

# COVER STORY

## 主題文章



# 橫琴項目置換物業管理公司與港澳地區的差異化比較



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## 一、前言

橫琴粵澳深度合作區自成立以來，逐步成為粵港澳大灣區區域合作的試驗田。橫琴不僅在經濟發展上承載著創新重任，還在城市治理層面探索了多種新模式，尤其是在物業管理領域。物業管理作為城市基礎服務的重要組成部分，對於維護城市秩序、提升居民生活品質具有不可忽視的作用。而物管公司的置換，作為業主自治與市場調節的重要交匯點，更是衡量物業管理制度成熟度的關鍵指標。

在橫琴，目前實行的「雙過半投票機制」和嚴格的物管公司進退場程序，是其物業管理制度的核心特點。這種模式與港澳地區及亞洲其他發達國家的市場化、自主化運作方式形成鮮明對比，既體現了內地物業管理市場的發展階段性特徵，也反映了內地在保障業主權益上的制度創新。然而，隨著橫琴進一步深化與港澳的合作，新制度在實踐中的挑戰及其改進空間亦逐漸顯現。



本文將系統分析橫琴物管公司置換機制的特點，並從法律架構、行政干預、業主自治及市場化程度等多角度，與港澳及亞洲其他地區進行對比，結合實例探討制度運行的優勢與不足，最後提出針對不同參與方的專業建議，期望為物業管理行業提供可行的參考。

## 二、現狀分析

### 橫琴的物業管理制度特點

橫琴的物業管理制度源於《珠海經濟特區物業管理條例實施細則》，該細則在充分結合內地物管制度和橫琴特殊定位的基礎上進行了設計，具有高度的地方特色和法律支持。

首先，雙過半投票機制是橫琴物業管理制度的核心。該機制要求在進行物管公司置換時，業主需同時達到「業權份額過半」和「業主人數過半」的雙重要求，方可作出有效決議。這一設計旨在避免少數業主壟斷決策權，保證決議的廣泛代表性和公平性。然而，雙過半投票機制的實施難度相對較高。由於橫琴物業項目多為大型住宅小區，業主人數龐大且多數業主分散居住，往往導致投票組織困難，尤其是業主參與度不足的情況下，容易出現投票難以達標的問題，進而影響物管公司的交替進程。

其次，橫琴對物管公司的進退場程序設置了嚴格的法律門檻。根據《細則》規定，物管公司須在政府部門完成登記備案，並在合同到期或退出時進行一定日子的公示，獲得相關方同意後方可註銷登記。若無法完成公示或註銷，物管公司即便合同到期，亦需按照原合同條款繼續提供服務，業主則需支付相應費用。這一制度設計保障了物管服務的連續性，但也可能因繁瑣的程序影響交接效率，甚至引發業主與物管公司間的權責糾紛。

最後，橫琴在業主自治不足，或未有出現業主委員會的情況下，引入了街道辦或居委會作為臨時主持實體，協助組織業主大會並進行投票與登記程序。這在一定程度上填補了業委會缺位時的管理空白，但也增加了行政干預的色彩，削弱了業主自治的實現程度。

### 港澳及亞洲其他地區的物業管理制度

與橫琴相比，港澳地區的物業管理制度更側重於市場化與業主自治，行政干預相對較少，運行機制更為靈活。

在港澳，物管公司置換的核心在於業主的自主決策。物業管理條例規定，置換物管公司僅需業權份額過半即可，不再要求業主人數過半，從而顯著降低了決策門檻，提升了效率。此外，港澳地區的物管公司合同到期後可自由退出，無需進行額外的登記或公示程序，這種以市場化為導向的退出機制，既提高了物管公司的靈活性，也減少了行政資源的佔用。

在亞洲其他國家，物業管理制度的市場化程度更高。例如，新加坡的物管公司與業主之間完全基於合同關係，政府僅在法律框架層面提供支持，實際操作過程完全由業主或專業機構主導。日本則強調專業化管理，通過行業自律和市場競爭優化物管服務質量，並在管理交接中注重透明度和效率。

### 三、差異化比較

#### 投票機制的設計與實踐效能分析

橫琴的雙過半投票機制雖然在設計上體現了對決策公平性的追求，但其實踐效果往往受限於業主參與率低的現實困境。例如，在部分大型住宅項目，或商業綜合體之中，由於業主居住分散或對制度缺乏了解，又或部分投資項目的業主根本不常在項目之內，容易形式最終投票結果未能達到合法門檻，導致物管公司置換程序被迫延遲。相比之下，港澳的單過半制度操作簡便，能夠更快速地推動決策進程，但在缺乏雙重門檻的情況下，可能無法充分保障少數業主的意見權益，又或者容易被單一業主或開發商過度控制其投票結果。

#### 登記與退出程序的法律與操作比較

橫琴對物管公司退出程序設置的嚴格法律要求在保障服務連續性方面具有積極作用，但公示與審批週期的延長，往往增加了物管公司的運營成本，同時也可能給業主帶來額外的費用負擔。在港澳及亞洲其他地區，退出程序則更為簡化，合同期滿即為退出，這種基於合同自由原則的設計雖然提高了效率，但也存在因監管不足導致的交接風險。

#### 政府參與與業主自治的平衡分析

若未有業主委員會的設之下，橫琴的街道辦與居委會在物管置換中的角色，使政府成為了制度運行的重要參與者，這一安排雖然解決了業委會缺位的問題，但也容易導致業主的自主性被弱化。而港澳及亞洲其他地區更多依賴業主自治，政府僅提供法律框架支持，這種模式的優勢在於充分發揮了市場化機制的作用，但在業主缺乏專業知識的情況下，也可能導致決策質量下降。

### 物管公司退出與業主責任劃分的差異

內地業主在置換物管公司過程中需要承擔更多的程序義務，例如支付未完成交接期間的服務費用，這無形中增加了業主的財務負擔。而港澳及亞洲其他地區的業主責任則主要限於合同內的費用支付，退出過程中的負擔相對較輕。

### 四、案例探討

#### 橫琴案例：大型綜合體項目置換物管公司的挑戰

橫琴某大型綜合體項目包括商場、酒店及寫字樓三部分，其中商場和酒店由開發商持有並運營，寫字樓部分則已售予多位小業主。由於需要更換物管公司，開發商及部分業主提出更換物管公司的訴求。然而，該項目尚未成立業主委員會（業委會），儘管開發商持有超過項目總業權的一半以上，仍需遵循「雙過半投票機制」的規定，即業權份額及業主人數均需過半方可作出決議。

根據《珠海經濟特區物業管理條例實施細則》的規定，管委會在未成立業委會的情況下，需主持更換物管公司的全過程。管委會制定投票規則，允許業主透過現場投票及郵寄簽回的方式表達意見，並將規則公示7天。投票過程中，開發商作為大業主的投票支持成為關鍵，小業主則因分散居住參與率較低，組織工作面臨挑戰。在規定時間內，最終達成雙過半門檻，投票結果公示30天後無異議，管委會完成相關登記備案，新物管公司正式進駐提供服務。

該案例反映出橫琴「雙過半機制」保障公平性與合法性的同時，操作難度高，特別是在多業權主體項目中，業主分散導致協調困難。未來應考慮引入電子投票等技術手段，降低參與門檻並提升效率。

