COVER STORY
主題文章

中國綠色智慧物業發展報告

中國物業管理協會、全國智標委《中國綠色智慧物業發展報告》課題組（組長：劉政，國內特許會員）

一、 物業管理行業發展現狀

物業管理起源於19世紀60年代的英國。我國現代物業管理始於20世紀80年代，1981年深圳市物業管理公司的成立標志著我國物業管理行業的誕生。歷經近四十年的實踐，我國物業管理行業發展取得巨大成績，且在新的時代呈現出綠色化、智慧化的發展趨勢。

1.1 物業管理行業已頗具規模，在經濟社會發展中發揮著重要作用

隨著我國城鎮化進程和房地產行業快速發展，物業管理的覆蓋範圍不斷擴大。根據中國物業管理協會編著的《2019中國物業管理行業年鑒》，截至2018年末，全國物業管理總面積達到279.3億平方米，相比2008年增加153.84億平方米，年複合增長率為8.33%；全國共有物業服務企業約23.4萬家，較2013年10.5萬家增長了122.8%，年複合增長率為17.38%，物業管理行業從業人員約636.9萬人，近5年增長225.3萬人，複合增長率為9.12%，2018年行業從業人員已經佔到第三產業從業人員的3.02%，每年吸收就業人數近50萬。2018年物業管理行業總營收達到9066.1億元，較2013年增加4974.4億元，實現了產值的翻倍增長，複合增長率達17.25%。物業管理已成為我國服務業的重要部分，推動了我國現代服務業的持續發展以及社會就業，在經濟社會發展中發揮了重要作用。

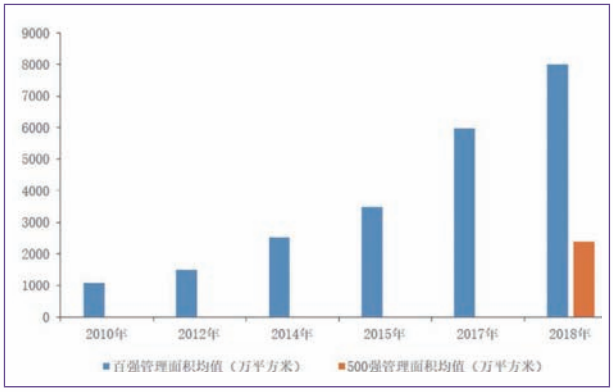
1.2 物業管理具有准公共產品屬性，是社區治理的重要參與者

社區是城市的細胞，物業管理寓於社區管理，社區管理寓於城市管理，三者相輔相成、密不可分。在物業管理活動中，物業服務企業配合政府部門，在社區治理、城市管理中承擔了較多的公共管理服務事務，物業管理具有一定的公共產品屬性。其中，物業管理在社區治安管理、消防安全管理、流動人口管理等方面發揮了重要作用，是社區治理的重要參與者。在2020年新冠疫情防控工作中，物業服務企業充分履行了自身的社會責任和專業義務，堅守社區一線，協助轄區基層政府全面完成了防控聯防和秩序維護工作，為抑制新冠疫情的蔓延提供了重要保障。

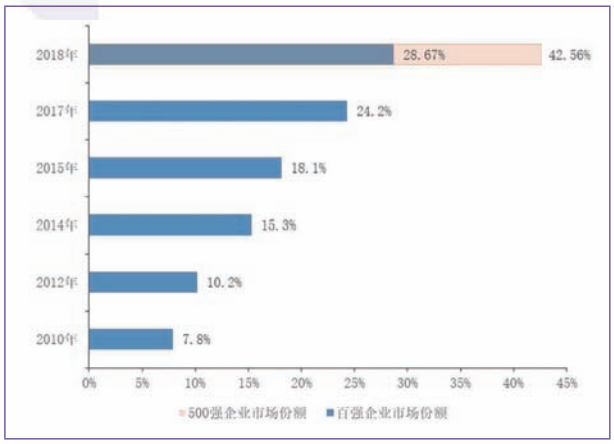
1.3 行業集中度不斷提升，有利於發揮規模效應及行業的創新發展

作為現代服務，現階段我國物業管理行業的發展表現出勞動密集型、集中度低的特徵。近五年來，在資本加持之下，物業管理行業的集中度持續提升。根據中國物業管理協會發佈的《2019物業服務企業發展指數測評報告》，截至2018年末，500強物業服務企業的管理面積均值為2377.35萬平方米，市場佔有率約為42.56%。百強物業管理企業的管理面積均值為8007.68萬平方米，同比增長33.89%，優勢向頭部企業集中，百強管理面積總值佔500強管理面積總值的67.37%。同時，百強企業市場佔有率較上年增加4.42個百分點至28.67%，集中度進一步提升。

圖表1-1 2010-2018年百強與500強物企管理面積均值情況



圖表1-2 2010-2018年百強與500強物企市場份額情況



1.4 物業管理覆蓋範圍不斷擴大，提供社區和城市服務成為趨勢

我國物業管理從誕生之初隻為商品房住宅小區提供服務，到目前已經覆蓋了商業物業、辦公物業、產業園區、學校、醫院，以及博物館和美術館等公共物業，城中村、老舊住宅小區，而且，正在朝著城市社區綜合服務商的方向發展。其中，具有代表性的，碧桂園服務啟動了「城市共生計劃」，向「智慧產城運營服務商」轉型，為城市的環境維護、綠化養護、基礎設施維護、公共秩序維護等提供專業化的技術支持與服務。萬科物業、長城物業等物企都明確提出開創城市服務領域，創新城市運營服務業務。

1.5 物業管理行業資本化進程將促進行業持續、縱深整合

自2014年彩生活成為第一家上市物企以來，物業管理行業的資本化熱度持續提升。金融資本對物業管理行業的青睞，源於對社區經濟發展的預期，社區是一個具有複合性需求的生態圈，涵蓋了購物、餐飲、住房、出行、金融、理財、家政、健康、養老、休閒娛樂等多個方面，其蘊含的商業價值巨大。與此同時，社區的綜合治理是城市管理的基礎，物企與社區有著天然的緊密聯繫，未來在參與社區治理、城市治理中將有更大的市場空間。在今年的新冠疫情防控中，物企在基層社區治理中的價值已經得到了資本市場的認可，疫情期間上市物企股價整體上呈現強勁的上漲勢頭，截至2020年4月30日，相較2019年末收盤價，物管板塊平均漲幅為26.3%，同期恒生指數下跌12.6%。

截至2019年底，共有21家物企在港股上市，有3家物企在A股上市。僅2020年1月至7月，共有6家物企陸續登陸港股市場，興業物聯、燁星集團輪番打破物企上市超額認購記錄，成為港股新晉「超購王」。在資本的加持下，物企已由原來主要依靠內生性增長演變為通過併購整合這種外生性增長來迅速擴大物業管理規模，提高市場佔有份額，進而推動物業管理行業的持續、縱深整合。

1.6 集中度提升、覆蓋範圍擴大及資本加持，助力智慧物業發展提速

物業管理行業的集中度不斷提升，導致單一企業的管理規模不斷擴大，必然會對管理效率和管理手段提出更高的要求，因此數字化、智慧化的物業管理成為必然趨勢。

物業管理行業的覆蓋範圍不斷擴大，勢必帶來業務的多樣性、複雜性和靈活性，傳統的管理手段顯然無法滿足需求，數字化、智慧化的物業管理成為必然趨勢。

資本的加持，為物業行業的數字化、智能化的投入提供了有力支撐；移動互聯、IOT、5G、大數據、人工智能、區塊鏈等不斷湧現的新技術為數字化、智慧化的物業管理提供了可能；物業管理行業近十年的智慧化探索，為行業積累了寶貴的經驗和教訓，同時也積累了人才和平臺提供企業，使物業管理的數字化、智慧化能得以健康順利發展；物業管理的客戶也從接受到習慣到依賴科技的應用帶來的便利，使物業管理的數字化、智能化的發展更加順暢。

1.7 以新技術和現代管理體系武裝的綠色智慧物業是智慧社區的重要組成部分

環保、綠色跟全人類的生存質量息息相關，是每一個行業都日漸重視和全力踐行的。因此，環保、綠色在物業管理行業的實踐已經成為智慧物業發展的必經之路。

各類節能光源、新的製冷技術、新型的各類傳感等諸多的硬件產品新技術為智慧綠色物業提供了技術基礎；各類信息化新技術、圖像識別技術、大數據、新型收支方式等軟件及軟硬結合領域的各項新技術，使一體化建設綠色智慧物業管理體系成為可能；多年的環保、節能、高效率的物業設備設施和服務的管理體系的積累，為智慧綠色物業的發展提供了更系統化的方法論和體系。

