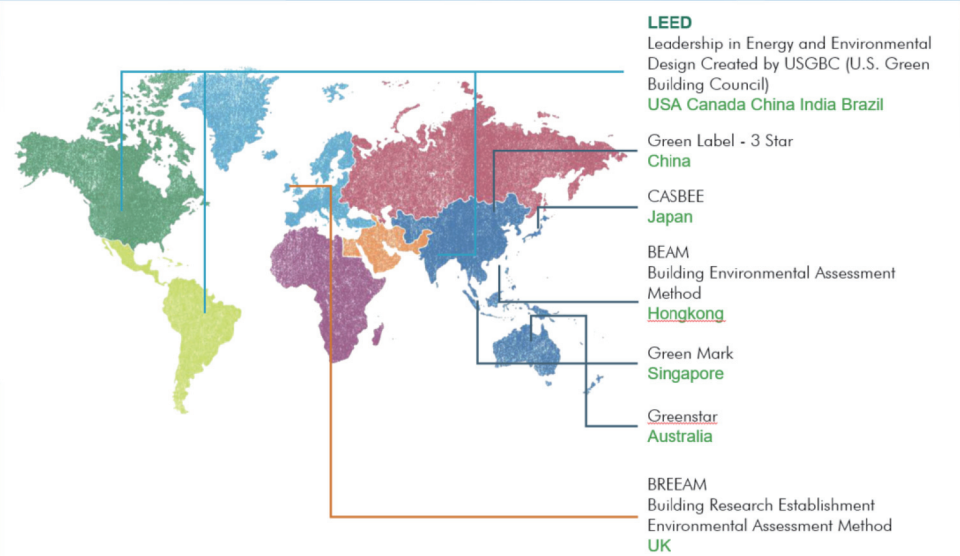
Green buildings are an integral part of the solution to the environmental challenges facing the planet. Today we use the equivalent of 1.5 Earths to meet the resource needs of everyday life and absorb the resulting wastes. This measure of our planet's carrying capacity means that it takes Earth 18 months to regenerate what is used in only 12 months. If current trends continue, estimates suggest, by the year 2030 we will need the equivalent of two planets.

Human population has increased exponentially in the past 60 years, from about 2.5 billion in 1950 to more than 7 billion today. Our linear use of resources, treating outputs as waste, is responsible for the toxins that are accumulating in the atmosphere, in water, and on the ground. This pattern of extraction, use, and disposal has hastened depletion of finite supplies of nonrenewable energy, water, and materials and is accelerating the pace of our greatest problem—climatic change. Buildings account for a significant portion of greenhouse gas emissions; in the U.S., buildings are associated with 38% of all emissions of carbon dioxide globally, the figure is nearly one-third.

The problem is anticipated to worsen as developing countries attain higher standards of living. These forces are bringing us to a tipping point, a threshold beyond which Earth cannot rebalance itself without major disruption to the systems that humans and other species rely on for survival.



The available green building rating systems in the worldwide are listed as below.




According to the 13th Five-Year Plan of Green Building Development, 2016-2020 will be a period of acceleration of "quantity and quality" for green buildings in China. The plan sets out the following goals for 2020: At least 50% of all newly constructed buildings should be green building certified; Over 80% of certified projects should fulfill the two-star requirements; At least 30% should receive certification for operations. All three indicators have vastly improved since September 2016. By 2020, it is estimated that new supply of green building space will reach 2 billion sqm.

**2. Development of Green Buildings in China**

The development of green buildings in China has undergone major advancements in recent years. Leaders of the green building movement are helping mitigate climatic change, positively affecting the health and well-being of millions of people, using fewer resources than ever before and reducing the impact of buildings on the environment. LEED and other green building programs have created a path forward for this market transformation, changing the way buildings, communities and cities are planned, constructed, maintained and operated.

