

OPEN LETTER

4 February, 2014

Mr Vincent Chua
Director
Discovery Bay Services Management Ltd
Discovery Bay
Hong Kong

Dear Vincent,

As the Director of Discovery Bay Services Management Limited (DBSML), the Manager for Discovery Bay under the Deed of Mutual Covenant (DMC), you are ultimately responsible for the conduct and policies of your Company. DBSML is a subsidiary of the developer, Hong Kong Resort Company Limited (HKR), and, in order to carry out your duties fairly and properly on behalf of all the Owners of Discovery Bay, it is important that any dealings between your Company and HKR that affect the management and finances of Discovery Bay be properly documented.

As you are aware, under the DMC, management expenses are shared according to the number of Management Units (MU) held by each Owner. The Village Sub-DMCs provide a complete record of all MU allocated to the residential properties in Discovery Bay. This record is open to the public, as all Sub-DMCs are available from the Land Registry.

However, the record for the commercial properties in Discovery Bay, all of which are owned by HKR, is much less satisfactory. There are no Sub-DMCs for the commercial units. HKR does not report the number of commercial MU to the Land Registry. Furthermore, the basis for allocating MU to the commercial units is not transparent, nor is it subject to third-party review.

Given that your Company is a subsidiary of HKR – but that, as the Manager, you have a duty to act on behalf of all the Owners of Discovery Bay – it is important that you be sensitive to any conflict of interest that may arise from allocating MU to commercial units.

The Case of Auberge Discovery Bay

Auberge is a hotel in Discovery Bay, operated by HKR. According to a revised budget issued by your Company in February 2013, 2,600 MU would be allocated to Auberge with effect from 1 March, 2013. It appears as though the number of MU was proposed by your Company, as it is stated in the budget that the number of MU is subject to confirmation with HKR. I would suggest that it is for HKR to inform your Company, and not the other way around. I attach the relevant page from the revised budget for your reference.

In response to a follow-up query from me, Mr. David Chan, Assistant Estate Manager, Discovery Bay, stated the following in an email to me dated 5 July, 2013:

Having verified the GBA calculation with HKR, the Management Units allocated to Auberge has been confirmed to be 2,600 MU. I regret that the calculation will not be made available to owners because of the proprietary right.

Thus, your Company refused to provide any documentary evidence to support the calculation.

Method for Calculating MU under the DMC

The method for calculating the allocation of MU to commercial properties in Discovery Bay is set out very clearly in the DMC. This states:

Every 10 square metre of GBA of a unit, whether commercial or residential, forms a Management Unit and shall be allocated as hereinafter described.

GBA is the abbreviation for Gross Building Area, which is defined as follows in the DMC:

The area contained within the external walls (or in the absence of such walls the external perimeters) of the building measured at each floor level (including any floor below the level of the ground), together with the area of each balcony in the building, which shall be calculated from the overall dimensions of the balcony (including the thickness of the sides thereof) and the thickness of the external walls of the building.

It is important to note that this definition differs from the definition of Gross Floor Area (GFA) adopted by Buildings Department. BD's definition changes in line with the policy on GFA concessions permitted by the Building Authority. GBA, on the other hand, does not allow any GFA concessions.

Building Plans

The total floor area for Auberge, showing all GFA concessions, is provided in the Building Plans for the hotel. The relevant BD reference number is BD2-9166/99. Having reviewed these plans, I find that the Building Authority has allowed some 8,622 sq.m. in GFA concessions and some 1,273 sq.m. in "back of the house" concessions for Auberge. These must be added back when calculating GBA.

The actual GBA of Auberge, following the definition in the DMC quoted above, is approximately 35,833 sq.m. Applying the formula provided in the DMC, whereby 1 MU is allocated for each 10 sq.m. of GBA, some 3,583 MU should have been allocated to Auberge.

I attach my calculation, showing GFA concessions by floor, for your reference. The number of MU actually allocated to Auberge is significantly less than the number that would be allocated if we followed the DMC. By my estimate, the management charges avoided by the developer as a result of underreporting the MU for the hotel is approximately \$500,000-\$600,000 in the current fiscal year.

Other Commercial Areas

I have restricted my investigation to Auberge alone. I suspect that, if we carried out the same review at other commercial areas in Discovery Bay, we would find similar underreporting. While I believe that none would reach the scale of underreporting at Auberge, the other areas have been in operation for considerably longer (some for over 30 years), and the accumulated shortfall may now be a considerable sum.

Conclusion

As the Director of Discovery Bay Services Management Limited, the Manager for Discovery Bay, you are accountable to all the Owners for the actions of your Company. You also have a duty to uphold the DMC. Given the apparent shortfall in the allocation of MU to Auberge, I ask that your Company seek independent professional verification of the MU calculation for the hotel by reviewing the building plans and applying the definition of MU and GBA from the Discovery Bay DMC. I further ask that your Company make copies of this review available to any Owner upon request in the interest of accountability and transparency.

I reserve the right to circulate this letter to any person or organisation.

Yours sincerely,

DISCOVERY BAY CITY OWNERS' FUND

REVISED BUDGET – 2012/2013

The budget for financial year 2012/13 is proposed to be revised to cope with the following major changes:

INCOME AND EXPENDITURE OF CITY – 2012/2013

1) Additional Management Units

The hotel Auberge is re-scheduled to commence the operation on 1st March, 2013 and the handover of Amalfi will be deferred to next year. The corresponding management unit, subject to the confirmation with HKR the gross building areas, will be as follows:

Development	Management Unit	Commencement Date
Pavilion (previously, chapel)	26	12 th December, 2012
Auberge	2,600	1 st March, 2013
Management Unit as at 31/3/2013		80,308

2) Headcount

	Number of Staff	
	12/13	11/12
Director & Senior Manager	4	4
Administration	11	12
Estate Team	40	40
Customer Service Team	4	4
Landscape Team	30	30
Community Relations	4	4
Account Team	8	8
Works Team	36	36
Customer Service Ambassador	19	19
In-House Security	5	Nil
Total	161	157



Hotel GFA Concession

Basement	2,192.940
Ground Fl	323.863
Level 12.1	445.475
1/FI	1,778.422
2/FI	328.149
5/FI	240.394
6/FI	241.141
7/FI	241.141
8/FI	241.141
9/FI	241.141
10/FI	241.141
11/FI	241.141
12/FI	241.141
15/FI	241.141
16/FI	241.141
17/FI	241.141
18/FI	129.643
19/FI	191.600
20/FI	126.672
21/FI	454.095

Total BD Concessions	8,622.663
Back of House	1,272.866
Total	9,895.529

Total BD Concessions	8,622.663
GFA After BD Concessions	27,211.160
Approx. GBA	35,833.823

Approx. MU	3,583
-------------------	--------------