二、 綠色智慧物業發展概況

近10年來，通過引進先進技術，物業服務企業等主體在綠色智慧物業領域已做了大量的探索嘗試，取得了較好成績，並將推動綠色智慧物業持續創新發展。

2.1 發展綠色智慧物業是多方主體共同推進的事業

物業服務企業並不是綠色智慧物業建設的唯一參與方，圍繞同一建築物，物業管理與服務的參與者除物企之外，往往還涉及：建築物開發者、建築物所有者(建築物所有者對於不同的建築差異也較大，政府辦公樓、醫院、學校等建築物的所有權往往屬於單一的組織、機構或個人；住宅和部分園區及商業項目等區分所有權建築物，由分散的多個業主持有私有本部分所有權，同時全體業主共同持有公共部分所有有權)、建築物運營企業、專業服務商、政府相關管理部門等。各個參與方分別從不同維度投資、建設、維護和使用綠色智慧物業體系。各個角色在不同階段又會相互轉化和交叉。

從建築物開發者角度：綠色智慧物業首先聚焦在建築物本身設計和建設的綠色和智慧化，本報告不做詳細論述。

從建築物所有者角度：建築物所有者作為針對建築物的物業管理的主體，應該主導綠色智慧物業的規劃、投入和建設。

從物業服務企業角度：智慧物業管理包含兩個維度：智慧的物業企業治理和智慧的物業項目管理。智慧的物企治理主要指運用各項新的軟硬件技術，結合不斷創新的優化的管理方法，充分調動企業自身的人力、資金、物資等資源，大力支撐物企的核心業務。

2.2 政策利好是推動綠色智慧物業市場增長的主要因素

支持綠色智慧物業建設的部分政策包括：

圖表2-1：綠色智慧物業建設相關支持政策梳理

時間	政策	內容
2019.2	粵港澳大灣區發展規劃綱要	建成智慧城市群。推進新型智慧城市試點示範和珠三角國家大數據綜合試驗區建設，加強粵港澳智慧城市合作，探索建立統一標準，開放數據端口，建設互通的公共應用平臺，建設全面覆蓋、泛在互聯的智能感知網絡以及智慧城市時空信息雲平臺、空間信息服務平臺等信息基礎設施，大力發展智慧交通、智慧能源、智慧市政、智慧社區。
2019.1	智慧城市時空大數據平臺建設技術大綱(2019版)	建設智慧城市時空大數據平臺試點，指導開展時空大數據平臺構建；鼓勵其在國土空間規劃、市政建設與管理、自然資源開發利用、生態文明建設以及公眾服務中的智能化應用，促進城市科學、高效、可持續發展。

時間	政策	內容
2018.6	「互聯網 + 民政服務」行動計劃	力爭到2020年前形成較完善的「互聯網 + 社區治理」標準體系。採取政府與社會資本合作等方式，引導互聯網企業和各類社會力量、市場主體參與社區治理和服務，有序推進智慧社區建設。
2018.5	數字中國建設發展報告（2017年）	各地積極探索PPP模式，構建包容普惠、彙聚眾智、多元共生的新型智慧城市生態體系，積極推動智慧社區、智慧養老等應用服務。積極參與國際標準制定。我國成智慧城市領域多個國際標准化組織機構的發起國和核心成員，國家標準《智慧城市技術參考模型》成果國際標準提供重要支撐。
2017.7	關於加強和完善城鄉社區治理的意見	按照分級分類推進新型智慧城市建設要求，務實推進智慧社區信息系統建設，積極開發智慧社區移動客戶端，實現服務項目、資源和信息的多平臺交互和多終端同步。

2.3 綠色智慧物業的發展階段

2.3.1信息化階段

信息化階段重點完成了各個業務需求的從線下遷移到線上的過程，主要聚焦在業務和管理本身。這一階段的建設，在完成了業務可控和管理便捷的同時，為數據的產生和積累打下了良好的基礎。

但這一階段的多個業務系統之間的協同、執行端和客戶端的普遍缺失，導致了數據的碎片化和廣度深度的欠缺。因此，從構建綠色智慧物業角度出發的信息化，應從架構和數據利用方式上全盤考慮各個業務系統。構建便於數據共享和一致性的統一架構。

充分引入移動互聯技術和物聯技術，讓員工、客戶、設備設施、第三方機構能更深入地參與到系統中，使系統更加智能、便利的同時，更能產生和積累更加完整，更加豐富的數據，為數智化階段最好準備。

2.3.2智能化階段

隨著5G的商用和邊緣計算、傳感技術及人工智能領域的技術進步，智能物聯逐漸成為了智慧物業的重要組成部分和數據來源。目前主要的應用場景有：

2.3.2.1 智慧社區安防管理

「智慧社區安防系統」按照統一規劃、統一標準、統一平臺、統一管理的設計思路，通過社區內的視頻監控、微卡口、人臉門禁和各類物聯感知設備，實現社區數據、事件的全面感知，並充分運用大數據、人工智能、物聯網等新技術，建設以大數據智能應用為核心的「智能安防系統」，形成公安、綜治、街道、物業多方聯合的立體化社區防控體系，有效提升對特殊人群、重點關注、涉案等人員的管理能力，不斷提高預測預警和研判能力、精確打擊能力和動態管理能力，提升社區防控智能化水平，提升居民居住安全指數。

2.3.2.2 智慧社區停車管理

智慧停車管理系統，利用圖像識別、物聯網、互聯網和移動互聯網、雲技術等前沿技術，實現雲停車、車牌識別、無感支付、自動繳費等現代化智慧停車管理解決方案。讓數據共享，打破了信息孤島。不僅加快車輛出入效率，提升停車管理水平，同時為企業提供綜合化數據分析平臺，為企業發展決策提供核心數據。

支持車位引導、車位預定、停車誘導、反向尋車、無感支付等功能，建立一體化的停車場後臺管理系統，實現停車位資源的實時更新、查詢、預訂與導航服務一體化，實現車位共享和停車位資源利用率的最大化和社區居民停車服務的最優化。

2.3.2.3 智慧社區智能家居

智能家居主要包括智能安防、智能門禁、智能衛浴、智能照明控制、智能窗簾控制、智能家電控制、智能傳感控制、智能網關控制、智能背景音樂、智能可視對講、智能家庭影院、智能情景控制、智能移動終端等功能。社區居民可通過手機進行遠程控制、設置、監控，保障家庭安全，同時提升居家品質，提升生活幸福感和滿足感。

2.3.2.4 智慧社區智能感知

智能感知設備主要包括社區內的智慧抄表、智慧路燈、智慧垃圾分類箱、智慧井蓋等智能感知設備，一方面幫助物業人員快速瞭解社區整體環境，快速服務客戶，另一方面，提升整體社區的環境品質，為社區居民打造智能、高效、綠色的生活環境。

智能抄表支持通過Lora/NB-IoT等物聯網技術實時傳輸水、電、氣、熱表的數據，實現自動抄表、自動計費、自動報表、自動查詢、遠程控制、智能化管理等功能，並能對存在的問題進行報警，實現儀錶的科學高效的管理，幫助物業服務人員對整體儀錶的監控和管理，提升工作效率。

智慧路燈擁有基本的自適應照明模塊，同時集成高清攝像頭、Wi-Fi探針、環境傳感器、物聯網中繼器、誘導屏、充電樁等設備設施，實現智能照明、信息發佈、通訊與控制、視頻監控、道路感知、環境監測、電動車充電和緊急呼叫等功能。智慧路燈實現了高度功能集成，節省空間和提升效率，成為智慧社區最為亮麗的一道風景。

智慧垃圾分類箱通過垃圾桶、車輛、場地監控等智能設備，結合Lora/NBIoT等物聯網技術，實現對垃圾滿溢、撒漏、私自傾倒等問題的自動監管功能，解決生活垃圾、餐廚垃圾、建築垃圾等各類垃圾的分類和收運管理問題，實現對社區垃圾收運全流程的系統化、智慧化管理。

