COVER STORY
主題文章

都市固體廢物收費

環境保護署

實施日期

實施都市固體廢物收費（垃圾收費）是實現「零廢堆填」的核心策略。基於「污染者自付」原則，垃圾收費透過提供經濟誘因，鼓勵各界珍惜資源，積極落實源頭減廢及乾淨回收，從而減少整體廢物棄置量。我們預計隨著垃圾收費的實施，市民會更積極實踐減廢回收，以盡量減低需要支付的垃圾收費。

經諮詢立法會後，我們已決定於2024年4月1日起推行垃圾收費。我們現正積極推展相關籌備工作，包括為供應指定袋和指定標籤建立「製造、存貨及分配系統」和零售網絡；與各持份者（例如物管公司、前線清潔工人等）溝通，制定相關指引，並提供支援和培訓；以及廣泛進行減廢回收的公眾教育和宣傳活動，讓政府、各持份者和公眾做好充分準備。

指定袋及指定標籤的銷售

為方便市民將來採購指定袋及指定標籤，我們正建立一個涵蓋超級市場、便利店、藥房、家品店及網上平台等約數千個零售點的全港性零售網絡。為進一步擴大銷售網絡，我們已設立批量採購安排，讓物管公司代表業主採購及／或在其管理的私人住宅售賣指定袋／指定標籤。物管公司可按照相關業主立案法團／業主組織的決定，協助住戶購買和分發指定袋。這將有助住戶養成使用指定袋棄置垃圾的新習慣，從而提高循規率，亦減少物管公司前線員工因處理違規棄置垃圾或居民投訴而與居民產生紛爭的機會。

考慮到實施垃圾收費後，市民在市面零售點所購買的普通塑膠購物袋不能用作垃圾袋，最終只能成為垃圾的問題，環保署與各零售商商討落實售賣垃圾收費指定袋的細節時，已鼓勵他們盡可能於收銀處銷售單個指定袋來替代塑膠購物袋，供沒有自備購物袋的顧客購買，從而達致「一袋兩用」之效。我們亦已要求零售商提醒收銀處的員工，當市民需要購買膠袋盛載貨品時，主動向市民提出可購買指定袋以代替普通膠袋。零售商普遍支持這個「一袋兩用」的建議並會予以配合。

與持份者溝通

成功推行垃圾收費有賴不同持份者（包括法團／業主組織、物管公司、清潔承辦商及業戶等）的支持及參與。為協助不同持份者了解垃圾收費的安排，環境保護署聯同物業管理、環境衛生、回收及保安業界等持份者組成了工作小組，共同草擬了良好作業指引，同時為相關業界的前線員工提供簡介及專題訓練，以協助他們更清晰了解相關法例要求及良好作業指引，並就調整前線運作安排提供建議。

宣傳工作

為協助市民準備垃圾收費，我們已透過環境運動委員會推行全港宣傳和公眾教育活動。活動以「多回收 • 揀少啲 • 慳多啲」為主題，分階段在社區展開。為配合宣傳工作，環保署已提升其客戶服務中心和設立專設熱線，以便處理公眾有關垃圾收費的查詢，以及讓市民在垃圾收費正式實施後提出違例舉報。

風險為本的執法策略

從其他城市的經驗顯示，即使在實施垃圾收費後，公眾仍需時多年才逐漸培養減廢回收的習慣。我們留意到這些城市，尤其在垃圾收費實施初期，均著重以教育和宣傳來提高公眾認知和參與，而並非透過嚴厲執法。同樣地，我們認為在香港實施垃圾收費的整體方向，首要是讓市民養成減廢回收的習慣，從而減低需要支付的垃圾收費，而非嚴厲執行相關法例要求。

垃圾收費實施初期執法會較寬鬆，並有六個月的適應期，在這段時間，我們主要透過宣傳教育的方式，鼓勵市民改變行為習慣，對於違規個案只會作出警告，該段時間不會嚴厲執法。適應期後我們會以風險為本的模式執法，即不會動用大量人手到處監察市民，亦不會一遇到違規情況便立即檢控。我們會針對性地留意一些黑點，包括透過投訴和情報提供的地點，針對這些經常違法的黑點採取執法行動。此舉可讓市民大眾，特別在垃圾收費實施初期，更容易接受這項非常重要的廢物管理措施。

「零廢 • 減碳」實現碳中和

為實現2050年前達至碳中和的目標，在未來的日子，政府會繼續努力推動各方面的環保回收政策，以實現「全民減廢」及「資源循環」。物業管理業站在環保減廢工作最前線，應致力參與，推動全民落實減廢，減少碳排放以應對氣候變化，為香港以至全球可持續發展的未來作出積極貢獻。而作為市民，我們可以減少不必要的消費，使用可循環再用的產品，做好源頭減廢及乾淨回收。通過這些小小的改變，慢慢扭轉我們的生活習慣，就可以做到「零廢 • 減碳」。

Insurance in the context of Property Management

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Introduction

There are various kinds of insurance which is related to property management, for example, property insurance against risks of damage of common areas and facilities of buildings, and liability insurance to cover potential claims against property managers, owners and incorporated owners in connection with such common parts and facilities. This article will highlight some important terms contained in a typical liability insurance policy and discuss certain practical issues which insured property managers should pay heed to.

