

**Legislative Council Panel on Home Affairs
Meeting on 12 November 2004**

Winding up of an Owners' Corporation

PURPOSE

1. This paper informs Members of the latest developments of the Albert House case in Southern District and the follow-up actions being taken by the Administration.

BACKGROUND

2. Built in 1973, Albert House is a 26-storeyed composite building located in Aberdeen. A fatal accident occurred in the building in 1994 and the court ruled in 1999 that six parties (one being the owners' corporation (OC) of Albert House) should be held jointly and severally liable for paying damages to the plaintiffs.

3. The major owner of the building, being one of the parties remaining solvent, had already paid the full damages for itself and on behalf of the other five defendants. The major owner then applied to the court to seek contribution from the OC of Albert House. The court ruled in January 2004 that the solvent parties, including the OC of Albert House, had to contribute to the whole sum of compensation in their respective shares. For the OC, the share together with legal costs is approximately \$25 million. On 8 November 2004, the High Court ordered the OC of Albert House to wind up as it is unable to pay the judgment debts.

ACTION TAKEN BY HOME AFFAIRS DEPARTMENT

4. The Home Affairs Department (HAD) has been in close contact with the owners of Albert House and its management company to ensure that the daily management of the building is not affected. A meeting with the owners, former management committee members and the management company was held on 9 November 2004. A briefing for

the owners has also been held on 10 November 2004 where representatives of the Official Receiver's Office and a voluntary lawyer were present to explain to owners the legal procedures for winding up of an OC and the liabilities.

5. We are aware that some of the owners have genuine financial difficulties in paying their share of contribution. Some owners, especially those elderly ones, have serious concern over the status of their flats and future housing arrangements. We have been in contact with the Social Welfare Department and the Housing Department so that they could offer assistance to these owners where necessary.

OWNERS' CORPORATIONS TO PROCURE THIRD PARTY RISKS INSURANCE

6. The Albert House case has highlighted to OCs and property owners the importance of proper management and maintenance of their buildings. It has also highlighted the importance of procuring third party risks insurance.

7. HAD has all along encouraged OCs and owners to procure third party risks insurance to protect the owners' interests. The Building Management (Amendment) Ordinance 2000 introduced a new section to require that an OC shall procure and keep in force in relation to the common parts of the building a policy of insurance in respect of third party risks. It will be an offence if the OC does not comply with this legal requirement.

8. Since passage of the Building Management (Amendment) Ordinance 2000, HAD has been in active discussion with the industry, through the Hong Kong Federation of Insurers, to work out the implementation details. The subsidiary legislation relating to third party risks insurance is a very complicated one which needs careful consideration. As far as we are aware, most of the properly managed buildings have already procured third party insurance. However, our main concern is with buildings which lack proper building management and maintenance. Insurance companies will find it difficult to provide coverage for them. There are also other issues like the setting of the

minimum amount for the insurance policies, coverage for unauthorised building works, provisions relating to restrictions in the insurance policies, etc. which also require careful consideration.

9. Our current plan is to introduce the Building Management (Amendment) Bill, with the subsidiary legislation on insurance, into the Legislative Council in April 2005. Salient features of the Amendment Bill and the draft subsidiary legislation are set out in Annex A. The provisions on third party risks insurance will come into effect once the related subsidiary legislation has been passed.

10. In addition to the proposal to mandate the procurement of third party risks insurance, the Building Management (Amendment) Bill will also include a series of proposals which are aimed at assisting OCs to perform their duties of building management and offering better protection to property owners.

Home Affairs Department
November 2004

Annex A

**Procurement of Third Party Risks Insurance
by Owners' Corporations
Under the Building Management Ordinance**

1. This paper outlines the proposed amendments to the Building Management Ordinance (BMO) (Cap.344) and contents of the draft regulation on third party risks insurance to be procured by owners' corporations (OCs).

Background

2. The Legislative Council enacted the Building Management (Amendment) Bill in 2000 which amended, inter alia, section 28 and section 41 of the BMO regarding the requirements for OCs to procure third party risks insurance. The amended section 28 and section 41 of the BMO is at Appendix I. These provisions will come into effect after the making of a set of regulations to set out the detailed requirements for the procurement of third party risks insurance by OCs.

3. Since the enactment of the Building Management (Amendment) Ordinance 2000, HAD has been in active discussion with the Hong Kong Federation of Insurers (HKFI) to work out how best to implement the legislation. The proposals below have incorporated most of HKFI's comments.

Proposed Amendments to the BMO

4. Section 28 of the BMO requires OCs to procure third party risks insurance. The present provision requires that an OC shall procure on behalf of the corporation and the occupiers and owners of the building, in relation to the building and all parts thereof, including the common parts and the property of the corporation a policy of third party risks insurance.

