

**Extract of the Minutes of Meeting of
Bills Committee on
Building Management (Amendment) Bill 2000 on 30 March 2000**

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Clause 7 - Obligations regarding insurance

26. Mr LEE Wing-tat pointed out that the Bill proposed to impose a mandatory obligation on OCs to take out third party insurance in respect of their buildings including the common parts. As such, if the Administration did not implement the policy on the removal of UBWs consistently and allowed UBWs which posed no danger to remain as they were, insurance companies might be reluctant to provide insurance coverage for buildings with UBWs.

27. DS(HA)2 advised that the Administration had consulted the Hong Kong Federation of Insurers which was supportive of the proposal of taking out third party insurance for buildings. Representatives from the insurance profession stated at the Bills Committee meeting on 9 March that the insurance industry was the most flexible industry and it could provide services to meet the needs of customers under any circumstances.

28. Assistant Director of the Buildings Department informed members that certain kinds of professionally recognized persons such as registered structural engineers could be employed to inspect the safety of buildings. The safety certificates they issued would facilitate insurance companies to decide whether to provide insurance.

29. Mr LEE Wing-tat queried whether it was practicable to engage professionally recognized persons to inspect UBWs. As far as he knew, the average cost for inspecting and determining whether the UBWs of a flat were safe was \$8,000. If owners were willing to pay for the cost of employing professionally recognized persons to inspect their UBWs, they should have already hired workers to remove their UBWs. The Chairman expressed concern that if insurance companies were willing to provide insurance for low-risk UBWs, the owners concerned would have no intention to remove their UBWs. Mr LEE Wing-tat pointed out that even if insurance companies were willing to provide insurance, owners might have to pay a high premium.

30. Mr Bernard CHAN informed members that the premium for taking out third party insurance in respect of buildings and common parts was not as high as what members had imagined. He believed that insurance companies would not employ professionally recognized persons to inspect buildings because of the expensive fees involved. Insurance companies would evaluate the safety risks of buildings and determine the level of premiums to be charged having regard to

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factors such as their location, age and how they were managed. To his knowledge, the premium for taking out third party insurance for a 20-storey building was around \$2,000. Therefore, the problem lay in indemnification rather than the charging of premiums. When an accident arose from UBWs, insurance companies might not offer any indemnity.

31. Mr LEE Wing-tat stated that a premium of \$2,000 was not a huge amount but he was concerned that disputes might arise between owners and insurance companies when the former found after an accident that the insurance did not cover UBWs. Mr James TO asked whether the reference to “all parts” under the new section 28(1) concerning the procurement of a policy of insurance in relation to a building and all parts thereof with an insurance company in respect of third party risks included UBWs. He believed that if UBWs were within the insurance coverage, the premium would be very high. If it was the Government’s policy to make use of the high insurance premium to force owners to remove UBWs, clause 7 might serve the purpose.

32. DS(HA)2 explained that clause 7 provided the outline of the mandatory insurance scheme. The requirements of the insurance such as the scope of coverage, minimum level of indemnity and qualifications of insurers would be provided in a regulation to be made by the Chief Executive in Council separately after the passage of the Bill. DS(HA)2 emphasized that under the mandatory insurance scheme, owners were required to take out third party insurance rather than comprehensive insurance in respect of their buildings. Furthermore, it was the owners' responsibility to remove their UBWs.

33. Mr James TO said that it was unfair to members of the Bills Committee if they were asked to pass the principal Ordinance before they had an idea of the contents of the regulation.

34. DS(HA)2 informed members that it was the usual legislative procedure to pass the principal Ordinance before the relevant regulations were introduced. Clause 12 of the Bill already provided for the power to make regulations and its scope. As regards the contents of the regulation to be made, the Administration would need to consult the insurance industry before drafting the regulation. The regulation would be submitted to the Legislative Council for negative vetting. At Mr LEE Wing-tat’s request, DS(HA)2 undertook to provide the draft parameters of the regulation for members’ reference.

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35. Mr LEE Wing-tat expressed concern that MC members might be guilty of a criminal offence under the new section 28(2) if no insurance companies were willing to provide insurance for their buildings, particularly those with UBWs. He asked how the Administration would enforce clause 7 if a building had not formed an OC.

36. DS(HA)2 explained that under the new section 28(2), OCs might be exempted from criminal liabilities if they could sufficiently prove that they had

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exercised due diligence and yet were unable to take out insurance in respect of their buildings. Otherwise, they might be liable on conviction to a fine at level 5 (up to \$50,000). For buildings without OCs but with safety problems, the Bill conferred the Authority a power to impose mandatory management on these buildings for the purpose of forming OCs. DS(HA)2 further explained that the mandatory insurance requirement was only applicable to buildings with OCs. For buildings with no OCs, the owners concerned was responsible for making the necessary compensation in case an accident occurred. He emphasized that even if owners did not take out third party insurance, it did not necessarily mean that they could shirk their responsibilities when an accident occurred.

37. Since every MC member could be guilty of a criminal offence if an MC failed to take out third party insurance for its building, Mr TAM Yiu-chung was concerned that owners might be unwilling to become MC members. Mr Edward HO pointed out that the Bill appeared to be discriminatory against buildings with OCs, given that buildings without OCs, on the contrary, were not subject to the mandatory insurance requirement and their owners were free from any criminal liability. Mr LEE Wing-tat enquired about the difficulties which might arise if a piece of legislation was made to require all owners to take out third party insurance. He pointed out that since only 20% of the buildings had formed their OCs, 80% of the buildings were not required to take out third party insurance and such an arrangement was undesirable. Mr Edward HO considered that if mandatory third party insurance was imposed across the board, it was not necessary for the Administration to check whether owners had observed the requirement because when an accident occurred, the owners concerned could in no way evade their legal responsibilities.

38. DS(HA)2 remarked that members' suggestion had far-reaching implications. He considered that the proposal of imposing a mandatory obligation on all owners to take out third party insurance should be further studied. The Administration definitely hoped that all owners would take out third party insurance so as to offer protection to more people. In fact, as compared with owners who had taken out insurance, owners who did not do so had to face greater risks. The reason for the Bill to rest the liability on OCs was that it was very difficult to pinpoint the party to be liable before an incident occurred. As such, it should be the collective responsibility of all owners to take out insurance in respect of their building.

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