

BRIEF FOR THE LEGISLATIVE COUNCIL

**Building Management Ordinance
(Chapter 344)**

BUILDING MANAGEMENT (AMENDMENT) BILL 2005

At the meeting of the Executive Council on 22 March 2005, the Council ADVISED and the Acting Chief Executive ORDERED that –

- (a) the Building Management (Amendment) Bill 2005, at Annex A, should be introduced into the Legislative Council to improve the present legal framework governing the incorporation of owners and its subsequent operations; and
- (b) the Building Management (Third Party Risks Insurance) Regulation, at Annex B, should be approved in principle, to be referred back to the Chief Executive in Council to be made after the Bill has passed into law.

JUSTIFICATIONS

2. The aims of the proposals set out in the Building Management (Amendment) Bill 2005 are to rationalize the appointment procedures of a management committee (MC), assist owners' corporations (OCs) in performing their duties and exercising their powers, and safeguard the interests of property owners. The major proposals included in the Bill are set out below.

Appointment of an MC

3. The MC is the executive arm of an OC. The appointment procedures of an MC are set out in the BMO. There are, however, ambiguity and deficiencies in the provisions about the appointment process.

4. According to section 3 of the BMO, an MC may be appointed at a duly convened meeting of the owners in accordance with the deed of mutual covenant (DMC); or if there is no DMC or the DMC contains no provision for the appointment of an MC, by a resolution of the owners of not less than 30% of the shares. The reference to a DMC in the BMO has raised doubts over

whether the provisions in the DMC or those in the BMO should prevail. This is especially the case as most DMCs contain provisions for the appointment of an owners' committee having similar functions as a statutorily formed MC.

5. In the case of *Siu Siu Hing v Land Registrar* (HCAL 77/2000), the court ruled that unless the DMC of a building specifically referred to the appointment of an MC under section 3 of the BMO, the MC referred to in the DMC was not the same as the one provided for in the BMO. For this reason, we **propose** to stipulate clearly in the BMO that for an MC to be formed under the BMO, the owners have to follow the procedures set out in the BMO, instead of the DMCs.

6. Schedule 2 to the BMO sets out the operational procedures for MCs. For the same reason stated above, we further **propose** to delete all references to the DMC in Schedule 2 so that the operation of an MC will follow the requirements under the BMO instead of DMCs.

7. We note that, of the 7 500 OCs registered with the Land Registry, some 60 OCs were formed in accordance with the provisions in their respective DMCs¹. We **propose** to include a savings provision in the BMO so that these OCs will remain valid upon the enactment of the proposed amendment. We will require these OCs to follow the requirements as set out in the revised Schedule 2 after the expiry of a period of four years from the commencement of the Bill.

8. Other legislative amendments relating to the appointment procedures of an MC are set out in Annex C.

Protection for MC Members

9. Under the existing BMO, once an OC is formed, the liability of the owners in relation to the common parts of the building will be enforceable against the OC to the exclusion of the owners. There is, however, no clear provision to the effect that the liability of an OC will not be transferred to an individual member of an MC.

10. We **propose** to add a new section in the BMO to the effect that MC members of an OC acting in good faith shall not be held personally liable for any act done or default made by or on behalf of the OC. The new section is modelled after section 23 of the Hospital Authority Ordinance (Cap.113).

¹ Figures as at 31 January 2005.

Qualifications of MC Members

11. The BMO stipulates that no person shall be appointed as a member of an MC if this person –

- (a) has been declared bankrupt;
- (b) has entered into composition with his creditors;
- (c) has at any time been sentenced to imprisonment for three months or more.

There are a few problems associated with the above provisions. First, no time limit has been set, meaning that any person who has fallen into any of the three categories above can never be appointed as a member of an MC. This is even more stringent than the arrangement under the Legislative Council Ordinance (Cap.542) and the District Councils Ordinance (Cap.547), which imposes a five-year ban on membership in relation to the above conditions. Secondly, it is unclear under the existing provision whether suspended sentence should be regarded as “sentenced to imprisonment”.

12. To rectify these problems, we **propose** to amend the BMO such that a person who has been sentenced to imprisonment, whether suspended or not, for three months or more without the option of a fine will not be disqualified from being a member of an MC after five years. At the same time, we **propose** that anyone who has been discharged from bankruptcy and has paid the creditors in full will not be barred from being a member of an MC. As for those who have either obtained a discharge in bankruptcy or have entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap.6) with their creditors (in either case without paying the creditors in full), they will be eligible for MC membership after five years. The revised wording will be in line with the provisions of the Legislative Council Ordinance and the District Councils Ordinance.

13. The next problem is about compliance with the above qualifications requirements. We **propose** to introduce a self-declaration system under the BMO such that each individual member of the MC has to make a statutory declaration to be lodged with the Land Registry.

14. The above amendments will not affect the appointment of any existing MC members. The revised qualification requirements and the self-declaration system shall, on commencement of the Bill, take effect immediately for newly appointed MC members and existing MC members on

their re-appointment.

Appointment of proxy by owners

15. The BMO provides that owners may appoint proxy to attend and vote at owners' meetings. The requirements for the appointment of proxy, however, are not clearly stipulated in the BMO, thus causing disputes among owners.

16. We **propose** to set out clearly the requirements for appointment of proxy (including the absolute deadline for submission of proxy at 24 hours before the owners' meeting, and the procedures for appointment of proxy if the owner is a body corporate) and also to include a standard format of proxy instrument in the BMO.

Termination of the appointment of manager

17. Schedule 7 to the BMO provides for, amongst other things, a mechanism for the termination of the appointment of the building manager under the DMC². In the case of any subsequent manager appointed by an OC, the relevant management contract normally provides for a specified period of management. However, there are cases where the subsequent contract manager refuses to leave service even after the specified contractual period has expired, on the ground that the appointment can only be terminated by the mechanism under Schedule 7.

18. We therefore **propose** to specify that the termination mechanism under the BMO shall only be applicable to the termination of the appointment of the DMC manager. For any subsequent manager appointed by an OC (including the DMC manager who is re-appointed by the OC), any termination of the manager's appointment shall be executed in accordance with the provisions of the management contract.

Procurement by OCs and managers

19. The BMO currently provides that any procurement which exceeds or is likely to exceed \$100,000³, or a sum which is equivalent to 20%⁴ of the

² According to paragraph 7 of Schedule 7 to the BMO, an OC could terminate the appointment of a manager by a resolution of owners of not less than 50% of the shares. For this purpose, only owners of shares who pay or who are liable to pay the management expenses relating to those shares shall be entitled to vote.

³ \$100,000 or such other sum in substitution therefor as the Authority (Secretary for Home Affairs) may specify by notice in the Gazette.

⁴ 20% or such other percentage in substitution therefor as may be approved by the OC by a resolution passed at a general meeting.

annual budget of the OC, whichever is the lesser, shall be procured by invitation to tender. The same provision is also set out in the Code of Practice on procurement of supplies, goods and services issued by the Secretary for Home Affairs (SHA) under the BMO. According to the BMO, failure on the part of any person to observe any Code of Practice shall not by itself render that person liable to criminal proceedings of any kind but any such failure may, in any proceedings whether civil or criminal, be relied upon as tending to establish or to negative any liability which is in question in those proceedings.

20. While the above requirements on procurement impose a legal obligation on OCs, compliance with the Code of Practice is not mandatory under the law. The co-existence of the same provisions in both the main legislation and the Code of Practice often gives rise to disputes as to whether it is legally necessary to comply with the stipulated procurement requirements. To rectify the anomaly, we will make clear our policy intent by deleting the relevant provisions from the Code of Practice, so that any procurement with a value exceeding the thresholds prescribed in the BMO has to be done in accordance with the BMO.

21. We have also taken the opportunity to review the tender procurement provisions under the BMO. Specifically, we **propose** that any procurement of goods or services with a value exceeding \$200,000 or 20%⁵ of the annual budget of an OC (whichever is the lesser) shall be done through tendering, and that any tender of a value exceeding 20%⁶ of the annual budget of an OC shall be accepted or rejected upon the passage of a resolution of the owners at a general meeting.

22. We further **propose** that managers, as well as OCs, also need to comply with the same procurement requirements and go through the tendering procedures and passage of resolution at an owners' meeting if the procurement meets the stipulated thresholds.

23. The above proposal will, on the one hand, safeguard the interests of owners but, on the other, reduce flexibility of an OC's operation, especially in times of emergency. We therefore **propose** to allow OCs to formulate, at their own discretion, their own list of urgent matters that need not go through the required procurement procedures under the BMO. The list has to be passed by a resolution of a majority of votes of owners cast in respect of undivided shares at a general meeting.

⁵ Or such other sum or percentage in substitution which may be specified in the Gazette by SHA.

⁶ Or such other percentage in substitution which may be specified in the Gazette by SHA.

24. To allow time for the OCs and the managers to acquaint themselves with the new provisions, we **propose** that the new requirements on procurement shall take effect on a day to be published in the Gazette. We believe that 12 months after commencement of the Bill would be sufficient.

Financial arrangements for OCs and managers

25. Schedule 7 to the BMO provides, amongst other things, that the manager shall open and maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building. To safeguard the interests of property owners, it is necessary to strengthen the requirements on setting up of accounts for OCs by managers.

26. To ensure that the manager will keep the management fees received for an OC in a bank account separate from his own monies, and that the manager will not merge the management fees received from different buildings into one single bank account, we **propose** to stipulate in the BMO that the manager shall open and maintain one or more segregated trust/client accounts for holding money received in respect of the management of the building with the OC as the client. The manager is required to display in a prominent place in the building a copy of the document showing evidence of such segregated accounts.

27. Other legislative amendments relating to the financial arrangements of an OC and the manager are set out in Annex D.

Procurement of third party risks insurance

28. The Building Management (Amendment) Ordinance 2000 introduced a new section in the BMO (section 28) which provides that all OCs shall procure and keep in force in relation to the common parts of the building a policy of third party risks insurance. This section of the BMO has yet to come into operation.

29. To implement this new section, we need to draw up a Regulation to set out the detailed requirements. Towards this end, the Home Affairs Department (HAD) has been in active discussion with the industry, through the Hong Kong Federation of Insurers, to work out the implementation details.

30. During the drafting of the Building Management (Third Party Risks Insurance) Regulation, we note that certain amendments need to be made to the principal legislation. We **propose** to introduce the following legislative

amendments –

- (a) the addition of a new subsection to expressly authorise the OC to take out insurance as agent for and on behalf of the owners of the building from time to time;
- (b) the deletion of “occupiers” from section 28 of the BMO because “occupiers”, unlike owners, do not have an “insurable” interest in the common parts or the property of the OC;
- (c) the deletion of “all parts thereof” from section 28 of the BMO because the inclusion of such words in effect means that apart from the common parts, all of the individual units in a building would require to be insured against third party risks by the OC⁷;
- (d) the empowerment of the Chief Executive in Council under the BMO to make regulations concerning avoidance of agreements as to the liability of OCs or owners towards third parties; and
- (e) a new requirement for OCs to give notice to the Land Registrar the name of the insurance company from which an OC has effected such policy and the period of the policy.

31. The detailed requirements for the compulsory third party risks insurance for OCs are set out in the draft Building Management (Third Party Risks Insurance) Regulation 2005 at Annex B. After the Building Management (Amendment) Bill 2005 is enacted, we will refer the Building Management (Third Party Risks Insurance) Regulation 2005 back to the Chief Executive in Council for approval of its enactment. The major proposals included in the draft Regulation are summarized in Annex E.

32. To enable the OCs and the managers to acquaint themselves with the new requirements and to arrange for procurement of the insurance policy, we **propose** that the new requirement on mandatory third party risks insurance shall take effect on a day to be published in the Gazette. We believe that 12 months after the Regulation has been made would be sufficient.

33. In view of public concern about the proposed mandatory requirement for procurement of third party risks insurance and to facilitate discussion at the Bills Committee at Legislative Council, a copy of the draft Building

⁷ It is, however, not our intention to interfere with the owners’ personal right in respect of taking out insurance policy for their own properties.

Management (Third Party Risks Insurance) Regulation 2005 is attached to this Brief, in addition to the Building Management (Amendment) Bill 2005.

Delegation of Powers and Duties by SHA

34. To facilitate the delegation process, we **propose** to amend Cap. 1 sub. leg. C “Specification of Public Offices” to enable SHA to delegate to other public officers his powers and duties under the BMO.

OTHER ISSUES RELATED TO BUILDING MANAGEMENT

Fund in relation to compensation for third parties

35. In view of the Albert House incident⁸, some people have suggested the setting up of a fund, similar to the Protection of Wages on Insolvency Fund, with contributions from property rates or insurance premiums, to help property owners meet compensation payments. On this proposal, we consider it inappropriate to use public money to set up a fund for property owners to settle judgment debts. That said, we will consider further, in consultation with the insurance industry, the proposal to set up a fund to grant relief payments to third parties who are victims in incidents related to the common parts of buildings. In order not to hold up the passage of the current Bill, the matter will be given consideration in the longer term.

Liability of OCs

36. Arising from the Albert House case, there were also comments that the liability for OCs should be limited in the same way as limited companies. However, such comments fail to take into account that third party liability is unlimited under common law, for the protection of third parties. Therefore, each case has to be considered on its own merits and the damages or compensation adjudged by the court to victims differs from one case to another.

37. Moreover, when one becomes an owner of a building (i.e. possession of an undivided share of the building), one actually has the exclusive right to

⁸ A fatal accident occurred in Albert House, Aberdeen in 1994 and the court ruled in 1999 that six parties (one being the OC) should be held liable for paying damages to the plaintiffs. The major owner of the building, being one of the parties remaining solvent, had already paid the full damages for itself and on behalf of the other five defendants. The major owner then applied to the court to seek contribution from the OC of Albert House. The court ruled in January 2004 that the remaining solvent parties, i.e. the major owner and the OC of Albert House, had to contribute to the whole sum of compensation in their respective share. For the OC, the share together with legal costs is approximately \$25 million. On 8 November 2004, the High Court ordered the OC of Albert House to wind up as it was unable to pay the judgment debts. Since the OC was wound up, each individual owner of Albert House has become personally liable for the debt.

use his unit and also co-owns the common parts with other owners of the building. Whether an OC has been formed or not, owners have the legal responsibility to take care of the common parts of the building which they jointly own with other owners. The formation of a statutory OC is aimed at assisting owners to elect representatives to represent all of them. It is not aimed at increasing or decreasing the liability of individual owners. If we limit the liability of an OC, it begs the question of whether the same arrangement should apply to buildings without an OC.

