



重要文件  
IMPORTANT

致：太古城業主及居民

## 搜集客觀法律理據

### 感謝大律師協助業主全面了解外牆權責問題

自 1999 年起，太古城外牆權責事宜一直於由業主代表互選組成的「太古城物業管理聯絡議會」內跟進，惟近有坊間突然有人另行提及一些單一法律意見，令相關事宜引起較多人關注及討論。

太古城西區議員趙家賢及太古城東區議員曹漢光為求查明外牆事宜的理據，讓居民可在更全面及客觀的情況下討論，除向民主黨尋求相關的法律諮詢外，於本年 1 月，為求所得資訊更為中肯準確，亦邀請了熟悉物業管理法例的香港大學專業進修學院講師陳樹清大律師提供專業的法律意見，及後邀請民主黨副主席單仲階及立法會議員涂謹申律師，共同出席「太古城外牆法律問題研討會」，討論合理可行的爭取方向。我們綜合有關的重點向業主及居民公佈，希望有助各位分析事件。

#### 一、「外牆業主」是否需要按比例繳付其他共用地方的管理費用？

根據太古城大廈公契，太古城每年財政預算分開四部份，當中 A 部份為所有公共地方部份，所有業權份數業主（包括小業主）均需按比例承擔，但亦清楚列明如果將外牆業權的使用權免費許可 (licensed without charge) 予太古城物業管理有限公司（下稱管理公司）使用，可獲豁免。而資料顯示外牆業主曾將使用權免費給予管理公司使用。

#### 二、援引海景大廈案例，建築物管理條例 34H 條可凌駕大廈公契？

坊間有援引海景大廈案例 (HCA 20920/1998)，指建築物管理條例第 34H，可凌駕大廈公契，但此案例的情況與太古城的實況並不盡相同。

海景大廈外牆業主對外牆可以獨有使用 (exclusive right to use)，而建築物管理條例第 34H 指明擁有人對該部份有獨有使用，則需要負擔本身該部份的維修費用。但根據太古城公契，未有明文指出「外牆業主」對外牆可獨有使用。

陳樹清大律師的專業法律意見向我們提供一個值得參考的案例：高等法院上訴庭個案 (CACV 45/2009) 沙田好運中心案例，法庭認為公契內有關條款並不賦予發展商獨有使用外牆的權利，有關的權利是在「有條件下(qualified)」而行使的。因此，建築物管理條例第 34H 條並不是直接適用於每個個案中。

#### 三、管理公司作為「信託人」？

香港政府於 1987 年開始發出大廈公契指引，建議新的大廈公契，如果公共地方是有業權份數的話，此等份數應由物業管理人「以所有業主共同利益為依歸的信託人」的身份持有 (as trustee for and on behalf of all owners)，此項指引逐步應用至所有大廈。

雖然大廈公契指引在太古城公契簽署時並未實施，但由於政府在 1987 年前對物業管理人的信託身份未有制定政策，所以可作參考之用。外牆業主在 1993 至 1996 年間將業權轉讓予管理公司，當中宣稱管理公司是以所有業主共同利益為依歸的信託人的身份接受業權。分別是這信託人的身份是在轉讓契中，而不是在公契中列述。

值得注意的是這種形式的信託的設立，是否需要受益人（即所有業主）批准？及受益人是否已獲通知，而未有提出反對？就公契 Clause 17(k)來說，通告如於通告板上張貼連續張貼了三天，則被視為通知了業主，當時是否已張貼？另外，在聯絡議會會議內報告，會議紀錄有記載，是否可被視為正式知會？

#### 四、為何港鐵物業管理對「德福花園外牆問題」作出和解賠償？

另外，亦有人提出九龍灣德福花園小業主就外牆問題與港鐵和解，並由港鐵賠償的案例。**趙家賢議員**曾與德福花園其中一位業主委員會主席聯絡，對方解釋除了大廈公契列明港鐵對德福花園外牆具有獨有使用 (exclusive right to use) 的權力外，港鐵亦無對包括大廈外牆在內的公用部份進行信託轉讓，而是由港鐵公司內的物業管理部門直接管理；而太古城物業管理有限公司則是為管理太古城而另外成立的公司，營運基金全基於太古城內的物業管理費用，故兩個屋苑情況不同，難以直接引用。

由此可見，外牆問題並不如坊間流傳的資訊一樣。根據我們的法律意見，太古地產及太古城物業管理有限公司是否充分知會業主有關外牆業權轉移及代所有業主託管一事仍有爭議，仍需追查當時文件及紀錄。業主應就此等問題作分析然後要求太古城物業管理有限公司澄清。

#### 邀請大律師主講「太古城外牆法律問題研討會」

在本年 3 月 2 日，由**趙家賢議員**主辦的「太古城外牆法律問題研討會」中，已向 30 位太古城不同期數的業主代表簡報有關的法律意見，**現將研討會的精要內容連同此信函附上**，供各位參考。

#### 在區議會提案・討論公契經理人信託指引問題

**太古城西區議員趙家賢**及**太古城東區議員曹漢光**亦已於 2011 年 3 月 17 日的東區區議會轄下規劃、工程及房屋委員會內提交文件，討論有關屋苑公共部分的信託指引問題。民政事務署的回覆指，根據地政總署轄下的田土轉易處所發出的大廈公契指引，在業主未成立法團時，業主委員會可憑藉獲總共擁有份數不少於 50 % 並有投票權的業主支持的情況下，發出通知終止公契經理人的委任，政府的回覆表明業主們有權利及機制決定公契信託經理人的委任。

