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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides a summary of the issues and concerns raised by the Bills Committee on Building Management (Amendment) Bill 2005 on the draft Building Management Ordinance (Third Party Risks Insurance) Regulation (the draft Regulation).

Background

2. The Building Management (Amendment) Ordinance 2000 introduced a new section (i.e. section 28) in the Building Management Ordinance (Cap. 344) (BMO) which provides that all owners' corporations (OCs) shall procure and keep in force in relation to the common parts of the building a policy of third party risks insurance. To implement the new section which is planned to take effect on 1 January 2009, the Administration needs to draw up the Building Management (Third Party Risks Insurance) Regulation to set out the detailed requirements.

Issues and concerns raised by the Bills Committee

3. The Bills Committee on Building Management (Amendment) Bill 2005 discussed various issues relating to the Draft Building Management (Third Party Risks Insurance) Regulation including the statutory minimum amount of insurance coverage, protection for OCs, insurance coverage of unauthorised building works (UBWs) and the proposed asbestos exclusion clause.

4. On the statutory minimum amount of insurance coverage, some members considered that the proposed amount of \$10 million was too low to offer adequate protection for owners. Some other members, however, were concerned that increasing the minimum amount would lead to a higher level of

premium. The Administration informed the Bills Committee that the current proposal for a \$10 million coverage was made by the Hong Kong Federation of Insurers. As advised by the Federation in June 2006, an average of 6 500 public liability claims were received by its member companies between 2002 and 2004, and no single claim exceeding \$10 million was reported.

5. In response to members' suggestion of setting up a tiered structure on the basis of the numbers of flats in respect of the minimum insured amount, the Administration considered that it was impractical to do so on the grounds that, as the number of units of buildings in Hong Kong varied greatly, a number of tiers would be required to cater for the many different types of buildings.

6. Members noted that an insurance company could impose restrictions in the insurance policy by OCs by reference to matters such as the number of claims that could be made during a certain period, the age of the building, the condition or maintenance of the building, and the type of use of the building, etc. Any such restrictions would be of no effect if the OC had exercised reasonable diligence in managing the building and kept the building in good condition. Members raised queries over the interpretation of the phrase "having exercised reasonable diligence". They were concerned that an insurance company might reject the claims by third parties on the ground that the OC concerned had failed to exercise reasonable diligence in that respect.

7. The Administration advised that reference could be made to an English court case relating to liability insurance, i.e. *Fraser v B.N. Furman (Productions) Ltd and Others* [1967] All ER 57. For there to be a breach of the requirement to take reasonable precaution, the insured must have recognised the danger, and deliberately courted it, by taking measures that the insured knew to be inadequate to avert it. The insured's conduct or omission must have been reckless. At members' request, the Administration agreed to revise the phrase "ensure compliance with the deed of mutual covenant" as "exercise reasonable diligence to ensure compliance with DMC concerned" in section 6(3)(a)(ii) of the Regulation.

8. Members also had diverse views on whether the policy on third party risks insurance should cover UBWs attached to or hung on the common parts of a building. Some members were of the view that these UBWs should be covered under the mandatory insurance policies of OCs on the grounds that it could better protect third parties and the increase in premium may encourage owners concerned in considering demolition of their UBWs. Other members, however, considered it unfair to impose a mandatory requirement on OCs to procure insurance for UBWs in order to protect the owners who build the UBWs which were used by the owners concerned only.

9. The Administration was strongly of the view that OCs should not be required to procure a third party risks insurance policy which covered liabilities

relating to UBWs on the grounds that it would imply that the Government condoned the existence of UBWs and indirectly encouraged the continual existence of UBWs. Moreover, the higher insurance premium would mean cross-subsidy of the poor risks by good risks, which was unfair to those properly maintained buildings and those owners who had no UBWs attached to their units.

10. The Administration also advised that although the UBWs concerned were attached to or hung on the common parts of buildings in a number of cases, it was held by the court in some cases that the OC of the building should not be held responsible for the claim because the individual owner and/or occupier concerned had the exclusive right to use the UBWs which caused the accident and the UBW although attached to the common part was not a common part of the building.

11. Some members expressed disagreement with the arguments put forward by the Administration for not including UBWs within the coverage of the Regulation. The Bills Committee, however, had not come to any unanimous view on the issue.

12. Some members considered that it was unlikely that claims against an OC in relation to death or bodily injury in the common parts of a building would be associated with asbestos. At members' suggestion, the Administration agreed to include an asbestos exclusion clause in the future Regulation. The Administration also advised that a common disease induced by asbestos was pneumoconiosis and, under the Pneumoconiosis Compensation Ordinance (Cap. 360), a person suffering from pneumoconiosis would be able to claim compensation from the Pneumoconiosis Compensation Fund. As for other cases, employees' compensation insurance would cover employees' claims against death or injury associated with asbestos.

13. Members may wish to refer to the Report of the Bills Committee on Building Management (Amendment) Bill 2005 (issued vide LC Paper No. CB(2)1603/06-07 on 20 April 2007) for further details.