38. In the case of Albert House, it was decided that the solvent parties (one of which is the OC) have to bear the compensation left unpaid by the insolvent parties. This was a decision of the court having regard to certain common law principles. The dispute in question relates to distribution and settlement of civil liabilities, rather than a matter related to the application of the BMO.

Borrowing power of OCs

39. During our consultation on the proposed amendments to the BMO, there was one proposal to empower OCs to borrow on behalf of those missing or irresponsible owners from the Government to carry out statutory works. While the principle of the proposal is generally supported, we have come across grave difficulties in pursuing the proposal. These include the procedures for OCs to exercise the borrowing power, an appeal mechanism for the owners concerned, and the mechanism for placing a charging order on the properties of the owners concerned as security for the Government loan. As a result, this proposal is now excluded from the Building Management (Amendment) Bill 2005.

40. In examining amendments to the Fire Safety (Buildings) Ordinance⁹ [FS(B)O] in 2002, the Legislative Council decided that the amended provisions in the FS(B)O should not come into operation until after the BMO had been amended to empower an OC to borrow from the Government to cover the share of the repair cost of those owners who had failed or refused to pay. As such, the exclusion of the proposal from the BMO Amendment Bill will have implications for the commencement of FS(B)O. We will continue to discuss the matter with the relevant bureaux/departments.

⁹ The Fire Safety (Buildings) Ordinance 2002 requires OCs and owners to upgrade the fire service installations and equipment in their buildings.

Termination of the appointment of the DMC manager

41. During our consultation on the proposed amendments to the BMO, there was also one proposal to relax the existing requirement (50% of the shares of owners) for termination of the appointment of the DMC manager. However, strong objections were received from the industry, professional organizations and some property owners. As a result, it is now excluded from the Building Management (Amendment) Bill 2005.

Formation of OCs in house developments

42. There were proposals for the Government to introduce provisions to enable owners of house developments to incorporate. The ownership structure and nature of the title of multi-storey buildings and house developments are fundamentally different and a mere amendment to the BMO will not be sufficient to make the BMO applicable to house developments. A new piece of legislation will be needed for such purposes which we will consider in the long term.

Mandatory management and maintenance of buildings

43. There were also proposals for the Government to introduce some mandatory measures with regard to management and maintenance of buildings. In this regard, the Secretary for Housing, Planning and Lands has announced that his bureau will conduct a public consultation on mandatory inspection of buildings in 2005.

THE BILL

44. The main provisions of the Bill, at Annex A, are as follows –

- (a) Clauses 4, 5, 6 and 19 amend sections 3, 3A, 4 and 40C of the BMO to repeal the provision which has caused doubts as to whether an MC within the meaning of the BMO may be appointed in accordance with a DMC, specify the person who is to preside over a meeting of owners for the appointment of an MC, and provide for such other procedural matters as the quorum, the casting of votes and the appointment of proxy.
- (b) Clause 9 amends section 7 of the BMO to require a person appointed as a member of an MC to make a declaration on his eligibility for the appointment.

- (c) Clause 10 amends section 12 of the BMO to require the Land Registrar to enter into the register of OCs the particulars of the insurance company with which an OC has effected a policy of insurance and the period covered by the policy.
- (d) Clause 11 amends section 18 of the BMO to empower an OC to pay an allowance to a member of the MC, irrespective of whether or not the member is a chairman, vice-chairman, secretary or treasurer of the MC.
- (e) Clause 13 amends section 20A of the BMO to require that any procurement of supplies, goods or services of a value exceeding \$200,000 by an OC must be done through tendering, and that any tender of a value exceeding 20% of the annual budget of an OC must be accepted or rejected by a resolution of the owners.
- (f) Clause 14 amends section 27 of the BMO to require an MC to prepare financial statements which give a true and fair view of the state of affairs of the OC, and require the accountant who audits the financial statements to report as to whether the financial statements are, in his opinion, properly prepared.
- (g) Clause 15 introduces a new section 29A of the BMO to provide that a member of an MC doing anything in good faith in the performance of the functions of an OC incurs no personal liability.
- (h) Clause 20 amends section 41 of the BMO to empower the Chief Executive in Council to make regulations for the avoidance of agreements as to the liability of an OC or owners of buildings towards third parties.
- (i) Clause 23 amends Schedule 2 to the BMO to require that the resolution for the appointment of the members of the first MC must be passed by a majority of votes of the owners, clarify that a person who is not a member of an MC does not become such a member by virtue of his appointment as a secretary or treasurer of the MC, and make further provisions for the qualification of a member of an MC.
- (j) Clause 28 amends Schedule 7 to the BMO to require the manager of a building to open and maintain one or more segregated accounts for money received in respect of the management of the building with the OC as the client, require that the manager of a building must not enter

into a contract unless it complies with the amended section 20A of the BMO, and make the Schedule applicable only in relation to the termination of the appointment of the manager who is specified in a DMC of a building to manage the building.

- (k) Clause 33 amends the new section 28 of the BMO (not yet in operation) introduced by the Building Management (Amendment) Ordinance 2000 (69 of 2000) to repeal certain expressions which have caused ambiguity in the interpretation of the provisions, and to empower an OC to enter into a policy of third party risks insurance as an agent for the owners in respect of the common parts.
- (l) Clause 36 deals with the transitional arrangements for an MC which has been appointed in accordance with a DMC under section 3(2)(a) of the BMO as in force immediately before the commencement of the Bill.

THE DRAFT REGULATION

45. The main provisions of the Regulation, at Annex B, are –

- (a) Clause 3 provides that third party risks liabilities covered by the insurance policy shall include liabilities incurred by the OC or the owners in respect of a third party's bodily injury and death, i.e. prescribed liabilities. It also sets out the types of liabilities which need not be covered by the insurance policy.
- (b) Clause 4 provides that the minimum insured amount of each policy is not less than \$10 million per event.
- (c) Clause 5 requires an insurance company to issue a notice of insurance to the OC and requires the OC to display the notice in a prominent place in the building.
- (d) Clause 6 stipulates that a policy provision that restricts the insurance by reference to certain matters will be of no effect.
- (e) Clause 7 provides that any agreement between the OC or owners and the third party made after 31 March 2005 that purports to negative or restrict any prescribed liability towards the latter will be of no effect.
- (f) Clause 8 provides if a third party has obtained judgment against the OC

or owners in respect of the prescribed liabilities covered by a policy, the insurance company is required to pay to the third party any sum payable under the judgment up to the policy amount. Clause 9 sets out the exceptions to this requirement.

- (g) Clause 10 provides that if the OC or owners become insolvent, that does not affect the OC's or owners' prescribed liability. Nor does it affect the third party's right of action under the Third Parties (Rights Against Insurers) Ordinance (Cap.273).

LEGISLATIVE TIMETABLE

46. The legislative timetable is –

Publication in the Gazette	1 April 2005
First Reading and commencement of the Second Reading debate	27 April 2005
Resumption of Second Reading Debate, Committee Stage Amendments and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

47. The Bill has economic and environmental implications which are set out in Annex F.

48. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the binding effect of the existing Ordinance. It does not have any productivity, financial, or civil service implications. The proposal does not have significant sustainability implications.

PUBLIC CONSULTATION

49. Following the enactment of the Building Management (Amendment) Ordinance 2000 in June 2000, a Subcommittee on Review of the BMO was formed under the Legislative Council Panel on Home Affairs to discuss further proposals to improve the provisions in the BMO. In May 2003, we conducted an extensive public consultation exercise and sought the views of the 18 District Councils, all the OCs and owners' associations, the professional organizations

and the general public on the proposed legislative amendments. We received a plethora of comments, including a total of 1 240 written submissions from various parties concerned. The results of the consultation were reported to the Panel on Home Affairs in November 2003. Further discussions were held at the Subcommittee on Review of the BMO following the public consultation exercise and a final report on the proposed amendments to the BMO was submitted to the Panel on Home Affairs in July 2004. The proposals included in the Bill were generally supported by the Panel on Home Affairs.

PUBLICITY

50. The draft Bill will be published in the Gazette on 1 April 2005 and introduced into the Legislative Council on 27 April 2005. A press release will be issued and a spokesman will be available to answer media and public enquiries.

BACKGROUND

51. Management of private buildings is the responsibility of private property owners. It is the Government's policy objective to assist private property owners to manage and maintain their properties. We provide a legal framework through the BMO to facilitate the incorporation of property owners and the subsequent operation of the OCs to facilitate the management of buildings. To better equip property owners to put good building management into practice, HAD also provides support services, offers advice, and organizes training for the owners of private buildings.

ENQUIRIES

52. For enquiries on this brief, please contact Mrs Angelina Cheung, Assistant Director of Home Affairs, on 2123 8391 or Miss Christine Au, Administrative Officer of the Home Affairs Department, on 2123 8395.

**Home Affairs Bureau/Home Affairs Department
March 2005**

**Building Management Ordinance
(Chapter 344)**

BUILDING MANAGEMENT (AMENDMENT) BILL 2005

ANNEXES

- Annex A - Building Management (Amendment) Bill 2005
- Annex B - Building Management (Third Party Risks Insurance) Regulation
- Annex C - Amendment Proposals Relating to the Appointment Procedures of a Management Committee
- Annex D - Amendment Proposals Relating to the Financial Arrangements of Owners' Corporations and Managers
- Annex E - Proposals in the Draft Building Management (Third Party Risks Insurance) Regulation
- Annex F - Implications of the Proposal

BUILDING MANAGEMENT (AMENDMENT) BILL 2005**CONTENTS**

Clause		Page
PART 1		
PRELIMINARY		
1.	Short title	1
2.	Commencement	1
PART 2		
AMENDMENTS TO BUILDING MANAGEMENT ORDINANCE		
3.	Interpretation	2
4.	Appointment of management committee	3
5.	Appointment of management committee after application to the Authority	10
6.	Appointment of management committee after application to tribunal	17
7.	Notice of and voting at meetings	23
8.	Application of section 5 to meetings held under section 40C	23
9.	Application by management committee for registration of owners as a corporation	23
10.	Land Registrar to maintain register of corporations	24
11.	Duties and powers of corporation	24
12.	Establishment of funds	25
13.	Supplies, goods and services	25
14.	Accounts of corporation	26

15.	Section added	
	29A. Protection of members of management committee	28
16.	Interpretation	29
17.	Right to establish corporation and conduct business	29
18.	Appointment of building management agent by order of Authority	30
19.	Appointment of management committee or building management agent by order of tribunal	30
20.	Power to make regulations	36
21.	Common parts	37
22.	Schedule 1A added	
	Schedule 1A Forms	37
23.	Composition and procedure of management committee	39
24.	Meetings and procedure of corporation	56
25.	Maximum allowances in respect of each holder of office of a management committee	64
26.	Annual budget	65
27.	Accounts	65
28.	Mandatory terms in deeds of mutual covenant	66
29.	Terms added if consistent with deed of mutual covenant	74
30.	Exempt estates	80
31.	Hearing and determination of specified proceedings by tribunal	80
32.	Enumeration of owners	80

PART 3

AMENDMENTS TO BUILDING MANAGEMENT
(AMENDMENT) ORDINANCE 2000

33.	Section substituted	80
-----	---------------------	----

PART 4

AMENDMENT TO SPECIFICATION OF PUBLIC OFFICES

34.	Schedule amended	82
-----	------------------	----

PART 5

TRANSITIONAL PROVISIONS

35.	Interpretation	82
36.	Management committees appointed in accordance with deeds of mutual covenant	83

PART 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Building Management Ordinance

37.	Interpretation	84
38.	Appointment of management committee	85
39.	Appointment of management committee after application to the Authority	85
40.	Appointment of management committee after application to tribunal	86
41.	Composition and procedure of management committee	86
42.	Application by management committee for registration of owners as a corporation	87
43.	Incorporation	87

44.	Change of name	88
45.	Powers of corporation generally	88
46.	Tenants' representative	88
47.	Duties and powers of corporation	88
48.	Contributions to funds	88
49.	Accounts of corporation	89
50.	Dissolution of management committee and appointment of administrator	90
51.	Interpretation	90
52.	Mandatory terms in deeds of mutual covenant	91
53.	Terms added if consistent with deed of mutual covenant	93
54.	Right to establish corporation and conduct business	93
55.	Management committee to replace owners' committee	93
56.	Appointment of management committee or building management agent by order of tribunal	93
57.	Powers of building management agent appointed following order of tribunal	94
58.	Power to amend Schedules	94
59.	Jurisdiction of tribunal in relation to building management	94
60.	Composition and procedure of management committee	95
61.	Meetings and procedure of corporation	95
62.	Annual budget	96
63.	Accounts	96
64.	Mandatory terms in deeds of mutual covenant	96
65.	Terms added if consistent with deed of mutual covenant	97
66.	Enumeration of owners	97

Lands Tribunal Rules

67.	Commencement of proceedings	98
68.	Forms	98

Land Titles Ordinance

69.	Consequential amendments	99
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A BILL

To

Amend the Building Management Ordinance and to provide for
incidental and transitional matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Building Management
(Amendment) Ordinance 2005.

2. Commencement

(1) This Ordinance, other than sections 10, 13 and 28(e)
and Part 3, shall come into operation on the day on which it is
published in the Gazette.

(2) Sections 10, 13 and 28(e) and Part 3 shall come into
operation on a day to be appointed by the Secretary for Home
Affairs by notice published in the Gazette.

PART 2

AMENDMENTS TO BUILDING MANAGEMENT ORDINANCE

3. Interpretation

Section 2 of the Building Management Ordinance (Cap. 344) is amended -

- (a) in paragraph (c)(ii) of the definition of "building", by repealing "Part II" and substituting "section 3, 3A, 4 or 40C";
- (b) in the definition of "management committee", by repealing "section 3, 3A or 4" and substituting "section 3, 3A, 4 or 40C";
- (c) by adding -

"convenor" (召集人) -

- (a) in relation to a meeting of owners convened under section 3, means the person referred to in section 3(1)(a) or (b) or the owner appointed under section 3(1)(c);
- (b) in relation to a meeting of owners convened under section 3A, means the owner

directed under section

3A(1);

(c) in relation to a meeting of owners convened under section 4, means the owner directed under section 4(1); or

(d) in relation to a meeting of owners convened under section 40C, means the owner named in the order made under section 40C(1);

"member" (委員), in relation to a management committee, means a person appointed as a member of the management committee under paragraph 2(1)(a) or 5(2)(a) of Schedule 2;".