Green building has also been identified as a critical component in meeting the goals of *13th Five-Year Plan for Economic and Social Development of the People's Republic of China*. The Five-Year Plan not only forms a detailed blueprint for China's development and evolution over the next five years, but it also reinforces the need to contribute to China's vital environmental and sustainable building efforts. China has reached a new starting point in its development endeavors. 'Guided by the vision of innovative, coordinated, green, open and inclusive development, we will adapt to and steer the new normal of economic development and seize opportunities it presents.'-Keynote speech at the opening ceremony of the Belt and Road Forum (BRF) for International Cooperation in Beijing.

At the heart of the 13th Five-Year Plan are five guiding principles:

***OPENNESS***

*Encouraging China to utilize both domestic and global markets and be more active in global governance.*

***GREEN DEVELOPMENT***

*As a means of protecting the environment, safeguarding precious resources, and pursuing environmentally friendly economic growth.*

***COORDINATION***

*To promote balanced development between rural and urban areas, and across different industries.*

***INCLUSIVENESS***

*To ensure that China's prosperity is shared among the whole population.*

***INNOVATION***

*That not only fosters new development, but also shifts China's economic structure into a higher-quality growth pattern.*

The 13th FYP details many initiatives that will play an essential role as China continues to redefine itself for the future. According to the Plan, key areas of concentration include agriculture and industry, the cyber economy, infrastructure, urbanization, regional development, the environment and eco systems, public education, and job creation. Green buildings can make valuable contributions to many of the initiatives that are considered vitally important to the future wellbeing of the people, the ecosystems, and the economics of China.

**3. LEED in China**

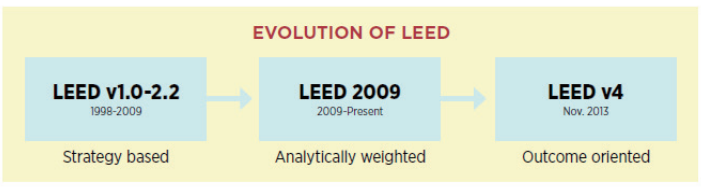
***3.1 What is LEED?***

Developed by the U.S. Green Building Council, LEED (Leadership in Energy and Environmental Design) is a framework for identifying, implementing, and measuring green building and neighborhood design, construction, operations, and maintenance. LEED is a voluntary, market driven, consensus-based tool that serves as a guideline and assessment mechanism. LEED rating systems address commercial, institutional, and residential buildings and neighborhood developments.

LEED seeks to optimize the use of natural resources, promote regenerative and restorative strategies, maximize the positive and minimize the negative environmental and human health consequences of the construction industry, and provide high-quality indoor environments for building occupants. LEED emphasizes integrative design, integration of existing technology, and state-of-the-art strategies to advance expertise in green building and transform professional practice. The technical basis for LEED strikes a balance between requiring today's best practices and encouraging leadership strategies. LEED sets a challenging yet achievable set of benchmarks that define green building for interior spaces, entire structures, and whole neighborhoods.

LEED for New Construction and Major Renovations was developed in 1998 for the commercial building industry and has since been updated several times. Over the years, other rating systems have been developed to meet the needs of different market sectors.

Since its launch, LEED has evolved to address new markets and building types, advances in practice and technology, and greater understanding of the environmental and human health effects of the built environment. These ongoing improvements, developed by USGBC member-based volunteer committees, subcommittees, and working groups in conjunction with USGBC staff, have been reviewed by the LEED Steering Committee and the USGBC Board of Directors before being submitted to USGBC members for a vote. The process is based on principles of transparency, openness, and inclusiveness.



### *3.1.1 LEED's Goals*

The LEED rating systems aim to promote a transformation of the construction industry through strategies designed to achieve seven goals:

1) To reverse contribution to global **climatic change**

2) To enhance individual **human health** and well-being

3) To protect and restore **water resources**

4) To protect, enhance, and restore **biodiversity** and ecosystem services

5) To promote sustainable and regenerative **material resources** cycles

6) To build a **greener economy**

7) To enhance social equity, environmental justice, **community** health, and quality of life

These goals are the basis for LEED's prerequisites and credits. In the BD+C rating system, the major prerequisites and credits are categorized as Location and Transportation (LT), Sustainable Sites (SS), Water Efficiency (WE), Energy and Atmosphere (EA), Materials and Resources (MR), and Indoor Environmental Quality (EQ).

