

立法會
Legislative Council

LC Paper No. CB(2)572/07-08
(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 Monday, 29 October 2007, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH

Members absent : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, GBS, JP
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

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

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I. Meeting with the Administration

[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) & CB(2)172/07-08(01)]

The Subcommittee deliberated the Administration's responses to issues raised at the meeting on 16 and 23 October 2007 respectively (index of proceedings attached at **Annex**).

Admin 2. In response to members' concern over the interpretation of the phrase "to exercise reasonable diligence" under section 6(3) and (4), the Administration agreed to repeal section 6(3) and (4) of the Regulation.

Admin 3. In response to Mr WONG Kowk-hing's view that the penalty for members of the management committee (MC) of an owners' corporation (OC) for failure to display the notice of insurance under section 5 was too severe, the Administration undertook to consider the Chairman's suggestion of reducing the level of fine from level 2 (i.e. \$5,000) to level 1 (i.e. \$2,000).

Admin 4. At the Chairman's request, the Administration undertook to consider whether the definition of "statutory instrument" under the Regulation should be amended to extend its scope for the sake of protecting OCs.

(Post-meeting note: The English version of the Administration's response to members' concern and suggestion referred to in paragraph 2 to 4 and the amendments to be proposed by the Administration to the Regulation were issued to members vide LC Paper No. CB(2)205/07-08(01) on 30 October 2007.)

5. On members' concern over the affordability of owners of small-sized old

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buildings, the Administration indicated that it could consider deferring the implementation date if it was anticipated that owners of these buildings had great difficulties in complying with the mandatory requirement.

6. The Chairman suggested that, to plug any possible loophole, the Administration should consider imposing penalty on an OC in the next phase of implementation, in addition to the MC concerned, for failure to procure third party risks insurance in respect of the common parts of its building.

Admin 7. On the issue of unauthorized buildings works (UBWs), Mr WONG Kwok-hing expressed his view that BD should consider implementing a computerized system to register UBWs for public inspection. The Administration was requested to convey Mr WONG's suggestion to BD for consideration.

Admin 8. The Administration was also requested to provide written response and information on the following issues raised by members at the meeting -

- (a) in the case that owners of the building had voted against the proposal for taking out a third party risks insurance at the owners' annual general meeting, to advise whether members of the management committee could have the authority to procure such insurance on behalf of the OC of the building on the ground that it was mandatory for an OC to take out a third party risks insurance policy under the Regulation;
- (b) to elaborate more on the interpretation of the phrase "to exercise reasonable diligence"; and
- (c) as regards the remaining 12% of 15 000 buildings that had formed OCs but had not procured any third party risks insurance policies, to provide information on the age of the buildings, the number of flats in that buildings and the location of the buildings etc., if available, for members' reference.

(Post-meeting note: The English version of the Administration's response was issued to members vide LC Paper No. CB(2)240/07-08(01) on 1 November 2007.)

Admin 9. The Administration was requested to provide the Subcommittee with the amendments to be proposed by the Administration by noon on Tuesday, 30 October 2007 for circulation to members. The Chairman concluded that, if members did not have any comment on the proposed amendments, the Subcommittee would make a report to the House Committee on 2 November 2007 recommending that, subject to the amendments to be proposed by the Administration, the Regulation be supported. The Chairman added that, given that the deadline for giving notice of amendment to the Regulation was 31 October 2007, he would give notice of moving a motion to repeal the Regulation as a precaution that Members might wish to do so after

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perusal of the written report.

II. Any other business

10. There being no other business, the meeting ended at 4:55 pm.

Council Business Division 2
Legislative Council Secretariat
10 December 2007

**Proceedings of the meeting of
Subcommittee on Building Management
(Third Party Risks Insurance) Regulation
on Monday, 29 October 2007, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 001654	Chairman Admin	Opening remarks Briefing by the Administration on its response to members' concerns and issues raised at the meeting on 23 October 2007 [LC Paper No. CB(2)172/07-08 (01)].	
001655 - 004247	Ms Audrey EU Admin Mr Bernard CHAN Chairman	Discussion on the following concerns/views - - the interpretation of the phrase "to exercise reasonable diligence" under section 6(3) and (4); - whether the insurance company could avoid the policy by section 9(5) in the case that an owners corporation (OC) did not know the existence of unauthorized building works (UBWs) in the building and made a statement that there were no UBWs in the building when procuring an insurance policy; and - for offering better protection to the third party, the insurance company should settle the judgment compensation to the third party under all circumstances up to the policy amount and recover the amount so paid from the OC concerned afterwards in the case where the OC concerned had not exercised reasonable diligence.	
004248 - 004611	Chairman Mr Wong Kwok-hing	Discussion on Mr WONG Kwok-hing's concern that the penalty for members of the management committee (MC) might be too severe in case an OC contravened the requirements under section 5, and suggestion of implementing a computerized system for registering records of UBWs by BD.	Admin to convey Mr WONG's suggestion to BD (para. 7 of the minutes)