4. Appointment of management committee

Section 3 is amended -

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

"(c) an owner appointed to convene such a meeting by the owners of not less than 5% of the shares in aggregate.";

(b) by repealing subsection (2) and substituting -

"(2) At a meeting of owners convened under this section, the owners may, by a resolution -

(a) passed by a majority of the votes of the owners voting either personally or by proxy; and

(b) supported by the owners of not less than 30% of the shares in aggregate,

appoint a management committee.";

(c) by adding -

"(3) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and -

(a) where the convenor is the person referred to in subsection (1)(a), to any person referred to in subsection (1)(b);

- (b) where the convenor is the person referred to in subsection (1)(b), to any person referred to in subsection (1)(a); or
- (c) where the convenor is the owner appointed under subsection (1)(c), to any person referred to in subsection (1)(a) or (b).

(4) The notice of meeting shall specify -

- (a) the date, time and place of the meeting; and
- (b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management committee.

(5) The notice of meeting may be given -

- (a) in the case of an owner -
 - (i) by delivering it personally to the owner;

(ii) by sending it by post to the owner at his last known address; or

(iii) by leaving it at the owner's flat or depositing it in the letter box for that flat; or

(b) in the case of a person referred to in subsection (1)(a) or (b) -

(i) by delivering it personally to the person; or

(ii) by sending it by post to the person at his last known address.

(6) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the

Authority from time to time for that purpose.

(7) The convenor shall preside at a meeting of owners convened under this section.

(8) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(9) At a meeting of owners convened under this section -

(a) an owner shall, unless the deed of mutual covenant (if any) otherwise provides, have one vote in respect of each share he owns;

(b) an owner may cast a vote personally or by proxy;

(c) where 2 or more persons are the co-owners of a share, the vote in respect of the share may be cast -

(i) by a proxy jointly appointed by the co-owners;

(ii) by a person
appointed by the
co-owners from
amongst
themselves; or

(iii) if no appointment
is made under
subparagraph (i)
or (ii), either by
one of the co-
owners personally
or by a proxy
appointed by one
of the co-owners;
and

(d) where 2 or more persons are
the co-owners of a share and
more than one of the co-
owners seeks to cast a vote
in respect of the share,
only the vote that is cast,
whether personally or by
proxy, by the co-owner whose
name, in order of priority,
stands highest in relation
to that share in the

register kept at the Land Registry shall be treated as valid.

(10) For the purposes of subsection (9) -

(a) the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A, and -

(i) shall be signed by the owner; or

(ii) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf;

- (b) the instrument appointing a proxy shall be lodged with the convenor at least 24 hours before the time for the holding of the meeting; and
- (c) a proxy appointed in accordance with paragraphs (a) and (b) to vote for an owner shall, for the purposes of establishing a quorum, be treated as being an owner present at the meeting."

5. Appointment of management committee after application to the Authority

Section 3A is amended -

- (a) in subsection (1), by repealing "(convenor" (召集人))";
- (b) in subsection (3), by repealing "the meeting of owners convened under this section may," and substituting "at a meeting of owners convened under this section, the owners may,";

(c) by adding -

"(3A) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and any person referred to in section 3(1)(a) or (b).

(3B) The notice of meeting shall specify -

- (a) the date, time and place of the meeting; and
- (b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management committee.

(3C) The notice of meeting may be given -

- (a) in the case of an owner -
 - (i) by delivering it personally to the owner;
 - (ii) by sending it by post to the owner at his last known address; or

(iii) by leaving it at
the owner's flat
or depositing it
in the letter box
for that flat; or

(b) in the case of a person
referred to in section
3(1)(a) or (b) -

(i) by delivering it
personally to the
person; or

(ii) by sending it by
post to the person
at his last known
address.

(3D) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the Authority from time to time for that purpose.

(3E) The convenor shall preside at a meeting of owners convened under this section.

(3F) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(3G) At a meeting of owners convened under this section -

(a) an owner shall, unless the deed of mutual covenant (if any) otherwise provides, have one vote in respect of each share he owns;

(b) an owner may cast a vote personally or by proxy;

(c) where 2 or more persons are the co-owners of a share, the vote in respect of the share may be cast -

(i) by a proxy jointly appointed by the co-owners;

(ii) by a person appointed by the co-owners from amongst themselves; or

(iii) if no appointment is made under subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners; and

(d) where 2 or more persons are the co-owners of a share and more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, whether personally or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid.

(3H) For the purposes of subsection

(3G) -

(a) the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A, and -

(i) shall be signed by the owner; or

(ii) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the body corporate in that behalf;

- (b) the instrument appointing a proxy shall be lodged with the convenor at least 24 hours before the time for the holding of the meeting; and
- (c) a proxy appointed in accordance with paragraphs (a) and (b) to vote for an owner shall, for the purposes of establishing a quorum, be treated as being an owner present at the meeting.";
- (d) in subsection (4), by repealing "by notice served upon the Authority not less than 7 days" and substituting "by notice given to the Authority at least 7 days";
- (e) in subsection (5), by repealing "served with a notice under section 5(1)(ba)" and substituting "to whom a notice has been given under subsection (3A)".

**6. Appointment of management committee
after application to tribunal**

Section 4 is amended -

(a) in subsection (4), by repealing "The meeting of owners convened under this section may," and substituting "At a meeting of owners convened under this section, the owners may,";

(b) by adding -

"(5) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and any person referred to in section 3(1)(a) or (b).

(6) The notice of meeting shall specify -

(a) the date, time and place of the meeting; and

(b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management committee.

(7) The notice of meeting may be given -

(a) in the case of an owner -

(i) by delivering it personally to the owner;

(ii) by sending it by post to the owner at his last known address; or

(iii) by leaving it at the owner's flat or depositing it in the letter box for that flat; or

(b) in the case of a person referred to in section

3(1)(a) or (b) -

(i) by delivering it personally to the person; or

(ii) by sending it by post to the person at his last known address.

(8) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the Authority from time to time for that purpose.

(9) The convenor shall preside at a meeting of owners convened under this section.

(10) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(11) At a meeting of owners convened under this section -

(a) an owner shall, unless the deed of mutual covenant (if any) otherwise provides, have one vote in respect of each share he owns;

(b) an owner may cast a vote personally or by proxy;

(c) where 2 or more persons are the co-owners of a share, the vote in respect of the share may be cast -

(i) by a proxy jointly appointed by the co-owners;

(ii) by a person appointed by the co-owners from amongst themselves; or

(iii) if no appointment is made under subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners; and

(d) where 2 or more persons are the co-owners of a share and more than one of the co-owners seeks to cast a vote

in respect of the share,
only the vote that is cast,
whether personally or by
proxy, by the co-owner whose
name, in order of priority,
stands highest in relation
to that share in the
register kept at the Land
Registry shall be treated as
valid.

(12) For the purposes of subsection
(11) -

(a) the instrument appointing a
proxy shall be in the form
set out in Form 1 in
Schedule 1A, and -

(i) shall be signed by
the owner; or

(ii) if the owner is a
body corporate,
shall,

notwithstanding
anything to the
contrary in its
constitution, be
sealed or stamped

with the seal or
stamp of the body
corporate and
signed by a person
authorized by the
body corporate in
that behalf;

(b) the instrument appointing a
proxy shall be lodged with
the convenor at least 24
hours before the time for
the holding of the meeting;
and

(c) a proxy appointed in
accordance with paragraphs
(a) and (b) to vote for an
owner shall, for the
purposes of establishing a
quorum, be treated as being
an owner present at the
meeting."

7. Notice of and voting at meetings

Section 5 is repealed.

8. Application of section 5 to meetings held under section 40C

Section 5A is repealed.

9. Application by management committee for registration of owners as a corporation

Section 7(3) is amended -

(a) in paragraph (c), by repealing "and";

(b) in paragraph (d) -

(i) by repealing "section 5, 5A or 5B" and substituting "section 5B";

(ii) by repealing the full stop and substituting "; and";

(c) by adding -

"(e) a declaration by each member of the management committee appointed under paragraph 2(1)(a) of Schedule 2, in such form as the Land Registrar may specify, that he does not fall within the description of paragraph 4(1)(a) or (b) of that Schedule."

10. Land Registrar to maintain register of corporations

Section 12(2) is amended by adding -

"(da) the name and address of the insurance company with which the corporation has effected a policy of insurance under section 28 and the period covered by the policy of insurance;".

11. Duties and powers of corporation

Section 18 is amended -

(a) in subsection (2)(aa) -

(i) by repealing "subject to subsection (3), and";

(ii) by repealing "the chairman, vice-chairman (if any), secretary, treasurer and other holders of office of the management committee appointed in accordance with the Second Schedule" and substituting "the members of the management committee";

(b) in subsection (3), by repealing "A person" and substituting "For the avoidance of doubt, it is declared that a member of a management committee";

- (c) in subsection (4), by repealing "a person who is otherwise entitled to receive an allowance under this section" and substituting "a member of a management committee who is entitled to receive an allowance under subsection (2)(aa)".

12. Establishment of funds

Section 20 is amended -

- (a) in subsection (3), by adding "open and" before "maintain";
- (b) in subsection (4), by adding "opened and" before "maintained".

13. Supplies, goods and services

Section 20A is amended -

- (a) in subsection (2) -
 - (i) in paragraph (a), by repealing "\$100,000" and substituting "\$200,000";
 - (ii) in paragraph (b), by repealing "as may be approved by the corporation by a resolution passed at a general meeting" and substituting "as the Authority may specify by notice in the Gazette";

(iii) by adding ", unless the supplies, goods or services fall within a list of urgent matters specified in a resolution of the owners passed at a general meeting of the corporation" after "invitation to tender";

(b) by adding -

"(2A) Where any supplies, goods or services are required under subsection (2)(b) to be procured by invitation to tender, whether a tender submitted for the purpose is accepted or not shall be decided by a resolution of the owners passed at a general meeting of the corporation.".

14. Accounts of corporation

Section 27 is amended -

(a) in subsection (1), by repealing "an income and expenditure account and a balance sheet which shall both be signed" and substituting "financial statements which shall be signed";

(b) by adding immediately after subsection (1) -

"(1AA) The financial statements referred to in subsection (1) shall include -

(a) an income and expenditure account which gives a true and fair view of the financial transactions of the corporation for the period to which it relates; and

(b) a balance sheet which gives a true and fair view of the financial position of the corporation as at the date to which the income and expenditure account is made up." ;

(c) in subsection (1A) -

(i) by repealing ", the income and expenditure account and balance sheet" and substituting ", the financial statements";

(ii) by repealing "such account and balance sheet present fairly the financial transactions of the corporation during the period to which the income and expenditure account and balance sheet relate; and the financial position of the corporation at the end of that

period," and substituting "such financial statements are, in his opinion, properly prepared so as to give a true and fair view of the financial transactions of the corporation for the period to which the income and expenditure account relates and the financial position of the corporation as at the date to which the income and expenditure account is made up,".

15. Section added

The following is added in Part IV -

"29A. Protection of members of management committee

(1) No member of a management committee, acting in good faith, shall be personally liable for any act done or default made by or on behalf of the corporation -

(a) in the exercise or purported exercise of the powers conferred by this Ordinance on the corporation; or

(b) in the performance or purported performance of the duties imposed by this Ordinance on the corporation.

(2) The protection conferred by subsection (1) on a member of a management committee shall not in any way affect the liability of the corporation for that act or default."

16. Interpretation

Section 34D(1) is amended -

- (a) by repealing the definition of "manager" and substituting -

"manager" (經理人), in relation to a building, means the DMC manager or any other person who for the time being is, for the purposes of the deed of mutual covenant, managing the building;"

- (b) by adding -

"DMC manager" (公契經理人), in relation to a building, means the person who is specified in the deed of mutual covenant to manage the building;"

17. Right to establish corporation and conduct business

Section 34J(4) is amended -

- (a) in paragraph (a), by repealing "Part II" and substituting "section 3, 3A, 4 or 40C";
- (b) in paragraph (b), by repealing "a manager's appointment" and substituting "a DMC manager's appointment".

18. Appointment of building management agent by order of Authority

Section 40B(3) is repealed and the following substituted -

"(3) For the purposes of this section and section 40C, a person is eligible to be appointed as a building management agent if his name appears in a list of persons engaged in the business of the management of buildings compiled by the Authority from time to time and published in the Gazette."

19. Appointment of management committee or building management agent by order of tribunal

Section 40C is amended -

- (a) by repealing subsection (3) and substituting -
 - "(3) At a meeting of owners convened under this section, the owners may, by a resolution passed by a majority of the votes of the owners voting either personally or by proxy, appoint -

- (a) a management committee; or
- (b) (if no management committee is appointed) a building management agent.";

(b) by adding -

"(3A) If no management committee or building management agent is appointed at the meeting of owners, the convenor may appoint a building management agent directly.";

(c) by repealing subsection (4) and substituting -

"(4) The convenor shall, at least 14 days before the date of the meeting of owners, give notice of the meeting to each owner and any person referred to in section 3(1)(a) or (b).";

(d) by adding -

"(5) The notice of meeting shall specify -

- (a) the date, time and place of the meeting; and
- (b) the resolutions that are to be proposed at the meeting and, in particular, the resolution for the appointment of a management

committee and the resolution
for the appointment of a
building management agent.

(6) The notice of meeting may be
given -

(a) in the case of an owner -

(i) by delivering it
personally to the
owner;

(ii) by sending it by
post to the owner
at his last known
address; or

(iii) by leaving it at
the owner's flat
or depositing it
in the letter box
for that flat; or

(b) in the case of a person
referred to in section
3(1)(a) or (b) -

(i) by delivering it
personally to the
person; or

- (ii) by sending it by
post to the person
at his last known
address.

(7) The convenor shall also, at least 14 days before the date of the meeting of owners, display the notice of meeting in a prominent place in the building and publish the notice in a newspaper selected from a list of newspapers specified by the Authority from time to time for that purpose.

(8) The convenor shall preside at a meeting of owners convened under this section.

(9) The quorum at a meeting of owners convened under this section shall be 10% of the owners.

(10) At a meeting of owners convened under this section -

- (a) each owner shall have one
vote;
- (b) an owner may cast a vote
personally or by proxy;

- (c) in the case of co-owners,
the vote may be cast -
- (i) by a proxy jointly
appointed by the
co-owners;
 - (ii) by a person
appointed by the
co-owners from
amongst
themselves; or
 - (iii) if no appointment
is made under
subparagraph (i)
or (ii), either by
one of the co-
owners personally
or by a proxy
appointed by one
of the co-owners;
- and
- (d) where, in the case of co-
owners, more than one of the
co-owners seeks to cast a
vote, only the vote that is
cast, whether personally or
by proxy, by the co-owner

whose name, in order of priority, stands highest in the register kept at the Land Registry shall be treated as valid.