此外，現行程序耗時較長，尤其在公示與備案環節，可能對物管交接的效率造成影響。建議設立針對緊急情況的快速通道，以縮短必要流程時間，保障服務連續性。該案例為橫琴物管置換機制提供了實踐經驗，未來可通過完善法律與市場化手段，提升制度靈活性與實效性，更好地支持橫琴粵澳深度合作區的發展需求。

### 五、專業建議

#### 針對橫琴的建議

橫琴應在現有制度基礎上進一步優化投票機制。例如，可採用電子投票方式，降低業主參與的時間與空間成本，提升投票效率。另外，應縮短物管公司退出的公示與審批週期，通過引入專業第三方機構協助交接，減少因流程延誤帶來的管理真空。同時，加強對業主的法律教育，通過舉辦宣講會或發佈指引，幫助業主更好地理解投票及置換程序。

### 針對港澳及其他地區的建議

港澳及其他地區應考慮在大型住宅或商業綜合體項目中引入更高的投票門檻，以避免決策過於片面。此外，可借鑒橫琴的公示制度，制定更詳細的交接指引，確保物管公司退出後的服務連續性。同時，應加強業主委員會的專業化建設，例如提供專項培訓，提升業主自治能力。

### 針對物管公司的建議

物管公司在進駐橫琴前，應充分了解當地法律程序，提前制定退出預案，確保合同到期後的交接有序進行。此外，應建立與街道辦及業主的溝通機制，通過透明化的流程增強業主的信任感，減少置換時的潛在衝突。

## 六、結語

橫琴的物管公司置換機制在保障業主權益方面體現了兩地制度的差異性，現行的高門檻投票要求和繁瑣退出程序也帶來了不同程度上的挑戰。相比之下，港澳及亞洲其他地區的市場化模式雖靈活高效，但在監管與服務連續性上仍有改進空間。

隨著粵港澳大灣區的進一步融合，橫琴有機會成為物業管理制度創新的標杆。未來，應通過對標港澳經驗與市場化模式，實現制度的本地化與靈活化，為促進跨境物業管理專業發展提供更堅實的保障。同時，業界應加強專業交流，推動物業管理行業的規範化與高質量發展，助力粵港澳大灣區建設更具活力的城市治理格局。

# 破局與重構：2025年物業行業高品質發展路徑

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2025年，在物業行業砥礪前行的第44個年頭，我們共同站在歷史的交匯點，反思過往，擘畫未來。當前，「權責錯配」與「主體缺位」是行業發展的核心矛盾。展望2025年，中國物業服務行業必將在法治化、市場化、智慧化和社區化的多重驅動下，加速邁向一個更為成熟和高品質發展的新階段。這不僅是對現有矛盾的進一步化解，更是對「幸福生態圈」的積極構建。

## 一、2025年中國物業服務發展方向展望

2025年，中國物業服務行業將在多重力量驅動下迎來深層次變革，朝著智慧化、多元化、法治化和綠色化方向加速邁進。行業將通過技術深度融合、服務邊界拓展、權責依法界定以及可持續發展實踐，化解核心矛盾，構建「幸福生態圈」，實現從傳統管理向現代化社區治理的跨越。

### 1、智慧物業全面滲透，數位治理成為常態

技術深化應用，重塑服務體驗與管理效能。2025年的物業管理將不再是簡單的技術點綴，而是物聯網、大資料、人工智慧、5G等前沿技術與服務場景的深度融合。從社區出入口的無感通行、周界安全的智慧預警，到設備設施的遠端監控與預測性維護，再到能源的精細化管理和停車資源的動態調配，智慧化將無處不在。筆者所宣導的「陽光物業」體系，將依託更為先進和用戶友好的官方平台及業主端APP實現，物業費收支明細、公共維修資金使用情況、投訴處理進度等關鍵資訊將實現秒級更新、即時可查，業主知情權將得到前所未有的技術保障。

資料驅動決策，精準賦能運營與監管。物業企業將普遍建立資料中台，通過對海量運營資料的收集、清洗與分析，精準洞察業主需求變化、服務瓶頸及潛在風險，從而科學指導服務內容的優化、人力物力的調配以及應急預案的制定。同時，政府主導的物業企業與業主組織雙向信用評價體系，也將更加依賴客觀資料進行智慧化評分與動態調整。失信行為的記錄與聯合懲戒將更加精準高效，真正實現以資料驅動行業良性競爭與健康發展。

### 2、「大物業」與「大社區」融合，服務邊界持續拓展

基層治理深度參與，物業角色多元化升級。物業服務企業將超越傳統「四保一服」的範疇，更深層次地融入基層社會治理大格局。到2025年，物業公司將不僅僅是社區的管理者和服務者，更將成為黨建引領下社區共建共治共用的重要力量，積極參與社區文化建設、鄰里矛盾調解、平安社區創建、突發事件應急回應以及政府政策的上傳下達。這種角色的轉變，要求物業企業主動承接部分公共服務職能，成為連接政府、居民、社會組織的「社區共同體」關鍵樞紐，有效踐行新時代「楓橋經驗」在城市社區的創新應用。

服務內涵多元化，滿足全週期生活需求。圍繞業主從搖籃到暮年的全生命週期需求，物業服務將從基礎保障向品質生活延伸。2025年，我們將看到更多物業企業通過自營、合作或平台模式，提供精細化、個性化的增值服務，如社區養老驛站的運營、普惠性托育點的設立、專業化家政保潔的引入、社區生鮮團購的組織、家庭健康管理諮詢乃至業主閒置資產的盤活與管理等。這種「物業服務+生活服務」的生態模式，不僅能顯著提升業主的生活便利度和幸福感，也將為物業企業開闢新的利潤增長點，從而反哺基礎服務品質，形成可持續發展的商業閉環。

### 3、權責界定法治化加速，業主主體意識普遍覺醒

法規體系持續完善，為權責對等提供堅實保障。在《民法典》確立的框架基礎上，預計2025-2030年，各地方將進一步完成物業管理條例及配套細則的修訂工作。這些法規將更加清晰地界定物業服務企業、業主、業主大會及業委會在物業管理活動中的權利與義務清單，特別是在公共設施設備的大修與更新改造決策流程、維修資金的申請與使用監管、共有部分經營收益的分配與公示等方面，將有更具有操作性的法律規範。相關司法解釋和典型案例指導的發佈也將更為頻繁，為解決權責爭議提供明確的法律依據。

業主自治能力提升，從「權利漠視」到「責任擔當」。政府主導的社區教育、普法宣傳以及對業主大會和業委會成立運作的指導將持續深化。從2025年到2030年，建築物區分所有權的物業共有權人的法律地位將更加深入人心，業主大會監督決策權與配合執行義務的統一性將顯著提升，「花錢買服務」的單一消費者心態將逐步向「社區主人翁」的責任主體意識轉變。「重權利輕義務」的認知偏差將得到有效糾正，業主參與社區公共事務的積極性和專業性將顯著提高，業主大會的召開率、決策效率以及業委會的履職能力將邁上新臺階，為構建「政府監管 - 業主自治 - 企業服務」的協同治理生態奠定堅實的群眾基礎。

#### 4、綠色低碳與可持續發展成為行業新風尚

綠色運營全面鋪開，踐行社區可持續發展理念。隨著國家「雙碳」戰略的推進，物業管理行業作為城市運營的重要一環，其在綠色低碳轉型中的作用將日益凸顯。到2025年，社區內的節能改造（如公共照明LED替換、智慧節水系統）、垃圾分類的精細化管理與資源化利用、電動汽車充電樁的合理佈局與推廣、屋頂綠化與海綿社區建設等綠色實踐將成為物業服務的標配。物業企業將主動引入綠色供應鏈管理，並在日常運營中推廣環保理念，引導業主形成綠色生活方式。

