

Bills Committee on Building Management (Amendment) Bill 2005

Proposed New Section 29A – Protection of Members of Management Committee

PURPOSE

1. At the Bills Committee meeting on 17 May 2005, Members discussed the proposed new section 29A of the Building Management Ordinance (BMO) regarding protection of members of management committee. This paper sets out the background of the proposal and application of the proposed section.

LIABILITY OF MEMBERS OF MANAGEMENT COMMITTEE

2. The Government's policy intent is that the liability of an owners' corporation (OC) should not be transferred to an individual member of its management committee. Under the existing BMO, the liability of an OC should not normally be transferred to an individual owner or member of a management committee, except in those situations specifically set out in the provisions relating to the responsibilities of a specified member of a management committee¹ or under section 17(1)(b) of the BMO². This has been reflected in sections 8(2)(a), 16 and 29 of the BMO which, when read together, and supported by case laws³, indicate that once an OC is formed, it shall be a body corporate capable of suing and being sued; the liabilities of the owners in relation to the common parts of the building shall be enforceable against the OC to the exclusion of the owners; and the management committee of the OC is simply performing duties and exercising powers on behalf of the OC.

3. There have however been concerns that there is no clear provision to the above effect in the existing BMO. The Subcommittee on Review of the BMO formed under the Legislative Council Panel on

¹ Examples are sections 12(3), 20(5), 38(1), paragraphs 2 and 6(1) of the Third Schedule, paragraph 5 of the Fifth Schedule and paragraph 4 of the Sixth Schedule.

² Section 17(1)(b) of the BMO provides that if a judgment is given or an order is made against an OC, execution to enforce the judgment or order may issue, with leave of the Lands Tribunal, against any owner.

³ *Millap Ltd & Others v The Incorporated Owners of Fanling Centre & Others* (LDBM 260/1999 and LDBM 360/1999) and *葉大永建築師有限公司對金明閣業主立案法團及黃文賢* (CACV 143/99).

Home Affairs had had discussion over the matter. The Subcommittee was of the view that without such express provision in the BMO, if a member of a management committee is being sued on account of the OC's collective decisions solely on the ground that he is a member of the management committee, the statutory basis for him to apply for striking out the legal proceedings is questionable. Members of the Subcommittee also considered that if there is an express provision, the Lands Tribunal or the High Court may then, based on the provision, exercise its discretion in striking out the name of a member of the management committee from the proceedings, thus reducing the duration and legal cost of legal proceedings.

PROPOSED NEW SECTION 29A – PROTECTION OF MEMBERS OF MANAGEMENT COMMITTEE

4. We therefore propose to add a new section in the BMO (new section 29A) to the effect that members of a management committee acting in good faith shall not be held personally liable for any act done or default made by or on behalf of the OC (clause 15 of the Building Management (Amendment) Bill 2005). The new section is modeled after section 23 of the Hospital Authority Ordinance (Cap.113).

5. The proposed section 29A(1) provides that "No member of a management committee, acting in good faith, shall be personally liable for any act done or default made by or on behalf of the corporation - (a) in the exercise or purported exercise of the powers conferred by this Ordinance on the corporation; or (b) in the performance or purported performance of the duties imposed by this Ordinance on the corporation."

EXISTING STATUTORY PROVISIONS

6. Based on a search on the Bilingual Laws Information System, there are 59 provisions which contain the expression "good faith" (Annex A). These provisions afford immunity or protection similar to our proposed new section 29A in the BMO.

DEFINITION OF THE TERM “GOOD FAITH”

7. According to the Blacks Dictionary (7th edition, p.701), “good faith” means “(a) a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.” According to the Concise Oxford Dictionary (8th edition, p.421), “good faith” means “honesty or sincerity of intention”.

APPLICATION OF THE PROPOSED SECTION 29A

8. It is the policy intent, following the recommendation of the Subcommittee on Review of the BMO, that owners should be encouraged to join the management committee to serve their fellow co-owners and they should be given statutory protection from being claimed for personal liability in the course of exercising statutory power or discharging statutory duty on behalf of the OC under the BMO. The proposed new section 29A aims to provide protection to members of management committee rather than to find means to penalise them.

9. There are no decided cases relating to the duty of a member of a management committee to act in good faith. The new section 29A is modeled after section 23 of the Hospital Authority Ordinance. Neither are we aware of any decided cases involving the application of this section.