(11) For the purposes of subsection

(10) -

(a) the instrument appointing a proxy shall be in the form set out in Form 1 in Schedule 1A, and -

(i) shall be signed by the owner; or

(ii) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be sealed or stamped with the seal or stamp of the body corporate and signed by a person authorized by the

body corporate in
that behalf;

(b) the instrument appointing a proxy shall be lodged with the convenor at least 24 hours before the time for the holding of the meeting; and

(c) a proxy appointed in accordance with paragraphs (a) and (b) to vote for an owner shall, for the purposes of establishing a quorum, be treated as being an owner present at the meeting."

20. Power to make regulations

Section 41(ca) is amended -

(a) in subparagraph (vi), by repealing "dissolution" and substituting "winding up";

(b) by adding -

"(xi) the avoidance of arrangements, agreements or understandings, or parts thereof, made or reached after 31 March 2005 as to the liability of corporations, or owners of buildings, towards third parties;".

21. Common parts

The First Schedule is amended -

- (a) by repealing "FIRST SCHEDULE" and substituting "SCHEDULE 1";
- (b) by repealing "[s. 2]" and substituting "[ss. 2 & 42]".

22. Schedule 1A added

The following is added -

"SCHEDULE 1A [ss. 3, 3A, 4, 40C
 & 42 & Schs.
 3 & 8]

FORMS

FORM 1

INSTRUMENT OF PROXY FOR MEETINGS OF OWNERS
 CONVENED UNDER SECTION 3, 3A, 4 OR 40C OF
 OR PARAGRAPH 8 OF SCHEDULE 8 TO THE
 BUILDING MANAGEMENT ORDINANCE
 (CAP. 344)

Meeting of the owners of

(b) by repealing "[ss. 6 & 42]" and substituting
"[ss. 2, 6, 7, 14, 34K & 42 & Sch. 3]";

(c) in paragraph 1 -

(i) by repealing subparagraph (a) and
substituting -

"(a) consist of -

(i) not less than 3
persons where the
building contains
not more than 50
flats;

(ii) not less than 7
persons where the
building contains
more than 50 flats
but not more than
100 flats; or

(iii) not less than 9
persons where the
building contains
more than 100
flats; and";

(ii) by repealing subparagraphs (b) and
(c);

(d) in paragraph 2 -

(i) by repealing subparagraph (1) and substituting -

"(1) Subject to subparagraph (2), at a meeting of owners convened under section 3, 3A, 4 or 40C, after a management committee is appointed, the owners shall, by a resolution passed by a majority of the votes of the owners voting either personally or by proxy -

(a) appoint, from amongst themselves, the members of the management committee;

(b) appoint a person, from amongst the members of the management committee, as the chairman of the management committee;

(c) appoint a person,
whether or not he
is a member of the
management
committee, as the
secretary of the
management
committee; and

(d) appoint a person,
whether or not he
is a member of the
management
committee, as the
treasurer of the
management
committee,

and the owners may, by a
resolution passed by a majority
of the votes of the owners voting
either personally or by proxy,
appoint a person, from amongst
the members of the management
committee, as the vice-chairman
of the management committee.";

(ii) by adding -

"(3) A person who is not a member of the management committee appointed under subparagraph (1)(a) does not by virtue of his appointment as the secretary or treasurer of the management committee under subparagraph (1)(c) or (d), as the case may be, become a member of the management committee.

(4) For the purposes of appointing the members, chairman, vice-chairman (if applicable), secretary and treasurer of a management committee under subparagraph (1) at a meeting of owners convened under section 3, 3A, 4 or 40C -

(a) if the meeting is convened under section 3, the provisions in section 3(8), (9) and (10) shall apply as they

apply for the
purposes of
appointing a
management
committee under
section 3;

(b) if the meeting is
convened under
section 3A, the
provisions in
section 3A(3F),
(3G) and (3H)
shall apply as
they apply for the
purposes of
appointing a
management
committee under
section 3A;

(c) if the meeting is
convened under
section 4, the
provisions in
section 4(10),
(11) and (12)
shall apply as

they apply for the purposes of appointing a management committee under section 4; or

(d) if the meeting is convened under section 40C, the provisions in section 40C(9), (10) and (11) shall apply as they apply for the purposes of appointing a management committee under section 40C.";

(e) in paragraph 3, by repealing everything after "members of the management committee" and substituting "appointed under paragraph 2(1)(a) shall hold office until the members of a new management committee are appointed under paragraph 5(2)(a).";

(f) in paragraph 4 -

(i) by repealing subparagraph (1) and substituting -

"(1) For the purposes of paragraphs 2(1)(a) and 5(2)(a), 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 proposed 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 the person's creditors, in

either case
without paying the
creditors in full;

(b) has, within the
previous 5 years,
been convicted of
an offence for
which he has been
sentenced to
imprisonment,
whether suspended
or not, for a term
exceeding 3 months
without the option
of a fine.";

(ii) in subparagraph (2)(e), by repealing
", or ceases to be qualified to be a
member according to the deed of mutual
covenant (if any), as the case may
be";

(iii) by adding -

"(3) Every member of the
management committee appointed
under paragraph 5(2)(a) shall,
within 14 days after the
appointment, lodge with the

secretary of the management committee a declaration, in such form as the Land Registrar may specify, stating that he does not fall within the description of subparagraph (1)(a) or (b).

(4) Subject to subparagraph (6), where a change occurs in any matter stated in a declaration referred to in section 7(3)(e) or subparagraph (3), the person who made the declaration shall, within 14 days after the change occurs, lodge with the secretary of the management committee another declaration, in such form as the Land Registrar may specify, stating the particulars of the change.

(5) The secretary of the management committee shall, within 28 days after receiving a declaration by virtue of subparagraph (3) or (4), lodge with the Land Registrar the declaration.

(6) Where the person referred to in subparagraph (4) is the secretary of the management committee, that person shall, within 28 days after the relevant change occurs, lodge with the Land Registrar a declaration, in such form as the Land Registrar may specify, stating the particulars of the change.";

(g) in paragraph 5 -

(i) in subparagraph (1), by repealing "annual general meeting, all members of the management committee, other than the member (if any) deemed to be appointed under paragraph 2(2) in his capacity as the tenants' representative, shall retire from office." and substituting -

"annual general meeting -

(a) all members of the management committee (other than the member (if any) deemed to

be appointed under paragraph 2(2) in his capacity as the tenants' representative);

(b) if the secretary of the management committee is not a member of the management committee, the secretary; and

(c) if the treasurer of the management committee is not a member of the management committee, the treasurer,

shall retire from office.";

(ii) by repealing subparagraph (2) and substituting -

"(2) Subject to subparagraph (2A), at an annual general meeting of a corporation at which the members of the management committee retire under subparagraph (1), the owners shall -

- (a) appoint, from amongst themselves, the members of a new management committee;
- (b) appoint a person, from amongst the members of the new management committee, as the chairman of the new management committee;
- (c) appoint a person, whether or not he is a member of the new management committee, as the

secretary of the
new management
committee; and

(d) appoint a person,
whether or not he
is a member of the
new management
committee, as the
treasurer of the
new management
committee,

and the owners may appoint a
person, from amongst the members
of the new management committee,
as the vice-chairman of the new
management committee.";

(iii) by adding -

"(2A) The tenants'
representative appointed under
section 15(1) shall be deemed to
be appointed by the owners as a
member of the new management
committee.";

(iv) by adding -

"(4) A person who is not a member of the new management committee appointed under subparagraph (2)(a) does not by virtue of his appointment as the secretary or treasurer of the new management committee under subparagraph (2)(c) or (d), as the case may be, become a member of the new management committee.";

(h) in paragraph 8 -

(i) by repealing subparagraph (2) and substituting -

"(2) The secretary shall, at least 7 days before the date of the meeting of the management committee, give notice of the meeting to each member of the management committee.";

(ii) by adding immediately after subparagraph (2) -

"(2AA) The notice of meeting shall specify -

(a) the date, time and place of the meeting; and

(b) the resolutions (if any) that are to be proposed at the meeting.";

(iii) in subparagraph (2A) -

(A) by repealing "Service of a notice required to be served under subparagraph (2) may be effected" and substituting "The notice of meeting may be given";

(B) in sub-subparagraph (a), by repealing "personally upon" and substituting "by delivering it personally to";

(C) in sub-subparagraph (b), by repealing "by post addressed to" and substituting "by sending it by post to";

(D) in sub-subparagraph (c) -

(I) by repealing "the notice" where it twice appears and substituting "it";

(II) by repealing "his letter box" and substituting "the letter box for that flat";

(iv) in subparagraph (3), by repealing "serve a copy of such resolution, and a copy of any subsequent resolution of the management committee affecting the same, upon each member" and substituting "give a copy of such resolution, and a copy of any subsequent resolution of the management committee affecting the same, to each member";

(i) by adding -

"10A. (1) The minutes certified in accordance with paragraph 10(4A) shall be kept by the management committee for such period, being not less than 6 years, as the corporation may determine.

(2) If the tenants' representative, an owner, a registered mortgagee or any person duly authorized in writing in that behalf by an owner or registered mortgagee requests in writing the corporation to supply him with copies of any minutes certified in accordance with paragraph 10(4A), the secretary shall, on the payment of such reasonable copying charge as the management committee may determine, supply such copies to that person.";

- (j) in paragraph 11(1), by repealing "Notwithstanding any provision in a deed of mutual covenant to the contrary, where" and substituting "Where".

24. Meetings and procedure of corporation

The Third Schedule is amended -

- (a) by repealing "THIRD SCHEDULE" and substituting "SCHEDULE 3";
- (b) by repealing "[ss. 8(5) & 42]" and substituting "[ss. 8, 10, 27, 30, 34D & 42 & Schs. 2 & 11]";
- (c) in paragraph 2 -
- (i) by repealing subparagraph (1) and substituting -

"(1) The secretary of the management committee shall, at least 14 days before the date of the meeting of the corporation, give notice of the meeting to each owner and the tenants' representative (if any).";

(ii) by adding immediately after subparagraph (1) -

"(1AA) The notice of meeting shall specify -

(a) the date, time and place of the meeting; and

(b) the resolutions (if any) that are to be proposed at the meeting or other matters that are to be discussed at the meeting.";

(iii) in subparagraph (1A) -

(A) by repealing "Service of a notice required to be served under subparagraph (1) may be effected"

and substituting "The notice of meeting may be given";

(B) in sub-subparagraph (a), by repealing "personally upon" and substituting "by delivering it personally to";

(C) in sub-subparagraph (b), by repealing "by post addressed to" and substituting "by sending it by post to";

(D) by repealing sub-subparagraph (c) and substituting -

"(c) by leaving it at the flat of the owner or tenants' representative (if any) or depositing it in the letter box for that flat.";

(iv) by repealing subparagraph (2);

(d) in paragraph 3 -

(i) by repealing subparagraph (1) and substituting -

"(1) A meeting of the corporation shall be presided over by -

- (a) the chairman of
the management
committee;
 - (b) in the absence of
the chairman of
the management
committee, the
vice-chairman (if
any) of the
management
committee; or
 - (c) in the absence of
the chairman and
the vice-chairman
(if any) of the
management
committee, a
person appointed
by the owners
present at the
meeting from
amongst
themselves.";
- (ii) by repealing subparagraph (2);

(iii) in subparagraph (3), by repealing "majority of votes of the owners" and substituting "majority of the votes of the owners voting either personally or by proxy";

(iv) in subparagraph (5) -

(A) in sub-subparagraph (a), by repealing "each owner shall, subject to the provisions of any instrument registered in the Land Registry" and substituting "an owner shall, unless the deed of mutual covenant (if any) otherwise provides";

(B) by repealing sub-subparagraph (b) and substituting -

"(b) Where 2 or more persons are the co-owners of a share, the vote in respect of the share may be cast -

(i) by a proxy jointly appointed by the co-owners;

(ii) by a person
appointed by
the co-owners
from amongst
themselves;
or

(iii) if no
appointment
is made under
sub-sub-
subparagraph
(i) or (ii),
either by one
of the co-
owners
personally or
by a proxy
appointed by
one of the
co-owners.";

(C) by adding -

"(c) Where 2 or more persons
are the co-owners of a
share and more than one
of the co-owners seeks
to cast a vote in

respect of the share,
only the vote that is
cast, whether
personally or by proxy,
by the co-owner whose
name, in order of
priority, stands
highest in relation to
that share in the
register kept at the
Land Registry shall be
treated as valid.";

(v) in subparagraph (7), by repealing
"served" and substituting "given";

(e) in paragraph 4 -

(i) in subparagraph (1), by repealing "the
votes of owners may be given either"
and substituting ", an owner may cast
a vote";

(ii) in subparagraph (2), by repealing "in
writing signed by the owner, or if the
owner is a body corporate, under the
seal of that body." and substituting -
"in the form set out in Form 2 in
Schedule 1A, and -

- (a) shall be signed by
the owner; or
 - (b) if the owner is a
body corporate,
shall,
notwithstanding
anything to the
contrary in its
constitution, be
sealed or stamped
with the seal or
stamp of the body
corporate and
signed by a person
authorized by the
body corporate in
that behalf.";
- (iii) by repealing subparagraph (3) and
substituting -

"(3) The instrument
appointing a proxy shall be
lodged with the secretary of the
management committee at least 24
hours before the time for the
holding of the meeting.";

(f) by adding -

"6A. (1) The minutes certified in accordance with paragraph 6(2) shall be kept by the management committee for such period, being not less than 6 years, as the corporation may determine.

(2) If the tenants' representative, an owner, a registered mortgagee or any person duly authorized in writing in that behalf by an owner or registered mortgagee requests in writing the corporation to supply him with copies of any minutes certified in accordance with paragraph 6(2), the secretary shall, on the payment of such reasonable copying charge as the management committee may determine, supply such copies to that person."

25. Maximum allowances in respect of each holder of office of a management committee

The Fourth Schedule is amended -

(a) by repealing "FOURTH SCHEDULE" and substituting
"SCHEDULE 4";

- (b) in the heading, by repealing "HOLDER OF OFFICE" and substituting "MEMBER";
- (c) by repealing "[ss. 18(2) & 42]" and substituting "[ss. 18 & 42]".

26. Annual budget

The Fifth Schedule is amended -

- (a) by repealing "FIFTH SCHEDULE" and substituting "SCHEDULE 5";
- (b) by repealing "[ss. 21(4) & (5) & 42]" and substituting "[ss. 21 & 42]".

27. Accounts

The Sixth Schedule is amended -

- (a) by repealing "SIXTH SCHEDULE" and substituting "SCHEDULE 6";
- (b) by repealing "[ss. 27(4) & (5) & 42]" and substituting "[ss. 27 & 42]";
- (c) in paragraph 3(a) -
 - (i) by repealing "an income and expenditure account and balance sheet" and substituting "the financial statements and, if applicable, the accountant's report";

- (ii) by repealing "section 27(1)" and substituting "section 27".