社會責任彰顯，提升企業綜合價值與品牌形象。物業企業將更加注重ESG（環境、社會和公司治理）績效的提升，並將其作為衡量企業可持續發展能力的重要指標。除了環境保護，企業還將積極投身社區公益事業，如組織志願者活動、關愛空巢老人和困境兒童、支持社區文化傳承等，以此增強社區凝聚力，提升企業的社會認同感和品牌美譽度。這種對社會責任的擔當，也將成為優秀物業企業在市場競爭中脫穎而出的重要軟實力。

## 二、物業公司戰略規劃：擁抱變革，重塑價值

面對行業發展新趨勢，物業公司需以戰略眼光推進自我革新，通過數位化轉型提升運營效率，深化社區運營構建信任關係，優化人才發展啟動組織活力，創新服務模式形成差異化優勢，探索老舊社區可持續運營路徑，從而在變革中重塑企業價值，打造核心競爭力。

### 1、數位化轉型戰略 – 智慧驅動，效率革新

物業服務企業將全面建成資料為核心的智慧運營平台，實現管理精細化、服務智慧化、決策資料化。物業公司需制定明確的數位化路線圖，加大在物業SaaS系統、物聯網設備、AI演算法以及資料分析人才方面的投入。這包括構建統一的IOC智慧運營中心，實現對各專案人、事、物狀態的即時感知與集中調度；推動傳統服務流程如報事報修、巡檢巡更、收費催繳等的全麵線上化、標準化與部分自動化；並利用AI技術對業主行為資料進行深度挖掘，精準畫像，從而優化服務資源配置，預測潛在需求與風險，並確保「陽光物業」體系的技術支撐，通過APP、公示屏等多種管道，向業主即時公開各項關鍵資訊，提升運營透明度與業主信任度。

### 2、社區深度運營戰略 – 精耕細作，共建信任

從傳統的基礎服務提供者，升級為社區綜合服務運營商和基層治理的積極協同者，構建與業主共生共贏的「命運共同體」。公司應組建或培養專業的社區運營團隊，深入理解所服務社區的文化特質和居民需求，策劃並組織豐富多彩的社區文化活動、興趣社群、鄰里節慶，以此增強社區活力與業主歸屬感。同時，要主動加強與街道、社區黨組織的聯動，積極承接部分適合市場化運作的社區治理輔助職能，如網格化管理、矛盾調解、政策宣傳等。更重要的是，要以開放和專業的姿態，指導和協助業主成立業主大會、規範業委會選舉與運作，建立與業主組織常態化、制度化的溝通協商機制，共同商議社區公共事務，有效化解「利益博弈」，培育深厚的信任基礎。

### 3、人才發展與組織進化戰略 – 賦能員工，啟動組織

打造一支既懂管理、又懂技術，既有服務意識、又有經營頭腦的專業化、複合型、高素質人才隊伍，以適應行業轉型升級的需求。公司需構建系統化、多層次的培訓體系，不僅要強化一線員工的服務技能和職業素養，更要重點提升項目經理在法律法規應用、智慧化工具操作、社區活動策劃、危機公關處理、財務預算管理以及與多方溝通協調等方面的綜合能力。同時，應改革薪酬激勵機制，將服務品質、業主滿意度、增值服務拓展等關鍵指標與員工收益緊密掛鉤，吸引和保留核心人才。在組織架構上，鼓勵向扁平化、敏捷化轉型，打破部門壁壘，提高決策效率和市場回應速度，賦予一線團隊更多自主權，激發組織活力。

#### 4、價值創新與差異化競爭戰略 – 服務升級，品質致勝

徹底擺脫依靠「低價內卷」獲取專案的惡性循環，通過提供高品質、差異化、有溫度的服務，構建企業獨特的核心競爭力。公司應投入資源進行市場調研和業主需求分析，深挖不同客群（如年輕家庭、老年群體、高端社區等）的痛點和癢點，開發具有針對性的高附加值定制化服務包，例如提供「一站式」智慧養老解決方案、引入優質教育資源開展社區課堂、為業主提供房屋租售和資產託管等。此外，還應積極與家政、健康、零售、文娛等領域的優質協力廠商服務商建立戰略合作關係，整合資源，共同打造開放共用的社區生活服務生態圈。在收費模式上，積極探索和推廣酬金制等更靈活的方式，推動「服務品質與收費標準動態掛鉤」機制的真正落地，讓優質服務獲得應有回報。

#### 5、老舊社區可持續運營戰略 – 精細管理，多元解困

破解老舊社區普遍面臨的收費低、成本高、設施舊、矛盾多的運營難題，探索出一條兼顧社會效益與經濟效益的可持續服務路徑。針對老舊社區人力成本佔比高的痛點，公司應積極引入成熟的智慧化設備（如智慧門禁、雲監控、自助繳費終端）替代部分基礎崗位，優化人力結構。同時，要投入更多精力加強與業主的溝通解釋工作，普及物業費標準調整的必要性和維修資金使用的規範流程，爭取理解與支援。公司還應主動對接政府關於老舊社區綜合整治、海綿城市改造等政策，爭取財政補貼和政策扶持。更要開動腦筋，探索「基礎物業+社區微利商業」的運營模式，如利用閒置空間開辦社區食堂、老年日照中心、共用洗衣房、快遞驛站等，通過增值服務產生的收益反哺基礎物業維護，提升項目的自我造血能力。

### 三、對物業經理人的啟示與思考：新時代的領航者

新時代下，物業經理人需完成角色重塑與能力升級，從傳統「管家」轉變為兼具運營與協調能力的複合型人才，擁抱科技成為智慧化管理先鋒，提升法律素養筑牢合規根基，強化人文關懷構建情感連結，堅持終身學習引領團隊成長，以適應行業轉型需求，成為社區治理的關鍵力量。

#### 1、從「管家」到「社區運營官」與「衝突協調官」

作為一線的指揮官應當經常思考，我的日常工作是否仍然局限於傳統的「收費、保潔、保安、維修」四項基礎服務？我是否具備盤活社區資源、提升社區資產價值的經營思維？我是否有能力組織策劃社區活動，營造和諧氛圍？面對業主間的矛盾、業主與物業的衝突，我是否能專業、公正、有效地進行調處？

新時代的物業經理人，其核心價值將更多體現在社區的綜合運營與治理協同上。這意味著需要培養更強的商業敏感度和資源整合能力，學習如何通過精細化運營提升社區公共空間的使用效率和潛在價值。同時，面對日益複雜的社區人際關係和利益訴求，物業經理人必須提升自身的溝通藝術、談判技巧和矛盾化解能力，熟悉相關法律法規，扮演好中立、專業的「協調官」角色，有效紓解「責任邊界模糊化」和「利益博弈激化」帶來的日常摩擦與衝突，成為社區和諧的守護者。