10. In the case of an incorporated company, its director owes a duty to act in good faith towards the corporation. "Gower's Principles of Modern Company Law" (6th edition, p.601) explains what is meant by "acting in good faith" –

"In most cases, compliance with the rule that directors must act honestly and in good faith is tested on common-sense principles, the court asking itself whether it is proved that the directors have not done what they honestly believed to be right, and normally accepting that they have unless satisfied that they have not behaved

as honest men of fide in what they consider – not what a court may consider – is in the interests of the company."

11. We may apply the above explanation of the general duty of a director of a company to act in good faith in the context of the proposed new section 29A. If a member of a management committee has contravened a statutory provision, thereby resulting in being convicted of an offence, then it will be extremely hard for him to seek protection under the proposed new section 29A against a claim because he was unlikely to be acting honestly.

12. For mere illustration purpose, if a member of a management committee has fraudulently misappropriated the OC's fund held by him on behalf of the OC and is convicted of the offence of "theft", then he is not acting honestly. He would be liable to account for the misappropriated money and not be able to rely on the proposed new section 29A to exclude his personal civil liability.

13. In another hypothetical example, where the secretary serves a notice of the OC's meeting, he carelessly deposits the notice at a wrong letter box and as a result, the owner concerned does not receive the notice. If this aggrieved owner seeks to claim against the secretary personally, the secretary may be protected under the proposed new section 29A.

14. Regarding the hypothetical example given by Hon LI Kwok-ying at the Bills Committee meeting on 17 May 2005⁴, against the given circumstantial information, if a member of a management committee casts a vote for a resolution which he honestly believes that it is in the interest of the OC, he is acting in good faith and is not personally liable for any personal claim, even if the collective decision turns out to be detrimental to the OC.

⁴ In the case cited by Hon LI Kwok-ying, an OC had passed a resolution in accordance with the required procedures. However, the resolution was found by the OC of the succeeding term that it was in breach of certain requirements under the BMO. The resolution had been passed in such a way that only the OC chairman had voted for it whereas a majority of the other members, though they disagreed to it, had abstained from voting.

CONCLUSION

15. The expression of "in good faith" is ubiquitous in our legislation and, so far, has not posed any legal difficulties in its application to the factual situations. If a member of a management committee is sued in his personal capacity for act which is done honestly for discharging statutory duties under the BMO, he may easily invoke the proposed new section 29A to ask the court to dismiss claim. Nevertheless, each case has to be determined on its own facts.

Home Affairs Department
May 2005

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
1.	32	Companies Ordinance	<p>S.303B – Protection of Registrar etc. where computerized information etc. is used</p> <p>(1) Where for the purposes of this Ordinance the Registrar provides a service or information involving computerized information or by means of magnetic tapes or any electronic modes, a relevant person shall not be personally liable for any loss or damage suffered by a user of the service or information by reason of an error or omission of whatever nature appearing therein or however caused if the error or omission, as the case may be, was made in good faith and in the ordinary course of the discharge of the duties of the relevant person.</p> <p><i>[‘Relevant person’ here means the Registrar, the supplier of information or any other persons appointed by the Chief Executive for the purpose of this Ordinance]</i></p>
2.	50	Professional Accountants Ordinance	<p>S.32G – Immunity</p> <p>(2) No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Part.</p> <p>S.42H – Immunity</p> <p>No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Part.</p> <p>S.53 – Immunity of the members of the Council, etc.</p> <p>No personal liability shall be incurred by any of the members of the Council, the Registrar or any officer or employee of the Institute or</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			any person to whom any powers or duties of the Council is delegated in respect of any act done or any omission made by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Ordinance.
3.	95	Fire Services Ordinance	<p>S.19 - Director to be corporation sole for purposes of this Part</p> <p>(6) Neither the Director [i.e. Director of Fire Services Incorporated] nor any delegate of the corporation is personally liable in any legal proceedings arising out of an act done or omitted to be done in relation to the Fund if the act was done or omitted to be done in good faith for the purpose of giving effect to this Part.</p> <p>S.22 - Protection of members of Fire Services Department</p> <p>(2) Where a member has done or omitted to do any thing in connection with his duties which he is empowered to do or omit to do on the occasion of a fire or other calamity, and it is subsequently discovered that a fire or other calamity had not in fact occurred, such act or omission shall be deemed to have been done or omitted pursuant to this Ordinance if it was done or omitted in good faith and would have been lawfully done or omitted if a fire or other calamity had in fact occurred.</p>
4.	106	Telecommunications Ordinance	<p>S.39B – Immunity</p> <p>(1) No person to whom this subsection applies, acting in good faith, shall be personally liable for any civil liability or claim whatever in respect of any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.</p>
5.	113	Hospital Authority Ordinance	S.23 – Protection of members of Authority etc.