Compulsory Insurance

Previously, property managers and incorporated owners were, in law, free to decide whether to take out any property or liability insurance concerning the buildings they managed, as no such insurance was mandatory. The old version of section 28 of the Building Management Ordinance only provides that if the incorporated owners have taken out building insurance, they need to produce the receipt for payment of the last premium if required by the owners. In 2000, the Building Management Ordinance was amended to impose mandatory requirements on incorporated owners to take out certain insurance, in the same way as drivers of motor vehicles insured against liability of third party claims arising from road traffic accidents, and employers insured against liability for their employees' claims in respect of accidents arising out of and in the course of their employments. However, despite the amendments, the requirement of mandatory insurance only came into operation many years afterwards in 2011. This was the case although many important amendments of the Ordinance already took effect in between (i.e. in 2007).

Under the current version of section 28 of the Building Management Ordinance, the incorporated owners of a building are required to take out public liability insurance. If they fail to do so, every member of the management committee of the incorporated owners shall be guilty of an offence and shall be liable on conviction to a fine up to level 5 (i.e. $50,000). Of course, if somehow the property manager fails to arrange for any compulsory insurance or its renewal on behalf of the incorporated owners, or fail to advise those members of the management committee the relevant statutory requirements, the property manager will likely be considered negligent in law.

The long time gap in between the enactment and implementation of the new section 28 was to enable the incorporated owners to comply with the statutory requirement and arrange for the prescribed public liability insurance. There were many buildings which might not be properly managed and hence considered risky by insurance companies. One obvious risk was the existence of many unauthorized building structures which were not uncommon in Hong Kong and which might cause serious accidents resulting in huge claims. Very few, if any at all, insurance companies might be willing to accept such risks. If the requirement for mandatory insurance were imposed instantly, many incorporated owners might fail to be insured as required and liable to be prosecuted. Therefore, much time was needed for consulting the insurance industry as to the terms of the prescribed policy which the industry would consider acceptable, and for educating the owners the statutory requirement and the benefits of insurance. At the end, the mandatory requirement for public liability insurance was finally imposed on the incorporated owners after about eleven years.

Coming into operation at the same time as the new section 28 was the Building Management (Third Party Risks Insurance) Regulation which defines the terms of a statutory insurance policy. Similar to the compulsory insurance for motor vehicles and employees' compensation, successful claimants may, subject to limited exceptions, enforce any court judgments obtained against the insured incorporated owners in those public liability claims directly against the insurers, including any interest and legal costs payable under the judgments. This will generally be the case even if the insured incorporated owners are in breach of some policy conditions, like failing to give timely notice of the accident to the insurer as discussed below. However, if the insurance company is only required to satisfy the claim by reason of its statutory liability, while it is entitled to disclaim policy liability against the incorporated owners or property managers contractually, it may seek recovery of its outlays against the insured.

Under section 34 of the Building Management Ordinance, upon the winding up of the incorporated owners, the owners shall be jointly and severally liable, according to their respective shares, to contribute to the assets of the incorporated owners to an amount sufficient to discharge its debts and liabilities. Therefore, in making the said recovery claim against incorporated owners who have breached the policy, the insurance company may seek to wind up the incorporated owners so as to pursue against the individual owners, including looking to the owners' units in the building to satisfy its claim. At the end, it will still be those owners who have to foot the bill despite the insurance coverage, if they have not duly observed the terms of the policy. It is, therefore, crucial that professional property managers should properly advise the incorporated owners and ensure due observance of the policy terms. If the managers fail to take proper and reasonable measures in such regards, they may also be liable for negligence.

Indeed, the basic function of insurance is to spread and not to eliminate the risks. The insurance companies simply pool the resources together by collecting premium from every insured, and pay out to a particular insured who is faced with a claim. One cannot expect the insurance companies to fund claims voluntarily in this commercial world. Therefore, an insured building making frequent claims will likely find it difficult to take out liability insurance in future, or at least it will have to pay vastly increased sums as premium. In reality, it may have to bear the consequences of those claims by itself even though the policy does cover the risk concerned.

As mentioned above, one of the major concerns of the insurance industry was risks associated with unauthorized building structures. Perhaps as a compromise, section 3(2)(c) of the Building Management (Third Party Risks Insurance) Regulation provides that an insurance policy is not required to cover any liability arising out from building works carried out in contravention of the Buildings Ordinance. Therefore, it should be noted that claims arising from unauthorized building works or structures, like any such structures falling off from a building and injuring people, will unlikely be covered by a typical public liability insurance policy taken out under the present section 28 of the Building Management Ordinance.