#### 2、擁抱科技，善用工具，成為智慧化管理先鋒

數位化、智慧化是物業行業不可逆轉的趨勢，物業經理人必須主動學習和掌握新的數字技能，將科技工具內化為日常工作的得力助手。這不僅包括熟悉操作各類軟硬體系統，更要理解這些技術背後的邏輯，懂得如何利用資料分析來發現問題、改進服務。例如，通過智慧報修系統優化派單效率和維修品質跟蹤，通過線上社區平台收集業主回饋並及時回應，通過智慧安防系統提升社區安全等級，用科技為服務賦能，為管理減負，讓業主切實感受到智慧社區的便捷與高效。

#### 3、法律素養與合規意識是職業生涯的「壓艙石」

物業經理人應當深入學習並準確理解《民法典》中關於業主建築物區分所有權、共同管理權以及地方物業管理條例中關於物業服務合同、權責清單、業主大會及業委會運作的最新規定。在日常工作中，確保每一個決策、每一項服務都符合法律法規要求，能夠有效規避潛在的法律風險。

隨著物業管理法治化進程的加快，以及業主維權意識的提高，物業經理人的法律素養和合規意識顯得尤為重要。這不僅是保護企業合法權益、避免不必要糾紛的前提，更是贏得業主信任和尊重、樹立專業形象的基石。物業經理人必須成為「懂法、守法、用法」的表率，定期參加法律知識培訓，關注行業法規政策的更新，確保物業服務行為始終在法律框架內運行，從而在複雜的物業管理實踐中行穩致遠。

#### 4、強化人文關懷，構建有溫度的情感連結

在追求管理效率和技術升級的同時，物業經理人不能忽略服務的「人情味」。真正用心去瞭解所服務社區的每一位業主，感知他們的真實需求、情緒變化和生活困擾。同時還需兼顧團隊是否能在組織內部和對客服務時傳遞出溫暖和關懷。

物業服務歸根結底是「人」的服務，技術和標準固然重要，但無法取代人與人之間的情感交流和人文關懷。特別是在老齡化趨勢加劇、鄰里關係趨於原子化的今天，物業經理人應更加注重在服務中注入溫度。通過定期的業主拜訪、真誠的微笑問候、耐心的傾聽解答、及時的困難說明，以及組織富有溫情的社區活動，努力構建起物業與業主之間、業主與業主之間深厚的情感連結，將冰冷的鋼筋水泥社區打造成充滿人情味的和諧家園。

## 5、終身學習，持續進化，引領團隊共同成長

面對快速反覆運算的行業知識、不斷湧現的新模式新業態，物業經理人的現有知識儲備和管理技能常常難以應對挑戰。如何制定清晰的職業發展規劃和持續學習的計畫，如何帶領我的團隊成員一同進步，適應行業發展，成為每一個物業經理人必須思考的深刻問題。

物業行業正處在一個深刻變革與快速發展的時期，對從業者的綜合素質和專業能力提出了前所未有的高要求。物業經理人作為團隊的核心和表率，必須樹立終身學習的理念，保持對新知識、新技能、新趨勢的敏感性和求知欲。通過參加行業培訓、閱讀專業書籍、參與線上研討、跨界交流學習等多種方式，不斷更新自己的知識結構，提升戰略思維、創新能力和領導力。更重要的是，要將學習成果轉化為團隊的集體能力，營造積極向上的學習氛圍，激勵和帶領團隊成員共同成長，以適應未來物業行業更加激烈的競爭和更高標準的服務要求。

## 結語：共築未來社區的「幸福生態圈」

展望2025年，物業行業的轉型升級將更加深入。這不僅是權責的再分配、技術的再革新，更是治理理念的深層變革和人文精神的回歸。唯有通過立法築牢制度根基、市場啟動創新動能、業主強化自治意識，輔以物業企業和從業人員的積極轉型與不懈努力，我們才能共同將「矛盾聚集地」真正轉變為人人嚮往的「幸福生態圈」，為中國式現代化背景下的基層治理現代化貢獻堅實的力量。未來的物業人，使命光榮，責任重大，讓我們攜手並進，揚帆未來！

## 迎風而立 – 從颱風看物業樹木管理

### 蘇安敏 Cammy So

國際樹木學會註冊樹藝師及樹木風險評估資歷  
國際樹木學會香港分部會長 (2024-2025)  
資歷架構樹藝及園藝業行業培訓諮詢委員會委員  
過往資歷認可 (樹藝及園藝業) 管理委員會成員

在高樓林立、節奏急速的城市中，樹木往往被視為背景的一部分。城市中的樹木遠不止於綠化點綴，而是城市綠色基建的重要骨幹，樹木除了令城市更美觀，亦能發揮降溫、改善空氣質素、緩減噪音、增加空間感、增加生物多樣性等多種功能，更為社會帶來多方面好處，包括改善人們身心健康、提升生活品質、促進社區凝聚，以及提供休憩與教育資源，是一個宜居城市不可或缺的元素。隨著極端天氣日益頻繁、颱風強度不斷增加，如何透過專業及審慎的管理，讓城市樹木既安全可靠，又能發揮環境及社會效益，已成為物業管理及城市規劃不容忽視的課題。

全球氣候變遷加劇，近年極端天氣事件如颱風、暴雨等的頻率與強度不斷上升，城市樹木正面臨前所未有的挑戰。2025年，香港有破紀錄的風季，香港天文台發出高達14次颱風警告信號，打破自天文台1946年有記錄以來年內「掛波」次數最多紀錄，創下80年以來新高。2025年更是自1964年以來首次一年內兩度發出十號風球，其中包括超強颱風「樺加沙」。強颱風的出現頻繁，對城市樹木的考驗日益嚴峻。例如2018年的超強颱風「山竹」導致廣泛樹木受損，政府紀錄的塌樹個案多達60,800宗。這樣的氣候趨勢凸顯了加強樹木管理的重要性。

對物業業主及管理人而言，妥善管理樹木至關重要。良好的樹木管理能確保樹木發揮最大環境及社會效益，同時避免因疏於管理而造成的風險。颱風及暴雨會顯著改變樹木所處的環境條件，包括風力負荷、土壤含水量等。因此，除日常檢查及護養外，亦應於風季前後加強監察與防護安排，以確保樹木在惡劣天氣下仍能維持結構安全與環境穩定，減低颱風帶來的影響。

### 樹木擁有人的謹慎責任

根據普通法，私人業主身為土地業主及／或佔用人，負有謹慎責任，須維護其下土地，包括在該土地上生長的樹木，確保樹木不會對他人或財物構成潛在危險。業主如不履行謹慎責任而造成人身傷害及／或財物損毀，可能須承擔法律責任。

樹木擁有人應小心謹慎地管理樹木，以確保樹木健康生長及結構良好。同時，亦需定期檢查樹木，識別潛在高風險樹木，及適時採取合適的緩解措施，以減低樹木構成的風險。假如沒有妥善護養樹木，樹木可能會倒塌，導致人命傷亡和財物損失。如果意外不幸發生，業主可能需要承擔修葺物業及向受影響人士作出賠償的龐大費用。

### 颱風對樹木的多層次影響

颱風來襲時，強風是颱風對樹木造成破壞的主要因素。強風導致樹木枝幹斷裂，甚至可能引致整棵樹倒塌。另一不容忽視的因素是颱風帶來的持續降雨或暴雨 – 過多的水分會使土壤飽和，泥土顆粒子之間變得潤滑，降低土壤與樹根之間的摩擦力和支撐力。這樣一來，當風雨推動樹冠時，樹木可能因根系和土壤提供的抗倒能力不足而整棵樹被連根拔起。當一棵樹木被破壞，甚至因此而要移除，損失的不只是清理的成本，更是多年來它提供的各樣功能。損失的樹越大棵，重建其功能所需的時間越長；在一些特定的環境，可能甚至無法重新種植。