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>1) No member of the Authority or of any committee, acting in good faith, shall be personally liable for any act done or default made-</p> <p>(a) by or on behalf of the Authority; or</p> <p>(b) by or on behalf of any committee, in the performance or purported performance of the functions, or the exercise or purported exercise of the powers, imposed or conferred on the Authority under this Ordinance.</p>
6.	128	Land Registration Ordinance	<p>S.23A – Liability of Land Registrar and others</p> <p>If the Land Registrar or any other person employed in the Land Registry wilfully or negligently fails to comply with section 23, he shall be liable for any loss or damage thereby caused, but he shall not be liable in damages-</p> <p>(a) for registering, in good faith, any deed, conveyance or other instrument in writing, or judgment, notwithstanding any error, omission or defect therein;</p> <p>(b) for registering, in good faith, any deed, conveyance, or other instrument in writing, or judgment, which does not affect any parcels of ground, tenements or premises in Hong Kong; or....</p>
7.	132	Public Health Municipal Services Ordinance	<p>S.138 - Protection of public servants acting in good faith</p> <p>A public officer shall not be personally liable in respect of any act done by him in the execution or purported execution of this Ordinance and within the scope of his employment, if he did that act in the honest belief that his duty under this Ordinance required or entitled him to do it:</p> <p>Provided that nothing in this section shall be construed as relieving the Government from liability in respect of the acts of its servants.</p>
8.	155	Banking Ordinance	S.127 – Indemnity

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			(2) No liability shall be incurred by any chief executive, director, manager or employee of an authorized institution as a result of anything done or omitted to be done by him in good faith in the carrying out or purported carrying out of any directions given to him by the Manager of the institution.
9.	159	Legal Practitioners Ordinance	S.8AA – Appointment and powers of inspector (4) No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the exercise of any [<i>inspection and investigating</i>] power under this section.
10.	197	Essential Services Corps Ordinance	S.9 - Indemnity Every member of the Corps who, in good faith , purports to act in the exercise of any power conferred by sections 7 and 8, shall be and is hereby indemnified and discharged from any indictment, penalty, action or other proceeding for so doing.
11.	216	Consumer Council Ordinance	S.19 – Protection of members of Council and committees (1) No member or employee of the Council or of any committee of the Council shall be personally liable for any act done or default made- (a) by the Council; or (b) by any committee of the Council, acting in good faith in the course of the operations of the Council or of the committee.
12.	232	Police Force Ordinance	S.39A – Commissioner to be corporation sole for purposes of this Part (6) Neither the Commissioner [i.e. Commissioner of Police Incorporated] nor any delegate of the corporation is personally liable in any legal proceedings arising out of an act done or omitted to be done in relation

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			to the Police Welfare Fund if the act was done or omitted to be done in good faith for the purpose of giving effect to this Part.
13.	234	Prisons Ordinance	S.24D - Commissioner to be corporation sole for purposes of this Part (6) Neither the Commissioner [i.e. Commissioner of Correctional Services of Hong Kong Incorporated] nor any delegate of the corporation is personally liable in any legal proceedings arising out of an act done or omitted to be done in relation to the Fund if the act was done or omitted to be done in good faith for the purpose of giving effect to this Part.
14.	245	Public Order Ordinance	S.53 - Indemnity to persons acting under Ordinance Without prejudice to the provisions of section 46, no person acting in good faith under the provisions of this Ordinance shall be liable in damages or otherwise for any act done by him in pursuance or exercise of any obligation, duty or power imposed or conferred, or reasonably supposed to be imposed or conferred, on him by this Ordinance, if done in good faith , and done or purported to be done in the execution of his duty or for the public safety or for the defence of Hong Kong or for the enforcement of discipline or otherwise in the public interest, if such person be a person holding office under or employed in the service of the Crown in any capacity, whether naval, military, air force or civil, or be an officer or member of the Government Flying Service or a member of the Hong Kong Auxiliary Police Force acting as such or be a person acting under the authority of a person so holding office or so employed or such an officer or member.
15.	279	Education Ordinance	S.40BI – Rights and liability of manager and protection (2) A manager shall not incur any civil