The goals also drive the weighting of points toward certification. Each credit in the rating system is allocated points based on the relative importance of its contribution to the goals. The result is a weighted average: credits that most directly address the most important goals are given the greatest weight. Project teams that meet the prerequisites and earn enough credits to achieve certification have demonstrated performance that spans the goals in an integrated way. Certification is awarded at four levels (Certified, Silver, Gold, Platinum) to incentivize higher achievement and, in turn, faster progress toward the goals.

LEED v4, is the latest version of the international standard and was fully implemented in October 2016. LEED v4 has increased its emphasis and raised standards for interior environments. The assessment of interior environment has been adjusted to account for 16 points instead of 15 and is now 14.7% of the total weighted average which is 1.1% more than the previous version. Air quality standards have also become much stricter which have been updated from the original ASHARE 62.1-2007 to the ASHARE 62.1-2010, and also limiting smoking areas.

### *3.2 Development trend of LEED in China*

Since China's first LEED certification of the Agenda 21 project in 2005, the LEED certification has maintained rapid growth and development in the Chinese market. During 2005-2016, the total area of LEED certified projects in China had increased at a CAGR of 77%. By August 2017, over 48 million sqm of projects across 54 cities had been LEED certified. As of 2010, China has sustained its position as the largest LEED market outside of the US, accounting for over 9% of the global market and 32% of international market (excluding US).

LEED certification in China entered a period of acceleration in 2015; over 8 million sqm had been certified during the two years of 2015 and 2016, estimations also show that in 2017 newly certified projects will account for more than 10 million sqm. The Chinese market has displayed three major trends in terms of LEED certification, them being

**1. Increasing construction of commercial properties has driven LEED certification**

The Chinese government provides subsidies to projects which meet the locally issued Three-star Green Building Label which has led to numerous government buildings and amenities to be designed and commissioned towards these specifications. This has naturally led to LEED being focused towards commercial properties, and over the years its adoption has progressed rapidly. As of August 2017, over 80% of LEED certified space in China was for either offices or retail, an increase of roughly 6% since 2014.

Rapid increase of LEED commercial space has been highly correlated to the influx of new supply in the first and second tier cities. CBRE data shows that during the period of 2015-2017, over 17 million sqm of new commercial supply in 17 major Chinese cities will have been introduced to the market. This figure is 1.6 times greater than new supply over the 2010-2014 period. Highly competitive market conditions along with an increased sense of corporate responsibility has led to the LEED certification becoming a competitive differentiator to attract tenants.

**2. Over 10% of existing projects have achieved the LEED certification, however this still trails the global average**

Since 2015, the total amount of LEED certified commercial space in China had increased by 135%, reaching 5.4 million sqm and maintaining its position as the largest LEED certification market outside of the US; the proportion of existing projects which have become certified has gone from 9% to 11%. In comparison to newly constructed projects, existing projects which receive the LEED certification are stronger exemplifications of the certification's benefits of achieving higher rent levels, lower energy consumption, lower vacancy rates, and an overall improved environment for tenants.

Statistics on LEED office by major developers

**Source:** USGBC, CBRE Research Q3 2017; Statistics on cities cover by CBRE Research, and certified office space , but undisclosed projects are not included