Duty of Utmost Good Faith

In law, the insured is under a duty to make full and frank disclosure to the insurance company all material information relevant for the latter's decision on whether to issue the policy and the terms upon which the policy will be issued. The reasoning behind such rule appears to be that the insurer cannot properly assess the risk without such full and frank disclosure by the insured.

Matters and information required to be disclosed may not necessarily be restricted to those requested for in the insurance proposal to be filled in and submitted by the insured at the time when the policy was taken out, but include all matters relevant for the risk assessment process. Some matters which may have to be disclosed include particulars of any statutory notices or instructions concerning safety of the building to be complied with, any hazards or serious defects of the building already known or identified etc.. If the insured has not fulfilled their duty to make full disclosure of all material facts and information, the insurer will likely be entitled to avoid the policy against the insured on the ground of material non-disclosure. Even if the insurer may still be liable to compensate the victim for his loss by virtue of the Regulations, it may seek reimbursement from the insured incorporated owners and building manager as discussed above. Of course, where any material information supplied to the insurance company is false, the insurer may also seek to rescind the policy or seek damages for misrepresentation.

Common Terms in Insurance Policies and Some Decided Cases

Property managers should be conversant with the contents and effects of the insurance policies taken out for the building and facilities under their management, and advise the owners and the owners' organizations like the incorporated owners accordingly. If necessary, they may seek advice from brokers and lawyers. Some of the usual policy conditions found in a public liability policy connected with building management are discussed below. However, it cannot be over-emphasized that each policy may well have its own wordings or effects and must be studied individually. The decisions in the cases cited below may not necessarily apply to other cases.

1. "Prerequisite" ("Condition Precedent") clause

If the insured breaches certain policy condition (such as reporting the incident to the insurance company in a timely manner), the insurance company may refuse to indemnify the insured without having to show any loss or prejudice caused by the breach.

In a Hong Kong case *Chan Yiu Sun v Yip Kim Cheung, Cheung Chi Keung & Tsui Cheuk Yin* [1990], an insured taxi driver sought indemnity from the insurer his liability in a traffic accident that had caused serious injuries to a passenger in another car. The insurer sought to avoid liability on the basis that the taxi driver had failed to give timely notice of the accident. The clause in the policy condition is "*[t]he due observance and fulfillment of the terms provisions conditions special clauses endorsements of this Policy by the Insured in so far as they relate to anything to be done or complied with by the Insured shall be a condition precedent to any liability of the Insurance Company*." The Court held that the taxi driver had known at the time of the accident that people had been injured and that there were allegations that he was responsible for the accident. Therefore, he was obligated to give notice to his insurer as soon as possible at that time. His failure to give notice was in breach of the policy condition. In view of that, the "condition precedent" for the insurer's liability to arise under the policy had not been fulfilled. Therefore, the insurer need not prove any loss or damage flowing from the late notice. It was still entitled to disclaim any policy liability to indemnify the insured driver.

Under the Regulations, the insurance company cannot refuse to satisfy the judgment obtained against the insured property manager or incorporated owners by virtue of a condition precedent clause. However, as discussed above, it may seek to recover any outlays incurred from the insured who has breached the policy condition. The end result may well be the same, namely that it is the insured and not the insurer who is ultimately liable, when the incorporated owners and the property management company are usually financially capable of satisfying the claim.

2. "Timely notice" clause

The insured also has a duty to give timely or immediate notice to the insurer upon the occurrence of any events which may give rise to a claim under the policy. Depending on the actual wordings of the policy condition, the duty to give notice often has already arisen upon the occurrence of an event that may give rise to a claim, not being merely upon the receipt of a claim. The requirement to give timely notice upon awareness of the relevant circumstances has been described as "*a fairly loose and undemanding test*" in some English decided cases.

In an English case *Jacobs v Coster* [2000], a woman was at a petrol filling station intending to fill her car with petrol when she fell over and injured her leg. Ambulance was called to bring her to the hospital, but she did not complain that her fall was due to diesel or any other substance on the station floor or due to the fault of the operator of the petrol filling station. There was also no evidence of anything unsafe on the floor that could have caused her to fall. The operator of the petrol filling station did not notify his third party insurer as an event likely to give rise to a claim, until when he received a letter from the woman's solicitors intimating a claim against him. The insurers denied policy liability on the ground that he had not given timely notice. Nevertheless, the Court of Appeal held that the likelihood of a claim could not be inferred from the happening of the accident.

