

BRIEF FOR THE LEGISLATIVE COUNCIL

Building Management Ordinance (Chapter 344)

BUILDING MANAGEMENT (THIRD PARTY RISKS INSURANCE) REGULATION

1. At the meeting of the Executive Council on 26 June 2007, the Council ADVISED and the Chief Executive ORDERED that the Building Management (Third Party Risks Insurance) Regulation (at Annex A) should be made.

PROCUREMENT OF THIRD PARTY RISKS INSURANCE BY OWNERS' CORPORATIONS

2. The Building Management (Amendment) Ordinance 2000 introduced a new section in the Building Management Ordinance (BMO) (section 28) which provided that an owners' corporation (OC) should 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.

3. 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.

4. During the drafting of the Building Management (Third Party Risks Insurance) Regulation, we proposed that certain amendments be made to the principal legislation. These amendments had been included in the Building Management (Amendment) Bill 2005 which was passed on 25 April 2007.

5. The detailed requirements for the compulsory third party risks insurance for an OC are now set out in the Building Management (Third Party Risks Insurance) Regulation at Annex A.

THE REGULATION

6. The main provisions of the Regulation, at Annex A, are –

- (a) Section 3 provides that third party risks liabilities covered by the insurance policy shall include liabilities incurred by an OC in relation to the common parts of the building in respect of a third party's bodily injury and death. It also sets out the types of liabilities which need not be covered by the insurance policy.
- (b) Section 4 provides that the minimum insured amount of each policy is not less than \$10 million per event.
- (c) Section 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) Section 6 stipulates that if a policy restricts the OC's insurance by reference to matters like the number of claims that may be made during the period, or the age of the building, the restriction will be of no effect. It also stipulates that such restriction by reference to matters like the condition or maintenance of the building, use of the building, or existence of maintenance orders etc will only be effective if the policy requires the OC to exercise reasonable diligence in dealing with those matters, and the death or bodily injury is directly caused by the OC's contravention of the requirement.
- (e) Section 7 provides that any agreement between the OC and the third party that purports to negative or restrict any liability towards the third party will be of no effect.
- (f) Section 8 provides that if a third party has obtained judgment against the OC in respect of the liabilities required to be covered by a policy, the insurance company will be required to pay to the third party any sum payable under the judgment up to the policy amount. Section 9 sets out the exceptions to this requirement.
- (g) Section 10 provides that if the OC becomes insolvent, it will not affect the OC's liability covered by a policy. Nor will such liability be affected by the third party's right of action under the Third Parties (Rights against Insurers) Ordinance (Cap.273).

LEGISLATIVE TIMETABLE

- 7. The Regulation will be published in the Gazette on 6 July 2007 and

tabled in the Legislative Council for negative vetting on 11 July 2007.

8. To allow sufficient time for OCs and property management companies to acquaint themselves with the new requirements and to arrange for procurement of the insurance policy, we intend that the new requirement on mandatory third party risks insurance shall take effect on 1 January 2009, i.e. around 12 months after scrutiny by the Legislative Council.

ENQUIRIES

9. For enquiries on this brief, please contact Miss Joyce Kok, Administrative Officer of the Home Affairs Department, on 2123 8395.

Home Affairs Department
5 July 2007

**Building Management Ordinance
(Chapter 344)**

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

ANNEXES

Annex A - Building Management (Third Party Risks Insurance) Regulation

Annex B - Proposals in the Building Management (Third Party Risks Insurance) Regulation

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

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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).

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);

“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).

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

(1) Subject to subsection (2), a policy is required to insure the assured corporation in respect of any liability that may be incurred by the assured corporation 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 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) ionising radiations, or contamination by radioactivity, from –
 - (A) any nuclear fuel;
 - (B) any nuclear waste; or
 - (C) the combustion of nuclear fuel;
 - (ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of –
 - (A) any nuclear installation, reactor or other nuclear assembly; or
 - (B) any nuclear component of such installation, reactor or assembly;
 - (iii) any weapon or device employing –
 - (A) atomic fission;
 - (B) nuclear fission;

- (C) nuclear fusion;
 - (D) nuclear fission and fusion; or
 - (E) other like reaction or radioactive force or matter;
 - (iv) any chemical, biological, bio-chemical or electromagnetic weapon;
 - (v) any war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
 - (vi) any terrorist act within the meaning of section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575); or
 - (vii) the use, detection, removal, or elimination of, or exposure to, asbestos; or
 - (e) any contractual liability.
- (3) For the avoidance of doubt, the liability required to be 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 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 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.

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.

(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.

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

(1) An agreement made between a corporation and any person is of no effect in so far as it purports to qualify any prescribed liability of the corporation in respect of the person or any other person that arises after the agreement is made.

(2) If a person has willingly accepted as his the risk of negligence on the part of the corporation, the acceptance does not negative any prescribed liability of the corporation.

(3) For the purpose of subsection (1), 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 a policy is in effect, judgment is obtained against the assured corporation 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, despite 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 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 corporation.

(4) For the purpose of subsection (1)(b), a liability is regarded as being covered by a policy if the liability is covered by the policy by virtue of section 6 but would not otherwise be covered by the policy.

9. Exceptions to section 8

(1) An insurance company is not required to 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 is not required to 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 is not required to 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 is not required to 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 is not required to 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 particulars; 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 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 –

- (a) any prescribed liability of the assured corporation 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 in respect of any prescribed liability, the corporation shall, within 10 days after receiving the person’s written request –

- (a) state –

- (i) whether the corporation is insured in respect of that liability under a policy that is in effect; or
 - (ii) whether the corporation would have been so insured if the insurance company had not avoided or cancelled the policy; and
- (b) where the corporation is 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 request 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.
- (4) In any proceedings for an offence under subsection (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 owners' corporation named below covering the area as described –

1. Name and address of owners' corporation:
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

2007

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(7) stipulates that if a policy provision restricts the insurance in the event of the assured corporation’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 that purports to negative or restrict any prescribed liability of an owners’ corporation towards a third party is of no effect. If a person has willingly accepted the risk of negligence, the acceptance does not negative any prescribed liability of an owners’ corporation.

6. Section 8 stipulates that if a third party has obtained judgment against an owners’ corporation 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 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 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.

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

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

Coverage

2. The insured party will be the OC of a building. 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. Such policy is not required to cover any liability arising out of a breach of duty imposed by law in relation to unauthorized building works.

Minimum Insured Amount

3. 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

4. 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.

Protection for OCs and Third Parties

5. If a policy restricts the OC's insurance by reference to matters like the number of claims that may be made during the period, or the age of the building, the restriction will be of no effect. However, such restriction by reference to matters like the condition or maintenance of the building, use of the building, or existence of maintenance orders etc will only be effective if the policy requires the OC to exercise reasonable diligence in dealing with those matters, and the death or bodily injury is directly caused by the OC's contravention of the requirement.

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

7. If a third party has obtained judgment against the OC in respect of the liabilities required to be covered by a policy, the insurance company will be required to pay to the third party any sum payable under the judgment up to the policy amount.

8. If the OC becomes insolvent, it will not affect the OC's liability covered by a policy. Neither will such liability be affected by the third party's right of action under the Third Parties (Rights against Insurers) Ordinance (Cap.273).
