

**Legislative Council Panel on Home Affairs
Procurement of third party liability insurance by
owners' corporations under the
Building Management Ordinance (Cap. 344)**

Purpose

This paper outlines the proposed content of a Regulation specifying the detailed requirements of third party liability insurance to be procured by owners' corporations (OCs) under the Building Management Ordinance (Cap.344).

Background

The Building Management Ordinance and the Building Management (Amendment) Ordinance 2000

2. On 27 June 2000, the Legislative Council enacted the Building Management (Amendment) Ordinance (BM(A)O) which has amended, inter alia, section 28 of Cap.344. The amended section 28 is at Annex I. Under subsection (1), an OC is required to procure, in relation to the building and all parts thereof including the common parts, policy of insurance with an insurance company in respect of third party risks. The BM(A)O has also amended section 41 of Cap.344 on the Chief Executive in Council's power to make regulations. The amended section 41 is at Annex II. The BM(A)O has come into operation since 1 August 2000, except the above-mentioned mandatory third party liability insurance provisions which will come into effect after the making of a Regulation by the Chief Executive in Council on the detailed requirements.

The Problem

3. In the absence of third party liability insurance, there were cases where the OCs had to seek substantial contributions from the individual owners in order to pay for compensation to third parties who were injured inside and outside the building (e.g. common parts) for which the OC has maintenance responsibility. To address this problem, section 12 of the BM(A)O (section 28 of BMO) mandates the procurement of third party liability insurance by OCs upon enactment of a subsidiary legislation.

Consultation

4. The Administration has consulted the relevant professional bodies in the insurance and building management fields. The proposed content of the Regulation outlined below has taken into account their input and advice.

Proposed content of the Regulation

Coverage

5. The insured party will be the OC and the insurance policy will cover third party liabilities. To avoid double protection, statutory employees' compensation and contractual liability will be excluded from the coverage of third party liabilities. According to legal advice, parties that are not explicitly excluded from the coverage of the law will be covered. Hence, the Regulation needs not contain a specific definition of the term "third party".

Conditions and requirements that bind the OC or the insurance company

6. We propose to include the following main conditions and requirements in the Regulation :

- (a) the insurance policy shall cover the common parts situated within the specified inland lot, the buildings constructed thereupon and any land area outside of the lot for which the OC has maintenance responsibilities. "Common parts" is defined in section 2 of the BMO, a copy of the section and the First Schedule to the BMO are at Annex III;
- (b) the minimum insured amount of each policy shall be not less than HK\$10 million per event in respect of third party bodily injury and death; and the number of claimable events during the policy period shall not be limited by the terms of the policy;
- (c) the third party liabilities covered by the insurance policy shall include liabilities in respect of third party bodily injury and death. Insurance coverage of third party's property is not mandatory, since the provision of which will have a bearing on the insurance premium. However, the OC is at liberty to insure against damages to property;

- (d) the OC shall display a notice of insurance in a prominent location within the building or premises covered by the policy for information or inspection by the relevant parties;
- (e) for the purpose of (d) above, the insurance company shall issue a notice of insurance to the OC;
- (f) in case the terms of the insurance policy are issued in English or in Chinese only, the insurance company shall provide to the OC a true and fair translation of these terms in Chinese or in English respectively to facilitate understanding by OC members;
- (g) no rights under the insurance policy shall be waived by third parties except by way of an agreement in writing;
- (h) the insurance company shall satisfy judgements against the OC in respect of third party risks and pay compensation to the persons entitled to such benefits even if the insurance company may be entitled to avoid or cancel the policy; and
- (i) the rights of third party claimants arising under any event which occurred before the OC is wound up or dissolved shall not be affected provided that the insurance policy is in effect when the event in question occurred.

Unauthorized building works

7. According to section 14 of the Buildings Ordinance (Cap. 123), no person shall commence or carry out any building works without having first obtained written approval from the Building Authority. Unauthorized building works (UBWs) therefore refer to those building works which have not been so approved. On whether UBWs should be covered by the Regulation, there are essentially two schools of thought : those who support argue that inclusion is necessary to afford the third parties better protection as UBWs constitute a threat to safety; while those who object argue that requiring UBWs to be insured would create a perception that UBWs were condoned by Government.