28. Mandatory terms in deeds of mutual covenant

The Seventh Schedule is amended -

- (a) by repealing "SEVENTH SCHEDULE" and substituting "SCHEDULE 7";
- (b) in paragraph 2(2) -
 - (i) by adding "and a balance sheet" after "a summary of income and expenditure";
 - (ii) by repealing "a copy of it" and substituting "a copy of the summary and the balance sheet";
- (c) in paragraph 3 -
 - (i) in the heading, by adding "**open and**" before "**maintain**";
 - (ii) in subparagraph (1), by adding "open and" before "maintain";
 - (iii) by adding -
 - "(1A) Without prejudice to the generality of subparagraph (1), if there is a corporation, the manager shall open and maintain one or more segregated interest-bearing accounts, each

of which shall be designated as a trust account or client account, for holding money received by him from or on behalf of the corporation in respect of the management of the building.

(1B) The manager shall display a document showing evidence of any account opened and maintained under subparagraph (1) or (1A) in a prominent place in the building.";

(iv) in subparagraph (2), by repealing "maintained under subparagraph (1)" and substituting "opened and maintained under subparagraph (1) or, if there is a corporation, the account or accounts opened and maintained under subparagraph (1A)";

(d) in paragraph 4 -

(i) in subparagraph (3), by adding "open and" before "maintain";

(ii) by adding -

"(3A) Without prejudice to the generality of subparagraph (3), if there is a corporation, the manager shall open and maintain one or more segregated interest-bearing accounts, each of which shall be designated as a trust account or client account, for holding money received by him from or on behalf of the corporation in respect of the special fund.

(3B) The manager shall display a document showing evidence of any account opened and maintained under subparagraph (3) or (3A) in a prominent place in the building.";

(iii) in subparagraph (4), by repealing "maintained under subparagraph (3)" and substituting "opened and maintained under subparagraph (3) or, if there is a corporation, the account or accounts opened and maintained under subparagraph (3A)";

(e) by repealing paragraph 5 and substituting -

**"5. Contracts entered into
by manager**

(1) Where any supplies, goods or services are required under section 20A(2)(a) to be procured by invitation to tender, the manager shall not enter into any contract for the procurement of the supplies, goods or services unless the contract complies with such standards and guidelines as may be specified in a Code of Practice referred to in section 20A(3) and relating to procurement and tender procedures.

(2) Where any supplies, goods or services are required under section 20A(2)(b) to be procured by invitation to tender, the manager shall not enter into any contract for the procurement of the supplies, goods or services unless the contract complies with section 20A(2A) and with such standards and guidelines as may be specified in a Code of Practice referred to in section 20A(3) and relating to procurement and tender procedures.";

- (f) in paragraph 6 -
 - (i) in subparagraph (1)(b), by repealing "serving such a notice on" and substituting "giving such a notice to";
 - (ii) in subparagraph (2) -
 - (A) by repealing "Service of a notice on an owner under this paragraph may be effected" and substituting "The notice referred to in subparagraph (1)(b) may be given";
 - (B) in sub-subparagraph (a), by repealing "personally upon" and substituting "by delivering it personally to";
 - (C) in sub-subparagraph (b), by repealing "by post addressed to" and substituting "by sending it by post to";
 - (D) in sub-subparagraph (c) -

(I) by repealing "the notice" where it twice appears and substituting "it";

(II) by repealing "his letter box" and substituting "the letter box for that flat";

(g) in paragraph 7 -

(i) in the heading, by repealing "**manager's appointment**" and substituting "**DMC manager's appointment**";

(ii) in subparagraph (1) -

(A) by repealing "(5) and";

(B) by repealing "the manager's appointment" and substituting "the DMC manager's appointment";

(iii) in subparagraph (2) -

(A) in sub-subparagraph (b), by repealing "the manager" and substituting "the DMC manager";

- (B) in sub-subparagraph (c), by
repealing "the manager's
appointment" and substituting
"the DMC manager's appointment";
- (C) in sub-subparagraph (d), by
repealing "is served upon the
manager not more than 14 days"
and substituting "is given to the
DMC manager within 14 days";
- (iv) in subparagraph (3) -
 - (A) by repealing "Service of the
notice and the copy of the
resolution required to be served
under subparagraph (2)(d) may be
effected" and substituting "The
notice and the copy of the
resolution referred to in
subparagraph (2)(d) may be
given";
 - (B) in sub-subparagraph (a), by
repealing "personally upon the
manager" and substituting "by
delivering them personally to the
DMC manager";

(C) in sub-subparagraph (b) -

(I) by repealing "by post addressed to the manager" and substituting "by sending them by post to the DMC manager";

(II) by repealing "; or" and substituting a full stop;

(D) by repealing sub-subparagraph (c);

(v) in subparagraph (4), by repealing "to terminate the manager's appointment" and substituting "in a contract to terminate the appointment of a manager who is not a DMC manager";

(vi) by repealing subparagraph (5);

(vii) in subparagraph (6), by repealing "a manager's appointment" and substituting "a DMC manager's appointment".

**29. Terms added if consistent with deed
of mutual covenant**

The Eighth Schedule is amended -

(a) by repealing "EIGHTH SCHEDULE" and substituting
"SCHEDULE 8";

(b) by repealing "[ss. 34D, 34F & 42]" and
substituting "[ss. 34D, 34F & 42 & Sch. 11]";

(c) by repealing paragraph 2 and substituting -

"2. The person or persons convening the
meeting of the owners' committee shall, at
least 7 days before the date of the
meeting, give notice of the meeting to each
member of the owners' committee.";

(d) by adding -

"2A. The notice of meeting referred to in
paragraph 2 shall specify -

(a) the date, time and place of
the meeting; and

(b) the resolutions (if any)
that are to be proposed at
the meeting.";

(e) in paragraph 3 -

- (i) by repealing "Service of a notice required to be served under paragraph 2 may be effected" and substituting "The notice of meeting referred to in paragraph 2 may be given";
- (ii) in subparagraph (a), by repealing "personally upon" and substituting "by delivering it personally to";
- (iii) in subparagraph (b), by repealing "by post addressed to" and substituting "by sending it by post to";
- (iv) in subparagraph (c) -
 - (A) by repealing "the notice" where it twice appears and substituting "it";
 - (B) by repealing "his letter box" and substituting "the letter box for that flat";
- (f) by repealing paragraph 9 and substituting -
 - "9. The person or persons convening the meeting of owners shall, at least 14 days before the date of the meeting, give notice of the meeting to each owner.";
- (g) by adding -

"9A. The notice of meeting referred to in paragraph 9 shall specify -

- (a) the date, time and place of the meeting; and
- (b) the resolutions (if any) that are to be proposed at the meeting.";

(h) in paragraph 10 -

- (i) by repealing "Service of a notice required to be served under paragraph 9 may be effected" and substituting "The notice of meeting referred to in paragraph 9 may be given";
- (ii) in subparagraph (a), by repealing "personally upon" and substituting "by delivering it personally to";
- (iii) in subparagraph (b), by repealing "by post addressed to" and substituting "by sending it by post to";
- (iv) in subparagraph (c) -
 - (A) by repealing "the notice" where it twice appears and substituting "it";
 - (B) by repealing "his letter box" and substituting "the letter box for that flat";

(i) in paragraph 13 -

(i) by repealing subparagraphs (a), (b)
and (c) and substituting -

"(a) an owner shall have one vote
in respect of each share he
owns;

(b) an owner may cast a vote
personally or by proxy;

(c) where 2 or more persons are
the co-owners of a share,
the vote in respect of the
share may be cast -

(i) by a proxy jointly
appointed by the
co-owners;

(ii) by a person
appointed by the
co-owners from
amongst
themselves; or

(iii) if no appointment
is made under sub-
subparagraph (i)
or (ii), either by
one of the co-
owners personally

or by a proxy
appointed by one
of the co-
owners;" ;

(ii) by adding -

"(ca) where 2 or more persons are
the co-owners of a share and
more than one of the co-
owners seeks to cast a vote
in respect of the share,
only the vote that is cast,
whether personally or by
proxy, by the co-owner whose
name, in order of priority,
stands highest in relation
to that share in the
register kept at the Land
Registry shall be treated as
valid; and";

(j) in paragraph 14 -

(i) in subparagraph (1), by repealing "in
writing signed by the owner or, if the
owner is a body corporate, under the
seal of that body." and substituting -
"in the form set out in Form 1 in
Schedule 1A, and -

- (a) shall be signed by
the owner; or
 - (b) if the owner is a
body corporate,
shall,
notwithstanding
anything to the
contrary in its
constitution, be
sealed or stamped
with the seal or
stamp of the body
corporate and
signed by a person
authorized by the
body corporate in
that behalf.";
- (ii) in subparagraph (2), by repealing "not
less than 24 hours before the time for
the holding of the meeting at which
the proxy proposes to vote, or within
such lesser time as the chairman shall
allow" and substituting "at least 24
hours before the time for the holding
of the meeting".

30. Exempt estates

The Ninth Schedule is amended by repealing "NINTH SCHEDULE" and substituting "SCHEDULE 9".

31. Hearing and determination of specified proceedings by tribunal

The Tenth Schedule is amended by repealing "TENTH SCHEDULE" and substituting "SCHEDULE 10".

32. Enumeration of owners

Schedule 11 is amended -

- (a) by repealing "[s. 5B]" and substituting "[ss. 5B & 42]";
- (b) in paragraph (a), by repealing "section 40C(3) and" and substituting "sections 3(8), 3A(3F), 4(10) and 40C(9),".

PART 3

AMENDMENTS TO BUILDING MANAGEMENT
(AMENDMENT) ORDINANCE 2000

33. Section substituted

Section 12 of the Building Management (Amendment) Ordinance 2000 (69 of 2000) is amended, in the new section 28 -

- (a) in subsection (1) -

- (i) by repealing "occupiers and";
 - (ii) by repealing "the building and all parts thereof including the common parts" and substituting "the common parts of the building";
- (b) by adding -
- "(1A) For the purposes of subsection (1), a corporation shall have power to enter into a policy of insurance with an insurance company as agent for the owners of a building.";
- (c) in subsection (3), by repealing "occupiers and";
- (d) in subsection (5) -
- (i) by adding "of the management committee" after "the treasurer";
 - (ii) by repealing "副本費" and substituting "複印費";
- (e) in subsection (6), by adding "of the management committee" after "the treasurer";
- (f) by adding -
- "(6A) The secretary of the management committee shall, within 28 days after the corporation has effected the policy of insurance, give notice of the name and address of the insurance company and the

"pre-amended Ordinance" (未經修訂條例) means the Building Management Ordinance (Cap. 344) as in force immediately before the commencement date;

"transitional period" (過渡期) means a period of 4 years after the commencement date.

36. Management committees appointed in accordance with deeds of mutual covenant

(1) This section applies to a management committee of a corporation which has been appointed in accordance with a deed of mutual covenant under section 3(2)(a) of the pre-amended Ordinance and which is in existence immediately before the commencement date.

(2) Subject to subsection (3), during the transitional period, the amendments made by section 23 of this Ordinance to the Second Schedule to the pre-amended Ordinance shall not affect the composition and procedure of a management committee to which this section applies, and the Second Schedule to the pre-amended Ordinance shall continue to have effect with respect to the composition and procedure of the management committee as if section 23 of this Ordinance had not been enacted.

(3) Subsection (2) shall cease to have effect with respect to the composition and procedure of a management committee to which this section applies when -

- (a) the corporation decides, by a resolution passed at an annual general meeting during the transitional period, that Schedule 2 to the Building Management Ordinance (Cap. 344) as amended by section 23 of this Ordinance shall have effect with respect to the composition and procedure of the management committee; or
- (b) (if no resolution referred to in paragraph (a) is passed during the transitional period) the transitional period expires,

and Schedule 2 to the Building Management Ordinance (Cap. 344) as amended by section 23 of this Ordinance shall after such cessation have effect with respect to the composition and procedure of the management committee accordingly.

PART 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Building Management Ordinance

37. Interpretation

Section 2 of the Building Management Ordinance (Cap. 344) is amended -

- (a) in paragraph (b) of the definition of "common parts", by repealing "the First Schedule" and substituting "Schedule 1";

- (b) in paragraph (a) of the definition of "exempt estate", by repealing "the Ninth Schedule" and substituting "Schedule 9";
- (c) in paragraph (c)(ii) of the definition of "建築物", by repealing "委任" where it twice appears and substituting "委出";
- (d) in the definition of "管理委員會", by repealing "委任" and substituting "委出".

38. Appointment of management committee

Section 3(1) is amended by repealing "委任" and substituting "委出".

39. Appointment of management committee after application to the Authority

Section 3A is amended -

- (a) in subsection (1) -
 - (i) by adding "in aggregate" after "the shares";
 - (ii) by repealing "委任" and substituting "委出";
- (b) in subsection (3), by repealing "委任" and substituting "委出";
- (c) in subsection (4), by repealing "委任" and substituting "委出";

(d) in subsection (5) -

(i) in paragraph (a), by repealing "owners of not less than 20% of the shares" and substituting "the owners of not less than 20% of the shares in aggregate";

(ii) in paragraph (b), by repealing "owners of not less than 20% of the shares" and substituting "the owners of not less than 20% of the shares in aggregate".

40. Appointment of management committee after application to tribunal

Section 4 is amended -

(a) in subsection (1) -

(i) in paragraph (a), by adding "in aggregate" after "the shares";

(ii) by repealing "委任" and substituting "委出";

(b) in subsection (4), by repealing "委任" and substituting "委出".

41. Composition and procedure of management committee

Section 6 is amended by repealing "The Second Schedule"

and substituting "Schedule 2".

42. Application by management committee for registration of owners as a corporation

Section 7 is amended -

(a) in subsection (1) -

(i) by repealing "委任的" and substituting "委出的";

(ii) by repealing "獲委任" and substituting "委出";

(b) in subsection (2), by repealing "採用土地註冊處處長所指明的格式" and substituting "符合土地註冊處處長指明的格式";

(c) in subsection (3) -

(i) in paragraph (c), by repealing "委任" and substituting "委出";

(ii) in paragraph (d), by repealing "聲明書格式由土地註冊處處長指明" and substituting "聲明書須符合土地註冊處處長指明的格式".

43. Incorporation

Section 8 is amended -

(a) in subsection (2)(b), by repealing "委任" and substituting "委出";

- (b) in subsection (5), by repealing "The Third Schedule" and substituting "Schedule 3".