5. There are two problems with the present provision. First, "occupiers", as defined in section 2 of the BMO to include tenants or any lawful occupants, does not have an "insurable" interest in the common

parts or the property of the OC. Another problem is that the inclusion of the term “and all parts thereof” in effect means that apart from the common parts, all of the individual units in a building would require to be insured against third party risks by the OC. We consider that every owner of a building should be responsible for his own unit. It would be unreasonable to require the OC and the other owners to bear the third party liability which is incurred in an individual unit. We therefore propose to amend section 28 of the BMO so that an OC shall be required to procure and keep in force an insurance policy on behalf of the owners in respect of third party risks for the common parts of the building only.

6. Any third party risks insurance policy relating to the common parts of the building shall be taken out in the joint names of the OC and the owners. There may, however, be a significant number of owners and the owners may change from time to time. As a practical matter, it is likely that the policy will be taken out by the OC for itself and as an agent for and on behalf of the owners of the building from time to time. As such, we propose to include a new subsection under section 28 to expressly authorise the OC to take out insurance as agent for and on behalf of the owners of the building from time to time.

7. Section 28, as it now stands, only applies to buildings where an OC has been formed. However, it is also our concern that regarding buildings which have yet to establish an OC under the BMO, owners of these buildings are most in need of an insurance to cover third party liability. We have been considering whether the owners could jointly procure a third party risks insurance in respect of the common parts of the building.

Proposed Contents of the Regulation

Coverage

8. Our intention is that the policy on third party risks insurance to be procured by an OC is not required to cover any liability covered by the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap.272), statutory employees’ compensation, contractual liability. Such policy is also not required to cover any liability arising out of a breach of duty

imposed by law in relation to unauthorized buildings works or dangerous hillsides.

Minimum Insured Amount

9. Our current plan is to stipulate the minimum insured amount of each policy to be not less than \$10 million for a period of 12 months in respect of the third party bodily injury and death.

Notification to Owners

10. The insurance company shall issue a notice of insurance to the OC and the OC shall display this notice in a prominent location in the building. Furthermore, we will require OCs to register with the Land Registrar the name of the insurance company from which third party risks policy has been procured and the period of the policy.

Protection for Owners

11. An insurance company may introduce restrictions in the insurance policy of the OCs (like the number of claims that may be made during the period, the age of the building, the occupancy of the building, and use of the building, etc.). We are considering whether provisions should be included in the regulation to deal with such matters.

12. We are also considering adding provisions to the effect that if an OC is wound up, this will not affect its liability to a third party already incurred when the policy is in effect.

Way Forward

13. We will continue to work with the HKFI on the drafting of the regulation. The Administration will introduce into the Legislative Council a new Building Management (Amendment) Bill, together with the draft regulation on insurance in April 2005.

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Appendix I

"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."

Chapter: 344 Title: BUILDING MANAGEMENT
ORDINANCE
Section: 41 Heading: **Power to make regulations**

The Chief Executive in Council may make regulations for any of the following matters- (Amended 34 of 1999 s. 3)

(a) the fees payable in respect of the registration or filing of any documents submitted to the Land Registrar under this Ordinance; (Amended 8 of 1993 s. 3)

(b) the fees payable for the inspection or copying of any document so registered or filed;

(c) the fees payable for the issue of any certificate under this Ordinance;

(ca) the effecting of policies of insurance in respect of third party risks and against fire and other risks by corporations with insurance companies and the conditions and requirements which are to apply in respect of those policies, including without limitation-

(i) the conditions and requirements in respect of policies which are binding on corporations and the occupiers and owners of a building;

(ii) the conditions and requirements in respect of policies which are binding on insurance companies;

(iii) the conditions to policies which are to be void and of no effect;

(iv) the duty of insurance companies to satisfy judgments against corporations and the occupiers and owners of a building in respect of third party risks;

(v) the effect of the insolvency and bankruptcy of corporations and the occupiers and owners of a building in respect of claims by third parties;

(vi) the effect of the dissolution of a corporation in respect of claims by third parties;

- (vii) the avoidance of the imposition by insurance companies of restrictions on the scope of policies covering third party risks;
- (viii) the conditions and requirements as to the minimum amount of insurance cover;
- (ix) the conditions and requirements as to the system of accounts to be kept and the returns to be furnished by insurance companies;
- (x) the obligations of third parties; (Added 69 of 2000 s. 20)
- (d) prescribing anything which is to be or may be prescribed under this Ordinance;
- (e) the better carrying out of the purposes of this Ordinance.