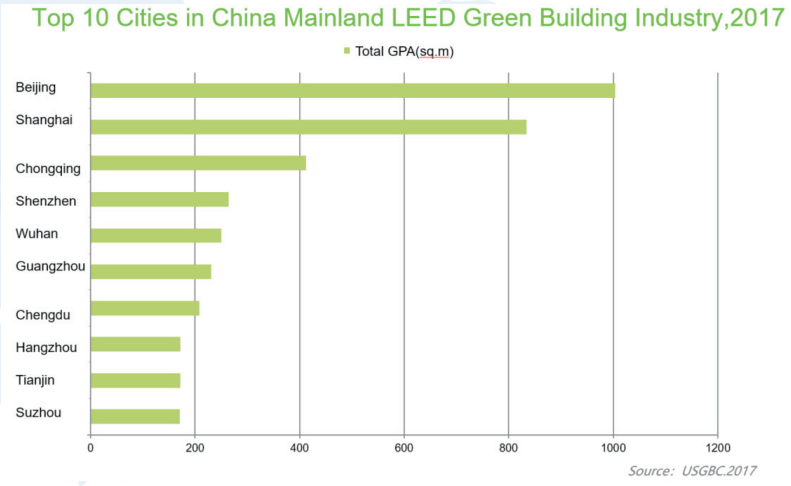
| Developer | LEED certified office space (sq.m.) | LEED certified offices as % of total office stock |
|---|---|---|
| The Wharf | 695,148 | 58% |
| Shui On | 648,075 | 69% |
| SOHO China | 553,996 | 93% |
| Kerry | 390,023 | 61% |
| Excellence Group | 389,000 | 92% |
| Sino-Ocean Land | 348,158 | 54% |
| Henderson Land | 347,716 | 66% |
| Sun Hung Kai Properties | 330,805 | 55% |
| Pingan | 247,054 | 78% |

However, this proportion is still relatively low by international standards which is roughly 35%. Amongst the 20 countries with the most LEED certified space, the top three countries with the highest proportion of existing projects are India (68%), Sweden (67%), and the US (41%); China (11%) ranks 12th on the list.

There is currently over tens of billions of sqm of existing commercial property supply in China and this figure continuously grows at a rapid rate which reflects large opportunities for greening the existing stock. However, this could be a relatively slow process as according to survey results published in the "World Green Buildings Trends 2016", only 19% of landlords in China have expressed plans for implementing green building standards to their existing projects, which is much lower than the global average of 37%, and ranks last amongst the 13 surveyed markets.

**3. First tier cities continue to lead in LEED certified space, however, third tier cities are trending**

As of August 2017, the total amount of LEED certified space in Beijing, Shanghai, Guangzhou, and Shenzhen had reached 23 million sqm, accounting for 51% of all total certified area in China, a 1% increase from 2014. It should be noted that since 2014, over 10 new cities have been added to LEED's footprint in China, which now totals 54 cities. These cities include: Dongguan (22), Huizhou (30), Sanya (32), Zhongshan (33), Shaoxin (36), Zhuhai (42), Changchun (43), Ordos (50), Luoyang (52), and Xuzhou (54). In addition to this, the concentration of certified space in the top ten cities has decreased from 87% to 81%. These figures are clear indications that the LEED certification is gradually becoming adopted and popularized across China.



The change in rankings of the top 20 LEED certified cities in China can also be regarded as strong supporting evidence for this view. Beijing, Shanghai, and Chongqing continue to lead the nation, whereas Beijing has become the first Chinese city to accumulate more than 10 million sqm. Hangzhou is the only new addition to the top 10 list in 2017, and now ranks 8th which is 3 spots higher than its previous position in 2014. Shenzhen has displayed the most growth in terms of both rankings and overall certified space. Nanchang, Hefei, and Dalian have displayed the fastest growth amongst the bottom half of the list, striving to make their first appearances on the top 20 list.

In addition to this, our data shows that registered area (not yet certified) for LEED certification since 2015 has reached 37 million sqm in over 58 cities. This clearly indicates the LEED certification will continue to develop rapidly over the next three years. Cities which have the most registered area are Beijing, Shanghai, Shenzhen, Wuhan, Guangzhou, and Chengdu.