颱風對樹木的影響不僅限於當下的斷枝或倒塌，亦有延遲或長遠的影響。強風令枝幹受力不均，樹體內部可能出現肉眼難察的撕裂；暴雨導致土壤過度飽和，使根部支撐力減弱。當下一次強風來襲，表面看似完好的樹木，也可能出現延遲性倒塌。此外，颱風造成的枝幹破損和葉片喪失，會削弱樹木的光合作用與養分供應，影響樹木的健康。遭撕裂的樹皮、斷枝，造成大量傷口，增加病蟲害的感染，真菌入侵傷口，會導致木材腐爛，削弱樹木的結構。這些「隱形後遺症」若未獲妥善處理，往往在日後演變成嚴重的安全隱患。

### 颱風前的預防與風險管理

有效的颱風防備始於「預防」。物業管理團隊應於風季前制訂詳細檢查計劃，由具資格的專業人士檢查樹木健康與結構，在某些情況下，建議進行預防樹木受損的跟進方案。

檢查的內容涵蓋以下方面：

- 樹幹與樹枝：確認木材是否已有開裂、腐蝕、蛀洞或不正常傾斜情況。
- 根系與土壤：檢查根部是否穩固，本來有沒有暴露或異常隆起；檢查土壤排水是否良好；土壤是否鬆散或積水，鬆散或積水的土壤會減低根部抓地力。
- 樹冠的結構：檢查其密度與分布，體積過大或結構不平衡的樹木較易被強風大雨影響。

按情況進行預防工作，可減少颱風對樹木的傷害及帶來的影響。修剪是控制樹木風阻的關鍵措施。適當的修剪能大大提高樹木的抗風能力，減低強風造成的破壞，並降低樹木倒塌的風險：修剪過高過重的樹冠，以減少風阻；平衡樹冠結構，確保樹木整體結構穩固，避免偏重一側增加倒塌風險。此外，對可能受災的樹木進行支撐或給予暫時圍封，提前修剪枯死、病弱、可能折斷的枝條也能有效降低風害。所有檢查及維護應有書面紀錄，方便追蹤與日後審核。這些措施雖然牽涉額外時間與成本，但在減低潛在事故方面，效益往往遠超修復破壞的支出。

### 颱風後的樹木管理 – 檢查與修復

颱風離去並不代表問題結束。當風暴過後，樹木檢查及修復同樣關鍵。經歷強烈颱風吹襲後，許多樹木雖看似完好，實際上內部結構可能已經歷變化；其他的外力可能觸發折斷，懸掛於樹冠的折枝亦可延後墜落。另一方面，部分樹木的根系在颱風中也可能受到類似的破壞成為隱患。

故此，受強度高的颱風影響過後，建議邀請專業人員進行緊急巡查，儘快查找樹木上的隱患或缺陷，並在有必要時即時封鎖現場。其後，按先後緩急進行緩減及修復工作，清理斷枝、處理傷口、樹冠修復、支撐或重植樹木，防止二次災害。

### 預防勝於治療

適當的種植設計、平時妥善的保養，比起風後的搶修或補救工作更具效益，亦有助確保物業內樹木功能的持續性。近年，不少樹木在颱風中被連根拔起，暴露出香港普遍存在的問題 – 土地問題（根部生長空間不足）。根系是支撐樹木結構的關鍵，良好的根系發展能大幅提升樹木的抗風能力。然而，在香港的城市中，奢求廣闊的種植位置殊不容易，對於物業管理來說更是「飯都煮好咗」，在設計上沒有甚麼主導空間。很多時候原生狹窄的空間已限制了樹木根部的伸展。這時，專業妥善的管理更顯重要，該怎樣做呢？

政府近年積極推動「植樹有方，因地制宜」，強調在種植設計前須從環境條件、空間限制及樹種特性等多方面作出全面評估以免錯選品種。錯選品種除了為將來製造安全隱患外，還可能對周邊設施造成破壞。物業管理從業當然不希望要接管設計有誤的樹木，但「因地制宜」這概念還可套用於管理被錯選的樹木。例如，根系發達的品種（如細葉榕、印度橡樹）若已被栽種於狹小空間，為免樹木長大後破壞路面、花槽或地下設施，除了更換為較小型或生長緩慢的樹種外，定期的樹冠控制亦有助於減慢樹木根系的發展。

在應對颱風方面，「因地制宜」同樣重要。不同樹種的抗風能力差異明顯，考慮到風向、風力、地形及建築佈局等因素，管理部門應諮詢專業樹藝師的意見定期修剪和控制大型、枝條脆弱或樹冠寬闊的品種；如條件許可，於暴露位置逐漸改用抗風力較強的樹種可能是更理想的長遠策略。

因各種原因，屋苑如需補種樹木，可以綜合以上因素重新審視樹種選擇與種植設計，避免重複過往問題，逐步建立更具韌性的樹木結構和持續的功能。另外，如條件許可，亦可改善根部生長空間，透過擴大樹穴面積、增力土壤深度、改善土壤結構（如加入有機質提升土壤通氣性、保水力、排水狀況及養分含量），促進根系向外及向下拓展，強化樹木的整體穩定性。

### 組織專業樹木管理團隊

常見的樹木在香港便有二／三百種，它們的特性和可提供的功能各異。要妥善管理樹木必須依賴專業的團隊，除了外聘服務承辦商時需要要求對方有合資格的樹藝專業人士負責外，管理公司亦應當為管理同事提供基本的樹木管理培訓，以便他們能有效地安排工作、制訂合理、具保障的標書，以及有基礎的認知和外聘承辦商溝通。

國際樹木學會香港分部一直以來與業界緊密聯絡，提供相關培訓，歡迎相關學會和管理公司查詢。本會更每年主辦「樹木管理大獎」，鼓勵物業管理公司建立優良的樹木管理習慣，包括制訂全面的管理計劃、聘用專業人員、日常保養的質素等。本文內容雖然只涉及一二，但從應對颱風去了解正確的樹木管理觀念也是一個好的開始。

# Identifying Common Parts and Determining the Liability for Repair and Maintenance

By K. Y. Kwok and Bertha Keung of Li, Kwok & Law Solicitors and Notaries

Hong Kong's urban landscape is among the world's most densely developed, with the vast majority of residents living in multi-storey buildings under divided ownership. The fragmented ownership frequently leads to disputes over who bears the responsibility to repair and maintain a specific part of the building, ranging from external walls, water pipes, fire services installations and equipment and so on. Over the years, the Hong Kong courts have through a substantial body of case law clarified the scope of "common parts" and how repair obligations and costs are allocated among the Incorporated Owners ("IO"), the property managers ("Manager") and the individual owners.

## 1. Identifying Common Parts

Generally speaking, it would be the IO's duty under section 18(1)(a) of the Building Management Ordinance (Cap. 344) (the "BMO") to maintain the common parts of the development in a state of good and serviceable repair and clean condition. The Manager would also in general have a duty to keep the common parts of the development in proper repair and conditions under the respective Deed of Mutual Covenant ("DMC") or the Management Agreement.

