

立法會
Legislative Council

LC Paper No. CB(2)364/07-08
(These minutes have been seen by
the Administration)

Ref : CB2/SS/11/06

**Subcommittee on Building Management
(Third Party Risks Insurance) Regulation**

**Minutes of meeting
held on Tuesday, 23 October 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon TAM Heung-man

Public officers attending : Home Affairs Department

Mr Isaac CHOW
Deputy Director of Home Affairs (2)

Miss Linda SO
Assistant Director of Home Affairs (4)

Department of Justice

Mr Lawrence PENG
Senior Assistant Law Draftsman

Ms Lonnie NG
Senior Government Counsel

Attendance by Invitation : The Hong Kong Federation of Insurers

Mr William NG
Deputy Chairman of Accident Insurance Association

Mr Jimmy NG
Committee Member of Accident Insurance Association

The Hong Kong Association of Property Management Companies Limited

Mr Alkin KWONG
1st Vice President

Mr Raymond CHAN
Vice President

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Alice LEUNG
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Meeting with the Administration and deputations

[Legislative Council Brief : File Ref : HAD/HQ/CR/20/3/1(C), LC Paper Nos. LS121/06-07, CB(2)26/07-08(03)-(04), CB(2)83/07-08(01) & CB(2)127/07-08(01)]

The Subcommittee received views from representatives of the Hong Kong Federation of Insurers and the Hong Kong Association of Property Management Companies Limited (HKAPMC).

(Post-meeting note: The written submission from HKAPMC tabled at the meeting was issued to members vide LC Paper CB(2)143/07-08(01) on 24 October 2007.)

Action

(Index of proceedings attached at **Annex**).

2. The Subcommittee noted that the following five organizations had provided written submissions -

- (a) the Hong Kong Institute of Housing [LC Paper No. CB(2)127/07-08(02)];
- (b) the Swire Properties Limited [LC Paper No. CB(2)132/07-08(01)];
- (c) the Chartered Institute of Housing Asian Pacific Branch [LC Paper No. CB(2)134/07-08(01)];
- (d) the Hong Kong Institute of Surveyors [LC Paper No. CB(2)134/07-08(02)]; and
- (e) the Housing Managers Registration Board [LC Paper No. CB(2)143/07-08(02)].

(Post-meeting note: The written submissions from the Real Estate Developers Association of Hong Kong, Hong Kong Housing Society and Hong Kong Institute of Real Estate Administration, which were received after the meeting, were issued to members vide LC Paper CB(2)153/07-08 (01) to (03) on 24 October 2007.)

Admin

3. The Administration was requested to provide information and written response to the following concerns and issues raised by members -

- (a) to address the concern that an insurance company may refuse to pay compensation to third parties under the mandatory insurance policy of an owners' corporation (OC) on the ground that the OC has not exercised reasonable diligence under section 6(3) or has not disclosed information of material nature under section 9(5);
- (b) to consider whether an anti-avoidance provision similar to the relevant provision of the Motor Vehicles Insurance (Third Party Risks) Ordinance can be included in the Regulation;
- (c) to give examples of the types of information which are required to be disclosed under section 9(5) and to consider the suggestion whether section 9(5) could be deleted;
- (d) to compile a table setting out the statutory duties of the management committee of an OC in respect of displaying various notices/documents and the respective penalty provisions for failure to perform such duties; and

Action

- (e) to give a clear definition of unauthorized building works (UBWs) and provide information on the Buildings Department's enforcement policy against UBWs.

II. Any other business

Date of next meeting

4. Members noted that the next meeting of the Subcommittee would be held on Monday, 29 October 2007 at 2:30 pm to continue discussion with the Administration.

5. There being no other business, the meeting ended at 4:32 pm.

Council Business Division 2
Legislative Council Secretariat
15 November 2007

**Proceedings of the meeting of
Subcommittee on Building Management
(Third Party Risks Insurance) Regulation
on Tuesday, 23 October 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject | Action required |
|-----------------|---|---|-----------------|
| 000000 - 000427 | Chairman | Opening remarks | |
| 000428 - 000842 | The Hong Kong Federation of Insurers (HKFI) | Presentation of views as follows - <ul style="list-style-type: none"> - a consensus view of HKFI members that the mandatory third party risks insurance policy should not cover unauthorized building works (UBWs); - there was effective competition in the market as there were more than 80 insurance companies providing third party risks insurance for buildings; - the level of insurance premium depended on many factors e.g. the age of the building, the maintenance conditions and claims experience, etc; - all the public liability claims received by HKFI members between 2004 to 2006 were below \$10 million; and - the insured amount of the third party risks insurance for most of the buildings was in the range of \$5 to \$10 million. | |
| 000843 - 001419 | The Hong Kong Association of Property Management Companies Limited (HKAPMC) | Presentation of views [LC Paper No. CB(2)143/07-08(01)]. | |
| 001420 - 002044 | Mr WONG Kwok-hing Chairman Representatives of HKFI and HKAPMC | Discussion on the procurement of third party risks insurance for small-sized single buildings and buildings that owners corporations (OCs)/owners' committees had not been set up, the suggestion of insuring those buildings that had difficulties to get insurance coverage due to the existence of UBWs under a bulk insurance policy, and the suggestion of a tiered structure of the minimum insured amount. | |