# 中國智慧建築的現狀及發展趨勢

**羅奕**
**國內地區會員**

近年來，大數據、雲計算基礎設施的不斷完善，人工智能、物聯網技術不斷進步，深度學習算法體系和通用算法包的逐步成熟，給商業地產帶來了新的思考方向-智慧建築。智慧建築定位為是一個全面感知和永遠在線的建築生命體，「人」、「機」、「物」將不再是信息的孤島，會不斷的融合、交流。建築更能在不斷的自我學習、思考、決策中，實現人性化、綠色化、智慧化運營管理目標。

中國的智慧建築領域一直走在在積極探索和快速發展的道路上。「神鯨空間」賦予聯合辦公新的用戶體驗，用戶可以享受共享辦公的高效與便利、體驗擁有眾多智慧理念的建築空間。比如讓出行暢通的人臉識別；一鍵投屏、視頻會議的在線會議系統；雲打印與雲掃描、會議室預定、工位預定的在線辦公服務；具有車牌識別、在線鎖車、車位預定、在線繳費、室內導航尋車等功能的智慧停車系統；高效收發快遞的智能郵局。而騰訊濱海大廈則進一步打破了傳統建築運營設備硬件和軟件的隔離，為總部型企業的智慧辦公提供了新思路。濱海大廈的「智慧」以微信為載體，實施了一系列的智慧元素。如在線實現人臉輸入、閘機出入，讓用戶能快速進入辦公空間；閘機電梯一體化運營功能，讓用戶能通過閘機的同時，系統即刻進行派梯與目的樓層選層；通過實時在線室內定位和導航服務，給訪客提供快速抵達目的地的室內路徑指引；大堂智能機器人進行主動溝通與引導，讓運營服務更加主動；室內環境監控系統使辦公壞境內新風量、照度、溫度、濕度等環境指標處於最優範圍，保障辦公空間舒適度；交流空間和共享空間促進溝通交流等。

從「神鯨空間」到「濱海大廈」的發展來看，智慧建築的發展軌跡和實施方案的重點在於智慧建築三要素(建築本身、網絡層、用戶)中的網絡層。它既是建築與用戶溝通的橋樑，也是建築會分析、思考、學習、決策、進化的關鍵一環。在未來的智慧建築發展來看，網絡層將依然是智慧建築的最為關鍵環節。智慧建築將以實現提高用戶便捷化、高效化的辦公感受為目標，讓建築更加懂得用戶的需求，促進用戶在無限的智能空間內實現共享和協作。

此外，由於智慧建築對於空間內部人性化、綠色化、智慧化的關注，在可預見的未來建築後期運營管理方式也將產生較大轉變，傳統的模式下的用戶被動式接受、滯後式調節與滿足將轉變為主動式需求提出、自動調節與滿足。在這種需求下，對於前期地產項目在智能化功能規劃能力就有了更高的要求，就必須結合現有技術、發展趨勢、項目定位等要求來提前鎖定後期運營期的智慧建築的需求元素或者功能。

兼容性、可拓展性較強智慧建築的功能將未來較長的一段時間內依託物聯網、人工智能等技術的不斷進步而持續優化，相應的智慧辦公、智慧能耗管理、智慧安防、人工智能等功能也將陸續有新的發展。在智慧辦公領域，可通過大數據、雲計算技術對用戶需求點的持續記錄、分析、挖掘，為員工提供更為定制化的服務，如辦公資料雲存儲、辦公工具(桌子高度、椅子高度等)喜好記錄與自動調節、辦公位置預留、工作時間提醒、工作效率提高、咖啡偏好記錄、共享空間佈局等服務，來促進內部員工團隊合作、協作交流，以提升創新能力。同時通過分析單個區域用戶對於壞境中溫度、濕度、照度等使用要求，為每個用戶設置最佳的辦公環境，使建築物能實現綠色化運營管理，降低能耗，以實現大廈能耗管理的目標。智能安防的應用將變被動防禦為主動分析，為全後臺化、少人化甚至無人化的智慧安防管理提供新的發展路徑，通過視頻採集、人臉識別、行為分析、軌跡跟蹤等手段主動識別危險信息和求助信號，來保障大廈內部用戶的安全、並及時響應用戶的需求。同時隨著人工智能的不斷發展，未來的運營人員將可以在崗位中應用人工智能技術，進行運營協助工作，以減少現有運營管理中存在的僅需進行機械、簡單、重複工作(如禮賓等)或危險係數(如清洗外牆等)較高或操作不便利(如管道清洗等)工作的崗位，來降低運營管理人員數量、運營成本，實現扁平化、標準化、智能化的運營管理。