智慧井蓋通過加裝Lora/NB-IoT井蓋監測設備，實現對井蓋的傾斜、水位、位置移動等數據的自動採集和異常情況報警等功能，實時獲取井蓋發生位移、異常開啟等狀態，實現對井蓋的遠程智能監測和全方位管理。

2.3.2.5 智慧社區能耗監控

智慧能耗管理系統對社區主要商業、建築物內機電設備運行監測及計算，能耗和物耗採集分析，產生運行及能耗統計數據，智慧控制實現建築物節能減排。應對社區大型公共建築的能源消耗如：電、水、氣(汽)、冷熱量的使用過程數據，監測、記錄、分析、指導。24小時監控掌握大型公共建築實際用能狀況，加強能源領域的宏觀管理和科學決策，促進建築節能的發展。支撐社區相關人員更好的監督和指導各個重點耗能企業持續推進節能減排工作。

2.3.3數字化階段

完成了信息化和智能(物聯)化階段後，就會有源源不斷的大數據產生，並最終形成數據流，企業在挖掘數據流背後的大數據價值的同時，會形成各式各樣的數據商品，並廣泛應用到企業服務和商業模式，源源不斷地產生更精准更豐富的服務，促進整個智慧物業的自我生長的良性循環。整個生態也由此形成了數字化應用的完美閉環。

圖表2-2：綠色智慧物業數據運營模型

2.4 智慧社區是基於現代技術的社會治理創新模式

智慧社區(城區)是充分利用移動互聯、IOT、5G、大數據、人工智能、區塊鏈等不斷湧現的新技術，通過基礎業務數字化、數據沉澱、數據運營、服務優化的邏輯，使物業服務的物業本體管理、物業服務、社區綜合治理更加智慧、便捷、高效。

2.4.1系統建設原則

在建設整個系統時，需本著「技術先進、系統實用、結構合理、產品主流、低成本、低維護量」作為基本原則，進行系統構架。

技術的先進性：整個系統選型、系統建設均要符合高新技術的潮流，在滿足功能的前提下，系統具有先進性，並且在今後一段時間內保持一定的先進性。

架構合理性：採用先進成熟的技術來架構各個子系，統組成穩定可靠大系統，使其能安全平穩地運行，有效地消除各子系統可能產生的瓶頸，選用合適的設備來保證各子系統具有良好的擴展性。

經濟性：在滿足系統功能及性能要求的前提下，儘量降低系統建設成本。採用經濟實用的技術和設備，利用現有設備和資源，綜合考慮系統的建設、升級和維護費用，不盲目投入。

實用性：系統保持良好的實用性和易用性，能夠根據用戶的使用習慣，組織相關功能和操作，功能全面，能滿足目前日常業務處理和未來預見的相關需求。

規範性：控制協議、編解碼協議、接口協議、視頻文件格式、傳輸協議等應符合相關國家標準、行業標準。

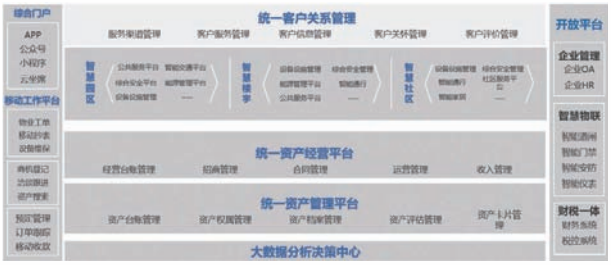
可維護性：系統和採用的產品應該是簡單、實用、易操作、易維護。系統的易操作和易維護是保證非計算機專業人員使用好本系統的條件。

安全性：對系統採取必要的安全保護措施，防止病毒感染、黑客攻擊，防雷擊、過載、斷電和人為破壞，具有高度的安全和保密性。

2.4.2技術架構建議

系統架構技術採用B/S方式。系統支持SOA（面向服務架構）方法、EAI（企業應用集成）技術、Ajax，數據庫支持MY SQl，支持多節點管控。

圖表2-3：智慧社區的總體構架



2.5 AI機器人在綠色智慧物業中得到廣泛嘗試和應用

近年來，隨著「機器替人」在我國的進一步推進，不僅工業機器人的增速突飛猛進，服務機器人市場也開始出現大爆發。在此背景下，傳統的物業管理領域開始了「機器替人」的進程，以應對不斷上漲的勞動力成本和日益升級的物業服務需求。

物業機器人採用智能人機交互技術，實現人與機器人的肢體互動、視頻互動與語音互動，專為社區研發全面提升物業的管理與服務水平，能高效、智能的輔助甚至代替人工完成社區客服及導覽工作如社區服務導引、信息查詢導覽，路徑指引工作、信息查詢發佈、安全監控、人機交互等功能。目前物業機器人主要應用在三大領域，分別是門崗類、清潔類以及安保類：

門崗類機器人可以人臉識別、智能語音問答、屏幕及動作互動、身份證識別等技術；並且能對小區進出人員及車輛進行智能管理和記錄，與雲端網絡、小區物業信息系統與手機APP後臺互聯，實現專業而先進的制度化管理。

清潔類機器人能實現樓梯垃圾清掃、樓梯地面刷洗、扶手清潔、自動返回充電、自動傾倒垃圾、自動加裝清水排污、避讓行人、設備狀態遠程監控等功能，是物業管理的最佳幫手，不僅解放了人力，優化了物業管理人員結構，還能對社區信息化建設增添動力。

安保機器人主要是應用於社區的大門出入口、住宅樓出入口、室外公共場所、住宅樓內公共區域、停車場等場景，可以做到全天候24小時不間斷巡邏，能夠實時監測人臉、人體等音視頻信息，識別可疑人員和可疑行為、自動預警報警，同時還可以通過語音在現場進行互動提醒等，在檢測到異常情況時，能夠通過提前設置的多種報警方式進行實時的上報，管理移動終端可以隨時查看，不同的事件機器人也會根據不同的預案進行應急處理，減少安保人員的工作負擔，保障應急工作高速、高效進行。

2.6 綠色智慧物業平臺的發展趨勢

2.6.1中台化＋微服務

未來的綠色智慧物業的各項服務會更加定制化、時效化。會因服務對象的差異，提供不同的服務感受；會因時間節點的變化，提供不同的服務內容。因此智慧物業系統的業務支持的靈活性，依靠傳統的架構是無法實現的，只有通過引入中台和微服務的能力，將資源、能力與業務流程相融合，並依照需求變化快速響應迅速生成新服務，才能真正解決未來綠色智慧物業複雜、靈活、多變、個性化的業務需求。

2.6.2專業化 + 協同

未來的綠色智慧物業平臺必然是龐大、複雜、專業的，很難全部由一方力量獨立完成，勢必需要在統一框架下，由各個細分領域專業公司完成各自最專業部分的基礎上，各個專業體系之間開放協同。

協同的另一層含義是：隨著綠色智慧物業的管理規模擴大、業務專業化和多樣化發展，必然會面臨多維度的業務協同和系統協同。如：物企內部的不同職能、不同層級之間的協同；同一體系內不同服務間的協同；行業內不同企業間的協同；不同行業間的協同等。這就要求構建的綠色智慧物業平臺要有充分的靈活性，同時也必須具備充分的開放的協同能力。

2.6.3物聯

隨著5G的商用，5G的低功耗、底時延、全在線的優勢，必然會催生更多物聯新技術和新產品，從而極大促進整個綠色智慧物業領域的物聯水平，進而使整個系統更智能、數據顆粒度更細、對未來業務的不斷優化支撐更充分。

2.6.4大數據 + 人工智能

隨著綠色智慧物業的全業務數字化，全方位的數據沉澱成為可能。隨著沉澱數據量的增加和對行業數據模型的研究積累，數據的巨大價值必然會通過大數據和人工智能技術在行業的應用，不斷推動行業的自我進化。

2.6.5雲技術的普遍應用

隨著雲計算及相關技術和服務的普及和完善，雲計算架構的安全性、穩定性不斷提升，靈活性、可擴展性、易維護易部署等優點更加凸顯，越來越多的核心關鍵業務，都遷移到了公有雲上。未來的智慧物業平臺建設，也應以SaaS方式為主。