Time marker	Speaker	Subject	Action required
		Undertaking of the Administration to consider members' suggestion of reducing the level of fine from level 2 (i.e. \$5,000) to level 1 (i.e. \$2,000).	Admin's undertaking to consider reducing the level of fine as stipulated in section 5(7) (para. 3 of the minutes)
004612 - 005415	Admin Chairman Ms Audrey EU	Briefing by the Administration on its response to members' concerns and issues raised at the meeting on 16 October 2007 [LC Paper No. CB(2)127/07-08 (01)]. Discussion on members' concern over the affordability of owners of small-sized old buildings.	
005416 - 010655	Miss CHOY So-yuk Chairman Admin	Discussion on the feasibility of the suggestion of exempting OCs of buildings with 20 units or less from the mandatory requirement to procure third party risks insurance. The Administration's response as follows - - there were presently about 15 000 buildings with OCs, and 88% of which had already procured third party risks insurance for their buildings; - the Urban Renewal Authority and the Hong Kong Housing Society had both introduced an incentive scheme whereby OCs which had completed the renovation works in the common parts of the buildings would be reimbursed for the third party risks insurance premium of up to \$6,000 per annum for three consecutive years; - although there was exemption for OCs of buildings with less than 50 units from the mandatory requirement to prepare an audit report under BMO, the same consideration should not be applied to these two mandatory requirements as they were of a different nature, because buildings with less units would also become liable in case of third party's death or bodily injury; and	

Time marker	Speaker	Subject	Action required
		<p>- it could consider deferring the implementation date if it was anticipated that owners of these buildings have great difficulties in complying with the mandatory requirement.</p>	<p>Admin to consider (para. 5 of the minutes)</p>
010656 - 011837	<p>Miss CHOY So-yuk Chairman Admin Ms Audrey EU</p>	<p>The Administration was requested to provide information on the age of the buildings, the number of flats in that buildings and the location of the buildings etc. in respect of the remaining 12% of 15 000 buildings that had formed Owners Corporations but had not procured any third party risks insurance policies.</p>	<p>Admin to response (para. 8(c) of minutes)</p>
011838 - 013355	<p>Chairman Admin Miss CHOY So-yuk</p>	<p>The Administration was requested to elaborate more on the interpretation of the phrase of "to exercise reasonable diligence", and to advise whether members of an MC could have the authority to procure such insurance on behalf of the OC of the building on the ground that it was mandatory for an OC to take out a third party risks insurance policy under the Regulation in case owners of the building had voted against the proposal for taking out a third party risks insurance at the owners' annual general meeting.</p> <p>The Chairman's suggestion that, to plug any possible loophole, the Administration should consider imposing penalty on an OC in the next phase of implementation, in addition to the MC concerned, for failure to procure third party risks insurance in respect of the common parts of its building.</p>	<p>Admin to response (para. 8(a) and (b) of minutes)</p> <p>Admin to consider (para. 6 of minutes)</p>
013356 - 013715	<p>Chairman Admin Miss CHOY So-yuk</p>	<p>The Hong Kong Institute of Surveyor's concern whether building works exempted under Part V of the Buildings Ordinance should be covered by a third party risks insurance policy [LC Paper No. (CB(2)134/07-08(02)).</p> <p>The Administration's reply in affirmative.</p>	

Time marker	Speaker	Subject	Action required
013716 - 021558	Chairman Admin Miss CHOY So-yuk Mr WONG Kwok-hing ALA4 Clerk	<p>Section-by-section examination of the Regulation -</p> <p><u>Section 5(7)</u> Undertaking of the Administration to consider reducing the level of fine as stipulated under section 5(7).</p> <p><u>Section 6</u> Undertaking of the Administration to repeal section 6(3) and (4), and to confirm whether warning notices issued by the Buildings Department (BD) in respect of the unauthorized buildings works (UBWs) were also included under the "statutory instrument" as defined under the Regulation.</p> <p><u>Section 9(5)</u> Discussion on the concern over the interpretation of the phrases of "non-disclosure of a material fact" and "by a representation of fact which was false in some material particulars" under section 9(5), and the Chairman's query why section 9(5) could not be repealed to allow simply the application of the common law principle.</p> <p>The Administration's responses that section 8 as presently worded posed a very strict duty on insurance companies. It was considered appropriate to include an express provision, i.e. section 9(5), in the Regulation for the purpose of striking a right balance.</p>	<p>Admin's undertaking to consider reducing the level of fine as stipulated in section 5(7) (para. 3 of the minutes)</p> <p>Admin's undertaking to repeal section 6(3) and (4) and to response (para. 2 and 4 of minutes)</p>
021559 - 022010	Chairman Clerk	<p>Conclusion of the meeting -</p> <ul style="list-style-type: none"> - Subcommittee's support to the Regulation subject to the amendments to be proposed by the Administration to the Regulation, if members did not have any comment after perusal of the amendments; and - written report to the House Committee on 2 November 2007. 	<p>The Clerk to prepare a written report (para. 9 of the minutes)</p>