

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

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RESOLUTION OF THE LEGISLATIVE COUNCIL

(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).

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 corporation” (受保法團), in relation to a policy, means the corporation that procures the policy;

“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 28(1) of the Ordinance and section 3;

“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);

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~~“statutory instrument” (法定文書), 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;

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

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“statutory instrument” (法定文書), in relation to a
building, means —

- (a) an order, notice or direction issued under an Ordinance requiring —
 - (i) any maintenance, improvement, alteration, repair or demolition work to be carried out in relation to the building;
 - (ii) any fire safety installation or improvement work to be carried out in relation to the building; or
 - (iii) any relevant person to be appointed to carry out investigation in relation to the building; or
- (b) a notice or direction issued under an Ordinance specifying that the notice or direction will be registered in the Land Registry if any maintenance, improvement, alteration, repair or demolition work, or any fire safety installation or improvement work, is not carried out in relation to the building before a particular date;

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5. Issue of policy and notice of insurance

(1) If a corporation has procured 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~~.

(8) In any proceedings for an offence under subsection (7), 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.

↑ level 1

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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 corporation 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 statutory instrument in relation to that building.

~~(3) If~~

(a) a policy—

- (i) restricts the insurance of the assured corporation by reference to the condition or maintenance of the building and requires the assured corporation to exercise reasonable diligence to keep that building in good condition and maintenance;
- (ii) restricts the insurance of the assured corporation by reference to the use of the building and requires the assured corporation to exercise reasonable diligence 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 corporation by reference to the existence of a statutory instrument in relation to the building and requires the assured corporation to exercise reasonable diligence to comply with any statutory 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 corporation's contravention of that requirement,

~~subsection (1) does not apply in relation to the restriction.~~

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~~(4) For the purpose of subsection (3), a requirement on an assured corporation to exercise reasonable diligence to do something is a requirement that is not contravened unless the assured corporation—~~

- ~~(a) recognizes a situation that requires measures to be taken for the purpose of doing that thing; and~~
- ~~(b) does not take measures for that purpose, or takes measures that it knows to be inadequate for that purpose, or is reckless as to whether measures or adequate measures are taken for that purpose.~~

|| ~~(5)~~ Nothing in subsection (1) requires an insurance company to pay any sum in respect of the liability of the assured corporation otherwise than in or towards the discharge of that liability.

|| ~~(6)~~ Any sum paid by an insurance company in or towards the discharge of any liability of the assured corporation which is covered by the policy by virtue only of subsection (1) is recoverable by the insurance company from the assured corporation.

|| ~~(7)~~ 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.

|| ~~(8)~~ Nothing in subsection ~~(7)~~ renders void any provision in a policy requiring the assured corporation 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.

↑ (3)

↓ (4)

↔ (5)

↗ (6)

△ (5)