On the other hand, if a certain part of a building is for an owner's exclusive use and possession, then irrespective of what the DMC says, it would be for that owner to repair and maintain that part under section 34H of BMO. Section 34H of the BMO provides as follows:-

"34H. Duty to maintain property

- (1) Where a person who owns any part of a building, has the right to the exclusive possession of any part of a building or has the exclusive right to the use, occupation or enjoyment of that part, as the case may be, but the deed of mutual covenant in respect of the building does not impose an obligation on that person to maintain the part in good repair and condition, that person shall maintain that part in good repair and condition.

- (2) The obligation in subsection (1) shall be deemed to be an obligation owed to all owners of the building under the deed of mutual covenant."

Section 34H, like other provisions contained in Part VIA of the BMO, were introduced in 1993 to re-write retrospectively all DMCs in Hong Kong primarily to remove unfair provisions to protect individual owners' interest. As provided under section 34C of the BMO, these provisions contained in Part VIA of the BMO prevail over contrary provisions in the DMC.

### Definition of "common part"

"Common parts" is defined in section 2 of the BMO as follows " (a) the whole of a building, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and (b) unless so specified or designated, those parts specified in Schedule 1." Other than more specific facilities such as roofs, chimneys, water tanks, lifts etc., Schedule 1 also covers, as some examples, "...installations intended for the use and benefit of all of the owners generally..." (paragraph 10 of Schedule 1, BMO) and "Fixtures situated in a flat which are used in connection with the enjoyment of any other flat or other portion of the building" (paragraph 11 of Schedule 1, BMO).

The definition of "common parts" or "common areas and facilities" may differ in different DMCs. However, more recent DMCs likely adopted the definition in the BMO as described above. Very often, the definition will not be detailed enough to cover specifically individual facilities and areas.

### The "Benefit" Test

Where the DMC does not clearly specify whether a certain part or facility of the building is a common part or for an owner's exclusive use, case laws often take into account whether it benefits a particular unit or more than one unit in determining that question. Structures and facilities which benefit more than one unit are likely found to be common parts. The location of such part or facility (i.e. whether it is situated within a unit) may be less important.

### Some decided cases on the “benefit” test

Therefore, waterproofing membranes have been regarded as common part and facilities even if they are situated beneath roof floors which are for an owner’s exclusive use in many decided cases. For example, in *I.O. of Hong Leong Industrial Complex & Anor. v HL Resources Ltd. & Anor.* (CACV 89/2009, 11 Feb 2010) one of the issues was whether the waterproof layer of the floor slab of the roof of the building was a common part so that management fund should be employed for its repair and maintenance, or whether such obligation fell on the developer who in the Plaintiff owner’s case had reserved the roof area for its exclusive use instead. It was held both at the first instance and on appeal that the waterproof layer was a common part, as it was an installation intended for the use and benefit of all the owners generally, which also came under the definition of paragraphs 10 and 11 of Schedule 1 of the BMO. The Court of First Instance said as follows:–

*“...I am satisfied that a waterproofing layer or system is an installation intended for the use and benefit of all the owners generally within the meaning of item 10 in Schedule 1 of the Ordinance [the BMO]. The waterproofing layer is designed to and does protect the building from rainwater seeping inside, in particular the units in the floors below the roof. It also protects the lift shafts (which are for the benefit of all the owners generally) from rain water seeping in...”*

Indeed, in an earlier case *Barnes & Noble Property Management Ltd. v IO of Kwan Yick Building Phase III* (LDBM 104/2001, 19 Dec 2001), the Lands Tribunal held that the structural columns inside the carpark were common parts for the IO to repair and maintain, as the columns are integral parts of the structural frame for the support and benefit of the entire building. As such, those columns could not be for the exclusive use and enjoyment of the carpark owners. Otherwise, it would mean that the carpark owners might remove these structural columns as they wished. Accordingly, the columns were common parts and all owners shall contribute to the cost of repairing such columns through IO.

In another case *IO of Tin Shing Court v. Cheng Yuk Mui and others* (LDBM 232, 233 & 235/2011, 25 Jul 2012), the Lands Tribunal held that the letter-boxes of individual units at the Ground Floor lobby of the buildings of the development were not common parts. Therefore, a purported resolution passed by management committee of IO prohibiting placing of promotional materials into the letter-boxes was void. All these decisions demonstrate that the facilities situated outside a unit can still be for the exclusive use and benefit of the unit and not a common part or facility. In other words, in the absence of provision in the DMC or other documents registered in the Land Registry affecting the property to the contrary, the benefit or function served by the facility concerned is a more important factor than its location to consider in determining whether the facility is a common part, and whose obligation it is to repair and maintain it (i.e. the “benefit” test).

In the more recent Court of Final Appeal’s decision in *Donora Company Limited v The IO of Tsuen Kam Centre* (FACV 6/2023, 8 Feb 2024), it was held that the external walls of the residential buildings of the suit development were common parts. In arriving at such conclusion, one of the factors the court has taken into account was that the definition of common parts in the DMC includes reference to such parts of the development which were intended for the common benefit of the owners (as many DMCs do). The inherent structural or architectural functions of the external walls include the following:–

- (a) Holding and supporting the building;
- (b) Preventing damage to the building’s interior; and
- (c) Enabling the co-owners to have peaceful enjoyment of their respective units.

These functions are clearly for the common benefit of the owners generally.

There are cases in which the court considered the functions and benefits of the facilities when apportioning management expenses amongst different owners. In *Hong Kong Housing Society v. IO of Heya Star* (HCA 874/2019, 22 Aug 2023), the Plaintiff was the developer and retained the non-residential portion of the subject estate. It challenged the IO's decision to allocate the management expenses for the fire service system and security guard cost to the ECA (estate common area) rather than RCA (residential common area). On the relatively small amount of the expenses for the fire service system, the court considered that if a fire broke out, the entire building might be affected. Therefore, it held that even though the fire service equipment was installed only within the residential towers, they were estate common facilities benefiting all owners who should be liable for their repair and maintenance<sup>1</sup>.

For the more significant item, namely the staff cost of the security guards stationed at the lobby of each residential tower, as those guards were responsible for monitoring and controlling access to the residences and patrolled in the residential towers, the court held that even if they might refer some occasional inquiries and complaints regarding the carpark (which was owned by the developer) to other responsible persons, their services were for the general benefit and service of the residential flats only, and their remuneration should be paid out of the RCA management expenses.

### Water pipes – a less settled area

Water pipes serving a building or development situated outside any units for individual owners' exclusive use and serving more than one such unit are likely common parts and facilities.

There are also water pipes which should be for the exclusive use of a unit and for the owner of that unit to repair and maintain at his cost, for example pipes situated within a unit and serve exclusively that unit. In *IO of Mount Trio v Chan Ming Chu* (HCSA 26/2010, 19 Aug 2010), leakage occurred at some flushing pipes (a pipe which entered the Defendant's toilet through the wall and another pipe underneath the toilet floor) serving only that toilet, causing damage to some common parts of the building. The Court held that the Defendant was liable for the repair cost incurred by the IO as she had refused to conduct any repair despite repeated demands. Those pipes were found to be located in areas of the Defendant's exclusive use and possession, and were regarded as fixtures inside her flat.

Pipes situated in a unit but serving more than one unit, according to the "benefit" test and related decided cases discussed above, will likely be common parts in the absence of contrary specification in the DMC or other relevant instrument registered in the Land Registry (see also the presumption under paragraph 11 of Schedule 1 of the BMO set out above).