44. Change of name

Section 10(1) is amended by repealing "the Third Schedule" and substituting "Schedule 3".

45. Powers of corporation generally

Section 14(3) is amended by repealing "the Second Schedule" and substituting "Schedule 2".

46. Tenants' representative

Section 15(1) is amended by repealing "親自出席或委派代表出席投票" and substituting "親自投票或委派代表投票".

47. Duties and powers of corporation

Section 18 is amended -

- (a) in subsection (2)(aa), by repealing "the Fourth Schedule" and substituting "Schedule 4";
- (b) in subsection (3), by repealing "所訂的" and substituting "所指的".

48. Contributions to funds

Section 21 is amended -

- (a) in subsection (4) -

- (i) by repealing "The Fifth Schedule" and substituting "Schedule 5";
 - (ii) by repealing "製備" and substituting "擬備";
- (b) in subsection (5), by repealing "the Fifth Schedule" and substituting "Schedule 5".

49. Accounts of corporation

Section 27 is amended -

- (a) in subsection (1) -
 - (i) by repealing "the Third Schedule" and substituting "Schedule 3";
 - (ii) by repealing "製備" and substituting "擬備";
- (b) in subsection (1A), by repealing "製備" and substituting "擬備";
- (c) in subsection (4) -
 - (i) by repealing "The Sixth Schedule" and substituting "Schedule 6";
 - (ii) by repealing "收支概要的製備" and substituting "收支概算表的擬備";
- (d) in subsection (5), by repealing "the Sixth Schedule" and substituting "Schedule 6".

50. Dissolution of management committee and appointment of administrator

Section 30 is amended -

- (a) in subsection (1), by repealing "the Third Schedule" and substituting "Schedule 3";
- (b) in subsection (3)(a) -
 - (i) by repealing "the Third Schedule" and substituting "Schedule 3";
 - (ii) by repealing ", 委任";
 - (iii) in subparagraph (i), by adding "委任" before "另";
 - (iv) in subparagraph (ii), by adding "委出" before "新".

51. Interpretation

Section 34D is amended -

- (a) in subsection (1) -
 - (i) by repealing "the Seventh and Eighth Schedules" and substituting "Schedules 7 and 8";
 - (ii) in the definition of "業主委員會" -
 - (A) in paragraph (a), by repealing "委任" and substituting "委出";
 - (B) in paragraph (b), by repealing "委任" and substituting "委出";

- (b) in subsection (2), by repealing "the Seventh Schedule" and substituting "Schedule 7";
- (c) in subsection (3) -
 - (i) in paragraph (a), by repealing "the Third Schedule" and substituting "Schedule 3";
 - (ii) in paragraph (b), by repealing "在業主親自出席或委派代表出席的按照公契召開及進行的業主大會上" and substituting "在按照公契召開和進行的業主大會上由親自投票或委派代表投票的業主";
- (d) in subsection (4) -
 - (i) by repealing "the Seventh Schedule" and substituting "Schedule 7";
 - (ii) by repealing "the Third Schedule" and substituting "Schedule 3".

52. Mandatory terms in deeds of mutual covenant

Section 34E is amended -

- (a) in subsection (1), by repealing "the Seventh Schedule" and substituting "Schedule 7";
- (b) in subsection (4), by repealing "the Seventh Schedule" and substituting "Schedule 7";
- (c) in subsection (5) -

- (i) by repealing "the Seventh Schedule" and substituting "Schedule 7";
 - (ii) by repealing "(in aggregate)";
 - (iii) by repealing "owners of not less than 50% of the shares" and substituting "the owners of not less than 50% of the shares in aggregate";
- (d) in subsection (6), by repealing "the Ninth Schedule" and substituting "Schedule 9";
- (e) in subsection (7) -
- (i) in paragraph (a) -
 - (A) by repealing "(in aggregate)";
 - (B) by repealing "owners of not less than 50% of the shares" and substituting "the owners of not less than 50% of the shares in aggregate";
 - (C) by repealing "the Ninth Schedule" and substituting "Schedule 9";
 - (ii) in paragraph (c), by repealing "the Ninth Schedule" and substituting "Schedule 9";
- (f) in subsection (8), by repealing "製備" and substituting "擬備".

53. Terms added if consistent with deed of mutual covenant

Section 34F is amended -

- (a) in subsection (1), by repealing "the Eighth Schedule" and substituting "Schedule 8";
- (b) in subsection (3), by repealing "the Eighth Schedule" and substituting "Schedule 8".

54. Right to establish corporation and conduct business

Section 34J(4) is amended -

- (a) in paragraph (a), by repealing "委任" and substituting "委出";
- (b) in paragraph (b), by repealing "the Seventh Schedule" and substituting "Schedule 7".

55. Management committee to replace owners' committee

Section 34K is amended -

- (a) in paragraph (b), by repealing "the Second Schedule" and substituting "Schedule 2";
- (b) by repealing "委任" where it twice appears and substituting "委出".

56. Appointment of management committee or building management agent by order of tribunal

Section 40C is amended -

- (a) in subsection (1)(a), by repealing "獲委任" where it twice appears and substituting "委出";
- (b) in subsection (2)(a), by repealing "委任" and substituting "委出".

57. Powers of building management agent appointed following order of tribunal

Section 40D(1) is amended by repealing "the Seventh Schedule" and substituting "Schedule 7".

58. Power to amend Schedules

Section 42 is amended -

- (a) in subsection (1), by repealing "the Seventh and Ninth Schedules" and substituting "Schedules 7 and 9";
- (b) in subsection (2), by repealing "the Seventh Schedule" and substituting "Schedule 7";
- (c) in subsection (3), by repealing "the Ninth Schedule" and substituting "Schedule 9".

59. Jurisdiction of tribunal in relation to building management

Section 45 is amended -

- (a) in subsection (1), by repealing "the Tenth Schedule" and substituting "Schedule 10";
- (b) in subsection (3), by repealing "the Tenth Schedule" and substituting "Schedule 10";
- (c) in subsection (5), by repealing "the Tenth Schedule" and substituting "Schedule 10".

60. Composition and procedure of management committee

The Second Schedule is amended -

- (a) in paragraph 4(2)(e), by adding "管理" after "獲委任為";
- (b) in paragraph 5 -
 - (i) in subparagraph (1), by repealing "the Third Schedule" and substituting "Schedule 3";
 - (ii) in subparagraph (3), by repealing "退職" and substituting "卸任";
- (c) in paragraph 5A, by repealing "退職" where it twice appears and substituting "卸任";
- (d) in paragraph 6(1B)(a), by repealing "the Third Schedule" and substituting "Schedule 3".

61. Meetings and procedure of corporation

The Third Schedule is amended -

- (a) in paragraph 5(1) -

- (i) in sub-subparagraph (a), by repealing "全部業主的20%的人數" and substituting "業主人數的20%";
 - (ii) in sub-subparagraph (b), by repealing "全部業主的10%的人數" and substituting "業主人數的10%";
- (b) in paragraph 9, by adding "或業主人數的某個百分率" after "某個百分率的業主".

62. Annual budget

The Fifth Schedule is amended -

- (a) in paragraph 3, by repealing "製備" and substituting "擬備";
- (b) in paragraph 4, by repealing "副本費" and substituting "複印費".

63. Accounts

The Sixth Schedule is amended, in paragraph 3, by repealing "副本費" and substituting "複印費".

64. Mandatory terms in deeds of mutual covenant

The Seventh Schedule is amended -

- (a) in paragraph 1(7), by repealing "副本費" and substituting "複印費";

- (b) in paragraph 2(5)(b), by repealing "副本費" and substituting "複印費";
- (c) in paragraph 7 -
 - (i) in subparagraph (1), by adding "in aggregate" after "the shares";
 - (ii) in subparagraph (5A)(b) -
 - (A) by adding "in aggregate" after "the shares" where it twice appears;
 - (B) by repealing "不少於50%份數" and substituting "份數不少於50%".

65. Terms added if consistent with deed of mutual covenant

The Eighth Schedule is amended -

- (a) in paragraph 8(b), by adding "in aggregate" after "the shares";
- (b) in paragraph 11A(b), by adding "in aggregate" after "the shares".

66. Enumeration of owners

Schedule 11 is amended -

- (a) in paragraph (a) -
 - (i) by repealing "the Third Schedule" and substituting "Schedule 3";

- (ii) by repealing "the Eighth Schedule" and substituting "Schedule 8";
- (b) in paragraph (b), in column 2 of item 1, by repealing "共有人" and substituting "共同擁有人".

Lands Tribunal Rules

67. Commencement of proceedings

Rule 77(c) of the Lands Tribunal Rules (Cap. 17 sub. leg. A) is amended by repealing "the Tenth Schedule" and substituting "Schedule 10".

68. Forms

The Schedule is amended -

- (a) in Form 27 -
 - (i) by adding "in aggregate" after "the shares";
 - (ii) by repealing "委任" and substituting "委出";
- (b) in Form 28 -
 - (i) by adding "in aggregate" after "the shares";
 - (ii) by repealing "委任管理委員會" and substituting "委出管理委員會";
- (c) in Form 29 -

- (i) by repealing "to Tenth Schedule" and substituting "to Schedule 10";
- (ii) by repealing "the Tenth Schedule" and substituting "Schedule 10".

Land Titles Ordinance

69. Consequential amendments

Schedule 3 to the Land Titles Ordinance (26 of 2004) is amended -

- (a) by repealing section 114;
- (b) by repealing section 118;
- (c) by repealing section 119.

Explanatory Memorandum

The purpose of this Bill is to amend the Building Management Ordinance (Cap. 344) and to provide for incidental and transitional matters.

2. The Bill is divided into 6 Parts.

Part 1

3. Part 1 (clauses 1 and 2) contains preliminary provisions providing for the short title and the commencement of the Bill when enacted.

Part 2

4. Part 2 (clauses 3 to 32) amends the Building Management Ordinance (Cap. 344) ("the Ordinance").

5. Clause 3 amends section 2 of the Ordinance to clarify the meaning of certain terms used in the Ordinance.

6. Clause 4 amends section 3 of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular -

(a) the original section 3(2) is repealed to remove any doubt as to whether a management committee within the meaning of the Ordinance may be appointed in accordance with a deed of mutual covenant, and the new section 3(2) clarifies that a resolution for the appointment of a management committee must be passed by a majority of the votes of the owners and supported by the owners of not less than 30% of the shares in aggregate;

(b) the new section 3(3), (4), (5) and (6), which is modelled on the parts of section 5(1), (2), (3) and (4) of the Ordinance relating to section 3, provides for the giving of notice of the meeting of owners for the appointment of a management committee;

- (c) the new section 3(7) specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
- (d) the new section 3(8), (9) and (10), which is modelled on the parts of section 5(5) and (6) of the Ordinance relating to section 3, provides for such matters as the quorum, the casting of votes and the appointment of proxy.

7. Clause 5 amends section 3A of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular -

- (a) the new section 3A(3A), (3B), (3C) and (3D), which corresponds to the new section 3(3), (4), (5) and (6), provides for the giving of notice of the meeting of owners for the appointment of a management committee;
- (b) the new section 3A(3E), which corresponds to the new section 3(7), specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
- (c) the new section 3A(3F), (3G) and (3H), which corresponds to the new section 3(8), (9) and (10), provides for such matters as the quorum, the casting of votes and the appointment of proxy.

8. Clause 6 amends section 4 of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular -

- (a) the new section 4(5), (6), (7) and (8), which corresponds to the new section 3(3), (4), (5) and (6), provides for the giving of notice of the meeting of owners for the appointment of a management committee;
- (b) the new section 4(9), which corresponds to the new section 3(7), specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
- (c) the new section 4(10), (11) and (12), which corresponds to the new section 3(8), (9) and (10), provides for such matters as the quorum, the casting of votes and the appointment of proxy.

9. Clause 7 repeals section 5 of the Ordinance which has been incorporated, with modifications, into the amended sections 3, 3A, 4 and 40C of the Ordinance.

10. Clause 8 repeals section 5A of the Ordinance which has been incorporated, with modifications, into the amended section 40C of the Ordinance.

11. Clause 9 amends section 7 of the Ordinance to require each member of a management committee to declare that he is eligible for appointment as such.

12. Clause 10 amends section 12 of the Ordinance to require the Land Registrar to enter into the register of owners' corporations the name and address of the insurance company with which an owners' corporation has effected a policy of insurance under the amended section 28 of the Ordinance and the period covered by the policy of insurance.

13. Clause 11 amends section 18 of the Ordinance to empower an owners' corporation to pay an allowance to a member of the management committee, irrespective of whether or not the member is a chairman, vice-chairman, secretary or treasurer.

14. Clause 12 amends section 20 of the Ordinance to achieve consistency between the Chinese and English texts.

15. Clause 13 amends section 20A of the Ordinance to require that any procurement of supplies, goods or services of a value exceeding \$200,000 by an owners' corporation must be done through tendering, and that any tender of a value exceeding 20% of the annual budget of an owners' corporation must be accepted or rejected by a resolution of the owners.

16. Clause 14 amends section 27 of the Ordinance to require a management committee to prepare financial statements which give a true and fair view of the state of affairs of the owners' corporation and require an accountant who audits the financial statements to report as to whether the financial statements are, in his opinion, properly prepared.

17. Clause 15 introduces the new section 29A of the Ordinance to provide that a member of a management committee doing

anything in good faith in the exercise or performance of the powers or duties of the owners' corporation incurs no personal liability.

18. Clause 16 amends section 34D of the Ordinance to define the meaning of the term "DMC manager" used in the amended sections 34D and 34J of and Seventh Schedule to the Ordinance.

19. Clause 17 contains minor amendments to section 34J of the Ordinance.

20. Clause 18 amends section 40B of the Ordinance to clarify who is eligible to be appointed as a building management agent.

21. Clause 19 amends section 40C of the Ordinance to make further provisions for the appointment of a management committee under that section. In particular -

- (a) the new section 40C(4), (5), (6) and (7), which is modelled on the parts of section 5(1), (2), (3) and (4) of the Ordinance relating to section 40C, provides for the giving of notice of the meeting of owners for the appointment of a management committee;
- (b) the new section 40C(8), which corresponds to the new section 3(7), specifies the person who is to preside at the meeting of owners for the appointment of a management committee; and
- (c) the new section 40C(9), (10) and (11), which is modelled on the parts of section 5(5) and (6) of the Ordinance relating to section 40C and on

section 5A of the Ordinance, provides for such matters as the quorum, the casting of votes and the appointment of proxy.