In another English case *Maccaferri Ltd v Zurich Insurance Plc* [2015], a man had sustained an eye injury at work when using a Spenax gun to attach wire caging together. He sued his employer, who then sued the insured, from whom the gun had been hired. A clause of the insured's policy stated that "*the Insured shall give notice in writing to the Insurer as soon as possible after the occurrence of any event likely to give rise to a claim*". The accident happened in September 2011 and the insured was told of the claim against it in July 2013 and it notified the insurer shortly afterwards. The insurer refused to provide any indemnity on the ground that the insured had not given notice as soon as possible after the accident. The court held that "as soon as possible" simply referred to the promptness with which the notice was to be given if there had been an event likely to give rise to a claim. On the evidence, when the accident occurred, there had not been at least a 50 percent chance that a claim against the insured would eventuate. There had therefore been no failure on the insured's part to comply with the condition precedent to the insurer's liability. The insurer was obliged to indemnify under the policy. On appeal, the Court of Appeal also affirmed the lower's court decision, specifying that the circumstances of the incident were unclear and had not been made clear to the insured that someone had been seriously injured. There was only a mere possibility that the gun supplied was faulty. In those circumstances, the insurer was not entitled to rely upon the condition as a ground for denying liability.

However, it should be noted that not all "timely notice" clause in a liability policy contain the word "*likely*". The outcome may be different depending on the wordings of the relevant provisions and the circumstances of a particular case. It is not certain whether the court or arbitrator in Hong Kong will apply a more stringent test in determining whether there is any late notification. It may be prudent to give notice of all accidents and occurrences which may possibly lead to claims, whether or not any injury was observed at the scene. For accidents which are not that serious, insurers will unlikely incur costs of investigation when being notified of the occurrence resulting in an increase of insurance premium in the following year.

In another Hong Kong case *The Incorporated Owners of Tung Fat Building Block A Kam Ping Street v Ng King Fong Judy & Others* [2020], the owner of a flat issued a legal letter followed by court action claiming damages to their shop due to water leakage from the outer wall of the suit building. The incorporated owners did not take step to defend the claim, and judgment was entered against them who made payment of $550,000 to the claimant. The insurer disclaimed policy liability because the incorporated owners did not send the claim documents to them immediately. The policy condition stated that "*the Insured shall give notice in writing to the Company as soon as possible after the occurrence of any accident with full particulars thereof. Every letter, claim, writ, summons and/or process shall be notified or forwarded to the Company immediately on receipt...*". Later, new chairman and members of management committee were appointed, and the incorporated owners brought recovery action against the former members of the management committee for their failure to deal with the claim properly and keep the insurance in force.

The Lands Tribunal held that the 3 former members of the management committee who knew about the court action and failed to pass the claim documents to the insurer promptly had caused the incorporated owners' loss and damage. They had also breached section 28 of the Building Management Ordinance in that the incorporated owners were unable to keep an insurance policy in force in respect of third party risks. The incorporated owners were entitled to judgment against those 3 former members for the full sum of $550,000 with interest and cost.

To sum up, failure to report to the insurers promptly is often a breach of the insurance policy, and the insurer can disclaim policy liability whether they are prejudiced by the delay. If the court finds on the facts that the failure was the fault of a specific member of the management committee, that member may be held personally liable for the loss suffered by the incorporated owners. Under such circumstances, individual members in the management committee will unlikely be protected under Section 29A of the Building Management Ordinance, which exempts such member from personal liability only if he has acted honestly and reasonably. Building managers guilty of the same delay in handling or reporting any occurrences or claims, even if they are only made against the incorporated owners, may also be faced with consequences like recovery claim from incorporated owners or complaint to the Property Management Services Authority.

3. "Reasonable precautions" and "Observing the Laws" clause

The policyholder must also take reasonable precautions to remove known risks of the policy and observe the relevant statutes.

In a Hong Kong case of *Leung Tsang Hung v The Incorporated Owners of Kwok Wing House* [2007], a female hawker selling goods in a public street was hit and killed by a concrete block falling from an unauthorized structure on the suit building. Her estate brought an action against the incorporated owners for damages. The Court of Final Appeal held that the incorporated owners were liable for public nuisance. The incorporated owners must have actually known or should have known that its omission in removing the illegal structure in existence for several decades would create nuisance and cause harm to users of the public highway, and the incorporated owners was obliged to take reasonable measures to remove such hazards.

The suit fatal accident occurred at a time when third party liability insurance was not compulsory for incorporated owners. However, even if the suit incorporated owners have taken out such a policy, the claim would unlikely be covered by the insurance because it arose from an unauthorized building structure. As discussed above, claims arising from those structures need not be covered by a mandatory statutory policy and will unlikely be so covered in reality. Further, the suit incorporated owners might arguably also have failed to observe the "reasonable precaution" clause for ignoring a known risk when the unauthorized structure has existed for a long time yet no action has been taken to remove it or even ascertain whether it might pose any danger.