However, there appears to be conflicting decisions by the Court of Appeal on whether water pipes situating outside a unit but serving that unit exclusively are common parts or not.

In *John So v Lau Hon Man* (CACV 110/1993, 5 Oct 1993), a fresh water pipe serving exclusively a flat burst leading to flooding and damage to the flat immediately below. The pipe was situated in the concrete floor slab separating the two flats. There were prior incidents of leakage occurring. While acknowledging that the floor slab might be a common part, the Court of Appeal upheld the decision of the trial judge that as the pipe was constructed for the exclusive benefit of the upper floor flat, it should be regarded as part of the flat and the flat owner should be responsible for its repair and maintenance. After looking at the definitions of "common parts" in the DMC and BMO, the Court of Appeal appeared had this to say:

*"As the respondents are the ones to get the exclusive benefit from the use of their fresh water pipe, it is not unreasonable they should bear the exclusive burden of the cost of repairing it if it becomes defective. Such was the common intent of those entering into the DMC ... By allowing their pipe to fall into disrepair with the result that water escaped to the Appellants' flat, the respondents were in clear breach of their obligation under s.10(c) of the DMC not to permit anything in their flat which might be a nuisance to other occupiers of the building, escape of water from one person's premises to another's being a classic instance of nuisance in the eyes of the law. "*

<sup>1</sup> With due respect to the presiding judge, there may be room for argument as to the correctness of this part of the decision in light of the relevant DMC provisions, to which the "benefit" test is always subject.

However, in a later case *IO of Summit Court v Full Surplus Investment Ltd. & Anor* (CACV 198/2005, 22 June 2007), various portions of water pipes serving exclusively a unit of the building were situated on the roof area of which the Defendant had exclusive use. Following some disputes between parties, the Defendant shut down the water supply to some of the flats and threatened to cut off water supply to different flats. The IO applied for injunctions restraining the Defendants from disconnecting or interfering with the water supply system and from obstructing or interfering with the IO's access to water supply system as well as declarations that the water pipes on the roof were common parts. The Court of Appeal took the view that even after the branching out to the portion serving a unit exclusively, the pipes "would still fall within the definition of common parts because although they were for the exclusive use of the individual owners ... It is common sense that ... pipes would branch out into individual flats and that such branch pipes would serve each individual flat exclusively". The Court distinguished *John So* by saying that in that case, "it happened that the burst water pipe was embedded in a concrete slab. The replacement pipe installed by the respondents ran within the respondents' flat. In that case, it was obvious that the new pipe was physically in the respondents' part of the building. The burst pipe was embedded in the floor/roof"<sup>2</sup>. Accordingly, the Court of Appeal held that such portions of the pipes which served a unit exclusively but located outside the unit were common parts of the building and ruled in favour of the IO.

The court might have done justice in *Summit Court's* case on the facts before it. With respect to the judges, however, the decision does not appear to be in line with the "benefit" test, nor is its reasoning in not applying *John So* easy to understand. If it is said that in *John So*, the burst pipe was located near to or partly in the Defendant's flat, so much so that the replacement pipe could be installed entirely in that flat was the determining factor that the burst pipe was for the Defendant's exclusive use (as the authors of this article underline in the quoted judgment above), this is not apparent from reading *John So's* judgment. One would also question how close the relevant water pipe should be to the Defendant's premises before it would be considered as for the Defendant's exclusive use and not a common part, and what is the logic behind such distinction.

As can be seen from the judgment in *Tin Shing Court's* case, letter-boxes located far from a unit can be for the exclusive use of that unit instead of common part. It is respectfully submitted that the decision in such case is logically sound and in line of quite some other decided cases discussed above. Further, it is beyond argument that there are many common parts and facilities situated within a unit for an owner's exclusive use. Therefore, the DMC almost invariably reserves for the Manager power to enter into a unit to inspect, repair and maintain such common parts and facilities. Section 40 of the BMO echoes that by providing that the IO may apply to the Magistrate for a warrant and if one is issued, break into the unit in the presence of the police to conduct such inspection and work.<sup>3</sup> If there can be common parts and facilities within a unit for an owner's exclusive use, one may ask why there cannot be any building facilities serving a unit exclusively or for an owner's exclusive use situated in common part of the building.

<sup>2</sup> The court did not discuss and it is assumed that there is no provision in the DMC saying whether the relevant pipes were common parts in *John So* and *Summit Court*.

<sup>3</sup> In *Ma Chung Lam v. Citybase Property Management Limited* (CACV 248/2005, 25 May 2006), the Court of Appeal said that such provision is only to be used in case of emergency although the section itself does not expressly so state.

The Lands Tribunal had the chance to choose between the said two conflicting decisions in the recent case of *Ng Choy Leung v 信和物業管理有限公司* (LDBM 93/2022, 19 Jan 2024 and 26 Jun 2024). In this case, water leakage occurred from such portions of some fresh water pipes situated beneath the floors of the common corridors of various residential floors but serving exclusively a flat. An owners' resolution was passed to the effect that the Manager should arrange for all maintenance and repair of such pipes. For a few years, a sum of over \$2 million had been incurred for such purpose covering 94 units. The owner of a unit was, however, dissatisfied with this arrangement. He brought the case before the Lands Tribunal and contended that those pipes were exclusively owned by the respective owners who should bear the respective repair costs. The Tribunal dismissed his case and held that those pipes were common parts. The Tribunal referred to the definition of "common part" in section 2 of the BMO and said the pipes had not been reserved in the DMC or other documents concerning the building registered in the Land Registry for an owner's exclusive use.<sup>4</sup> In attempting to reconcile between *Summit Court* and *John So*, the Tribunal said that the physical location of the concerned pipes was part of the consideration and chose to apply *Summit Court* and held that the pipes concerned were common parts. Further, the DMC should be interpreted to give business efficacy. It would simply bring about absurd results if the DMC intended for each unit owner to repair and maintain their respective water pipes at the corridor. Given the difference in progress of the construction works taken by each unit, it might mean that there would be continual construction works taking place at the corridor near the lift lobby, hindering the co-owners' effective use of the same.

The Tribunal further considered that even if the water pipes at the corridor were not common parts, the Manager would be under a duty to repair it if the owners refused to under the DMC provisions. The DMC also provided that the Manager could recover the costs and losses in carrying out the said works. The owners had no right under this DMC to obtain any refund from the Manager of the management fees paid for the repair works.

With respect to the learned presiding officer of the Tribunal, the reasoning in *Ng Choy Leung's* case is again arguable in so far as the decision was based on the location of the pipes for reasons discussed above.

In short, the following general principles may be derived from the above cases (subject to contrary provisions in the DMC):

- (i) If the pipe is within the Defendant's premises and is serving the premises exclusively, it will likely be for the Defendant to repair and maintain (section 34H of the BMO and the *Mount Trio's* case).
- (ii) If the pipe is within the Defendant's premises but is serving the Defendant and other owners as well, the structure will likely be a common part.
- (iii) If the pipe is outside the Defendant's premises and is not for the Defendant's exclusive benefit, then it will likely a common part.
- (iv) If the pipe is outside the Defendant's premises but is serving the Defendant and other owners as well, the position will be less clear as it may be difficult to reconcile the decision in the *John So's* case and *Summit Court's* case, although the recent *Ng Choy Leung's* case seem to suggest that the pipe may be a common part.