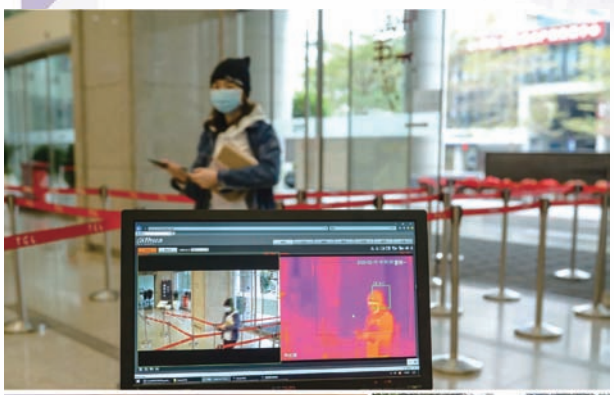
三、 新冠疫情防控對物業管理行業發展的影響

新冠疫情的持續傳播，對各行各業帶來了較為深遠的影響，物業管理行業在此次新冠肺炎疫情防控中起到了至關重要的作用。在舉國抗擊疫情過程中，治療一線在醫院，防控一線在社區，物業管理行業充分履行自身社會責任，幫助轄區基層政府全面完成了封控聯防和秩序保障工作。疫情防控對物業管理行業未來發展產生了深遠影響，具體來看：

3.1 物業管理的價值更加突顯，行業資本化進程加速

從疫情突發後上市物企股價的漲幅情況來看，疫情期間物業管理行業股不但沒有受疫情影響，反而呈現出強烈的增漲勢頭，其中規模較大的物企股，更是一路上漲，呈現出良好勢頭，疫情期間上市物企股獲得了資本市場的青睞，勢必吸引未來資本傾向，引發更多的大型房企拆分旗下物企上市或中小企業通過收併購等方式進入資本市場。當資本與更大的存量物企碰撞時，資本時代的來臨會對物業管理行業的轉型升級產生巨大的催化作用。物業管理行業守著社區最大的資產，服務最大的人群，是萬億級的服務消費領域。面對龐大的社區資源，資本助推下的物業管理行業定能綻放光彩，這對物業服務企業而言既是壓力也是動力。

疫情對於物業行業的影響，除了資本的加持之外還會帶來價值的重構。隨著資本對物業管理行業的青睞，行業將進入併購洗牌的高潮，物企轉型升級也將得到有利的窗口期，資本將會對行業的資源賦予新的價值，多元化業務為解決代際交割將提供更有效的路徑。資本作用下的物業管理行業可以讓服務更加科技化智能化，大數據+AI讓客戶、用戶得到更好的體驗、更好的價值。依託線下流量入口的定位，以及持續的成長空間、顯著的抗風險和抗周期能力、良好的業務延展性等優勢，物業管理行業資本化屬性的標簽將會是一種時尚。



3.2 物業項目管控要求提高，智慧化建設得到有效推動

在疫情防控中，無接觸服務成為疫情期間保證業主與工作員工的重要安全保障，物企大數據平臺發揮了關鍵作用，通過物業管理項目多年業主大數據的沉澱，全面掌握較為精准的業主基礎信息，對社區居民基本情況的摸排採集工作起到了極大的助力作用，不僅減少接觸感染幾率，更極大的提升了社區防控工作效率。

此次疫情期間物業智能化應用也在企業運行中大顯身手，借助智能安防監控雲平臺、智能門崗系統、物業信息化管理系統、業主APP等新應用，社區綜合防疫保障的效率和成果顯著。可以預期，疫情對於智能化平臺的需求會倒逼物企建立或深化技術革新，以更貼近用戶的方式從事物業管理服務工作。

3.3 物企持續擴大增值服務生態圈，智慧社區建設提速

此次疫情暫緩春節前後的人口大規模流動，除抗疫情保運行人員以外，絕大部分業主因疫情的影響，處於居家封閉狀態，這給物業服務企業增加了在線上和業主對接的機會。線上接觸頻率的加大，物企對業主的增值服務的渠道也隨之拓寬；在小區封閉狀態下，任何小區外的人員想要接觸業主，都繞不開物業服務人員。擁有線上APP平臺的物企，可以通過平臺為業主提供物資採購、線上問診等服務。同時，也可以通過開展線上促銷等活動，吸引業主從大型商超消費平臺轉向物企提供智慧平臺消費。在同品等價的情況下，更多業主會願意物業APP平臺消費。通過對智慧平臺網上購物的引導，物企在防疫之餘進行了適度的平臺導流，既滿足了業主生活服務需求，又增加了物企增值服務收入。物企練好基本功是基礎，更應該通過新技術新途徑，實現管理標準化、服務智能化，收益多樣化的新運營模式。

四、 關於推進綠色智慧物業發展的建議

綠色發展、智慧發展是建設社會主義現代化強國的必然之路，是實現住有宜居、提升民生福祉的必然選擇，是包括物業管理行業在內的社會各行業的時代責任。經「新冠肺炎一疫」，證明物業管理行業具有承擔這一時代責任的決心和能力。為推進綠色智慧物業縱深發展，本報告提出以下建議。

4.1 將綠色智慧物業納入智慧社區建設統一規劃

物業管理是社區管理的組成部分，物業管理寓於社區管理，綠色智慧物業是社區生態文明建設、智慧社區建設的基礎工作，由此，建議從政策制度、資金預算、工作機制等方面，將綠色智慧物業納入智慧社區、社區治理建設的統一規劃，對綠色智慧物業建設給予專項扶持，為綠色智慧物業發展提供必要的政策保障和資金保障。未來，只有運用統一的政策體系、統一的運營標準來指導物企開展綠色智慧物業建設，才可以將各物企的綠色智慧物業運營平臺納入同一個智慧社區的管理體系，進而納入智慧城市的管理體系，以此減少智慧城市建設過程中對基層社區智慧設施的整合成本，提高智慧城市建設的效率和質量。

4.2 建立物業管理參與社區治理的長效機制

物企與社區有著天然的聯繫，不同程度地參與了社區治理工作。但是目前物企參與社區治理缺乏統一的、長效的機制，缺乏規範的政策指導和資金保障機制，且多數是義務性地提供社區管理服務，增加了企業成本和經營壓力。未來在推進綠色智慧物業建設過程中，建議從政策、制度、資金層面，構建物企參與社區治理、開展社區管理服務工作的長效機制，使物企在履行社會責任的同時，能夠得到必要的物資、資金等資源保障。

4.3 完善共建共享的社區智慧化基礎設施

將綠色智慧物業納入智慧社區、智慧城市建設體系，需要物企可以共享社區智慧化基礎設施，包括一定範圍的硬件設施、軟件設施以及數據資源。智慧化管理的基礎是形成大數據，包括轄區內的人員、設施設備、交通等各類型的數據，數據的採集、傳輸、存儲、共享，相關投入需要政府統籌推進，在智慧化管理過程中與物企實現共建共享。一方面，形成統一的數據標準規範(包括數據採集與使用)。未來，物企應將運營管理過程中採集的數據上傳至社區智慧平臺，實現與政府相關部門的共享；另一方面，基於物企開展社區管理服務工作需要，政府相關部門的社區智慧化數據應與物企共享。

4.4 建立多元合作與統一開放的標準體系

綠色智慧物業建設涉及環衛管理、綠化維護、治安管理、設施設備維護管理、流動人口管理等多個方面，未來可能還涉及健康養老，家政教育等社區生活服務領域，在對接智慧社區、智慧城市管理體系時，將牽涉到多個政府部門，對接多種類型的專業機構。由此，建議以社區為原點，建立多元合作與統一開放、具有良好擴展性和包容性的標準體系，使社區服務、社區治理的多方主體能夠便利的、低成本的、高效的相互對接，共同推進綠色智慧社區發展。

4.5 充分發揮綠色智慧物業典型案例的示範效應

定期梳理、評選綠色智慧物業的典型案例，總結先進經驗，並通過組織開展相關評價認證，形成可供借鑒和參考的標準或技術文件，為其他物企等單位和機構提供指導、示範。由此，通過優秀案例選編和評價認證活動，鼓勵物企推進綠色智慧物業的探索和實踐，並積極分享成果和經驗。除了政策法規及相關標準體系之外，物企等單位在實踐中積累的經驗更具有實操性和推廣性，通過發揮其示範效應，以點帶面，進而提升整個物業管理行業的綠色化、智慧化水平。