#### 檢討《建築物管理條例》・完善法例

另外，政府現已開展了有關《建築物管理條例》的檢討工作。**檢討委員會成員，民主黨立法會議員涂謹申律師**已於 3 月 2 日的「太古城外牆法律問題研討會」內表明，會將太古城的個案提交到立法會《建築物管理條例》檢討委員會，希望完善法例後可為太古城小業主提供合理的權責保障。

我們將會團結各業主及居民討論事件，並向太古城物業管理有限公司爭取更多參與權利，要求改善外牆維修的招標模式，事實上，當外牆的維修費用由業主們共同承擔，管理上的主導權亦應歸於業主們以民主制度共同享有，我們定必以負責任及理性的態度爭取權益。

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**趙家賢 調解員**

太古城西區議員・第五期業主代表  
土地審裁處(建築物管理案件)認可調解員  
香港仲裁司學會會員

2011 年 4 月 2 日

## Seminar on External Walls Legal Issues of Taikoo Shing

District Councillor **Andrew Chiu**, Legislative Councillor **James To**, Barrister **Vincent Chan**



- Taikoo Shing: different DMCs for different Stages.
- Undivided shares to the external walls/common areas:  
Stage I : 6 undivided out of a total of 17,654.  
Stage III : 16 shares out of 55,224.  
Stage V: 12 shares out of a total of 41,494 shares.
- Licences for the external walls/common areas to the Management Company at no charge.
- 1993 to 1996, Taikoo Shing (Management) Limited was assigned the shares of the external walls/common areas. According to the assignments, the Management Company are to purchase the shares “as Trustee for and on behalf of all the Owners”.

### **Liability of the owner(s) of the external walls for costs payable according to the budget(s)**

- The budget of is to be divided into the the common areas (Part A);  
the shops, schools, school playgrounds or offices of the buildings (Part B);  
the flats or roofs of the buildings (Part C);  
the car parking spaces (Part D).
- Clause 8 (c)(i): “Each Owner shall pay for every undivided share of which he is the owner of a fraction of the total amount assessed under Part A of the annual adopted budget in which the enumerator shall be one and denominator is equal to the total number of undivided shares in the said Land and buildings provided always that no contribution shall be payable by an owner in respect of any undivided shares which represent the external walls, the designated common areas, the shops, schools, offices or retained areas so long as the same are tenanted or licensed without charge to the Management Company.”.
- In the assignments of the external walls/common areas, it is also averred that the Management Company were assigned the properties “as Trustee for and on behalf of all Owners”. It is a declaration that the Management Company has the legal ownership but all the Owners have the beneficial ownership.
- There are declarations that the Management Company is only a trustee for the owners.

### **Who should bear the costs for the repair of the external walls**

- Relevant clauses in the DMC:

Clause 3: “Each undivided share in the said Land and the building shall have the full and exclusive right and privilege to hold use occupy and enjoy each shop, school, office, flat, roof, car parking space .....shall be held by the person or person from time to time entitled thereto....”;

Clause 7 (a) (7) “ repair and keep in good repair and condition the main structure.....which are part of the common areas and the fabric of the said buildings.....and their common areas when necessary to replace any part of parts thereof which require replacement.”;

Clause 7 (a) (8): “ to paint or whitewash.....the exterior and common areas of the said building.....”;

Clause 7(a) (13): “ to remove any structure or installation, signboard, advertisements, sunshades.....in or on the said building which contravenes the terms contained herein...”;

- Section 34H of the Building Management Ordinance:

“Where a person who owns any part of a building, has the right to the exclusive possession.....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.”.

- In *Uniland Investment Enterprises Limited v The Incorporated Owners of Sea View Estate* HCA 20920/1998, it was ruled that Clause 8(i) of the DMC of Seaview Estate, which expressly provides that Outerwalls and Flat Roofs shall not be required to pay any monies under the DMC, was held to be displaced by section 34H .
- *The Incorporated Owners of Shatin New Town v Yeung Kui* CACV 45/2009, it was held that although the rights are given to the developers.... are to use the exterior walls for advertising purposes. While these were described as “exclusive rights”, they are in fact qualified.
- Clause 3 of the DMC of Stage III, it provides that “an owner of each undivided share in the land has the exclusive right and privilege to hold use each shop, school, office , flat, roof, car parking spaces or school playground....”. It should be noted that for such “exclusive right and privilege, the right to use the “external wall” is not included in this provision.
- Clause 8 ( c ) (i) that for Part A of the annual budget.....as long as any undivided share which represent the external walls.....are tenanted or licensed without charge, then no contribution shall be payable by an owner in respect of the share”. But there is no provision that the external wall owners shall pay for expenses in Part B, C, or D of the budget.

#### **The Management Company as “Trustee for and on behalf of all the Owners”**

- Guidelines for Deed of Mutual Covenants: “The manager being the trustee for the owners. Under which, in the event that undivided shares are allocated to the common parts and that such shares together with the common parts are to be held by the manager, then the manager shall hold the same as trustee for all owners (Guideline 20 of the First Guideline).
- s5(1)(b) of the Conveyancing and Property Ordinance (Cap 219) that a declaration of trust respective land shall be manifested and proved in writing signed by the person who is able to declare such trust. In accordance with the requirement of s2(1) of Land Registration Ordinance (Cap 128), deeds can be registered in the Lands Registry.
- Whether owners had been informed of the transfer ?
- Minutes of Taikoo Shing Management Liaison Council.
- Clause 17 (k) of the DMC which provides that the exhibition of a notice on notice boards for three consecutive days shall be due notice of the contents to each owner. Whether the notice(s) had been properly served in accordance with Clause 17(k) should be supported by further evidence.

~~ The END ~~