

立法會

Legislative Council

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Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 14 January 2011

Procurement of third party risks insurance by owners' corporations

Purpose

The mandatory requirement for owners' corporations ("OC") to procure third party risks insurance has taken effect since 1 January 2011. This paper updates members on the latest situation about the procurement of such insurance by OCs, and summarizes the relevant concerns expressed by members of the Panel on Home Affairs ("the Panel") at its meeting on 10 December 2010. A summary of the relevant concerns of members of the Panel and Legislative Council ("LegCo") Members on the same subject is contained in LC Paper No. CB(2)465/10-11(04).

Background

2. The Building Management (Third Party Risks Insurance) Regulation ("the Regulation") stipulates the mandatory requirement for the third party risks insurance policy to cover liabilities incurred by an OC in relation to the common parts of a building and the property of the OC in respect of the bodily injury to and/or the death of a third party. The minimum insured amount of a policy shall be \$10 million per event. Should an OC fail to procure and keep in force in relation to the common parts of the building a third party risks insurance policy, every member of the management committee ("MC") of the OC shall be guilty of an offence and liable on conviction to a maximum fine of \$50,000. However, it would be a defence for members of MC if they could demonstrate that they have exercised all due diligence to procure insurance.

Procurement of third party risks insurance

3. According to the Administration, as at October 2010, 15 571 or 95.5% of the total number of buildings with OCs had already procured third party risks insurance. About 730 or 4.5% had not procured such insurance. Of these 730 buildings, about 30% had indicated that their buildings were under repair and they would procure insurance upon completion of the repair work, while about another 20% were seeking quotations.

4. On 30 December 2010, the Hong Kong Federation of Insurers (HKFI) issued a media release on its establishment of a task force to handle the matter relating to the procurement of insurance by OCs. HKFI said that it had been working closely with the Home Affairs Department ("HAD") to develop effective measures to ensure the smooth implementation of the mandatory requirement. HKFI stressed that when taking out a policy, an OC should request insurance companies to clearly stipulate the relevant arrangements and details in the policy and to issue a Notice of Insurance to prove that the OC had taken out the required insurance. HKFI has issued a set of FAQs (**Appendix I**) explaining the coverage, claims, policyholders and premium charges, etc..

Members' concerns

5. At the Panel meeting on 10 December 2010, some members raised concern about the problems encountered by some OCs when they tried to procure or renew their third party risks insurance policies, and enquired about the actions to be taken by the Administration to assist OCs in complying with the mandatory requirement. Members were worried that prosecution against members of MC of an OC would be taken out if the OC failed to comply with the mandatory requirement.

6. The Administration responded that HAD had all along maintained constant contact with OCs and had been proactively assisting them in procuring insurance. HAD would liaise with HKFI once it noticed questions raised by owners and OCs over the services provided by insurance companies. The Administration also advised that HKSI had issued a circular to its members stating that when handling cases relating to the procurement of insurance, they should provide options which met the mandatory requirement without charging additional premium if there was no increase in risk exposure.

7. The Administration further advised that if an OC was unable to procure insurance, HAD would refer the case to HKFI. HAD would also provide the OC with a list of insurance companies authorized by HKFI as insurers of third party risks insurance for buildings and a list of insurance consultant companies provided by the Professional Insurance Brokers Association to facilitate the OC's procurement of insurance. Having regard to the spirit of the legislation which provided for a defence provision, prosecution against an OC would not be taken immediately upon the commencement of the mandatory requirement if the OC concerned had already made its best endeavour to procure insurance.

Latest development

8. The Administration will update the Panel on the latest development on matters relating to the procurement of third party risks insurance by OCs at its meeting on 14 January 2011. Representatives of HKFI have also been invited to join the discussion on the matters.

Relevant papers

9. A list of relevant papers with their hyperlinks at LegCo's website is in **Appendix II**.

Council Business Division 2
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「第三者風險保險」的常見問題

就《建築物管理條例》及《建築物管理(第三者風險保險)規例》強制要求法團於二零一一年一月一日起，購買「第三者風險保險」的事宜，市民有以下常見的問題：

1. 是否任何人士均可被視為「第三者」，並納入「第三者風險保險」的受保範圍內呢？

答：業主、造訪業主的親友、租客、單位佔用人、物業管理公司職員、擅自闖入者(trespasser)、政府人員均屬「第三者風險保險」保單內界定的「第三者」。如他們不幸在樓宇的公用地方遇到意外，均受保障。

