

For discussion
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**LEGISLATIVE COUNCIL
PANEL ON HOME AFFAIRS**

**Procurement of Third Party Risks Insurance by Owners' Corporations
and Issues Related to Building Management**

Purpose

This paper aims to seek Members' views on (i) the commencement date of the Building Management (Third Party Risks Insurance) Regulation (the Regulation) and relevant ordinances on the procurement of third party risks insurance by Owners' Corporations (OCs); and (ii) some Members' concern about the declaration requirement of Management Committee (MC) members.

(A) PROCUREMENT OF THIRD PARTY RISKS INSURANCE

Background

2. The Building Management (Amendment) Ordinance 2000 and the Building Management (Amendment) Ordinance 2007 introduced amendments to section 28 of the Building Management Ordinance (BMO) to provide that an OC should procure and keep in force in relation to the common parts of the building and the property of the OC a policy of third party risks insurance. The details are set out in the Regulation. During the passage of the Regulation by the Legislative Council, we indicated that we hoped to commence the relevant provisions of the two amendment ordinances and the Regulation on 1 January 2009, but would review the situation and determine the commencement date nearer the time.

Progress of Procurement of Third Party Risks Insurance

Measures Taken to Encourage Procurement of Insurance

3. Since the passage of the Regulation by the Legislative Council in November 2007, we have taken various measures to publicize the Regulation and encourage the procurement of third party risks insurance. They include:-

- (a) We have produced a set of posters and leaflets on the requirements of the Regulation. These posters and leaflets have been sent to all OCs and relevant parties;
- (b) We have organized 21 briefings and workshops for owners and members of the Management Committee to explain the requirements of the Regulation. Representatives from the Home Affairs Department, Buildings Department, the Hong Kong Housing Society, the Urban Renewal Authority and the Hong Kong Federation of Insurers (HKFI) were invited to explain the legal requirements, points to note when procuring insurance and the various building maintenance loans and grants schemes available;
- (c) A radio API has been launched to encourage OCs to procure third party risks insurance;
- (d) We have produced a leaflet to promote proper building maintenance and prompt procurement of third party risks insurance. It serves as a handy and easy-to-use reference to the various building maintenance loans and grants available; and
- (e) We will soon be launching a TV API on building maintenance and third party risks insurance to raise awareness of the general public.

Latest Situation of Procurement of Insurance by OCs

4. As at October 2008, there are around 15,800 buildings with OCs in Hong Kong. Around 91% of them have already procured third party risks insurance. This represents an increase of 3%, or over 600 buildings, when compared with the situation during the passage of the Regulation last year.

5. While there is a reasonable progress of procurement of third party risks insurance by OCs in the past year, we note that some 1,300 buildings have not yet procured third party risks insurance because of various reasons. According to our experience, some OCs have not yet procured insurance as their MC may not have been very active. They would need time to convene MC or OC meetings to discuss the procurement of suitable third party risks insurance and make the associated arrangements. For some MCs, there may be vacancies which need to be filled before meetings could be convened to discuss the procurement of third party risks insurance.

6. In some other cases, there are old single tenement buildings the conditions of which are not satisfactory. OCs may carry out maintenance works of various scales to facilitate procurement of third party risks insurance. They would need a longer lead time before procurement of insurance. According to our experience, while the duration of maintenance works varies for different buildings, it is common for OCs to take around one to two years to complete the whole process.

7. Separately, we also note that for those OCs who have already procured third party risks insurance, the policies are usually renewed on a yearly basis. Some of them may need lead time to ensure that their policies comply with the Regulation when renewing their policies, say increasing the insured amount to \$10 million if their original policy falls short of the minimum amount required by the Regulation.

Proposed Commencement Date

8. With the above mentioned measures and the effort of the OCs, we see that more and more OCs have started to procure insurance after the passage of the Regulation. However, we are mindful that some OCs inevitably need more time and assistance to comply with the Regulation, particularly for those old single tenement buildings. In the light of the latest situation as mentioned in paragraph 5 to 7 above, we propose to appoint **1 January 2011** as the commencement date for the relevant sections of the two amendment ordinances as well as the Regulation by notice in the Gazette. We hope that this would allow sufficient time for OCs to procure third party risks insurance if they have not done so, or if they have already procured insurance to ensure that their policies comply with legislative requirements.

Further Measures to Encourage OCs to Procure Insurance

9. Subject to Members' views on the commencement date, we will adopt a targeted approach to encourage OCs which have not yet procured insurance to do so. We will individually contact these OCs to promote the importance of third party risks insurance to owners, explain the relevant requirement, and facilitate them to procure insurance as soon as possible.