智慧建築將傳統建築變成了一個可以場景自適應的服務載體，用戶的需求變成構建建築服務中最為活躍和重要的一環，將不斷回應在現代用戶對於人性化、綠色化、智慧化的需求。相信隨著人工智能等技術的不斷推進，智慧建築也將持續不斷給大廈的所有用戶帶來全新的生活、辦公體驗。

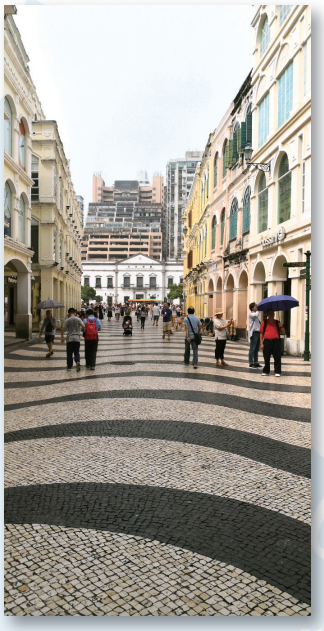
# 澳門物業管理新法實施，業界面臨新轉變

**周治方**
**澳門地區會員**

在澳門，兩個物業管理的專項新法律《分層建築物管理商業業務法》和《分層建築物共同部分管理的法律制度》於8月22日生效實施，標誌著澳門物業管理範疇法制建設取得了階段性的成果。業界和廣大市民大眾而言，絕對是影響民生的大事，萬眾囑目，各方關注，亦必然帶來業界的新轉變。


第12/2017號法律《分層建築物管理商業業務法》是監管物業管理企業的專項法律，生效後，僅具備有效的分層建築物管理商業業務准照的分層建築物管理企業主（包括個人企業主和公司），方可在澳門特區從事相關業務，否則即屬違法。法律主要涵蓋內容，從准照發給／續發／中止／註銷、提升註冊資本額、提供擔保金、聘請符合法定任職要件的技術主管、訂立罰款機制、明確從事有關業務而須遵守的義務等多方面進行法定規範，將是全方位的監管，有利於提升業界營運者的專業素質，但也增加了營運成本。

為執行《分層建築物管理商業業務法》，政府另制定行政法規《分層建築物管理商業業務法施行細則》。行政法規的主要內容包括：訂定分層建築物管理商業業務准照申請、發給、續發、中止、取消中止和註銷的行政程序，包括須提交的文件。發給准照和續發均須付費，具體的金額及保證金額由行政長官批示訂定；訂定使用房屋局電子系統的相關規定及程序。分層建築物管理商業業務准照亦將採用電子准照形式。同時，訂定分層建築物管理商業業務臨時准照的申請程序，以及由臨時准照過渡至正式准照的程序。



澳門是自由經濟體系，一般由個人企業主或公司在財政局登記開業即可營業，公司的註冊資本最低二萬伍千元，以法律規定需領取專門准照才可經營的行業並不多。但《分層建築物共同部分管理商業業務法》生效後，提升註冊資本至二十五萬元、需領取專門准照、附加以保證金、設定處罰機制、要求聘請法定的技術主管等規定，充分顯示特區政府對物業管理這個民生服務性行業的關注和重視。

公司須領取專門准照才可從事物業管理業務，聘請技術主管任職是發予正式准照的要素之一，從法律上認定技術主管在行業營運中的重要性和職責。法律中以專門條款規範了技術主管事項，將修讀《物業管理專業技術人員培訓讀課程》且成績及格列入法律中技術主管任職要件之一項。按法律要求設立技術主管職位可視為對兼負督導、監察職責的業界主管、行政人員賦予相應的法律地位。技術主管已不單純是某間公司、某個項目的主管或經理的職務內容，應理解為具備了法定職責和社會責任。公司需要聘有技術主管方可申請准照從事分層建築物管理業務，足以顯示法律認可技術主管在營運中的重要作用。