It should be noted that it is also the duty of incorporated owners and managers to take enforcement action to preserve the validity of any insurance coverage. In another Hong Kong case of *Incorporated owners of Hong Yuen Court v Dugar Shishir and Dugar Saroj & Anor* [2015], incorporated owners discovered a number of unauthorized structures and building works in the building, some of which were subject to building orders. The incorporated owners requested the owners to demolish these unauthorized works, but a number of owners refused. The relevant clause in the Deed of Mutual Covenant reads: "*Each of the parties hereto shall not...do or cause or permit or suffer to be done anything whereby any insurance of the said building against fire may be rendered void or voidable or whereby the premium for any such insurance may be liable to be increased.*"

The Fire Policy taken out by the incorporated owners was subject to a "*Legal Requirement Warranty A33*", in which the incorporated owners warranted that they would comply with and observe all statutory obligations (including any notices), and the breach or disregard of the same may affect or increase the risk being insured.

The Lands Tribunal held that under section 16 and 18(1)(a) of the Building Management Ordinance, the incorporated owners has the duty to maintain the common parts in good and serviceable repair, and if the unauthorized structures were not removed and the areas concerned be reinstated, the incorporated owners would be in apparent breach of the said Legal Requirement Warranty A33. There would be a real risk that the subject Fire Policy might be rendered void or voidable (or the premium may be increased). Therefore, the owners had breached the Deed of Mutual Covenant. The Lands Tribunal granted injunctions compelling the owners to demolish the structures.

Conclusion

Property managers should realize that insurance is not the full answer to all claims. Indeed, under section 4 of the Building Management (Third Party Risks Insurance) Regulation, a policy is only required to provide insurance of not less than $10 million in respect of any prescribed liability. Many public liability insurance policies taken out are limited to the statutory extent accordingly. That ceiling sum would include interest and costs (often including legal costs of both the claimants and the defence). Any sum in excess incurred in handling and settling a claim will still be borne by the property managers and the incorporated owners.

In any event, taking out insurance does not mean that the property managers may stop taking precautions to prevent accidents and claims. There may well be exceptions relating to unauthorized building structures and the requirements to take reasonable precautions to remove known and readily known risks contained in many typical policies. Also, increased premium loading and difficulty to take out the required insurance in future are possible consequences which cannot be ignored.

Property managers should also be familiar with the effect of the material provisions of the insurance policy so as to ensure their due and punctual observance. Professional advice from capable brokers and lawyers should be sought whenever there may be doubt.

This article is purely for readers' reference. If an actual case arises, please seek legal advice.

屋苑大維修　如何免煩憂

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前言

香港過去二、三十年不斷有大規模的基礎建設投入服務，亦有不少大型設計現代化又新穎的住宅和商業大廈相繼落成，令香港成為一個國際都會。但與此同時，卻又有不少樓齡逾四、五十年殘破剝落的住宅或工業大廈已完成或正在進行翻新修復；即使才三十年樓齡的樓宇，業主還未打算進行大維修，屋宇署也可能就此類樓齡的大廈因結構問題而發出強制驗樓通知(Mandatory Building Inspection Scheme)。是以近幾年香港常聽到一個社會話題 — 樓宇大維修，聽到的大多是負面新聞，諸如天價大維修費用；業主立案法團聘請工程顧問及承建商過程不透明；沒有邀請「市區重建局」參與協助等等。因而漸漸多了法團、業主和物業管理從業員關注這個費用動輒千萬元需時兩三年的大維修議題。本文擬探討法團展開大維修前應如何準備，採取甚麼步驟，有甚麼事項要注意，附加本行律師遇過的真實個案與讀者分享，務求令整個大維修過程暢順，減少業主與其他持份者之間的矛盾。

聘請工程顧問

大維修首要準備必定是聘請合資格富經驗的工程顧問，通常由測量師、工程師或則師等認可人士擔任。聘請工程顧問其實就是大維修這個課題必經的第一步驟，當中包括三步曲，亦即是工程顧問下列三項職能：

(1)　勘察樓宇和擬備勘察報告

勘察樓宇公用部分（如外牆結構）及公用設施（如消防系統及設備）；擬備勘察報告詳列樓宇狀況、需修葺的部份、建議修葺的方式及所需物料，以及工程成本初步的估算等。

(2)　草擬聘請承建商標書

當法團接納勘察報告內容，按需要及業主承擔能力，指示工程顧問草擬聘請承建商的標書。一般而言，聘請承建商的標書文件包括：投標資格及要求、投標表格、工程合約、工程規格及工程措施、工程範圍、項目數量、物料資料及單價明細表、工程圖則，以及反貪反圍標及利益申報書等。