但由法團直接聘任的技工和管理員，則是法團的直屬僱員，所以不在「第三者風險保險」的受保範圍之內。

2. 如果法團現有的「第三者風險保險」已就第三者的(i)人身傷害及死亡，以及(ii)財物損毀，提供保額為一千萬的保障，但在保單內卻沒有訂明(i)及(ii)的賠償比例。萬一發生意外事故，法庭裁定法團必須就(i)賠償 700 萬及就(ii)賠償 500 萬，法團可否要求保險公司先賠(i)，後賠(ii)呢？

答：如果在保單內沒有清楚註明(i)及(ii)的比例，保險公司則以「先判先得」的原則處理。法團不能要求保險公司先賠(i)，後賠(ii)。

3. 如果法團及物業管理公司是聯名保單持有人(Joint Policyholder)，已為第三者的人身傷害及死亡投保。萬一不幸發生意外事故，法庭裁定法團及物業管理公司均需為事件負責，保單持有人可否要求保險公司先為法團需要負責的部分作賠償，之後才處理物業管理公司的部分呢？

答：如果保單沒有特別註明，保險公司會根據法庭裁定法團及物業管理公司需要負責的比例作出賠償。

4. 承問題 2 及 3，法團是否必須在保單內訂明有關安排及細節呢？

答：法團應在購買保單時，要求保險公司在保單內清楚訂明有關安排及細節。

5. 承接上題，如因某些原因，有關細節不能在現有的保單內訂明以符合有關法例要求，這是否表示法團必須以法團的名義「獨自」購買另一份「第三者風險保險」保單，以符合有關法例的要求？法團可有其他選擇？

答：為符合法例的要求，法團可選擇以法團的名義「獨自」購買一份保單，以保障其利益。但保險公司亦會因應個別情況，提供不同的方案供投保人選擇，例如：

- (i) 更改法團現有的「第三者風險保險」保單，或
- (ii) 法團要求物業管理公司（如適用者）在其現有的「第三者風險保險」保單內「投保人」一項上加入法團名稱（即：聯名保單持有人），或
- (iii) 如現有「第三者風險保險」保單的第三者身體受傷及/或死亡賠償額已超過一千萬，不論保單持有人是法團或法團及物業管理公司聯名持有，法團可要求保險公司簽發批單(endorsement)及保險通告，證明法團已有法例規定之保障。

但任何方案均須符合有關法例要求。由於每宗個案的情況有別，法團應與保險公司／代理聯絡，商談有關細節。

6. 有個別保險公司／代理建議法團以法團的名義「獨自」購買一份保單，保險公司的建議是否恰當呢？

答：要視乎個別情況而定，但法團以法團的名義「獨自」購買一份保單，絕對符合法例的要求。

7. 在物業管理公司的同意下，法團可否要求保險公司在物業管理公司現有的保單內加入法團為聯名保單持有人（Joint Policyholder）呢？

答：要視乎個別情況而定。一般的情況下，保單的條款／細節或需修訂以符合法例要求；如果保險公司因此而要承保額外的風險，則會相應提高保費。

8. 如果法團需要更改現有的保單條款／細節，以符合法例要求，保險公司會否因此收取費用？

答：這是個別保險公司的商業決定。一般而言，如果投保額已符合法例要求，而保險公司認為沒有因此而要承保額外的風險，則

不會收取額外保費；相反，如果涉及額外的承保風險，保險公司便會相應提高保費。至於其他行政費用，則以收回成本為原則。

9. 香港保險業聯會是否已跟全港的物業管理公司就「第三者風險保險」的事宜達成共識？

答：香港保險業聯會已跟香港物業管理公司協會（協會）接觸，解釋業界對「第三者風險保險」的看法及現時保險市場的處理方法。而協會亦會將此信息發放給其會員。

10. 市民如對購買「第三者風險保險」有疑問，可向哪個機構查詢？

答：如果市民、物業管理公司或法團就「第三者風險保險」有任何疑問，請致電香港保險業聯會的熱線電話 2861 9329 或電郵至 hkfi@hkfi.org.hk。

Appendix II

Panel on Home Affairs

Relevant documents on Procurement of third party risks insurance by owners' corporations