4.6 各司其職、協同合作，發揮各相關行業的專業優勢

綠色智慧物業建設涉及多方主體，需要物企、專業供應商、政府基層部門、業主等共同努力；同時關係到諸多專業領域，包括綠化養護、設施設備維護管理、公共安全管理服務、智慧化軟件和硬件維護等。綠色智慧物業平臺建設相關的各個參與方應各司其職，聚焦專業領域，充分發揮自身的專業優勢，同時開展協同合作，實現優勢互補。未來，社區智慧平臺的建設應主要考慮採購和整合專業供應商的產品和服務，不建議物企大量自行重複開發智慧物業相關的軟、硬件等設施。

4.7 充分利用符合科技發展趨勢的雲模式

現代科技迭代快，創新技術不斷湧現。由此，在綠色智慧物業平臺建設規劃之初，應該充分評估科技發展的主流趨勢，充分考慮未來平臺的擴展性和包容性，儘量減少因技術迭代所帶來的平臺升級成本。充分利用市場化的資源，結合現代科技公司的專業優勢，建議主要利用符合科技發展趨勢的「雲模式」來構建綠色智慧物業平臺，保證質量，降低能耗，提高效率。

4.8 搭建平臺，增進相關領域的交流與合作

搭建綠色智慧物業交流平臺，充分發揮平臺的作用，使更多的組織和機構參與推進綠色智慧物業發展，緊密聯繫相關政府部門、科技企業、物企及專業供應商，使綠色智慧物業得到社會的認知、認同並關心和支持。增進相關行業在綠色智慧物業實踐經驗方面的交流與借鑒，促進項目之間、企業之間以及城市之間的溝通，在探索綠色智慧物業發展模式和方法上集思廣益、經驗共享。促進物業管理與房地產業、智慧建築和建築節能產業等上下游產業的合作，推動物業管理與綠色地產、建築節能改造、低碳智慧社區建設、智慧城市建設等領域的緊密結合。

Personal Data (Privacy) Ordinance — Misused Shield or Unwarranted Fear against Data Request?

By K.Y. Kwok and Harold Chiu
Li, Kwok & Law, Solicitors & Notaries

Many property managers may have received inquiries from potential claimants concerning the identities and personal data of certain owners, occupiers or visitors of the building in order to pursue their claims. For instance, an owner may sustain injuries due to the negligence of a delivery worker or courier in the building, and would like to seek damages against him or his employer. An occupier of a unit may want to restrain his neighbour from committing nuisance caused by water leakage or noise against him. Very often, the identities of the wrongdoers are not known to the claimants, but they may be known to the property manager who has recorded the identities of the delivery worker when he enters the building as a visitor, or is keeping a record of all the owners and occupiers of the building.

The usual concern the property manager may have when facing a request for data disclosure is whether disclosure may be in breach of the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"), particularly the Data Protection Principles ("**DPP**") contained in the Schedule to the PDPO which may carry legal consequences. This article aims at discussing generally the legal issues involved and the appropriate measures the property manager should adopt when being faced with requests of the kinds mentioned above.

What is "Personal Data"?

Under section 2 of the PDPO, "personal data" means any data relating directly or indirectly to a living individual, from which his or her identity can practicably be ascertained either directly or indirectly. It refers to data kept in an accessible form and can be processed. Accordingly, the name, address, HKID number, telephone number, photo, CCTV records etc. of a living person all fall within the definition of "personal data". For example, in *Eastweek Publisher Limited v. Privacy Commissioner for Personal Data* (2000), the Court of Appeal held that a photo of a person is his personal data. Therefore, it is clear that CCTV footages capturing the image of someone will also be personal data of that person, as they would assist in identifying the person concerned.

To cite an example, when a courier or a delivery worker from Deliveroo or Wellcome Supermarket delivers food or goods to an occupier of a building, it is a common practice for managers of the building to record his personal data like name and identity card number in the visitors' logbook for records before entry into the building is permitted. Further, the CCTV may be capturing his appearance and actions. All these may come within the definitions of "personal data" within the meaning of the PDPO.

Collection and Use of Personal Data

Under Data Protection Principle 3 in Schedule 1 to the PDPO ("**DPP3**"), personal data shall only be used for the purpose for which the data was to be used when they are collected without the prescribed consent of the data subject. When the security officer of a building collects an incoming delivery worker's personal data, the worker may not have been told that his data will be disclosed to a potential claimant. In such case, question may arise as to whether the data is being used not for the purpose for which it is collected.

It should be noted that in the said *Eastweek* case, the Court of Appeal also held that the mere taking of a photo of a lady in the street (and subsequently publishing it in the magazine with comment on her attires) was not "collecting" her personal data, as the reporter were acting without knowing or being interested in ascertaining the lady's identity. The court also gave an example of a photo being taken of the crowds in the racecourse and published

in the newspaper. Although any person knowing someone appearing in the photo would recognize him, that would not mean taking the photo was an act of collecting that someone's personal data.

Applying that principle, installing CCTV for general security purpose not aiming at recording the images and activities of any particular person may not be "collecting" the personal data of any persons, and it may further be argued that the subsequent use and disclosure of the information so collected may not be subject to DPP3, as the manager is not using personal data they have "collected". Notably, the Privacy Commissioner for Personal Data ("**Commissioner**") has apparently taken a different view in this regard. In the FAQ section of their official website, while admitting that to constitute the act of "collecting" personal data, "*there should be compilation of information about an individual, whose identity must have been identified by the data user*", they went on to say that if "*the data user intends or seeks to identify the identity of the individual*", he will also be "*collecting personal data*". They gave an example that "*after a special incident has happened, the Authority concerned may need to review the video records for the purpose of ascertaining the identity of persons involved in the incident and it may amount to collection of personal data*". As such, the Commissioner appears to take the view that in our example of deliveryman, any disposal of the CCTV footage after the review may amount to "*use*" of personal data "*collected*" (i.e. by the review) and hence subject to DPP3. The Commissioner recommended posting a notice at a prominent position near the CCTV camera stating that the area is being monitored, the purposes of monitoring, as well as the ways of handling the records etc.. There are also other recommendations relating to the use of CCTV as security measures in the "Guidance on CCTV surveillance and Use of Drones" published by the Commissioner which many experienced property management practitioners might have been familiar with.

On many occasions, the identity of the wrongdoer is already known to the property manager without resorting to the video records. In the example of deliveryman given above, such data might well have already been recorded in the logbook of the management office. Reviewing the CCTV records, therefore, may well be for other purposes like collating evidence of the tortious acts in question. Even if the video records are reviewed to ascertain the identity of the potential defendant, it is perhaps arguable whether this would amount to "*collection*" of personal data and hence its subsequent "*use*" will be subject to DPP3. One would argue that a person may not be "*collecting*" something he is already possessing in the same way that I cannot be collecting money already in my pocket. Further, if the act of installing a camera for general security purpose is not "*collecting*" personal data, it is difficult to see why the information recorded may not be used for that purpose without any artificial concept or obstacle of "*collecting data by reviewing what has been collected*" stepping in. This may largely defeat the original purpose of installing the CCTV. Nevertheless, in the absence of clear legal authorities in support, very few property managers will prefer taking any risk by supplying CCTV footage captured to a third party on the basis that they are not "*using*" any personal data they have "*collected*".

To reduce the risk of any challenge by the Commissioner, property managers may consider following their recommended practice of giving notices. In our example of the careless deliveryman, however, that would involve expressly stating in the notice put up in the building that any personal data recorded by the CCTV will be supplied to potential claimants to pursue their claims. The content of the notice may sound quite complicated especially when it is sought to include all possible uses of the information captured. There will also be the argument of whether the content of the notice has been sufficiently brought to the attention of the data subjects concerned when it is complicated and lengthy. The same observations may apply to visitors filling in the logbook of the management office upon entering a building, as they may be expressly told all possible uses that may be put to their personal

data, including passing them onto any potential claimants. However, again, the content of the notice will be quite complicated and this is not frequently adopted in practice.

Legal Consequence for contravening PDPO

In case of contravention of the PDPO, section 50 empowers the Commissioner to issue an enforcement notice and direct the data user to remedy and prevent similar future contravention. Non-compliance with the enforcement notice is a criminal offence and the offender is liable for penalty and imprisonment of 2 years. Besides, section 66 of the PDPO provides that an individual who suffers damage as a result of any breach of DPP3 etc. shall be entitled to compensation from that data user for any damage caused, including damages for injury to feelings. The Commissioner may also publish openly their conclusion after investigating into a particular case, which may not be conducive to the corporate image of a reputable property management company if the outcome is not that favourable.