8. Having consulted the relevant professional bodies and obtained legal advice, we have concluded that UBWs should be excluded from the coverage of the Regulation for the following reasons :

- (i) there would be significant practical difficulties for the OCs to obtain from an authorized person certification of safety of the UBWs (particularly those owned by individual owners) to enable them to be insured;
- (ii) insuring UBWs may create a wrong impression that Government is condoning UBWs. Such perception is incompatible with our policy intention and efforts to encourage demolition of UBWs as soon as practicable and may create a disincentive for owners to remove UBWs; and
- (iii) the OCs should not be held responsible for the third party liabilities arising from UBWs erected by individual owners who should be held liable if their UBWs caused injury or death to a third party.

The OCs should encourage owners to take steps to remove UBWs as soon as possible. In case of financial difficulties, loans are available to individual owners under the Building Safety Improvement Loan Scheme.

Legislative timetable

9. The Administration intends to forward a Building Management (Insurance) Regulation to the Legislative Council for negative vetting in the latter half of 2001.

Advice sought

10. Members are requested to note the content of this paper. Members' views on the proposed Regulation are welcome.

Home Affairs Bureau
June 2001

"28. Obligations regarding insurance

(1) A corporation shall, on behalf of the corporation and the occupiers and owners of a building, procure and keep in force in relation to the building and all parts thereof including the common parts and the property of the corporation, such policy of insurance with an insurance company in respect of third party risks as complies with any requirement prescribed for the purposes of this section.

(2) In the event of a contravention of subsection (1), every member of the management committee shall be guilty of an offence and shall be liable on conviction to a fine at level 5 unless he proves —

- (a) that the offence was committed without his consent or connivance; and
- (b) that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised in the circumstances.

(3) A corporation may, on behalf of the corporation and the occupiers and owners of a building, insure and keep insured with an insurance company the common parts of the building and the property of the corporation to the reinstatement value thereof against fire and other risks.

(4) Where a corporation has effected any policy of insurance with an insurance company by virtue of this section the management committee shall permit the Authority, an authorized officer, the tenants' representative, an occupier, an owner, a registered mortgagee or any person duly authorized in writing in that behalf by an occupier, an owner or registered mortgagee, to inspect the policy of insurance and any receipt for the premium in respect thereof at any reasonable time.

(5) Where any person (other than the Authority or an authorized officer) referred to in subsection (4) requests the corporation to supply him with copies of the policy of insurance and any receipt for the premium in respect of that policy, the treasurer shall, on the payment of such reasonable copying charge as the management committee may determine, supply such copies to that person.

(6) The treasurer shall, if requested by the Authority or an authorized officer and without raising any charge, supply the copies referred to in subsection (5) to the Authority or that officer.

(7) In this section and in section 41, "insurance company" (保險公司)—

- (a) means an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) or deemed under section 61(1) or (2) of that Ordinance to be so authorized, to carry on insurance business;
- (b) means the society of underwriters known in the United Kingdom as Lloyd's; and
- (c) means an association of underwriters approved by the Insurance Authority."

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ORDINANCE 2000
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In this Ordinance, unless the context otherwise requires-

"accountant" (會計師) means a certified public accountant within the meaning of the Professional Accountants Ordinance (Cap 50); (Added 27 of 1993 s. 4)

"administrator" (管理人) means a person appointed as an administrator under section 30 or 31;

"Authority" (主管當局) means the Secretary for Home Affairs; (Added 27 of 1993 s. 4)

"authorized officer" (獲授權人員) means any public officer authorized in writing by the Authority in that behalf; (Added 27 of 1993 s. 4)

"building" (建築物) means-

(a) any building which contains any number of flats comprising 2 or more levels, including basements or underground parking areas;

(b) any land upon which that building is erected; and

(c) any other land (if any) which-

(i) is in common ownership with that building or land; or

(ii) in relation to the appointment of a management committee under Part II or any application in respect thereof, is owned or held by any person for the common use, enjoyment and benefit (whether exclusively or otherwise) of the owners and occupiers of the flats in that building; (Replaced 27 of 1993 s. 4)

"Code of Practice" (工作守則) means any Code of Practice prepared, revised or issued from time to time by the Authority under section 44; (Added 27 of 1993 s. 4. Amended 69 of 2000 s. 2)

"common parts" (公用部分) means-

(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 (Amended 8 of 1993 s. 2)

(b) unless so specified or designated, those parts specified in the First Schedule;

"corporation" (法團) means a corporation registered under section 8;

"deed of mutual covenant" (公契) means a document which-

(a) defines the rights, interests and obligations of owners among themselves; and

(b) is registered in the Land Registry; (Amended 8 of 1993 s. 2)