## 2. IO's/Manager's potential liability due to failure to repair and maintain the common parts and facilities

Water leakage remains to be one of the most frequent sources of complaints which the IO/Manager would be asked to deal with. If the source of leakage is common part and facility, it will usually be for the IO and Manager to do all necessary repairs to stop the it. According to decided cases, IO's duty is only to take reasonable measures within reasonable time to stop the leakage. IO and Manager are not insurance companies and are under no absolute duty to compensate the victims for all losses due to water leakage. However, if they fail the "reasonableness" test, they will likely be liable for breach of their statutory duty under section 18(1)(a) of the BMO or even nuisance at common law. Managers often have similar duty to repair and maintain the common parts to the IO under the DMC or the Management Agreement.<sup>5</sup>

<sup>4</sup> This applies to many cases in dispute because it is rare for a DMC to expressly cover all and each section of water pipes in the building.

<sup>5</sup> Of course, the precise duty and obligation of the Managers are defined by the DMC or Management Agreements by which they are appointed. In some cases, there may be exemption clause in the DMC or Management Agreement which may be relevant in determining their liability in a particular case. It should also be noted that breach of duty may also lead to complaints to the Property Management Services Authority (PMSA) whether or not the Manager is liable in law for compensation.

### Decided cases on Liability of IO/Manager

The following two cases with different results illustrate IO's and Manager's liability for repair and maintenance of common parts and facilities.

In *Lee Ming Yueh v IO of Mei Foo Sun Chuen Stage VII & another* (CACV 265/2008, 19 Sept 2012), the Manager engaged contractors to replace the waterproof membrane underneath the roof. One year after the project had been completed, leakage occurred in a top floor unit. At first, the Manager mistakenly believed that the source of water seepage was the external walls, and arranged another contractor to do repair there. However, leakage continued. Later, after performing some tests, they found that the roof was the source of leakage. As there was 10 years' defects liability period under the roof waterproofing contract, the Manager called upon the contractor to perform rectification works. About one year later, leakage occurred in the unit again. The Manager asked the same contractor to do the repair, and after two more rounds of further repair works, the leakage ceased.

The owner of the top floor unit sued the IO and the Manager for having breached their duty to repair and maintain the common facility (i.e. the waterproofing membrane) which had caused her nuisance and loss (including loss of rental during the period when the unit could not be let out due to the leakage problem). The Lands Tribunal said that the Manager and IO had taken reasonable measures to maintain the common areas and facilities and could not be held liable. The Manager dealt with the complaints swiftly every time, although they had mistaken as to the cause of leakage initially which had caused some delay, it could not be said that they had failed to take reasonable measures to fulfill their responsibilities.

The owner appealed to the Court of Appeal, where she argued that the Manager had failed to appoint a competent contractor to carry out repairs, or to properly supervise the works. The Court of Appeal held that there was no evidence to show that the Manager had hired an incompetent contractor to carry out the roof waterproofing project in the first place. Later, since there was a 10-year defects liability period, they reasonably asked the same contractor to follow up with the works. Although the problem did recur, after the first two rounds of maintenance, leakage did stop for about a year. It was not unreasonable for the Manager to ask the same contractor to attend to the subsequent follow up repairs. The Court considered other decided cases and said that the DMC or section 18(1) of the BMO did not require the Manager or IO to make compensation whenever problems and damage occurred as if they were insurance companies. Their liabilities in law were based on fault, or, when a problem arose and they failed to rectify it for more than a reasonable time.

In another case *Lau Chun Wing Rod v IO of Po On Building* (CACV 20/2007, 1 Nov 2007), the building underwent renovation after which water leakage was found to persist in the Plaintiff's flat. The Defendant IO referred the Plaintiff's complaint to the renovation contractors who alleged that it was the Plaintiff's own works in his unit which had caused the problem. The Defendant denied liability and relied on the contractor's reply without taking active steps to investigate into the matter. The case went to the Court of Appeal which held that IO was liable to the Plaintiff caused by water leakage into his unit, as every time the IO simply referred the owner's complaint to the contractor, even though the problem had persisted for a few years. Therefore, the IO had not taken reasonable and appropriate measures to solve the problem. The IO's appeal is dismissed with costs, and is required to pay the plaintiff damages to be assessed.

It should be noted that damages for nuisance include a general damages for distress and inconvenience as well as special damages. If the Plaintiff has been letting and receiving rental for the affected premises, there may be a claim and award for loss of rental at a substantial sum, if the premises becomes unlettable or can only be let at a substantially reduced rental.

Even if the source of water leakage is identified to be areas and facilities for the exclusive use of the owner of a particular unit, IO and Manager may still be obligated to take appropriate action. An example is when the DMC contains the usual provisions that an owner shall not cause any nuisance, annoyance and disturbance etc. to other owners/occupiers. It is incumbent on IO to enforce the DMC under section 18(1)(c) of BMO and to take any action in respect of the common part to enforce the owners' rights under section 16 of the BMO. If the defaulting owner fails to take reasonable steps to abate the nuisance, IO may have to take action to compel him to do that.

Again, as the DMC or Management Agreement also empowers and requires the Manager to enforce the DMC, the Manager often stands in a similar position to IO, subject to the precise provisions in the DMC or Management Agreement including any exemption clauses. In *MTR Corporation Ltd v. Cheung Ching Kin* (LDBM19/2015, 31 Jul 2015) where complaints were made by various flat occupiers against noise produced from a flat often at small hours repeatedly, the DMC Manager took action and successfully obtained an injunction against the owner of the said flat concerned restraining him from causing or permitting to be produced any noise or vibration or to be done acts causing a nuisance to other owners, occupiers or members of public.

If the IO or the Manager fails to take reasonable measures to fulfill any duty to enforce the DMC, they may be compelled to do that by an order of the court on the application of an owner. In the well-known case *See Wah-fan v I.O. of Ki Tat Garden* CACV 389/2002, 2 April 2003), the Court of Appeal said that IO was both empowered and obligated to enforce the DMC and ordered that the IO should take actions, including legal actions against a defaulted owner to prevent him from causing or permitting any interruption to the common staircase.

### **Conclusion**

In determining whether certain parts and facilities in a building are common parts, it will of course be necessary to refer to the DMC and other title documents registered in the Land Registry and ascertaining whether there is any provision reserving such parts and facilities for an owner's exclusive use. If there is no such clear provision, an important question to ask is whether the areas and facilities are for the benefit of one unit or for the common or general benefit of the owners. In the latter case, they will likely be held to be common parts by the court. Locations of such facilities, for example, whether they are situated inside a flat or in common areas are usually relatively less important.

If they are common parts, they will likely for the IO and Manager to repair and maintain. Failing to do that may well render them liable for breach of DMC or for nuisance or negligence under common law, especially when they have failed to take reasonable measures within a reasonable time to fulfill their duty. In case of the IO, they may also be liable for breach of their statutory duty under section 18(1)(a) of the BMO.

There are, however, conflicting decided cases on water pipes, in particular water pipes situated outside but serving one unit exclusively. A recent decision in the Lands Tribunal seems to suggest that such water pipes may be common parts although they are for the benefit of one owner. With due respect, the correctness of such decision and the earlier decision to the same effect may be arguable. On the other hand, even if certain water pipes are for the exclusive use and benefits of a unit and for the owner of that unit to repair and maintain under section 34H of the BMO, the IO or Manager may still be under a duty to do any necessary repair and maintenance work, for example to abate any nuisance due to water leakage caused to other owners.

[END]

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