10. Depending on the individual circumstances of each case, if the MC has not been very active, we will assist the OC to convene MC or OC meetings to procure insurance. If the OC needs financial and technical support in carrying out building maintenance works before procuring third party risks insurance, we will introduce to owners the building maintenance loan and grant schemes offered by the Buildings Department, Hong Kong Housing Society and Urban Renewal Authority. These schemes provide not only loans and grants for building maintenance, but also subsidy on procuring third party risks insurance upon completion of the maintenance works. For example, under the Building Maintenance Incentive Scheme of the Hong Kong Housing Society OCs can apply for a subsidy of 50% of the insurance premium for third party risks insurance, subject to a ceiling of \$6,000 per annum for not more than 3 years.

11. Meanwhile, we will continue to enhance publicity of the Regulation among the general public. This would be done through information leaflets, posters and radio API.

Views Sought

12. Members are invited to give views on the proposed commencement date for the relevant sections of the amendment ordinances and the Regulation on third party risks insurance at 1 January 2011.

(B) DECLARATION REQUIREMENT FOR MANAGEMENT COMMITTEE MEMBERS

Background

13. Under the BMO, the powers and duties of an OC are mainly exercised and performed by the MC. The MC handles day-to-day business of the OC, including operational and financial matters. It is therefore important to ensure that MC members are not persons ineligible to be such members¹ (e.g. undischarged bankrupt).

14. To this end, the Building Management (Amendment) Ordinance 2007 introduces a new requirement that within 21 days after the appointment, every member of the MC has to make a declaration that he does not fall within the description of ineligible persons. The declaration has to be made in such form as specified by the Land Registrar and lodged with the Land Registrar with payment of a fee, currently set at \$58 per document. Failure to make the declaration within 21 days after appointment will lead to automatic cessation of MC membership. The requirement came into effect in August 2007.

The Declaration Requirement

Members' concern

15. Since the commencement of the Building Management (Amendment) Ordinance 2007, we have widely publicised the amendment ordinance including the declaration requirement through booklets, leaflets, posters and letters to all OCs. When staff of District Offices attend owners' meetings where MC members are appointed or conduct regular visits to OCs, they would also remind members to comply with the declaration requirement.

¹ A person is not eligible to be appointed as a member of a management committee if he – (a) is an undischarged bankrupt at the time of the appointment or has, within the previous 5 years, either obtained a discharge in bankruptcy or entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with his creditors, in either case without paying the creditors in full; (b) has, within the previous 5 years, been convicted of an offence in Hong Kong or any other place for which he has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine.

16. After the declaration requirement has been put in place, there has been feedback from some MC members that they do not want to make the declaration before a third party like the Commissioner for Oaths. They consider that MC members participate in building management work on a voluntary basis only and should not be required to make statutory declaration. In addition, many MC members have full time jobs and find it inconvenient to make the statutory declaration.

17. On the other hand, we are also aware that some members of public consider that MC members have a vital role to play in the operation of OC. They handle not only the operational matters but also financial matters of the OC. A statutory declaration is a serious and solemn declaration made under the requirement of law. MC members should be required to make a serious and solemn declaration to ensure that they are not ineligible persons before they assume the important role of MC members. In addition, the declaration needs to be made only once upon appointment of the MC members, which is about once every two years. The limited frequency should not pose undue inconvenience and burden on MC members. The requirement of a statutory declaration is therefore important and should remain.

18. Some MC members also reflect that MCs may have quite a large number of members. For an MC with say 10 members, they would need to pay \$580 filing fees for filing the 10 declarations. They consider that the filing fees are too high.

Measures to facilitate making of declaration

19. In the light of the feedback, we have taken the following measures to further facilitate MC members to make the declaration:-

- (a) After discussion with the Land Registry, we have allowed a Justice of the Peace or solicitor to administer the declaration in addition to a Commissioner for Oath; and
- (b) We have encouraged MC members to make use of any one of the Public Enquiry Service Centres (“PESCs”) of District Offices and Land Registry offices to make the declaration. MC members may approach any PESCs or Land Registry near to their workplace or

home, at a flexible time during the day which is convenient to them by appointment. In addition, we have enlisted the assistance of the Hong Kong Housing Society. By appointment, MC members can also make declaration at three of the Property Management Advisory Centres. In other words, MC members can make statutory declaration at a total of 30 places in Hong Kong.

20. To further facilitate implementation of the declaration requirement, we are exploring measures such as seeking further assistance of the Hong Kong Housing Society to provide declaration services at Property Management Advisory Centres during certain outside office hours, and reducing the declaration filing fees paid by OC.

Views Sought

21. Members are invited to give views on the declaration requirement. In particular, views on whether the making of a statutory declaration before a third party should remain is most welcome, in the light of the different views in paragraphs 16 and 17 and the facilitating measures by the Administration in paragraphs 19 and 20.

Home Affairs Department
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