(3)　監督工程進度及質量檢查

聘請了承建商後，施工前的準備，諸如工地移交、查核與工程相關的保險文件或相關政府部門開工批准書等，以至監督整個維修工程進度及質量檢查均是顧問協助法團處理的工作。

「招標妥」

從沒有大維修經驗的法團，如何招聘工程顧問和下一階段的承建商，的確要小心處理，行錯或行少任何一步，隨時惹來眾業主不滿，一發不可收拾。其實，「市區重建局」（下稱「市建局」）過去多年都有協助過不少屋苑／單幢大廈透過其「招標妥」樓宇復修促進服務的平台，展開大維修的第一步 — 聘請工程顧問。若政府當時推出強制驗樓或消防安全改善工程資助計劃，而屋苑／大廈的差餉租值符合當時所定水平，業主年齡達到長者定義的要求，更可以取得維修津貼資助。此外，參加「招標妥」，市建局有一套頗全面的聘請工程顧問的標書，內容包括制訂顧問服務的範圍，須遵守的合約條款及報價項目明細表等。若屋苑／大廈符合差餉租值水平的要求，所繳付「招標妥」的費用相對於聘請獨立顧問公司或律師廉宜得多。而且，市建局同事會為參與「招標妥」的屋苑／大廈收集及開啟標書；按情況需要面試投標公司，以及評核標書和擬備分析比較表，以便業主在業主大會投票揀選合適的工程顧問。當然，若差餉租值水平不符要求的屋苑／大廈也可以利用「招標妥」這個平台進行招聘工程顧問，只是費用略高而已。

本行律師曾出席法團有關申請「招標妥」及相關資助的業主大會，列席的市建局代表為免業主誤會，向業主表明用「招標妥」難以杜絕圍標或貪污情況，只希望能藉着市建局聯同專業人士開標見標以減低圍標或貪污機會。無論怎樣，若沒有聘請工程顧問經驗的屋苑／大廈是值得考慮採用「招標妥」，可省卻不少時間和資源，何況有市建局專業團隊協助。當然，若屋苑法團資源不缺，又有專業物業管理公司協助，亦可自行安排招標，只要遵照《建築物管理條例》招標相關規定和條例內所提述的工作守則(Code of Practice)，以及懂得處理法團管理委員會委員的利益衝突和對他們的誠信要求等問題便可。

業主大會揀選工程顧問

上文提到揀選工程顧問須在業主大會進行，一般而言，工程顧問費用大多超過《建築物管理條例》第20A條所訂的港幣200,000元或相等於法團每年預算的20%便須公開招標，而法例第20A條(2B)段訂明，標書是否獲接納，必須在業主大會上由業主投票通過業主決議來決定。不論是否採用「招標妥」，為便利業主揀選合其心意的工程顧問，法團及物業管理公司準備業主大會時，也應該擬備一份評核標書的分析表，隨業主大會通告派發給所有業主以供參考。

聘請承建商

當揀選工程顧問後，獲聘的工程顧問如本文開首所說，隨即要為樓宇的公用部份和設施進行勘察及擬備相關報告，繼而為法團草擬招聘承建商的標書，即上文提述工程顧問的第(2)項職能。若採用「招標妥」聘請工程顧問，市建局的同事多會就工程顧問所草擬的標書給予意見。至於標書內容尤其是工程合約部份，留待下文再論述。

招標

招標方式，不外乎由工程顧問向法團建議邀請若干承建商入標（即邀標）或登報公開招標兩種。為公平及讓業主多些選擇，大多會採用登報公開招標，若反應熱烈，收到的標書逾超過三、四十份不足為奇。故此，法團與物業管理公司得要預留長一點時間處理標書才安排業主大會揀選承建商。

開標

開標方面，除法團幾位骨幹委員（即主席／副主席、秘書、司庫）、物業管理公司代表和工程顧問外，不妨考慮邀請獨立第三方專業人士，如會計師或律師在場見證開標，好處是如有問題，在場見證的會計師或律師可即場給予意見，同時亦可提高招標過程的公平公正和認受性。

見標

見標（即面試投標承建商）固然是值得採用的做法，可藉此了解投標承建商的背景和經驗，但並非必要的步驟，尤其是若標書太多逾幾十份，法團難以花時間逐一面試。若法團有意進行面試，為免惹來質疑或非議，除了邀請標價、公司背景、經驗、商譽均合心意的投標承建商面試，較穩妥的做法是在眾多投標承建商中，同時邀請最低及最高標價幾間公司面試。

據知有此法團同時也邀請有興趣和時間的業主出席，透過管委會委員和工程顧問向投標承建商的提問，讓出席業主多了解各承建商的背景及擬進行維修的項目，出席業主可參與提問，從而令其後的業主大會揀選承建商過程較為順利。

業主大會揀選承建商

見標後便要安排業主大會揀選承建商，過程和準備事項，大致同揀選工程顧問一樣。當中工程顧問要為法團整理評核標書，綜合分析各承建商的資料包括標價、公司背景、財政能力，以及過往曾否因進行維修工程或與工程有關的事項而有被定罪或訴訟紀錄等，甚至聯同管委會委員及物管同事到訪部份承建商過往或現時正在施工的屋苑／大廈，觀察他們的工程質量。