Committee	Date of meeting	Minutes/Papers	LC Paper No.
Panel on Home Affairs	12.6.2001	Administration's paper on Procurement of third party liability insurance by owners' corporations under the Building Management Ordinance (Cap. 344).	CB(2)1753/00-01(03) http://library.legco.gov.hk:1080/record=b1061757
		Minutes of meeting	CB(2)555/01-02 http://www.legco.gov.hk/yr00-01/chinese/panels/ha/minutes/ha010612.pdf
House Committee	5.10.2007	Legal Service Division Report on subsidiary legislation tabled in the Legislative Council on 11 July 2007	LS121/06-07 http://www.legco.gov.hk/yr06-07/english/hc/papers/hc10051s-121-e.pdf
Subcommittee on Building Management (Third Party Risks Insurance) Regulation	12.10.2007	Legislative Council Brief on Building Management (Third Party Risks Insurance) Regulation issued by the Home Affairs Department on 5 July 2007	HAD/HQ/CR/20/3/1(C) http://www.legco.gov.hk/yr06-07/english/subleg/brief/146_brf.pdf
		Background brief prepared by the Legislative Council Secretariat	CB(2)26/07-08(02) http://www.legco.gov.hk/yr06-07/english/hc/sub_leg/sc61/papers/sc611012cb2-26-2-e.pdf

Committee	Date of meeting	Minutes/Papers	LC Paper No.
Subcommittee on Building Management (Third Party Risks Insurance) Regulation	12.10.2007	Minutes of meeting	CB(2)269/07-08 http://www.legco.gov.hk/yr06-07/english/hc/sub_leg/sc61/minutes/sc611012.pdf
	16.10.2007	Minutes of meeting	CB(2)298/07-08 http://www.legco.gov.hk/yr06-07/english/hc/sub_leg/sc61/minutes/sc611016.pdf
		Administration's response to issues raised at the Subcommittee's meeting on 16 October 2007	CB(2)127/07-08(01) http://www.legco.gov.hk/yr06-07/english/hc/sub_leg/sc61/papers/sc611023cb2-127-1-e.pdf
	23.10.2007	Minutes of meeting	CB(2)364/07-08 http://www.legco.gov.hk/yr06-07/english/hc/sub_leg/sc61/minutes/sc611023.pdf
	29.10.2007	Minutes of meeting	CB(2)572/07-08 http://www.legco.gov.hk/yr06-07/english/hc/sub_leg/sc61/minutes/sc611029.pdf
		Administration's response to issues raised by the Subcommittee at its meeting on 29 October 2007	CB(2)240/07-08(01) http://www.legco.gov.hk/yr06-07/english/hc/sub_leg/sc61/papers/sc611029cb2-240-1-e.pdf
House Committee	2.11.2007	Report of the Subcommittee on Building Management (Third Party Risks Insurance) Regulation to the House Committee	CB(2)207/07-08 http://www.legco.gov.hk/yr07-08/english/hc/papers/hc1102cb2-207-e.pdf

Committee	Date of meeting	Minutes/Papers	LC Paper No.
Panel on Home Affairs	12.12.2008	Administration's paper on procurement of third party risks insurance by owners' corporations and issues related to building management	CB(2)427/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/ha1212cb2-427-1-e.pdf
		Background brief prepared by the Legislative Council Secretariat	CB(2)427/08-09(02) http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/ha1212cb2-427-2-e.pdf
		Administration's paper on procurement of third party risks insurance by owners' corporations and issues related to building management (supplementary information)	CB(2)640/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ha/papers/ha1212cb2-640-1-e.pdf
		Minutes of meeting	CB(2)817/08-09 http://www.legco.gov.hk/yr08-09/english/panels/ha/minutes/ha20081212.pdf
Panel on Home Affairs	17.3.2010	Administration's paper on support to building owners and owners' corporations to facilitate building management and maintenance	CB(2)1082/09-10(03) http://www.legco.gov.hk/yr09-10/english/panels/ha/papers/ha0317cb2-1082-3-e.pdf
		Background brief prepared by the Legislative Council Secretariat	CB(2)1082/09-10(04) http://www.legco.gov.hk/yr09-10/english/panels/ha/papers/ha0317cb2-1082-4-e.pdf
		Minutes of meeting	CB(2)1498/09-10 http://www.legco.gov.hk/yr09-10/english/panels/ha/minutes/ha20100317.pdf

Committee	Date of meeting	Minutes/Papers	LC Paper No.
Panel on Home Affairs	10.12.2010	Administration's paper on Procurement of Third Party Risks Insurance by Owners' Corporations	CB(2)465/10-11(02) http://www.legco.gov.hk/yr10-11/english/panels/ha/papers/ha1210cb2-465-2-e.pdf
		Background brief prepared by the Legislative Council Secretariat	CB(2)465/10-11(04) http://www.legco.gov.hk/yr10-11/english/panels/ha/papers/ha1210cb2-465-4-e.pdf

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