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>liability in respect of anything done or omitted to be done by him in good faith in the performance or purported performance of any function of his office as the manager.</p> <p>(3) No civil proceedings shall be brought against a manager of a school for anything done or omitted to be done by or on behalf of the incorporated management committee of the school unless he has not acted in good faith in relation to the thing or omission.</p>
16.	331	Immigration Service Ordinance	<p>S.16 - Director to be corporation sole for purposes of this Part</p> <p>(6) Neither the Director [i.e. Director of Immigration Incorporated] nor any delegate of the corporation is personally liable in any legal proceedings arising out of an act done or omitted to be done in relation to the Fund if the act was done or omitted to be done in good faith for the purpose of giving effect to this Part.</p>
17.	342	Customs and Excise Service Ordinance	<p>S.19 - Commissioner to be corporation sole for purposes of this Part</p> <p>(6) Neither the Commissioner [i.e. Commissioner of Customs and Excise Incorporated] nor any delegate of the corporation is personally liable in any legal proceedings arising out of an act done or omitted to be done in relation to the Fund if the act was done or omitted to be done in good faith for the purpose of giving effect to this Part.</p> <p>S.21 – Protection of members and persons aiding them</p> <p>(1) A member shall not be liable for damages for, or in consequence of, any act done or omitted by him while he is exercising in good faith and in the course of his duty any power conferred upon him by law.</p> <p>(2) Any person may act in aid of a member who appears to be lawfully engaged in the</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>performance of his duty upon being requested by the members so to do and without being bound to inquire whether or not the member is acting lawfully or within the scope of his duty.</p> <p>(3) A person acting in good faith in aid of a member under subsection (2) shall not be liable for damages for or in consequence of any act which such first-mentioned person does or omits while so doing.</p>
18.	362	Trade Descriptions Ordinance	<p>S.30I – Protection of Commissioner and authorized officers</p> <p>(1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken in good faith in connection with the carrying out of a detention order.</p> <p>(2) The protection conferred by subsection (1) on the Commissioner and authorized officers in respect of any action taken or omitted to be taken in good faith in connection with the carrying out of a detention order shall not affect in any manner any liability of the Government for that action taken or omitted to be taken.</p>
19.	365	Employees Compensation Assistance Ordinance	<p>S.42 – Protection of members, etc. of Board</p> <p>(1) No-</p> <p>(a) member of the Board;</p> <p>(b) member of any committee of the Board;</p> <p>(c) employee of the Board; or</p> <p>(d) person exercising powers in association with the Board under section 5(2)(f), acting in good faith is personally liable for any act done or default made by-</p> <p>(i) the Board;</p> <p>(ii) any committee of the Board; or</p> <p>(iii) any such member, employee or person, in the exercise or performance (or the purported exercise or performance) of any of the powers or functions conferred or imposed on the Board under this Ordinance.</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
20.	389	Hong Kong Council on Smoking and Health Ordinance	<p>S.20 – Protection of members of Council and committees</p> <p>(1) No member or employee of the Council or of any committee of the Council shall be personally liable for any act done or default made-</p> <p>(a) by the Council; or</p> <p>(b) by any committee of the Council, acting in good faith in the course of the operations of the Council or of the committee.</p>
21.	391	Broadcasting Authority Ordinance	<p>S.16 – Indemnity</p> <p>No liability shall be incurred by-</p> <p>(a) the Authority;</p> <p>(b) any member of the Authority;</p> <p>(c) any member of any committee of the Authority; or</p> <p>(d) any public officer,</p> <p>as a result of any thing done or omitted to be done by the Authority or such member or officer in good faith in the exercise or purported exercise of powers conferred or functions imposed by or under this Ordinance, the Broadcasting Ordinance (Cap 562), Part IIIA of the Telecommunications Ordinance (Cap 106) or any other Ordinance.</p>
22.	397	The Ombudsman Ordinance	<p>S.18A – Immunity</p> <p>No person acting in good faith shall be personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.</p>
23.	398	Occupational Safety and Health Council Ordinance	<p>S.30 – Protection of members of Council</p> <p>(1) No-</p> <p>(a) member of the Council;</p> <p>(b) member of any committee of the Council;</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>(c) employee of the Council; (d) person exercising powers in association with the Council under section 5(2)(f), acting in good faith shall be personally liable for any act done or default made by-</p> <p>(i) the Council; (ii) any committee of the Council; (iii) any such member, employee or person, in the exercise and performance (or the purported exercise and performance) of the powers and duties conferred and imposed on the Council under this Ordinance.</p>
24.	411	Employees' Compensation Insurance Levies Ordinance	<p>S.28 – Protection of members, etc. of Board</p> <p>(1) No-</p> <p>(a) member of the Board; (b) member of any committee of the Board; (c) employee of the Board; (d) person exercising powers in association with the Board under section 5(2)(c), acting in good faith shall be personally liable for any act done or default made by-</p> <p>(i) the Board; (ii) any committee of the Board; (iii) any such member, employee or person, in the exercise and performance (or the purported exercise and performance) of the powers and functions conferred and imposed on the Board under this Ordinance.</p>
25.	415	Merchant Shipping (Registration) Ordinance	<p>S.6 – Protection of public officers</p> <p>(1) No public officer shall be personally liable for any damage, injury or loss suffered or incurred by any person as a result of any act done or omission made by the public officer in good faith in the exercise or performance or purported exercise or performance of any power, function or duty under this Ordinance.</p>
