

C006E

Amend the Building Management Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Building Management (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

2. Interpretation

Section 2 of the Building Management Ordinance (Cap. 344) is amended in the definition "Code of Practice" by adding "from time to time" after "issued".

3. Appointment of management committee

Section 3 is amended---

(a) in subsection (2), by repealing "At" and substituting "Subject to subsection (3), at";

(b) by adding---

"(3) In the case of a building the deed of mutual covenant of which is executed by the parties to it after the commencement of section 3 of the Building Management (Amendment) Ordinance 2000 (of 2000), a management committee, notwithstanding anything to the contrary in the deed of mutual covenant, may be appointed by a resolution passed by a majority vote of the owners voting either personally or by proxy at a meeting with a quorum of not less than 10% of the owners; and any proxy appointed by an owner for the purposes of voting on that resolution shall be treated as being an owner present at the meeting for the purposes of establishing that quorum."

4. Notice of and voting at meetings

Section 5(3)(b) is amended by repealing "an English language newspaper, and in a Chinese language" and substituting "a".

5. Duties and powers of corporation

Section 18 is amended---

(a) by repealing subsection (2)(d);

(b) by adding---

"(2A) Without prejudice to the generality of subsections (1) and (2), the corporation in the performance of its duties and the exercise of its powers under this section shall have regard to and be guided by Codes of Practice issued from time to time under section 44(1)."

6. Accounts of corporation

Section 27 is amended---

(a) by repealing subsection (1A) and substituting---

"(1A) Except in the case of a corporation incorporated in respect of a building which contains not more than 50 flats, the income and expenditure account and balance sheet referred to in subsection (1) shall be audited by an accountant retained by the corporation as may be approved by the corporation by a resolution passed at a general meeting and that accountant shall certify such account and balance sheet as a true and proper record of the financial transactions of the corporation during the period to which the income and expenditure account and balance sheet relates subject to such qualification, if any, as he may think fit.";

(b) in subsection (3), by repealing "of \$2,000" and substituting "at level 5".

7. Section substituted

Section 28 is repealed and the following substituted---

"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."

8. Penalty for improper use of
"Incorporated Owners"

Section 35 is amended by repealing "of \$5,000" and substituting "at level 3".

9. False statement or information

Section 36 is amended by repealing "of \$5,000" and substituting "at level 3".

10. Powers of Authority or authorized officer

Section 40A(2) is amended by repealing "of \$10,000" and substituting "at level 4".

11. Sections added

The following are added---

"40B. Appointment of building management agent by order of Authority

(1) Where it appears to the Authority in the case of any building having a management committee that---

(a) no person is, for the time being, managing that building;

(b) the management committee has, in any material particular, failed substantially to perform the duties of a corporation under section 18 including without limitation, the duty of a corporation under subsection (2A) of that section to have regard to and be guided by Codes of Practice; and

(c) by reason of the circumstances mentioned in paragraphs (a) and (b), there is a danger or risk of danger to the occupiers or owners of the building, the Authority may order that, within such reasonable period as shall be specified in the order, the management committee must appoint a building management agent for the purposes of managing that building.

(2) Where a management committee without reasonable excuse fails to comply with an order made under 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 and in the case of a continuing offence, to a further daily fine of \$1,000 for each day

during which the offence continues, 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) In this section and in sections 40C and 40D, "building management agent" (建築物管理代理人) means a person appointed from a list of persons engaged in the business of the management of buildings compiled from time to time by the Authority and published in the Gazette.

40C. Appointment of building management agent by order of tribunal

(1) Where upon the application of the Authority it appears to the tribunal in the case of any building that---

- (a) a management committee has not been and is not likely to be appointed under section 3, 3A or 4, notwithstanding an order of the tribunal made under section 4;
- (b) no person is, for the time being, managing that building; and
- (c) the Authority is satisfied that by reason of the circumstances mentioned in paragraphs (a) and (b), there is a danger or risk of danger to the occupiers or owners of the building,

the tribunal may order that, within such reasonable period as shall be specified in the order, a meeting of owners must be convened by such owner as shall be named in the order to deal with the matters referred to in subsection (2) for the purposes of managing that building.

(2) The matters referred to in subsection (1) are, consecutively---

- (a) to consider and, if thought fit, to pass a resolution which appoints a management committee;
- (b) where that resolution is not passed, to consider and, if thought fit, to pass a resolution which appoints a building management agent, for the purposes of managing that building.