"estate" (屋邨) means the buildings or groups of buildings the subject of an application under section 34E(6); (Added 27 of 1993 s. 4)

"exempt estate" (獲豁免屋邨) means-

(a) any estate specified in the Ninth Schedule;

(b) any estate added to that Schedule under section 34E(6); (Added 27 of 1993 s. 4)

"flat" (單位) means any premises in a building which are referred to in a deed of mutual covenant whether described therein as a flat or by any other name and whether used as a dwelling, shop, factory, office or for any other purpose, of which the owner, as between himself and owners or occupiers of other parts of the same building, is entitled to the exclusive possession;

"Land Registry" (土地註冊處) means the Land Registry established under the Land Registration Ordinance (Cap 128) and a District Land Registry established under the New Territories Ordinance (Cap 97);

"Land Registrar" (土地註冊處處長) includes, in relation to buildings on land registered in a District Land Registry, the Authority, save that only the Land Registrar may specify forms; (Amended 8 of 1993 s. 3; 27 of 1993 s. 4)

"management committee" (管理委員會) means a management committee appointed under section 3, 3A or 4; (Amended 27 of 1993 s. 4)

"occupier" (佔用人) means a tenant, sub-tenant or other person in lawful occupation of a flat, but does not include an owner of that flat; (Added 27 of 1993 s. 4)

"owner" (業主) means-

(a) a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which there is a building; and (Amended 8 of 1993 s. 2)

(b) a registered mortgagee in possession of such share;

"registered mortgagee" (已登記承按人) means-

(a) a person to whom an owner's interest in a building has been mortgaged or charged under a mortgage or charge which has been registered in the Land Registry; and (Amended 8 of 1993 s. 2)

(b) a person in whose favour a charge upon a flat has been created by virtue of any Ordinance;

"register" (登記冊) means the register of corporations maintained under section 12;

"share" (份數) means the share of an owner in a building determined in accordance with section 39;

"tenants' representative" (租客代表) means the tenants' representative appointed under section 15 (1); (Added 27 of 1993 s. 4)

"tribunal" (審裁處) means the Lands Tribunal established under section 3 of the Lands Tribunal Ordinance (Cap 17). (Added 27 of 1993 s. 4)

(Amended 8 of 1993 s. 2; 27 of 1993 s. 4)

Chapter: 344 Title: BUILDING Gazette Number:
MANAGEMENT
ORDINANCE
Schedule: 1 Heading: COMMON PARTS Version Date: 30/06/1997

[section 2]

1. External walls and load bearing walls, foundations, columns, beams and other structural supports.
2. Walls enclosing passageways, corridors and staircases.
3. The roofs, chimneys, gables, gutters, lightning conductors, satellite dishes and ancillary equipment, aerials and aerial cables. (Amended 27 of 1993 s. 38)
4. Parapet walls, fences and boundary walls.
5. Vents serving 2 or more flats. (Amended 27 of 1993 s. 42)
6. Water tanks, reservoirs, pumps, wells, sewers, sewage treatment plants, drains, soil pipes, waste pipes, channels, water-courses, gutters, ducts, downpipes, cables, conduits, refuse chutes, hoppers and refuse container chambers. (Amended 27 of 1993 s. 38)
7. Cellars, toilets, water closets, wash houses, bathhouses, kitchens and caretakers' flats.
8. Passageways, corridors, staircases, landings, light wells, staircase window frames and glazing, hatchways, roofways and outlets to the roofs and doors and gates giving access thereto.
9. Lifts, escalators, lift shafts and machinery and apparatus used in connection therewith and the housing thereof.
10. Lighting apparatus, air conditioning apparatus, central heating apparatus, fire fighting equipment and installations intended for the use and benefit of all of the owners generally and any room or chamber in which such apparatus, equipment or installation is fitted or installed.
11. Fixtures situated in a flat which are used in connection with the enjoyment of any other flat or other portion of the building.
12. Lawns, gardens and playgrounds and any other recreational areas. (Added 27 of 1993 s. 38)
13. Swimming pools, tennis courts, basketball courts, squash courts and premises containing or housing any other sporting or recreational facilities. (Added 27 of 1993 s. 38)
14. Clubhouses, gymnasiums, sauna rooms and premises containing health or leisure facilities. (Added 27 of 1993 s. 38)
15. Slopes, gradients and retaining walls including sea walls (if any) comprising or forming part of any land which is in common ownership with the building. (Added 27 of 1993 s. 38)