26.	423	Employees Restraining Ordinance	<p>S.32 – Protection of members and employees of Board [i.e. <i>Employees Restraining Board</i>]</p> <p>(1) No-</p> <p>(a) member of the Board;</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>(b) member of any committee of the Board;</p> <p>(c) employee of the Board;</p> <p>(d) person exercising powers in association with the Board under section 5(2)(g), acting in good faith shall be personally liable for any act done or default made by-</p> <p>(i) the Board;</p> <p>(ii) any committee of the Board; or</p> <p>(iii) any such member, employee or person, in the exercise and performance (or the purported exercise and performance) of the powers and functions conferred and imposed on the Board under this Ordinance.</p>
27.	425	Lord Wilson Heritage Trust Ordinance	<p>S.14 – Exemption from liability</p> <p>(1) No member of the Board of Trustees or of the Council shall be liable for the consequences of any act or omission of a person or body employed under this Ordinance in good faith.</p> <p>(2) No member of the Board of Trustees or of the Council, nor any person acting in accordance with the directions of the Board of Trustees or of the Council, shall be liable for any loss or damage resulting from any act done or omission made in carrying out their respective functions under this Ordinance, unless such act or omission was fraudulent, reckless or criminal or otherwise not in good faith.</p>
28.	426	Occupational Retirement Schemes Ordinance	<p>S.75 – Immunity</p> <p>(1) No personal liability shall be incurred by any person appointed under section 36(2) or public officer in respect of any act done, or omitted to be done, by him in good faith in the performance or purported performance of any function under this Ordinance.</p>
29.	428	Chiropractors Registration Ordinance	<p>S.26 – Protection of members of Council and committees</p> <p>(1) No member or employee of the Council</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>or of any committee of the Council shall be personally liable for any act done or default made-</p> <p>(a) by the Council; or</p> <p>(b) by any committee of the Council acting in good faith in the exercise or purported exercise of the powers conferred on the Council by, or by virtue of, this Ordinance.</p>
30.	443	The Legislative Council Commission Ordinance	<p>S.20 – Protection of members</p> <p>(1) No member acting in good faith shall be personally liable for any act done or default made by or on behalf of the Commission in the performance or purported performance of the functions, or the exercise or purported exercise of the powers imposed or conferred on the Commission under this Ordinance or any other enactment.</p> <p><i>[The Legislative Council Commission was formed for the purpose of providing administration support and services through the Secretariat]</i></p>
31.	460	Security and Guarding Services Ordinance	<p>S.9 – Privileges and immunities</p> <p>(1) No personal liability shall be incurred by any person in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance.</p>
32.	466	Dumping at Sea Ordinance	<p>S.22 – Protection of authorized officers</p> <p>(1) An authorized officer is not liable in civil or criminal proceedings for anything he does, or omits to do, in the purported performance of his functions under this Ordinance if the court is satisfied that it was done, or omitted, in good faith.</p>
33.	469	Occupational Deafness (Compensation) Ordinance	<p>S.34 – Protection of members etc. of Board and Medical Committee</p> <p>(1) No-</p> <p>(a) member of the Board;</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>(b) member of the Medical Committee; (c) member of any committee of the Board; (d) employee of the Board, acting in good faith is personally liable for any act done or default made by-</p> <p>(i) the Board; (ii) the Medical Committee; (iii) any committee of the Board, in the performance or purported performance of any function of the Board, the Medical Committee or such committee, as may be appropriate, under this Ordinance.</p>
34.	472	Hong Kong Arts Development Council Ordinance	<p>S.17 – Protection of members, employees, etc.</p> <p>(1) A member or employee of the Council or of any committee of the Council acting in good faith is not personally liable for any act done or default made-</p> <p>(a) by the Council; (b) by a committee of the Council; or (c) by the member or employee, in the carrying out or purported carrying out of the functions, powers or duties under this Ordinance.</p>
35.	473	Land Survey Ordinance	<p>S.33 – Limitation of public liability</p> <p>(2) No act or omission by the Authority or by any public officer acting under his direction, if it were done or made in good faith in the performance or purported performance of his functions under this Ordinance or for the purpose of enforcing this Ordinance, subjects the Authority or such public officer personally to any action, liability, claim or demand whatsoever.</p> <p>S.34 - Protection of members, etc. of the Committee and the Disciplinary Board</p> <p>No-</p> <p>(a) member of the Committee; (b) member of a Disciplinary Board; or (c) employee of the</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			Committee, acting in good faith is personally liable for any act or omission without negligence of- (i) the Committee; (ii) the Disciplinary Board; or (iii) any such member or employee, in the performance or purported performance of any function under this Ordinance.
36.	480	Sex Discrimination Ordinance	S.68 – Protection of members of Commission etc. (1) No person to whom this subsection applies, acting in good faith , shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Commission under this Ordinance.
37.	483	Airport Authority Ordinance	S.45 – Immunity No personal liability shall be incurred by a member of the Authority in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance (including a function duly delegated or sub-delegated under this Ordinance).
38.	485	Mandatory Provident Fund Schemes Ordinance	S.42B – Immunity No civil liability shall be incurred by the Authority [i.e. <i>Mandatory Provident Fund Schemes Authority which regulates MPF schemes and trustees etc.</i>], a director of the Authority or an employee of the Authority in respect of anything done, or omitted to be done, by the Authority, director or employee, as the case may be, in good faith in the performance or purported performance of any function under this Ordinance.
39.	489	Legal Aid Services	S.7 – Protection to members