(3) Notwithstanding anything to the contrary in the deed of mutual covenant, if any, the appointment of---

(a) a management committee under subsection (2)(a) shall be deemed to be effected if at the meeting of owners convened under that subsection a resolution in favour of that appointment is passed by a majority vote of the owners voting either personally or by proxy at a meeting with a quorum of not less than 10% of the owners; and for the purposes of that meeting, any proxy appointed by an owner for the purposes of voting on that resolution shall be treated as being an owner present at the meeting for the purposes of establishing that quorum;

(b) a building management agent under subsection (2)(b) shall be deemed to be effected if---

(i) a resolution in favour of that appointment is passed at a meeting of the owners in the manner described in paragraph (a); or

(ii) where a resolution of the description mentioned in subparagraph (i) is not passed, whether by reason of---

(A) a vote of less than a majority; or

(B) a quorum of less than 10%,

by appointment, directly, by the owner named in the order.

40D. Powers of building management agent appointed following order of tribunal

(1) A building management agent appointed under section 40C may carry on any activity or business relating to the management of a building, including without limitation, any activity or business of the description mentioned in the Seventh Schedule in relation to the activities or business of a manager.

(2) An order made under section 40C may direct that a building management agent appointed under section 40C(2)(b) shall hold his appointment for an indefinite period or for a fixed period on such terms and conditions as to remuneration and expenses or otherwise in respect of the carrying on by him of any activity or business relating to the management of the building as the tribunal shall think fit and specify in the order and the remuneration and expenses of the building management agent as so specified shall be a debt due to him from the owners in accordance with their respective shares at the time that that remuneration and those expenses are payable.".

12. Power to make regulations

Section 41 is amended by adding---

"(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;".

13. Codes of Practice

Section 44(1) is repealed and the following substituted---

"(1) The Authority may from time to time prepare, revise and issue Codes of Practice giving guidance and direction as to---

(a) the procurement of supplies, goods and services required by a corporation including such procurement by invitation to tender and the tender procedure in respect thereof;

(b) the standards and practices of management and safety that are to be observed and followed by a corporation including standards and practices relating to---

(i) building management;

(ii) building safety;

(iii) fire safety;

(iv) slope safety;

(v) lifts and escalators; and

(vi) utilities and other installations in the common parts of a building.".

14. Meetings and procedure of corporation

Paragraph 5 of the Third Schedule is amended---

(a) by renumbering it as paragraph 5(1);

(b) by adding---

"(2) A proxy appointed in accordance with paragraph 4 to give the vote of an owner at a meeting of the corporation shall, for the purposes of establishing a quorum, be treated as being an owner present at that meeting.".

15. Mandatory terms in deeds of mutual covenant

The Seventh Schedule is amended in the square brackets by adding ", 40D" after "34J".

Explanatory Memorandum

The purpose of this Bill is to amend the Building Management Ordinance (Cap. 344) to facilitate better management of buildings through the provisions described as follows---

(a) clause 3 amends section 3 to provide that a management committee may be appointed

by a majority vote of owners at a meeting convened for the purpose. The quorum of the meeting is not less than 10% of the owners of the building concerned;

(b) clause 4 amends section 5 which provides for the publication of notice of an owner's meeting to appoint a management committee. The provision as amended, requires the publication of such notice in one newspaper only;

(c) clause 5 amends section 18 and deals with the duty of a corporation to comply with the Codes of Practice;

(d) clause 6 amends section 27 to provide that the corporation of a building containing more than 50 flats must employ an accountant to audit its accounts;

(e) clause 7 repeals existing section 28 and adds a provision that imposes an obligation on a corporation to insure in respect of the common parts of a building against third party risks;

(f) clause 11 adds a provision that empowers the Authority, that is, the Secretary for Home Affairs to order the management committee, or if there is no management committee, the Lands Tribunal to order the owners of a building, to appoint a building management agent if the state of management of the building is below the standards contained in the Codes of Practice relating to the management of buildings or there is a danger or risk of danger to the occupiers and owners of the building;

(g) clause 12 adds an enabling provision so that regulations can be made in respect of policies of insurance by corporations;

(h) clause 13 amends section 44 so that the Codes of Practice concerning standards and practices of management and maintenance of buildings may be issued;

(i) clause 14 adds a provision to the Third Schedule to provide that a proxy appointed by an owner, whether or not he himself is an owner, is counted as a separate owner present at a corporation's meeting insofar as the quorum is concerned.