22. Clause 20 amends section 41 of the Ordinance to empower the Chief Executive in Council to make regulations for the avoidance of arrangements, agreements or understandings as to the liability of owners' corporations, or owners of buildings, towards third parties.

23. Clause 21 contains minor amendments to the First Schedule to the Ordinance.

24. Clause 22 introduces the new Schedule 1A to the Ordinance to set out the form of an instrument of proxy for a meeting of owners and the form of an instrument of proxy for a meeting of an owners' corporation.

25. Clause 23 amends the Second Schedule to the Ordinance on the composition and procedure of a management committee. In particular -

- (a) clause 23(c) replaces the original paragraph 1(a), (b) and (c) of the Schedule with the new paragraph 1(a) to remove any doubt as to whether a management committee within the meaning of the Ordinance may be appointed in accordance with a deed of mutual covenant;
- (b) clause 23(d) amends paragraph 2(1) of the Schedule to require that the resolution for the appointment of the members of the first

management committee must be passed by a majority of the votes of the owners and enable the owners to appoint a vice-chairman of the committee, and introduces the new paragraph 2(3) of the Schedule to provide that a person who is not a member of a management committee does not become such a member by virtue of his appointment as a secretary or treasurer of the committee;

(c) clause 23(f) amends paragraph 4 of the Schedule to make further provisions for the qualification of a member of a management committee, and to require each member of a management committee to declare that he is eligible for appointment as such and, when any change occurs in any matter stated in his declaration, to lodge with the secretary of the management committee a declaration on the particulars of the change;

(d) clause 23(g) amends paragraph 5(2) of the Schedule to provide for the appointment of the members of the second and subsequent management committees by the owners at the annual general meetings of the owners' corporation, and introduces the new paragraph 5(4) of the Schedule to provide that a person who is not a member of a new management committee does not

become such a member by virtue of his appointment as a secretary or treasurer of the committee; and

- (e) clause 23(i) introduces the new paragraph 10A of the Schedule to require a management committee to keep minutes of meetings of the committee and, when requested, supply the minutes.

26. Clause 24 amends the Third Schedule to the Ordinance on the meetings and procedure of an owners' corporation. In particular -

- (a) clause 24(e) amends paragraph 4 of the Schedule to make further provisions for the appointment of proxy to attend and vote at a meeting of an owners' corporation, including the requirement that the instrument of proxy must be in the specified form; and
- (b) clause 24(f) introduces the new paragraph 6A of the Schedule to require a management committee to keep minutes of general meetings of the owners' corporation and, when requested, supply the minutes.

27. Clause 25 contains minor amendments to the Fourth Schedule to the Ordinance.

28. Clause 26 contains minor amendments to the Fifth Schedule to the Ordinance.

29. Clause 27 contains minor and consequential amendments to the Sixth Schedule to the Ordinance.

30. Clause 28 amends the Seventh Schedule to the Ordinance on the mandatory terms impliedly incorporated into a deed of mutual covenant. In particular -

- (a) clause 28(c)(iii) introduces the new paragraph 3(1A) of the Schedule to require the manager of a building to open and maintain one or more segregated accounts for holding money received in respect of the management of the building;
- (b) clause 28(d)(ii) introduces the new paragraph 4(3A) of the Schedule to require the manager of a building to open and maintain one or more segregated accounts for holding money received in respect of a special fund;
- (c) clause 28(e) amends paragraph 5 of the Schedule to further require that the manager of a building must not enter into certain contracts unless the contracts comply with the amended section 20A of the Ordinance; and
- (d) clause 28(g) amends paragraph 7 of the Schedule to make the paragraph applicable only in relation to the termination of the appointment of a manager who is specified in a deed of mutual covenant of a building to manage the building.

31. Clause 29 amends the Eighth Schedule to the Ordinance on the terms which are impliedly incorporated into a deed of mutual covenant if they are consistent with the deed of mutual covenant. In particular, clause 29(j) amends paragraph 14 of the Schedule to make further provisions for the appointment of proxy to attend and vote at a meeting of owners, including the requirement that the instrument of proxy must be in the specified form.

32. Clause 30 contains minor amendments to the Ninth Schedule to the Ordinance.

33. Clause 31 contains minor amendments to the Tenth Schedule to the Ordinance.

34. Clause 32 amends Schedule 11 to the Ordinance to make the Schedule applicable in relation to the enumeration of the percentage of owners mentioned in the new sections 3(8), 3A(3F), 4(10) and 40C(9) of the Ordinance.

Part 3

35. Part 3 (clause 33) amends the new section 28 (not yet in operation) of the Ordinance introduced by the Building Management (Amendment) Ordinance 2000 (69 of 2000). In particular -

- (a) clause 33(a) and (c) refines the new section 28(1) and (3) by repealing certain expressions

which have caused ambiguity in the interpretation of the provisions;

(b) clause 33(b) introduces the new section 28(1A) to empower an owners' corporation to enter into a policy of insurance as agent for the owners; and

(c) clause 33(f) introduces the new section 28(6A) to require the secretary of a management committee to give notice to the Land Registrar of the name and address of the insurance company with which the owners' corporation has effected a policy of insurance and the period covered by the policy of insurance.

Part 4

36. Part 4 (clause 34) amends the Specification of Public Offices (Cap. 1 sub. leg. C) to enable the Secretary for Home Affairs to delegate to other public officers his powers and duties under the Ordinance.

Part 5

37. Part 5 (clauses 35 and 36) contains transitional provisions.

38. Clause 35 contains the definitions of the terms used in Part 5.

39. Clause 36 deals with the transitional arrangements for a management committee which has been appointed in accordance with a deed of mutual covenant under section 3(2)(a) of the Ordinance as in force immediately before the commencement of Part 5.

Part 6

40. Part 6 (clauses 37 to 69) contains minor and consequential amendments.

41. Clauses 37 to 66 contain minor and consequential amendments to the Ordinance.

42. Clauses 67 to 69 contain consequential amendments to other Ordinances.

**BUILDING MANAGEMENT (THIRD PARTY RISKS
INSURANCE) REGULATION**

CONTENTS

Section		Page
1.	Commencement	1
2.	Interpretation	1
3.	Requirements in respect of policies: liabilities to be covered	2
4.	Requirement in respect of policies: amount to be covered	4
5.	Issue of policy and notice of insurance	4
6.	Avoidance of restrictions in policies	5
7.	Avoidance of certain agreements or arrangements as to liability towards third party	7
8.	Duty of insurance companies to satisfy judgments in respect of third party risks	8
9.	Exceptions to section 8	8
10.	Winding up of assured corporation, etc. not to affect certain claims by third party	10
11.	Duty of corporation to give information as to insurance	10
12.	Defence	11
Schedule	Form of notice of insurance	12

BUILDING MANAGEMENT (THIRD PARTY RISKS INSURANCE) REGULATION

(Made by the Chief Executive in Council under section 41
of the Building Management Ordinance (Cap. 344))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of section 12 of the Building Management (Amendment) Ordinance 2000 (69 of 2000) and [*the amending provisions*].

2. Interpretation

In this Regulation, unless the context otherwise requires –

"approved plan" (經批准的圖則) means a plan, as defined in section 2(1) of the Buildings Ordinance (Cap. 123), approved by the Building Authority under that Ordinance;

"assured" (受保人) means the assured corporation and the assured owners;

"assured corporation" (受保法團), in relation to a policy, means the corporation on behalf of which the policy is procured;

"assured owners" (各受保業主), in relation to a policy, means the owners of the building on behalf of whom the policy is procured;

"Building Authority" (建築事務監督) has the meaning assigned to it by section 2(1) of the Buildings Ordinance (Cap. 123);

"building works" (建築工程) has the meaning assigned to it by section 2(1) of the Buildings Ordinance (Cap. 123);

"contravention" (違反), in relation to the Buildings Ordinance (Cap. 123), includes –

- (a) any failure to comply with any order given or any condition imposed by the Building Authority under that Ordinance; and

- (b) any material divergence or deviation from an approved plan;

"insurance company" (保險公司) has the meaning assigned to it by section 28(7) of the Ordinance;

"notice of insurance" (保險通告) means a notice of insurance issued under section 5(1);

"policy" (保單) means a policy of insurance that a corporation shall procure and keep in force under section 28(1) of the Ordinance;

"prescribed liability" (訂明法律責任) means such liability as is required to be covered by a policy under section 3, and section 28(1) of the Ordinance;

"relevant instrument" (有關文書), in relation to a building, means an order, notice or direction issued under an Ordinance requiring –

- (a) any maintenance, improvement, repair or demolition work to be carried out in relation to the building;
- (b) any fire safety installation or improvement work to be carried out in relation to the building; or
- (c) any relevant person to be appointed to carry out investigation in relation to the building;

"relevant person" (有關人士) means an authorized person, or a registered structural engineer, or a registered geotechnical engineer, as defined in section 2(1) of the Buildings Ordinance (Cap. 123);

"street works" (街道工程) has the meaning assigned to it by section 2(1) of the Buildings Ordinance (Cap. 123).

3. Requirements in respect of policies: liabilities to be covered

(1) Subject to subsection (2), a policy is required to insure the assured in respect of any liability that may be incurred by the assured corporation, or the assured owners, in respect of the death of, or the bodily injury to, any person.

- (2) A policy is not required to cover –
- (a) any liability required to be covered by a policy of insurance under section 6(1)(b) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272);
 - (b) any liability in respect of the death of, or the bodily injury to, any person employed by the assured corporation, or the assured owners, arising out of and in the course of the employment;
 - (c) any liability arising out of a breach of any duty imposed by law in relation to –
 - (i) any building within the meaning of the Buildings Ordinance (Cap. 123) erected in contravention of that Ordinance; or
 - (ii) any building works, or street works, carried out in contravention of the Buildings Ordinance (Cap. 123);
 - (d) any liability in respect of the death, or the bodily injury, caused by or arising from –
 - (i) any contamination by radioactivity from –
 - (A) any nuclear fuel; or
 - (B) any nuclear waste from the combustion of nuclear fuel, the radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (ii) any war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power; or

- (iii) any terrorist act within the meaning of section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575); or
 - (e) any contractual liability.
- (3) For the avoidance of doubt, the liability covered by a policy may include the liability for –
 - (a) interest, costs and expenses indemnified under the policy; and
 - (b) other costs and expenses incurred by the assured corporation, or the assured owners, and recoverable from the insurance company under the policy.

4. Requirement in respect of policies: amount to be covered

A policy is required to provide insurance of not less than \$10 million in respect of any prescribed liability that may be incurred in respect of the death, or the bodily injury, or both, arising out of one event.

5. Issue of policy and notice of insurance

(1) If a corporation has effected a policy with an insurance company, the insurance company shall, at the same time as it issues the policy to the corporation, issue to the corporation in respect of the policy a notice of insurance, in the Form in the Schedule, duly completed by the insurance company.

(2) An insurance company shall not issue a notice of insurance which is to its knowledge false in any material particular.

(3) A corporation shall –

- (a) as soon as practicable after being issued a notice of insurance in respect of a policy, display the notice in a prominent place in the building to which the policy relates; and
- (b) so display the notice as long as the policy is in effect.

(4) A corporation shall not display a notice of insurance issued to it in respect of a policy that is no longer in effect.

(5) If a notice of insurance has been lost or destroyed, the corporation to which the notice is issued shall cause a statutory declaration to be made by the chairman, vice-chairman (if any) or secretary of the management committee to that effect.

(6) An insurance company that contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 2.

(7) If a corporation contravenes subsection (3), (4) or (5), every member of the management committee is guilty of an offence and is liable on conviction to a fine at level 2.

6. Avoidance of restrictions in policies

(1) Subject to subsection (3), so much of a policy as purports to restrict the insurance of the assured by reference to any of the matters mentioned in subsection (2) is, as respects the prescribed liability, of no effect.

(2) Those matters are –

- (a) the number of claims that may be made during the period the policy is in effect or any part of that period;
- (b) the age of the building to which the policy relates;
- (c) the condition or maintenance of that building;
- (d) the number of flats in that building;
- (e) the use of that building; and
- (f) the existence of a relevant instrument in relation to that building.

(3) Subsection (1) does not apply if –

- (a) the policy –
 - (i) restricts the insurance of the assured by reference to the condition or maintenance of the building and requires the assured to exercise reasonable

diligence to keep that building in good condition and maintenance;

(ii) restricts the insurance of the assured by reference to the use of the building and requires the assured to ensure compliance with the deed of mutual covenant concerned in relation to the use of that building; or

(iii) restricts the insurance of the assured by reference to the existence of a relevant instrument in relation to the building and requires the assured to exercise reasonable diligence to comply with any relevant instrument in relation to that building; and

(b) the death or bodily injury that gives rise to the liability is directly caused by the assured's failure to comply with that requirement.

(4) Nothing in subsection (1) requires an insurance company to pay any sum in respect of the liability of the assured corporation, or the assured owners, otherwise than in or towards the discharge of that liability.

(5) Any sum paid by an insurance company in or towards the discharge of any liability of the assured corporation, or the assured owners, which is covered by the policy by virtue only of subsection (1) is recoverable by the insurance company from the assured.

(6) If a condition in a policy provides that –

(a) no liability is to arise under the policy; or

(b) any liability so arising is to cease,

in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, the condition is of no effect in connection with the prescribed liability.

(7) Nothing in subsection (6) is taken to render void any provision in a policy requiring the assured corporation, or the assured owners, to pay to the insurance company any sum –

- (a) that the insurance company may have become liable to pay under the policy; and
- (b) that has been applied to the satisfaction of the claims of third parties.

7. Avoidance of certain agreements or arrangements as to liability towards third party

(1) An agreement made after 31 March 2005 between –

- (a) either or both of the following –
 - (i) a corporation;
 - (ii) the owners of a building; and
- (b) any person,

is of no effect in so far as it purports to qualify any prescribed liability of the corporation, or those owners, in respect of the person or any other person that arises after the agreement is made.

(2) If, after 31 March 2005, a person has willingly accepted as his the risk of negligence on the part of the corporation, or the owners of a building, the acceptance is not to be treated as negating any prescribed liability of the corporation or those owners.

(3) In this section, an agreement purports to qualify a prescribed liability if it purports or might be held –

- (a) to negative or restrict the liability; or
- (b) to impose any conditions with respect to the enforcement of the liability.

(4) In this section –

- (a) "agreement" (協議) includes an understanding; and

- (b) a reference to an agreement being made includes a reference to an understanding being reached.

8. Duty of insurance companies to satisfy judgments in respect of third party risks

(1) This section applies if, when the policy is in effect, judgment is obtained against the assured corporation, or the assured owners, in respect of a liability that –

- (a) is the prescribed liability; and
- (b) is covered by the policy, or would be covered by the policy but for the fact that the insurance company may avoid or cancel, or has avoided or cancelled, the policy.