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
		Council Ordinance	(1) A member who acts in good faith and in the course of the operation of the Council is not personally liable for an act or omission of the Council.
40.	505	Social Workers Registration Ordinance	S.13 – Protection of members of Board, etc. (1) No person to whom this subsection applies, acting in good faith , shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Board under this Ordinance.
41.	511	Estate Agents Ordinance	S.54 – Immunity (1) No personal liability shall be incurred by any person in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance (including a function duly delegated under this Ordinance). (2)(c) No liability shall be incurred by any person by reason only of something said or otherwise done by him in good faith at or in connection with any investigation, inquiry or proceedings referred to in paragraph (a).
42.	517	Auxiliary Medical Service Ordinance	S.13 – Protection of members (1) A member shall not be liable for damages for, or in consequence of, any lawful act done, or omitted to be done, by him in good faith while he is on duty and acting in the course of that duty. S.22 – Provisions relating to cadets (1) A cadet shall not be liable for damages for, or in consequence of, any act done, or omitted to be done, by him in good faith while taking part in any activity of the Cadet Corps or undergoing any training as a cadet,

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			but nothing in this subsection shall affect any civil liability of the Government.
43.	518	Civil Aid Service Ordinance	<p>S.13 – Protection of members</p> <p>(1) A member shall not be liable for damages for, or in consequence of, any lawful act done, or omitted to be done, by him in good faith while he is on duty and acting in the course of that duty.</p> <p>S.22 – Provisions relating to cadets</p> <p>(1) A cadet shall not be liable for damages for, or in consequence of, any act done, or omitted to be done, by him in good faith while taking part in any activity of the Cadet Corps or undergoing any training as a cadet, but nothing in this subsection shall affect any civil liability of the Government.</p>
44.	524	Long-Term Prison Sentences Review Ordinance	<p>Sch. 1 – Provisions applicable to Board of review</p> <p>7. Liability of members and others</p> <p>No act done or omitted to be done by the Board, and no act done or omitted to be done by any member or by any person acting under the direction of the Board, if the act was done or omitted to be done in good faith for the purpose of giving effect to this or any other Ordinance, makes a member or a person so acting personally liable to any claim arising from having done or omitted to do that act.</p>
45.	528	Copyright Ordinance	<p>S.190 – Protection of Commissioner and authorized officers</p> <p>(1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken in good faith in connection with the carrying out of any of their duties under this Part.</p> <p>(2) The protection conferred by subsection (1) on the Commissioner and authorized</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>officers in respect of any action taken or omitted to be taken in good faith in connection with the carrying out of those duties shall not affect in any manner any liability of the Government for that action taken or omitted to be taken.</p> <p>S.272 - Protection of Commissioner and authorized officers</p> <p>(1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken in good faith in connection with the carrying out of a detention order.</p>
46.	529	Veterinary Surgeons Registration Ordinance	<p>S.27 – Protection of member of Board and committees</p> <p>(1) No member or employee of the Board or of any committee of the Board shall be personally liable for any act done or default made-</p> <p>(a) by the Board; or</p> <p>(b) by any committee of the Board, acting in good faith in the exercise or purported exercise of the powers conferred on the Board by, or by virtue of, this Ordinance.</p>
47.	541	Electoral Affairs Commission Ordinance	<p>S.14 – Immunity</p> <p>(1) No liability shall be incurred by-</p> <p>(a) the Commission in respect of anything done, or omitted to be done, by it in good faith in the performance of a function or the purported performance of a function under this or any other Ordinance; or</p> <p>(b) any other person in respect of anything done, or omitted to be done, by him in good faith in the performance of a function or the purported performance of a function under this Ordinance.</p>
48.	544	Prevention of Copyright Piracy Ordinance	<p>S.33 – Protection of the Commissioner, authorized officers and persons assisting them</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			(1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken by them in good faith in the exercise of their powers or the performance of their duties under this Ordinance.
49.	548	Merchant Shipping (Local Vessels) Ordinance	S.86 - Indemnity against damage, etc. No action in respect of any damage to property or injury to person shall lie against the Director or any other officer performing or exercising any function or power under section 52, 55, 56 or 68 in good faith . <i>[This provision is not yet in operation]</i>
50.	553	Electronic Transactions Ordinance	S.51 – Protection of public officers (1) No liability is incurred by the Government or a public officer by reason only of the fact that a recognition is granted, renewed, revoked, suspended or reinstated under Part VII. (2) Without prejudice to subsection (1), no civil liability is incurred by a public officer in respect of anything done or omitted to be done by the public officer in good faith in the performance or purported performance of any function under a Part other than Part VII.
51.	561	Human Reproductive Technology Ordinance	S.12 – Protection of members of Council, etc (1) No person to whom this subsection applies, acting in good faith , shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Council under this Ordinance.
52.	564	Witness Protection Ordinance	S.16 - Officers protected from suit in respect of decisions under Ordinance The approving authority, officers working