澳門特區政府勞工局和房屋局開辦的《物業管理專業技術人員培訓課程》是擔任技術主管資格的必讀課程，自2006年開辦至今共辦十二期，成績合格結業學員超過四百人，仍在業界工作的估計超過二百人，為業界公司領牌所需儲備了技術主管人才。他們是行業的中堅力量，須知責任重大。按法律規定，持牌物業管理公司營運有九項義務需由技術主管提供指導及意見。因此，除了將所學知識運用到實際操作外，應相當熟悉法律條文，從而幫助公司規避經營風險和避過不守法的誤解。該課程獲英國特許房屋經理學會總會認定課程，亞太分會全程協辦及選派導師授課。

第14/2017號法律《分層建築物共同部分的管理法律制度》，是將《民法典》中有關的分層所有權的規定內容抽出修訂成單行立法。本法律訂定分層建築物共同部分的管理法律制度，分層建築物的管理，包括一切旨在促進及規範分層建築物共同部分的使用、收益、安全、保存及改良的行為，亦包括按本法律規定屬於分層建築物各機關職責範圍的其它行為。

修法的方向體現於幾個方面：完善業主大會的召集制度和運作規則；調整通過業主大會決議的所需比例；明確規定管委會的組成及作出法律行為的範圍；釐清管委會與物業管理服務公司的關係及權責；引入關於在樓宇共同部分進行工程的特別規則。

新法律對比《民法典》中有關的法律條例，主要變化有：召集業主大會的程序相對簡單，不須以寄掛號信和當面簽收的形式召集，改以通告形式；降低開會出席業權比例，促成容易開會；選舉管理機關成員、通過上年度收支報告和本年度預算、及一般性事務的議決降低至達到15%業權比例通過；對召開業主大會及業主管理委員會運作的條例細化修訂規範，明確所有人大會作為決議機關的職權十九項、作為大會執行機關的管理機關（管委會）職務二十一項，管理機關成員的義務五項；設立會議錄寄存房屋局的機制防止非正常罷免管理機關成員、「一廈兩會」、「一廈兩管」等不正常情況發生。整個法律文本著重於業主大會及其管理執行機關如何運作方面，對管理公司的條文不多。

隨著上述兩個法律生效執行，對業界有多方面的直接影響：公司加大營運成本，在三年期限內未開業主大會的分層建築物樓宇都要召集業主大會；如能大部分樓宇成功開成業主大會，將會改變目前普遍存在的「無因管理」狀況，而轉為分別與各樓宇業主大會的管理機關簽訂物業管理服務合同；至於管理服務合同是採用承包制或是採用酬金制的模式，取決於各業主大會管理機關的取向，有待觀察；可以預見的是，市場會有很多的招投標個案出現，在招投標及選擇管理公司／管理方案的過程中，如何保障公平性和符合長遠利益可持續發展，也有待觀察；但是，廣大業主的「價低者得」的取向與業界提升服務專業發展的目標仍是存在不協調性，短時期內無法解決。

公司須領取專門准照才可從事業務及按法定設立技術主管職位，對業界是新事物，亦是行業專業發展的一個新起步點。雖然面臨新轉變，業界應以守法和積極有為的取向，主動面對和拆解這些新變化的難題，與業戶共同守法，積極召集業主大會，配合政府監管，政商民三方共同構建和諧社會的安居樂業生活環境。

如果行業的收入水平可以優化，有助於提升行業的服務水平和專業性。如何確保行業有合理的收入，從而維持行業有可持續發展的動力。在市場經濟主導的體制下，政府施政如何協調業界和市民的需求，將是執法後政府和業界都會共同面對的課題。

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