(2) Subject to section 9, the insurance company that issued the policy shall, notwithstanding the fact that it may avoid or cancel, or has avoided or cancelled, the policy, pay to the person entitled to the benefit of the judgment any sum payable under the judgment in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any law relating to interest on judgments.

(3) If the amount which an insurance company becomes liable under this section to pay in respect of the liability of the assured corporation, or the assured owners, exceeds the amount for which the insurance company would, apart from this section, be liable under the policy in respect of that liability, the insurance company is entitled to recover the excess from the assured.

9. Exceptions to section 8

(1) An insurance company shall not pay any sum under section 8 in respect of a judgment unless before, or within 7 days after, the commencement of the proceedings in which the judgment was given, the insurance company had notice of the bringing of the proceedings.

(2) An insurance company shall not pay any sum under section 8 in respect of a judgment so long as execution on the judgment is stayed pending an appeal.

(3) An insurance company shall not pay any sum under section 8 in connection with any liability if, before the happening of the event that was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained in it.

(4) An insurance company shall not pay any sum under section 8 in respect of any amount by which a sum adjudged to be payable under a judgment exceeds –

- (a) the amount covered by the policy; or
- (b) if any amount is paid, or due and payable, by the insurance company under the policy (otherwise than by virtue of the judgment) in respect of the same event, the amount covered by the policy less the amount so paid or so due and payable.

(5) Subject to subsection (6), an insurance company shall not pay any sum under section 8 in respect of a judgment if, in an action commenced before, or within 3 months after, the commencement of the proceedings in which the judgment was given, the insurance company has obtained a declaration –

- (a) that, apart from any provision contained in the policy, the insurance company is entitled to avoid the policy on the ground that the policy was obtained –
 - (i) by the non-disclosure of a material fact; or
 - (ii) by a representation of fact which was false in some material particular; or
- (b) if the insurance company has avoided the policy on that ground, that the insurance company was entitled so to do apart from any provision contained in the policy.

(6) An insurance company that has obtained a declaration mentioned in subsection (5) in an action does not by reason of that become entitled to the

benefit of that subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless before, or within 7 days after, the commencement of that action the insurance company has given notice of the action to the person who is the plaintiff in those proceedings specifying the non-disclosure or false representation on which the insurance company proposes to rely. Any person to whom notice of such an action is so given is entitled, if he thinks fit, to be made a party to it.

(7) In this section, “material” (具關鍵性) means of such a nature as to influence the judgment of a prudent insurance company in determining whether it will take the risk, and if so, at what premium and on what conditions.

10. Winding up of assured corporation, etc. not to affect certain claims by third party

If, when a policy is in effect, any event mentioned in section 2(1)(a) or (b) of the Third Parties (Rights against Insurers) Ordinance (Cap. 273) happens in relation to the assured corporation or the assured owners –

- (a) any prescribed liability of the assured corporation, or the assured owners, incurred to a person is not affected by –
 - (i) the happening of that event; or
 - (ii) any rights against the insurance company conferred by that Ordinance on the person; and
- (b) any rights against the insurance company conferred by section 8 on that person are in addition to the rights mentioned in paragraph (a)(ii).

11. Duty of corporation to give information as to insurance

(1) If a person makes a claim against a corporation, or the owners of a building, in respect of any prescribed liability, the corporation concerned shall, within 10 days after receiving the person’s written request –

- (a) state –

- (i) whether the corporation, or those owners, are insured in respect of that liability under a policy that is in effect; or
 - (ii) whether the corporation, or those owners, would have been so insured if the insurance company had not avoided or cancelled the policy; and
- (b) where the corporation, or those owners, are or would have been so insured, give such particulars of that policy as were specified in the notice of insurance issued in respect of the policy.

(2) A corporation shall not wilfully make any false statement in reply to any demand under subsection (1).

(3) If a corporation contravenes subsection (1) or (2), every member of the management committee is guilty of an offence and is liable on conviction to a fine at level 2.

12. Defence

In any proceedings for an offence under section 5(7) or 11(3), it is a defence for the person charged to prove –

- (a) that the contravention was committed without his consent or connivance; and
- (b) that he exercised all such due diligence to prevent the contravention as he ought to have exercised in the circumstances.

SCHEDULE

[s. 5]

FORM OF NOTICE OF INSURANCE

Building Management Ordinance
(Chapter 344)

Notice of Insurance

Policy No.

All parties please take notice that the policy numbered above against third party risk claims has been issued by the undersigned insurance company to the policy holder named below covering the area as described –

1. Name and address of policy holder:
2. Description of the building and premises covered under the policy:
3. Amount insured:
4. Effective date of the commencement of the policy for the purposes of the above Ordinance:
5. Date of expiry of the policy:

Date of issue

.....
Insurance Company

Clerk to the Executive Council

COUNCIL CHAMBER

2005

Explanatory Note

Section 28(1) of the Building Management Ordinance (Cap. 344) requires an owners' corporation to procure and keep in force in relation to the common parts of the building, and the property of the corporation, a policy of insurance in respect of third party risks ("policy"). The object of this Regulation is to prescribe the requirements with which a policy must comply and to provide for related matters.

2. Section 3 prescribes the liabilities that a policy is required to cover ("prescribed liabilities"). Section 4 prescribes the minimum amount of insurance that a policy is required to provide in respect of the prescribed liabilities.

3. Section 5 requires an insurance company to issue to the owners' corporation a notice of insurance when it issues a policy. The corporation is required to display the notice in a prominent place in the building.

4. Section 6(1) stipulates that a policy provision that restricts the insurance by reference to a matter set out in section 6(2) is of no effect. However, this stipulation does not apply under the circumstances set out in section 6(3). Section 6(6) stipulates that if a policy provision restricts the insurance in the event of the assured's failure to comply with a condition after the loss has taken place, the provision is of no effect.

5. Section 7 stipulates that an agreement made after 31 March 2005 that purports to negative or restrict any prescribed liability of an owners' corporation, or the owners of a building, towards a third party is of no effect. If, after 31 March 2005, a person has willingly accepted the risk of negligence, this section also treats the acceptance as not having negated any prescribed liability of an owners' corporation or the owners of a building.

6. Section 8 stipulates that if a third party has obtained judgment against an owners' corporation, or the owners of a building, in respect of a prescribed liability covered by a policy, the insurance company is required to pay to the third party any sum payable under the judgment up to the amount covered by the policy. Section 9 sets out the exceptions to this requirement.

7. Section 10 stipulates that if an owners' corporation or the owners of a building become insolvent, the insolvency, or the third party's direct right of action against the insurance company under the Third Parties (Rights against Insurers) Ordinance (Cap. 273), does not affect the corporation's or owner's prescribed liability. And the third party's right against the insurance company under section 8 is not affected by that direct right of action against the insurance company.

8. Section 11 requires an owners' corporation to give certain information as to the third party risks insurance by which it is covered.

**Amendment Proposals Relating to
the Appointment Procedures of a Management Committee**

Convenor of Owners' Meeting

1. According to the Building Management Ordinance (BMO), a meeting of the owners to appoint a management committee (MC) for the purpose of forming an owners' corporation (OC) may be convened by the owners of not less than 5% of the shares. The provision is, however, silent on who should be the person presiding at the meeting convened for the appointment of an MC. In some cases, all the owners of not less than 5% of the shares (which could mean over hundreds of owners for large estates) will be presiding over the meeting. In other cases, the manager of the building or a local dignitary (e.g. a District Councillor) may be invited to preside at the meeting. This is unsatisfactory. We therefore **propose** to specify that in such cases, the owners of not less than 5% of the shares as convenors of the owners' meeting shall nominate and appoint one owner to preside at the meeting.

Appointment of members of an MC

2. Once an MC has been appointed by a resolution of the owners, the owners shall at the same owners' meeting appoint a chairman, a vice-chairman (if any), a secretary, a treasurer and members of the MC. However, it has not been specified in Schedule 2 to the BMO how exactly these individual members are to be appointed. We consider that as long as the resolution to appoint an MC has been supported by owners of not less than 30% of the shares at an owners' meeting, it is not necessary to adopt the same threshold for appointing individual members of the MC. At the same time, we have to ensure that appointment of members of the MC, being a very important decision of the OC, is made by a reasonably representative number of owners. We therefore **propose** that members of the MC shall be appointed by a resolution passed by a majority of votes of owners cast in respect of undivided shares at which the first MC has been successfully appointed. We further **propose** that the same mechanism of passing a resolution by a majority at the annual general meeting shall apply to the appointment or re-appointment of members of the subsequent MCs.

Quorum requirement for owners' meetings

3. We **propose** to impose a quorum requirement of 10% of owners throughout the meetings convened for the purpose of appointment of an MC. The proposal will ensure that all owners' meetings convened for the purpose of appointing the first MC are attended by a representative number of owners of

the building. In other words, in addition to a requirement of a resolution to support the appointment of an MC, there will be a quorum requirement for such owners' meetings as well.

Appointment of vice-chairman

4. According to the existing Schedule 2 to the BMO, if the office of a vice-chairman is not specified in a DMC, no vice-chairman can be appointed to the MC even if the owners wish to do so. We consider that owners should be given the discretionary power to decide whether a vice-chairman is needed in the MC for the management of the building. We therefore **propose** to amend Schedule 2 to allow owners to decide, at meetings convened for the appointment of an MC or subsequent annual general meetings, whether a vice-chairman should be appointed, regardless of whether the office of vice-chairman is specified in the DMC.

Appointment of secretary and treasurer

5. The BMO requires the appointment of a secretary and a treasurer to the MC. The person appointed may, but need not be, one of the persons appointed as a member of the MC. In practice, the secretary and treasurer, if they are not members of the MC, may be employees of the manager or outside professionals. There have been disputes over the status and terms of appointment of the secretary and treasurer. We therefore **propose** to specify in Schedule 2 that the secretary and treasurer who are not persons appointed as members of the MC will not, by virtue of their appointment, become members of the committee. Moreover, the secretaries and treasurers, whether they are members of the MC or not, should retire together with other members of the MC at the alternate annual general meetings.

Allowances for MC members

6. Section 18(2)(aa) of the BMO provides that an OC may, at its discretion, pay the chairman, vice-chairman, secretary, treasurer and "other holders of office of the MC" appointed in accordance with Schedule 2 such allowances as may be approved by the OC by resolution passed at a general meeting, in accordance with, but not exceeding, the maximum allowances specified in Schedule 4. There have been disputes over the definition of "holders of office" in relation to their eligibility for allowances. The allowances for office holders of an MC is an incentive and a form of recognition for their voluntary work in the management of their building. As the term "holders of office" has no other use in the BMO other than qualifying who should be eligible for allowances, we **propose** to do away with this term. Following this amendment, each member of the MC would be eligible for allowances provided that the payment has been approved by owners at an

annual general meeting and the level of allowances is capped by Schedule 4.

**Amendment Proposals Relating to
the Financial Arrangements of
Owners' Corporations and Managers**

To safeguard the interest of property owners, we **propose** to introduce various legislative amendments relating to the financial arrangements of an owners' corporation (OC) and the manager. They include the following stipulations –

- (a) the management committee shall be responsible for preparing a set of financial statements to give **a true and fair view** of the state of affairs of the OC and the accountant [i.e. a certified public accountant (practicing) within the meaning of the Professional Accountants Ordinance (Cap.50)] shall in his/her audit report give opinion on whether such financial statements are properly drawn up so as to give **a true and fair view** of the state of affairs of the OC;
- (b) an OC shall supply copies of its financial statements, **as well as the accountant's audit report**, to the owners upon request and payment of a reasonable copying charge; and
- (c) the manager shall, within one month after each consecutive period of three months, prepare a summary of income and expenditure **and a balance sheet** in respect of that period and shall display a copy of it in a prominent place in the building.

**Proposals in the
Draft Building Management (Third Party Risks Insurance) Regulation**

1. The draft Building Management (Third Party Risks Insurance) Regulation 2005 at Annex B sets out the detailed requirements for the compulsory third party risks insurance for owners' corporations (OCs). The major proposals included in the draft Regulation are summarized below.

Coverage

2. The insured party will be the OC and the owners of the building as a whole. Third party risks liabilities covered by the insurance policy shall include liabilities incurred by the OC in relation to the common parts of the building in respect of a third party's bodily injury and death. Insurance cover in respect of a third party's property is not mandatory.

3. The policy on third party risks insurance to be procured by an OC is not required to cover any liability covered by the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap.272) and statutory employees' compensation, contractual liability and liability arising from nuclear activities, war and terrorist act. Such policy is also not required to cover any liability arising out of a breach of duty imposed by law in relation to unauthorized buildings works.

Minimum Insured Amount

4. The minimum insured amount of each policy is set at not less than \$10 million per event in respect of a third party's bodily injury and death.

Notification to Owners

5. The insurance company shall issue a notice of insurance to the OC and the OC shall display this notice in a prominent place in the building. Furthermore, the principal Ordinance will require OCs to give notice to the Land Registrar regarding the name of the insurance company from which third party risks policy has been effected and the period of the policy.

Protection for OCs and Third Parties

6. An insurance company may introduce restrictions in the insurance policy of the OCs by reference to matters like the number of claims that may be made during the period, the age of the building, the condition or maintenance of

the building, and use of the building, etc. Any such restrictions will be of no effect if the OC has exercised reasonable diligence in managing the building and kept the building in good condition.

7. If an OC enters into an agreement with a third party after 31 March 2005 that purports to negative or restrict any liability towards the OC or owners of the building, the Regulation provides that any such agreement will be of no effect.

8. If a third party has obtained judgment against the OC or owners in respect of the prescribed liabilities covered by a policy, the insurance company is required to pay to the third party any sum payable under the judgment up to the policy amount.

9. If the OC or owners become insolvent, it will not affect the OC's or owners' prescribed liability. Neither will it affect the third party's right of action under the Third Parties (Rights Against Insurers) Ordinance (Cap.273).

Building Management (Amendment) Bill 2005

Implications of the Proposals

1. The Building Management (Amendment) Bill 2005 includes proposals which are aimed at facilitating building management by owners through the formation of owners' corporations (OCs). It will encourage property owners to participate in the work of OCs and will in turn enhance effective building management.

2. The proposal will facilitate more effective building management. The proposed Regulation on procurement on third party risks insurance will help protect the interests of both the property owners and the third parties. It will also induce property owners to step up efforts in improving building safety in order to pay a lower insurance premium. Proper building management and maintenance will be conducive to the preservation and enhancement of property value over time, and thus will bring about benefits to the economy.