| Time marker | Speaker | Subject | Action required |
|-----------------|---|---|--|
| | | <p>On the statutory minimum insured amount, HKFI responded that the level of insurance premium would be dropped by about 10% to 25% if the statutory minimum insured amount was set at \$5 million instead of \$10 million.</p> | |
| 002045 - 003121 | <p>Ms Miriam LAU Representatives of HKFI Chairman Admin</p> | <p>Discussion on the concern whether the statutory minimum insured amount of \$10 million was adequate, and whether there was any anti-avoidance provision under the Regulation which was similar to that of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272).</p> <p>HKFI's response to Ms Miriam LAU's enquiry that the level of insurance premium would be increased by -</p> <ul style="list-style-type: none"> (a) 20% to 25% if the minimum insured amount was increased to \$15 million; (b) 30% to 50% if the minimum insured amount was increased to \$20 million; and (c) 100% or above if the minimum insured amount was increased to \$30 million. | <p>Admin to provide response (para. 3 (b) of minutes)</p> |
| 003122 - 004512 | <p>Ms Audrey EU Representatives of HKFI and HKAPMC Chairman</p> | <p>Discussion on the procurement of third party risks insurance for buildings with UBWs, in particular those buildings that had UBWs in the common parts of the buildings which were built by the developers, the suggestion of providing a bulk insurance policy for buildings that could not get third party risks insurance coverage, and competition in the third party insurance market.</p> <p>As regards Ms Audrey EU's enquiry on whether buildings with UBWs could procure third party risks insurance, HKFI responded that, generally speaking, insurance companies would advise their clients to remove UBWs in their buildings and remind them that the insurance policies would not cover liabilities in relation to UBWs.</p> | |

| Time marker | Speaker | Subject | Action required |
|-----------------|--|--|---|
| 004513 - 005811 | Miss CHOY So-yuk Chairman Representatives of HKFI Mr Albert HO Admin | Discussion on issues relating to the procurement of third party risks insurance for the buildings that had UBWs in the common parts of the buildings which were built by the developers, whether mutual aid committees could represent owners of the building to take out insurance policy for buildings, and the Buildings Department's (BD) policy in respect of the removal of UBWs. The Administration was requested to give a clear definition of UBWs and provide information on BD's enforcement policy against UBWS. | Admin to provide response (para. 3 (e) of minutes) |
| 005812 - 010219 | Mr Bernard CHAN Representatives of HKFI | Clarification on the normal practice of insurance companies that inspections of buildings would not be conducted by insurance companies prior to their issuance of public liability insurance policies. | |
| 010220 - 011525 | Mr Albert HO Representatives of HKFI Admin Chairman | Discussion on the following concern and issues raised by Mr Albert HO - - the percentage of buildings that had been rejected by insurance companies for applications for third party risks insurance; - in view that "to take a reasonable duty of care to maintain the building in good condition" was a standard clause in the insurance policy, whether it was a common case for an insurance company to claim that the policy was void on the ground that OC/property management company had not take a reasonable duty of care to maintain the building in good condition; and - duty of insurance companies to pay judgment compensation to the third party under section 8(2). | |
| 011526 - 012159 | Miss TAM Heung-man Representatives of HKAPMC Mr Bernard CHAN | Discussion on whether the statutory minimum insured amount of \$10 million was sufficient, and the problem of UBWs. | |

| Time marker | Speaker | Subject | Action required |
|-----------------|--|---|--|
| 012200 - 013114 | Chairman Admin | <p>The Administration's response to the concerns and views raised by members and deputations as follows -</p> <ul style="list-style-type: none"> - the statutory minimum insured amount of \$10 million was considered appropriate; - the main objective of introducing a new provision in the Building Management (Amendment) Ordinance 2000 requiring OCs to procure third party risks insurance was to, as with other provisions in the Building Management Ordinance, promote better building management; - the Administration's policy on UBWs was that all UBWs, which were unlawful structure, should be removed and demolished. Owners should be encouraged to properly manage and maintain their buildings and remove any UBWs; and - the Administration had to take prudent consideration on any suggestion that involved using public funds. | |
| 013115 - 015557 | Ms Audrey EU Admin Chairman Mr Albert HO Representatives of HKFI and HKAPMC | <p>Discussion on the concern over the interpretation of "reasonable diligence" under section 6(3) and the definition of "the non-disclosure of a material fact" and "a representation of fact which was false in some material particulars" under section 9(5), and the suggestion of deleting section 9(5).</p> <p>The Administration's response as follows -</p> <ul style="list-style-type: none"> - section 6(4) had provided an interpretation of "reasonable diligence"; and - section 9 was modeled on Cap. 272. | Admin to provide response (para. 3 (a), 3 (b) and 3 (c) of minutes) |

| Time marker | Speaker | Subject | Action required |
|--------------------|--|--|---|
| 015558 - 020002 | Mr WONG Kwok-hing Chairman Admin | The Administration was requested to compile a table setting out the statutory duties of the management committee of an OC in respect of displaying various notices/documents and the respective penalty provisions for failure to perform such duties. | Admin to provide response (para. 3 (d) of minutes) |
| 020003 - 020155 | Admin Chairman | Administration's supplementary information on Albert House case. | |

Council Business Division 2
Legislative Council Secretariat
15 November 2007