In view of those possible adverse consequences, understandably property managers are inclined to adopt a blanket policy to decline all information requests (be it visitors' data in logbook or CCTV footage) whenever such information may fall within the ambit of personal data.

Exemptions

However, the exemptions to DPP3 under the PDPO ought not to be overlooked. Section 60B of the PDPO provides that personal data is exempted from the provisions of DPP3 if the use of such data is (i) required in connection with any legal proceedings in Hong Kong; or (ii) required for establishing, exercising or defending legal rights in Hong Kong. Further, section 58(2) of the PDPO also provides that the restriction contained in DPP3 is exempted if the use of the data is for *inter alia* remedying unlawful or seriously improper conduct, or dishonesty or malpractice.

In the case of *Lily Tse Lai Yin v. Incorporated Owners of Albert House and Others* (1998) (the famous or indeed notorious case of 添喜大厦), after a tragic incident of the collapse of a canopy of Albert House in Aberdeen which caused injuries and death, the Plaintiffs were seeking disclosure of relevant witness statements taken by the Police to assist in their claim for compensation. However, the Police declined disclosure due to DPP3. The Court held that it has "*no hesitation*" that the exemption under section 58(2) of the PDPO applies, and ordered the Police to make the disclosure. The Court also hoped that the authorities "*will no longer have to live with the shadow previously cast over them by the [PDPO] when being requested for witness statements by parties involved in personal injuries litigations arising out of the same accident*". Twenty two years have passed since then. Even if the Police may no longer be living with such shadow as discussed below, some other people like property managers and their legal advisors may still be.

After the said *Lily Tse* case, the Police would voluntarily make disclosure of personal data (including the name and address) of the potential defendant to intended claimants who are victims of traffic accidents even without any court order, and even though the potential defendants might not have consented to it. It is difficult to see any reason warranting different treatment between victims of tortious acts committed inside a building or housing estate and victims of road traffic accidents in such regard, as the legal basis allowing voluntary disclosure is the same (the statutory exemptions under sections 58(2) and 60B as discussed above). After all, *Lily Tse's* case is also a claim for negligence or occupier's liability concerning maintenance of a building, with the defendants including its owner, occupier, manager and owners' corporation.

Even after *Lily Tse's* decision, in cases other than traffic accident, there might still be refusal for disclosure of personal data by the Police which had attracted the Court's criticism. In *Chan Chuen Ping v. The Commissioner of Police* (2013), a potential claimant was struck by a wheelchair being pushed by an unknown person in Tai Po Central Town Square. When the victim requested for disclosure of that unknown person's personal data, the Police again relied on the PDPO to decline her request so that the claimant has no choice but to apply for a court order. The High Court (i.e. Court of First Instance) emphasized that the PDPO has been "*misconstrued and misunderstood by many as that the law encourages secretiveness and lack of cooperation, but failing to understand that its purpose is to protect data where necessary, not to obstruct across the board*". The Court quite severely criticized the Police's refusal to the data request and forcing the claimant to apply for a court order as "*obstructing the proper efficient and fair administration of justice*" and "*a waste of administrative and judicial resources*", which must not happen again. It reiterated that as the potential claimant was taking steps to remedy a civil wrong (unlawful conduct), acceding to her data request falls well within the exception of "*remedying of unlawful conduct*" under the PDPO.

Implications to property managers

Applying those decided cases, if the circumstances are reasonably clear that a potential claimant does have a genuine claim against another person, but the identity and address of the person he intends to pursue against is unknown without the personal data kept by the property manager, acceding to the claimant's request for disclosure may fall within the statutory exemption under the PDPO discussed above. There would unlikely be any serious risk that the data subject could successfully claim against the property manager by alleging any contravention of the PDPO.

Some property managers may question how they would know whether the person requesting for the personal data has a genuine claim. Of course, the intended claimant should supply some basic information to justify his request, including identifying the incident in question and explaining why he has a claim as well as the relevance of the information sought. Once this is done, however, on many occasions the property manager may come to a sensible and reasonable judgment on whether to accede to the request without the slightest difficulty. There are instances when the wrongful acts in question have been clearly witnessed or even recorded. For example, we have been involved in a case in which an elderly person was hit by a hand cart and suffered from bone fracture while entering a lift of the building. The hand cart was at that time pushed along by a delivery worker whose identity was unknown to the victim (subsequently known to be employed by a local well-known online shop). The accident was witnessed by the watchman stationed at the Ground Floor lift lobby and was also recorded in the CCTV installed in the lift. The identities of the workman and his employer had also been recorded by the management office when he entered the building. Under such circumstances, it should be quite apparent that the victim did have a bona fide claim. Any request for disclosure of the personal data of the potential defendants (e.g. names of the worker and his employer) to enable him to take legal action should be exempted from the operation of the DPP3 by virtue of sections 58(2) and 60B discussed above, and if it is exempted, it will be difficult for the manager to justify his refusal to make disclosure.

Moreover, the property managers are employed and paid by the owners to manage the buildings. They are possessing the personal data of the visitor as agent for and on behalf of all owners. In the above example, the victim is an owner or family member of an owner of the building in which the accident happened. It would be really anomalous if the manager could refuse disclosure made by an injured owner or occupier for whose interest they should protect. It may indeed be a breach of the duty owed by the manager to the owner if disclosure is refused.

Another common example is when an owner complaining of nuisance like noise or water leakage in a building caused by his neighbour. The property manager may be faced with a request made by one owner to disclose the data like the identity of the occupier (not the owner whose name may appear in the records maintained in the Land Registry) causing the nuisance to enable legal action to be taken. There may also be cases where the precise source of the nuisance and the identity of the culpable owner cannot be identified (e.g. the precise flat from which some bad odour originates or the identity of the owner of a dog attacking or causing nuisance to the residents in a building). The initial complaint of nuisance is often made to the management office who has investigated into the matter for some time, and should be fully aware whether the owner has any bona fide claim.

In the examples given above, the manager may indeed have a duty to take action to abate the nuisance if the Deed of Mutual Covenant ("**DMC**") contains the usual provision that an owner shall not cause nuisance, annoyance etc. to the other owners or occupiers of the building, as it is likely the manager's duty to enforce the DMC even though the nuisance does not occur in the common parts. Successful legal action was taken by the manager in such a case in *MTR Corporation Ltd v. Cheung Ching Kin* (2015) where complaints were made by various flat occupiers against noise produced from a flat often at small hours repeatedly, although the nuisance, like many water leakage cases, did not occur in the common parts of the estate. Indeed, failure or refusal by the manager to take appropriate action may entitle the innocent owner to obtain an injunction compelling it to take action, as it is both the power and duty of the manager to enforce the DMC, see *Law Bik Ling, Milly v. Kai Shing Management Services Ltd* (2010). Strange enough, we have seen quite a few property managers, for reason best understood by themselves, think that they can simply keep their hands folded and refuse to do anything whatever to assist the innocent owner (whether to make disclosure of personal data or take legal action to abate the nuisance) simply because the nuisance occurs inside a unit and not the common part of the building. Of course, where nuisance does occur at the common part, the owners' corporation or the manager will also be obligated and empowered to take action to abate the nuisance under section 34I(1)(b) of the Building Management Ordinance (Cap. 344).

Court Order to Disclose Personal Data

That said, the law may not have imposed a positive obligation on the part of a data user (not being a manager owing legal duties to the owners as discussed above) to accede to a data request no matter how reasonable it is and when the disclosure is clearly exempted by the PDPO. Many property managers are simply reluctant to make voluntary disclosure of personal data for no legal reason. What they would normally do is to wait until the potential claimant has obtained a court order compelling their disclosure before doing so (commonly known as *Norwich Pharmacal Order*).

Cost Consequences

If the potential claimant does apply for such an order, the property manager will normally remain neutral to such an application and neither consent to nor resist the application. The usual cost order of a *Norwich Pharmacal* application is that the applicant will have to pay the cost of the manager who has not committed anything unlawful, but only an innocent party involved in the tortfeasor's wrongdoing. Such a usual cost order often encourages the manager to remain uncooperative to a reasonable and lawful request for disclosure because they will likely have their legal cost reimbursed for taking such a stand.