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			with him and any other public officer or person performing functions in relation to the witness protection programme are not liable to any action, suit or proceedings (including criminal proceedings) under a law in force in Hong Kong in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Ordinance.
53.	565	Hong Kong Science and Technology Parks Corporation Ordinance	S.32 – Immunity Subject to section 31(5), no personal liability shall be incurred by any individual person in respect of anything done or omitted to be done by him in good faith and with reasonable care in the performance or purported performance of any function under this Ordinance.
54.	570	Fixed Penalty (Public Cleanliness Offences) Ordinance	S.15 – Protection for public officers acting in good faith (1) A public officer shall not be personally liable in respect of any act done by him while exercising any of his powers under this Ordinance and within the scope of his employment, if he did that act in the honest belief that he was entitled to do it.
55.	571	Securities and Futures Ordinance	S.22 – Immunity (1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by- (a) a recognized exchange company; or (b) any person acting on behalf of a recognized exchange company, including- (i) any member of the board of directors of the company; or (ii) any member of any committee established by the company, in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the company under section 21 or in the performance or purported performance of its functions under its rules.

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

Cap No.	Title	Section
		<p>(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized exchange company of which it is a controller, the company's duties under section 21 or under its rules are not applicable to the company in respect of anything done or omitted to be done in good faith by the company in compliance with the instruction, direction or request.</p> <p>S.39 – Immunity, etc.</p> <p>(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by-</p> <ul style="list-style-type: none"> (a) a recognized clearing house; or (b) any person acting on behalf of a recognized clearing house, including- <ul style="list-style-type: none"> (i) any member of the board of directors of the clearing house; or (ii) any member of any committee established by the clearing house, <p>in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the clearing house under sections 38 and 47 or in the performance or purported performance of its functions under its rules, including its default rules.</p> <p>(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