有一個案可在此與讀者分享，在某屋苑的業主大會揀選承建商，列席的工程顧問向業主解說完投標承建商的分析表後，竟然向業主極力推介（其實是近乎推銷）某一間承建商，這樣明顯極不恰當，法團主席應中止該工程顧問繼續推介。同樣，法團即使心儀某一間承建商，無論其標價、相關工程經驗及公司背景商譽等均符合要求，也不應像該顧問在大會上極力推介，極其量只可向業主建議考慮，以免惹來與獲推介的承建商有利益輸送的猜疑。正如上文提及，法例第20A條(2B)段訂明，標書是否獲接納，必須在業主大會上由業主投票通過業主決議來決定。

處理工程合約

談論過大維修工程的三步曲流程，本文並不就此完結，還有更重要而往往為法團所忽略的一環 — 處理工程合約 — 尚待細說。正因香港不少樓宇已步入老齡化階段，現將過去四年來修改過多份大維修工程聘請顧問或承建商的合約或標書的經驗，借此機會與讀者分享當中較值得注意的事項。

不建議招標後才聘請律師修改合約

最經常遇到的情況就是完成了招標程序，經業主大會揀選了工程顧問／承建商後才聘請律師意圖修改相關合約部份條文。工程顧問／承建商按標書及標書內的合約條款落標報價，當中標後而被通知已中標，原則上雙方已建立合約關係，標書（包括合約部份）的全部內容及條文對雙方已具約束力，即使合約寫得如何不夠全面、欠缺保障法團權益的條款，甚至一面倒只保障工程顧問／承建商，亦屢見不鮮。無論將合約大幅度修改或只修改部份條款以保障法團權益，也需要合約的另一方同意才行。經驗告知我們，在正式開工前獲聘的承建商大多都願意接納修改建議，而工程顧問則較少願意。

然而，就算簽妥合約並不是每宗大維修工程可以依合約順利完成而雙方沒有糾紛。反之，工程合約糾紛更是常有發生，是以法庭訴訟案件類別中，工程個案則屬一專門類別。任何合約糾紛爭議（包括工程合約），大多源於合約條文草擬粗疏或不清晰，致令有爭議空間，又或是保障權益的條款向合約一方傾斜，對另一方缺乏合理的保障。

幾年前，觀塘一屋苑的法團主席因工程質素低劣而拒絕繳付工程費用尾數幾十萬元給承建商，及工程顧問費用尾數三、四萬元，遭受他們各自聘請律師追討。在檢視有關工程合約後，發現並沒有工程質素低劣時任何保障法團的條款，承建商只需憑工程顧問簽署工程竣工紙(Certificate of Practical Completion)後便可向法團支取工程費用尾數，該合約內當然沒有工程顧問須陪同法團代表在承建商報稱完工後，一同實地檢測是否妥善完工，亦沒有重要條款如保固期等。本來這種情況，法團難以拒絕繳付尾數，合約法有一重要原則–quantum merit，只要提供服務的一方的確按合約提供了相關服務，不論質素如何，另一方便須要按合約付款，受屈的另一方只可循法律程序要求提供服務的一方就工程質素低劣申索賠償。經律師了解後，得悉法團接獲過百宗業戶書面投訴工程質素差劣，某些工程項目完成後需符合屋宇署要求，但屋宇署書面回覆是不符合要求，以此為由律師協助法團回覆對方拒付尾數，並因工程質素差劣，法團需另聘他人修補某些項目而向該承建商反索償。

建議為屋苑／大廈度身訂造一套工程合約

倘若標書連同合約在招標前經有相關經驗的律師修改，便可以避免上述個案的情況。那麼，若標書連同工程合約的草稿事先經富經驗的律師修改，是否可免卻任何合約糾紛呢？那要視乎所聘用的工程顧問其草擬工程合約的方式。最理想當然是顧問掌握了屋苑／大廈需要修葺的部份後，為該屋苑／大廈度身訂造一套工程合約；工程規格及各項措施的要求；合約雙方各自須履行的責任及賠償條款等。可是，現實情況卻是較少工程顧問這樣做。