In the case of *Able Force Freight Ltd v. East Sun Estate Management Ltd* (2010), the District Court applied the general principle in the English case of *Totalise plc v Motley Fool Ltd and Anor* (2003) and decided that so long as the party required to make disclosure has a genuine doubt on whether the applicant is entitled to the information, or worried that it might be sued or suffer damage etc., that party can still ask the requesting party to pay its legal costs.

The said *Chan Chuen Ping* case was decided otherwise, where the Department of Justice was ordered to pay the costs of and occasioned by the application for disclosure which included the costs of six of the seven letters the Applicant's solicitors had written to the Police and of considering their replies. The Court opined that it would be "patently unfair" to ask the claimant to pay the legal costs, when the Police's refusal to the data request was considered so unreasonable as amounting to obstructing the proper efficient and fair administration of justice.

Besides, in the recent case of *Leung Yiu Ting v. MTR Corporation Ltd* (2020), while endorsing the general principle of *Totalise plc*, the Court of First Instance held that if a party has taken an adversarial stance in an application of *Norwich Pharmacal Order* upon him, this is a factor which the court can take into account on costs. Therefore, without any good reason or legal justification suggesting otherwise, the property manager should remain neutral and adopt a passive role when faced with a Norwich Pharmacal application.

Another 10 years have lapsed since *Able Force* was decided. The effect of the exemptions under the PDPO discussed above has become clearer than ever. Wilful refusal to accede to a request for disclosure when there is plainly no legal risk involved may well attract negative judicial comment with consequences like unfavourable cost order or adverse public image. Further, a property manager may also owe the owners a duty to enforce the DMC. If the manager neither does so nor disclose the personal data of the potential defendant to an owner intending to pursue a claim, the manager will be compelling the claimant to turn to sue him instead, and the manager will unlikely receive any sympathy before the court under such circumstances. Therefore, the manager has to look at each request carefully on a case-by-case basis with the above legal principles in mind, rather than adhering to a rigid policy of requiring any request for disclosure to be accompanied by a court order before it will be dealt with.

Caution: Trap of Unjust Enrichment

By Chung Pui Lam, GBS, JP
Chung & Kwan, solicitors

Introduction

Building managers (or incorporated owners) may from time to time commence legal proceedings against owners in breach of deed of mutual covenant for installing certain facilities or devices in the common parts of building and may also make a claim for account of licence fee, if any, received by owners pursuant to agreement with facility/device providers for such installation. Even there is a good cause of action and the breach of deed of mutual covenant is established, the court does not necessarily allow the claim, in particular a claim for restitution of unjust enrichment.

This article will discuss a recent case which is a good illustration of an unusual situation where there is a finding of liability on the part of a defaulting owner, but the relief specifically requested by incorporated owners to the court is not allowed and incorporated owners has to pay the costs of the action. This is a District Court case in The Incorporated Owners of Gough Plaza v Wong Ching Kong (1st defendant) and Kwok Yuen Ling Karen (2nd defendant) in DCCJ 3400/2019 [2020] HKDC 799, the judgment of which was handed down on 17 September 2020.

Building managers may learn and hopefully benefit from this case which may reinforce or even enlighten them in building management practice.

Background of Gough Plaza case

This is a case of alleged unauthorized installation of telecommunications equipment on the roof and certain common areas of Gough Plaza on Gough Street ("the Building"). The plaintiff is The Incorporated Owners of Gough Plaza. The 1st and 2nd defendants are husband and wife who are the registered owners of a flat on 5th Floor with a Roof ("the Roof") of the Building. The plaintiff commenced proceedings against the defendants in November 2017.

There was no dispute that the defendants, in pursuance to an agreement ("the Agreement") with Hong Kong Telecommunications Limited ("HKT") executed at the end of 2008, permitted HKT to install various aerial and associated equipment ("the Equipment") on the Roof and various electrical wires and conduits ("the Conduits") running through corridors and various service rooms which are common areas of the Building. It was also not in dispute that the defendants had received license fees from HKT pursuant to the Agreement.

The plaintiff initially also claimed an injunction for removal of the Equipment and Conduit against HKT as the 3rd defendant. Later, these were removed by HKT, so the plaintiff had discontinued that action in February 2019.

The plaintiff's case against the remaining 1st and 2nd defendants was that the installation of the Equipment and the Conduit was a breach of Deed of Mutual Covenant of the Building ("DMC") and a trespass, and that the license fee received was an "unjust enrichment" and thus claimed for an account for the license fees, i.e. restitution of unjust enrichment（歸還不公平的得利）. The defendants denied that there was a breach of DMC or trespass, and if there were any, these were subject to waiver（放棄）and acquiescence（默許）by the plaintiff, and if anything, the remedy of "account of profits" was not open to the plaintiff.

Having referred to some case authorities concerning similar contexts, His Honour Judge Harold Leong dismissed the plaintiff's claim and ordered the plaintiff to pay the costs of the action to the defendants, although the plaintiff could establish that the defendants were in breach of the DMC. Readers may wonder why the plaintiff, having established the breach of the DMC, still lost in the case and even had to pay the costs of the action to the defendants. This article will give readers the answer.

The Judgment of His Honour Judge Harold Leong

Plaintiff's claim of unjust enrichment failed

The plaintiff relied on the cases of Shine Empire Limited v The Incorporated Owners of San Po Kong Mansion in HCA 3444/2001 and Hollywood Shopping Centre Owners Committee Limited v The Incorporated Owners of Wing Wah Building Mongkok Kowloon in HCA 1582/2007. However, Judge Leong did not think that these two precedents could apply in Gough Plaza case. He set out the reasoning in his Judgment with the legal principles in claim for unjust enrichment considered in a Court of Final Appeal case in support.

The Shine Empire case concerned one defendant, namely The Incorporated Owners of San Po Kong Mansion, trespassing onto the roof of a building and wrongly contracted with other defendants (who were all telecommunication companies) for installation of equipment on the roof. The judge in that case founded that the roof belonged to the plaintiff Shine Empire because he did not think that it had been established that Shine Empire had ever relinquished its rights to the roof or parapet walls. Therefore, the judge allowed the claim for restitution of the license fee on the basis that the defendant The Incorporated Owners of San Po Kong Mansion had unjustly enriched itself.

The Hollywood Shopping Centre case was similar. The judge in that case founded that the defendant The Incorporated Owners of Wing Wah Building Mongkok Kowloon managed the canopy of the building and also had the right to put up advertisements at the building. However, the plaintiff Hollywood Shopping Centre had contracted with an advertising agency to install advertisement boards on the canopy and had profited from the license fees. Again, the judge allowed the defendant's counter-claim for an account for profit.

Having summarized the outcome of the aforesaid two cases, Judge Leong illustrated the legal principles in "claim for restitution based on unjust enrichment" considered in the Court of Final Appeal case Shanghai Tongji Science and Technology Industrial Company Ltd v Casil Clearing Ltd in FACV 13/2003 as follows:

"67. A useful framework for approaching such claims ..... involves asking four questions:

(a) Was the defendant enriched?
(b) Was the enrichment at the plaintiff's expense?
(c) Was the enrichment unjust?
(d) Are any of the defense applicable?"

Judge Leong considered that the most relevant question here in Gough Plaza case was question (b): was the enrichment at the plaintiff's expenses? In the cases of Shine Empire and Hollywood Shopping Centre, the common fact was that one party was taking the profit which rightfully belonged to the other party. Thus, the profit was taken at the other party's expense: it was the other party who actually had the capacity to enter into the agreement and to take profit from it. This is clearly aligned with the fundamental principle in compensation of a civil claim: that the wronged party should be restored, as far as possible, to the position as if the wrong was not done. Thus, in Gough Plaza case, the question to be asked would be: was the plaintiff (instead of the defendants) in a rightful position to enter into the Agreement and to benefit from the license fee? The answer, based on the facts of Gough Plaza case, was "no".

Unlike the cases of Shine Empire and Hollywood Shopping Centre, the Equipment in Gough Plaza case was installed on the Roof which belonged to the defendants and not the plaintiff. Although the installation process might require approval by the plaintiff, there was no evidence before the Court how the plaintiff might otherwise benefit from the Agreement or the license fee. In other words, it could not be said that the defendants took away the profit that should rightfully belong to the plaintiff. There was no "*enrichment at the plaintiff's expense*" and thus no "*unjust enrichment*". Therefore, Judge Leong found no basis for the remedy for restitution.