Cap No.	Title	Section
		<p>instruction or direction or makes a request to a recognized clearing house of which it is a controller, the clearing house's duties under sections 38 and 47 or under its rules (including its default rules) are not applicable to the clearing house in respect of anything done or omitted to be done in good faith by the clearing house in compliance with the instruction, direction or request.</p> <p>(3) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by-</p> <ul style="list-style-type: none"> (a) a person performing, by virtue of a delegation under the default rules of a recognized clearing house, a function of the clearing house in connection with any default proceedings; or (b) any person acting on behalf of a person referred to in paragraph (a), including- <ul style="list-style-type: none"> (i) any member of the board of directors of that person; or (ii) any member of any committee established by that person, <p>in respect of anything done or omitted to be done in good faith in the performance and purported performance of that function.</p> <p>S.64 – Immunity etc.</p> <p>Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>otherwise, shall be incurred by-</p> <ul style="list-style-type: none"> (a) a recognized exchange controller; or (b) any person acting on behalf of a recognized exchange controller, including- <ul style="list-style-type: none"> (i) any member of the board of directors of the recognized exchange controller; or (ii) any member of any committee established by the recognized exchange controller, <p>in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the controller under section 63 or in the performance or purported performance of its functions under its rules.</p> <p>S.81 – Immunity, etc</p> <p>(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by-</p> <ul style="list-style-type: none"> (a) a recognized investor compensation company; or (b) any person acting on behalf of a recognized investor compensation company, including- <ul style="list-style-type: none"> (i) any member of the board of directors of the company; or (ii) any

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>member of any committee established by the company, in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties to which this subsection applies.</p> <p>S.92 - Additional powers of Commission-restriction notices</p> <p>(13) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by-</p> <ul style="list-style-type: none"> (a) a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company; (b) an officer or employee of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company; (c) an exchange participant; or (d) a clearing participant, <p>in respect of anything done or omitted to be done in good faith in compliance or purported compliance with a restriction notice.</p> <p>S.380 – Immunity</p> <p>(1) A person shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of any act done or any omission made by</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>reason only of-</p> <p>(a) his performance or purported performance in good faith of any function (including that under each of the paragraphs of section 5(1)) under any of the relevant provisions; or</p> <p>(b) his furtherance or purported furtherance in good faith of any regulatory objective, or performance or purported performance in good faith of any function, pursuant to or consequent upon any written direction given by the Chief Executive under section 11.</p>
56.	581	Deposit Protection Scheme Ordinance	<p>S.47 – Immunity</p> <p>(1) The Board [i.e. <i>Hong Kong Deposit Protection Board, a non-governmental body which administers the protection scheme of the Ordinance</i>], or a person who is, or is acting as, a member, or a related person, of the Board, is not liable for anything done, or omitted to be done, in good faith in the performance, or purported performance, of the functions of the Board.</p> <p>(2) The Monetary Authority, or a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap 66) to assist the Monetary Authority, is not liable for anything done, or omitted to be done, in good faith in the performance, or purported performance, of the functions imposed on the Authority by or under this Ordinance.</p>
57.	584	Clearing and Settlement Systems Ordinance	<p>S.51 – Immunity</p> <p>(1) No civil liability shall be incurred by any of the following persons as a result of</p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
			<p>anything done or omitted to be done by him in good faith in the exercise or purported exercise of any functions conferred or imposed by or under this Ordinance, namely—</p> <ul style="list-style-type: none"> (a) any public officer; (b) any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap 66) to assist the Monetary Authority; or (c) any person appointed under section 9(3). <p>(2) No civil liability shall be incurred by any of the following persons as a result of anything done or omitted to be done by him in good faith in the carrying out or purported carrying out of any directions given to him by the Monetary Authority, namely—</p> <ul style="list-style-type: none"> (a) any system operator or settlement institution of a designated system, or any employee of such person; and (b) in addition, where the system operator or settlement institution of a designated system is a corporation, any officer of the corporation.
58.	585	Land Titles Ordinance	<p>S.11 – Immunity</p> <p>(1) No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.</p> <p><i>[This provision is not yet in operation]</i></p>

BMO Bill**Table of statutory provisions with reference to the expression “in good faith”**

	Cap No.	Title	Section
59.	1150	Hong Kong Council for Academic Accreditation Ordinance	<p>S.21 – Protection of members, employees, etc</p> <p>(1) A member or employee of the Council or of any committee of the Council or any person appointed by the Council under section 5(a) acting in good faith shall not be personally liable for any act done or default made-</p> <ul style="list-style-type: none"> (a) by the Council; (b) by any committee of the Council; or (c) by any such member, employee or person, in the exercise or purported exercise of the powers conferred or performance or purported performance of functions imposed under this Ordinance.