本行所見大多數情況是工程顧問在標書內說明，投標者需要參照工程業界使用逾百多頁由香港建築師學會、香港營造師學會及香港測量師學會聯合編製出版的「Agreement & Schedule of Conditions of Building Contract for use in the Hong Kong Special Administrative Region (Standard Form of Building Contract), Private Edition (Without Quantities)」，或是由香港測量師學會編製出版的「維修及裝修工程標準合同」，工程顧問同時另加設一份稱為「特別合約條款」之類的文件，列出前述的「Standard Form of Building Contract」／「標準合同」在某些頁數、某些條款、某些用詞，需如何修改，或刪除某些頁數、某些條款，或在某些用詞下加插某些段落等。換言之，他日法團在工程合約執行期間若想了解自己的權益，甚至遇上合約糾紛交由法庭處理時，則需要同時間就某一項條款要平衡翻閱「標準合約」及「特別合約條款」才得出個所以然。這樣費事失事，處理訴訟的律師不能一目了然，或許需時了解，收費自必然隨所花時間而遞增。故此，本行律師通常建議法團要求工程顧問別採用上述草擬工程合約的模式，應要求工程顧問為屋苑／大廈度身訂造一份合約，既便利法團在施工期間自行查閱自己的權利，即使他日對簿公堂，所聘用的律師亦毋需平衡檢閱兩份不同的合約，徒添加法律訴訟費用。

個案分享

上文提到工程業界兩款常用的「標準合約」，據知半山有一位處事嚴謹的法團主席聘用律師修改其大廈大維修標書連工程合約的草稿，當中的工程合約的確已是度身訂造的中文版本，內容經律師修改增刪後，本可足以保障法團權益。但律師留意到該工程顧問在合約第一頁的敘文中加插了一句：除該度身訂造的工程合約外，有意投標的承建商還須參照逾百多頁的「Standard Form of Building Contract」的英文版。即是說一單大維修工程，合約雙方同時有中、英文版各一套的合約要遵守，而不是合約有中英對照版時，若有任何不一致或矛盾，便以英文為準的慣常處理方法。問題是兩套不同語言的合約，涉及的內容或涵蓋的責任範疇即使相同，但用語不同而引伸的法律含意可以大相逕庭。據法團主席轉述，該工程顧問向他聲稱，法庭很多法官在處理工程合約糾紛時都稱許該「Standard Form of Building Contract」，又聲稱市建局的代表也如是說云云（因該大廈也是採用「招標妥」，所以有市建局代表可諮詢），該工程顧問因而不接納律師的意見而將之刪除。最後透過三方電話會議了解，市建局代表向法團主席澄清，市建局不會強迫法團接納該工程顧問的意見。最後，法團接納律師意見，只需該度身訂造的工程合約中文版。

說到合約條文，順帶一提，本行留意到工程業界擬備的工程合約中，全都有「仲裁」條款(Arbitration)來處理合約雙方的糾紛或爭議。這是可理解的，因為大概在2008/2009年之前，一般合約糾紛透過法律程序處理往往是經年，而且訟費不菲。2008/2009年司法機構推行了司法程序改革後，大大縮短了法律程序時間，並設立機制防止與訟任何一方借故拖延案件，加上與此同時又引入了調解機制，因而節省訟費。今時今日，透過聘請仲裁員來處理糾紛爭議，所需時間和費用不一定會短和少，反之隨時可能時間更長費用可能更多。故此，本行一般來說都建議合約雙方先協商、後調解，到最後才以訴訟來解決糾紛。

此外，頗多情況是法團與聘用的工程顧問在合約上及工程進度、物料、完工程度等出現重大分歧及爭議，解決不了，建議法團必須考慮聘用另一位中立的工程顧問，代表法團為爭議、糾紛作出檢討，向法團及其律師提出解決方案，然後採取法律程序。

結語

認識大維修三步曲及明白在招標前先處理工程合約草擬本的重要後，當然仍不足以可免除大維修帶來的煩憂。其實，屋苑／大廈大維修並不只是法團管委會十個八個委員的事，因為整項工程涉及工程費用以千萬元計，需時兩三年才完工，這是全屋苑／大廈所有業主關心關注的大事。縱使管委會在籌備大維修過程中背後花了很多時間和心力，但沒有讓業主參與，諮詢他們意見，與法團發生誤會或矛盾往往因欠缺溝通而起。故此，本行建議法團及物管業從業員在籌備大維修過程中，聯同工程顧問多舉辦座談會／簡介會，讓業主多了解諸如大維修的必要、需要修葺的公用部分和設施、可選擇的維修方案及所用物料等問題。過程完全需透明，既可讓業主明白知道管委會的確為大家勞心勞力，又能藉座談會／簡介會集思廣益，相信可以大大減低發生爭議或磨擦的機會，祈能達至屋苑大維修全無煩憂。

最後，大維修的確是一個很大且複雜的課題，難以藉着數頁紙的討論，便能透視由統籌、聘請工程顧問／承建商、處理相關合約、計算業主分攤工程費用的準則、開展工程、施工期間發生的問題到竣工後保固期整個過程的每一項。因篇幅所限，本文只能探討三步曲及處理合約常遇到的問題，日後有機會，再與讀者分享其他也值得法團及物管界同事注意的事項。法團可參考由香港房屋協會及廉政公署聯合編製逾150頁的「樓宇維修實務指南」，該「指南」內容豐富，值得法團及物管界參考。