In the Statement of Claim, the plaintiff had also pleaded for a usual and standard prayer（請求）, namely "such further and/or other relief" as the Court might deem just. But, the fact was the Equipment and Conduit had already been removed by HKT back in November 2018. Judge Leong imagined that if there were damages to the common areas that required repairs or restoration work, there might be a basis for a claim in damages. However, the plaintiff had produced no such evidence so the Court could not speculate on such.

In light of the above, readers may now come to realize that even there is a good cause of action against an owner in breach of deed of mutual covenant, and eventually liability of that owner is proved, it is not necessarily that the court will allow the ancillary relief pleaded in the statement of claim. It depends on what you claim and what ancillary relief you seek from the court. Therefore, it is advisable for building managers (or incorporated owners) to think about the intended claim carefully before commencing legal proceedings, whether it is a rightful or legitimate claim and whether there is any basis for the intended claim.

This article does not end here. We now turn to the defendants' multiple breaches of the DMC and trespass and their defence. This is indeed a good opportunity for building managers to re-visit the usual clauses in a deed of mutual covenant of a building and reinforce their practice in building management.

Defendants' breach of DMC and trespass established

The alleged multiple breaches by the defendants included: damaging the common part of the Building, converting common part to their own use, carrying out activities or alteration works in the common part without prior written consent of the manager. Having read the various clauses in the DMC, Judge Leong found that the defendants were in breach of the DMC and trespassing. Set out below are the breaches of relevant clauses of the DMC with the reasoning of Judge Leong extracted from the Judgment.

Although the Equipment sat on the Roof, these were secured by metal brackets parts of which were bolted to the internal surfaces of the parapet wall which is a common part of the Building according to paragraph 4 of Schedule 1 to the Building Management Ordinance. One may argue that the owner of the roof may be regarded as the owner of the internal surface of the parapet wall. Indeed, this is a common misconception. Judge Leong cited the case The Incorporated Owners of Mei Foo Sun Chuen Stage VI v Grandyield Knitters Limited in LDBM 110/2011 and confirmed that the internal surface of the parapet wall does not extend to the *structural part* of the parapet wall, namely the concrete part of the parapet wall.

As such, Judge Leong accepted that the defendants might, say, paint the internal surface of the parapet wall, but they could not interfere with the concrete or structural part. Here, the bolts were driven into the concrete structure of the parapet wall. Judge Leong therefore found that this was both a trespass of the common parts of the Building and a breach of the DMC as follows:—

clause 4 "*No Owner or the Manager shall make or permit ..... any structural alterations to any part of the said Building which may ..... interfere with the use ..... nor shall any owner ..... damage alter or interfere...any parts of the Common Areas .....*"

clause 13 "*No part of the Common Areas shall be ..... used for any business or private purpose .....*"

clause 16 "..... *No owner shall affix or install his own private aerial outside any part of the said Building without prior written consent of the Manager.*"

Further, the Equipment were very substantial in size and substantially higher than the parapet wall and this would be in breach of clause 37 of the DMC preventing any "*alteration of the external appearance*" of the Building "*without prior consent in writing of the Manager*".

Although clauses 16 and 37 of the DMC are concerned with activities permissible with written consent of the manager, it was not disputed between the parties that no such written consent had ever been obtained.

It was also clear from the electrician report produced before the Court that the Conduit was installed in the common areas of the Building. Judge Leong did not accept the defendants' arguments that they could rely on Section III clause 1(c) of the DMC which provides for easement rights of the owners of "*free and uninterrupted passage ..... of ..... electricity .....*". But the same clause stated that such easement is "*subject always to the rights of the Manager .....*". Judge Leong commented that it could not be the intention of this clause to allow complete freedom for the owner to install any electrical system he wanted in the common areas. If there was no electrical system in place, it would still require the incorporated owners or managers to decide on a system to be installed in accordance with the procedures stated in the DMC as decided in the Court of Appeal case in 338HK Limited v The Incorporated Owners of Tak Bo Building in CACV 99/2017. That case involved application from an owner for conversion of common part of Tak Bo Building to its own use by carrying out installation works. Readers may refer to our article titled "The exercise of decision under Section 34 I of the Building Management Ordinance, Cap. 344 — Conversion of common parts" published in the Year Book 2019 for details.

Defendants' defence invalid

The defendants raised a defence of waiver and acquiescence by the plaintiff（以原告放棄和默許作抗辯）as to the installation of the Equipment and Conduit. This involved two disputes to be determined by the Court.

The first one was when the plaintiff became aware of the Equipment and Conduit. Judge Leong found the evidence given by the witness for the plaintiff not entirely consistent. In his witness statement, the witness stated that in about 2015, he received a complaint from the owner next to the Roof regarding rubbish obstructing the roof area. He went up to investigate and saw some chairs etc., and he incidentally noticed the Equipment on the Roof. During cross examination, however, the witness said that this complaining owner said that he saw big machineries on the Roof. But this was in 2017, and the complaint was made about a week after the witness himself discovered the Conduits. In his witness statement, the witness stated that he discovered the Conduits when investigating a complaint by the lift company made to the plaintiff that the lamp in the lift machine room was malfunctioning, but there was no mention of this subsequent complaint by the complaining owner.

The second dispute was whether a key to the Key Box inside the management office (which contained all the keys to various utility rooms in the Building) had ever been given to the 1st defendant as the secretary of the plaintiff (i.e. the incorporated owners). Judge Leong did not go into the details of this dispute suffice to say that the witness for the plaintiff claimed that the 1st defendant had the key which meant that he could have provided access to the HKT workers installing the Conduits without anyone noticing. The 1st defendant denied this and suggested that the HKT workers would have to seek co-operation of the plaintiff/ management of the Building to gain access to the utility areas. This would, of course, further imply that the plaintiff must have notice of the installation at the time.

The 1st defendant also claimed that he had mentioned the installation to the witness after being approached by HKT in 2008, but the witness only said that: "*This was your property so it is for you to decide, but make sure the telecom workers won't damage the lift doors when transporting the equipment.*" Much of these were "he says, she says" scenarios with little or no supportive evidence either way. However, Judge Leong did not think that the Court needed to make such factual findings.

Upon reading various clauses in the DMC, Judge Leong considered that it was clear that certain clauses allow activities on "*prior written consent*" or "*with permission*" of the manager, for example, clause 16 which deals with installation of "*outside aerial*". But, other clauses do not contain such wordings, for example, clause 12 concerning use of premises for "*illegal or immoral purposes*". Judge Leong considered that it was the clear intention of the DMC that certain activities are strictly prohibited under all circumstances, so the manager/ the plaintiff had no power to consent to. The wordings in clause 4 make this very clear: "*No Owner or the Manager shall make or permit ..... any structural alterations to any part of the said Building which may ..... interfere with the use ..... nor shall any owner ..... damage alter or interfere ..... any parts of the Common Areas .....*". Similarly, no such "*prior consent*" wordings were found in clause 13 "*No part of the Common Areas shall be ..... used for any business or private purpose .....".*

As such, Judge Leong found that the breaches, at least with regard to clauses 4 and 13 of the DMC, were not within the power of the plaintiff to acquiesce to. Hence, the defence of acquiescence and waiver was not available to the defendants in this case (See Hollywood Shopping Centre case).

Among the various building management disputes our firm has handled over the years, it is quite common for defaulting owners to rely on defence of waiver and acquiescence by the incorporated owners. To avoid this, building managers, once becoming aware of any breach of deed of mutual covenant, should take pre-emptive action or steps as soon as practicable. For instance, issuing warning notice to defaulting owners followed by pre-action letter demanding them to rectify the breach, if it persists after giving the warning notice.

Conclusion

As can be seen from the above discussion about the legal principles in claim for unjust enrichment as well as usual clauses of deed of mutual covenant with various case authorities cited, great care should be taken as to what sort of claim or relief to be asked from the court, in particular whether to claim for unjust enrichment, if any. Do not fall into the trap of unjust enrichment. Therefore, when in doubt as to the legal basis for both commencing proceedings against defaulting owners and making claim for appropriate relief from the court, it is always advisable to seek advice from legal practitioners with considerable practical experience in and exposure to building management.

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