

**Extract from the Report of the Bills Committee
on Building Management (Amendment) Bill 2005
relating to the mandatory requirement on owners' corporations
to procure third party risks insurance**

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Draft Building Management (Third Party Risks Insurance) Regulation (Draft Regulation)

187. The Bills Committee has discussed various issues relating to the Draft Regulation. These include the statutory minimum amount of insurance coverage, protection for OCs, insurance coverage of UBWs and the proposed asbestos exclusion clause.

188. Members have expressed diverse views on the statutory minimum amount of insurance coverage. While some members consider that the proposed amount of \$10 million is too low to offer adequate protection for owners, some other members are concerned that increasing the minimum amount will lead to a higher level of premium. Members have suggested to the Administration to consider setting up a tiered structure on the basis of the numbers of flats in respect of the minimum insured amount.

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

190. The Administration also considers it impractical to devise a tiered structure for the insurance requirement on the grounds that the number of units of buildings in Hong Kong varies greatly and a number of tiers would be required to cater for the many different types of buildings. The Administration is also concerned that it will bring obvious inconvenience in implementation and render the mechanism unworkable and ineffective.

191. Members note that the new section 28 as currently drafted will enable the Administration to introduce a tiered structure for the insurance requirement if deemed necessary in the future. Members agree that the desirability of such a tiered structure should be considered during the scrutiny of the draft Regulation.

192. Members note that an insurance company may introduce restrictions in the insurance policy by OCs by reference to matters such as the number of claims that may be made during a certain period, the age of the building, the

condition or maintenance of the building, and the 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. Members have raised queries over the interpretation of the phrase "having exercised reasonable diligence". They are concerned that an insurance company may reject the claims by third parties on the ground that the OC concerned has failed to exercise reasonable diligence in that respect.

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

194. Members have also expressed diverse views on whether the policy on third party risks insurance should cover UBWs attached to or hung on the common parts of a building. Some members including Hon James TO, Hon Albert HO, Mrs Selina CHOW, Hon Miriam LAU, and Hon Emily LAU are of the view that these UBWs should be covered under the mandatory insurance policies of OCs on the grounds that it could better protect third parties and the increase in premium may encourage owners concerned in considering demolition of their UBWs. Hon CHOY So-yuk and Hon WONG Kwok-hing, however, take a different view. They consider it unfair to impose a mandatory requirement on OCs to procure insurance for UBWs in order to protect the owners who build the UBWs which are used by the owners concerned only.

195. The Administration is strongly of the view that OCs should not be required to procure a third party risks insurance policy which covers liabilities relating to UBWs mainly on the following reasons -

- (a) it would imply that the Government condones the existence of UBWs;
- (b) it would indirectly encourage the continual existence of UBWs as they are "protected" under the insurance policies; and
- (c) the higher insurance premium will mean cross-subsidy of the poor risks by good risks, which is unfair to those properly maintained buildings and those owners who have no UBWs attached to their units.

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

197. The Administration has further pointed out that the Draft Regulation made under section 41(ca) may set out the liabilities required, and not required, to be covered under those policies for the purpose of the new section 28. The issue of whether liabilities relating to UBWs should be covered in the third party risks insurance policies for OCs should be dealt with in the Regulation, and not the principal legislation.

198. Some members including Hon Emily LAU and Hon James TO have expressed disagreement with the arguments put forward by the Administration for not including UBWs within the coverage of the Regulation. The Bills Committee, however, has not come to any unanimous view on the issue.

199. Some members consider that it is unlikely that claims against an OC in relation to death or bodily injury in the common parts of a building will be associated with asbestos. At members' suggestion, the Administration has agreed to include an asbestos exclusion clause in the future Regulation.

200. Hon LEE Kwok-ying, however, has expressed concern whether employees' compensation insurance would cover claims against an OC in relation to death or injury associated with asbestos in the common parts of a building caused to an employee (e.g., a repairman) who is hired by the OC in the course of his performance of regular maintenance work for the building. The Administration has advised the Bills Committee that a common disease induced by asbestos is pneumoconiosis and, under the Pneumoconiosis Compensation Ordinance (Cap. 360), a person suffering from pneumoconiosis would be able to claim compensation from the Pneumoconiosis Compensation Fund. As for other cases, employees' compensation insurance would cover employees' claims against death or injury associated with asbestos.

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