

**Subcommittee on Building Management
(Third Party Risks Insurance) Regulation**

Matters Arising from Meeting on 29 October 2007

At the meeting of the Subcommittee on 29 October 2007, Members raised a number of questions about the Building Management (Third Party Risks Insurance) Regulation (the Regulation). Below are the responses of the Administration to these questions.

Obligation to Procure Insurance

2. Section 28 of the Building Management Ordinance (BMO) (which has yet to come into operation) requires all OCs to procure and keep in force third party risks insurance policies in relation to the common parts of the building. If OCs failed to comply with this requirement, every member of the MC shall be guilty of an offence and shall be liable on conviction to a fine at level 5. Should member of the MC prove that the offence was committed without his consent or connivance; and that he has exercised all such due diligence to prevent the contravention of section 28(1) as he ought to have exercised in the circumstances, he will not be guilty of the offence.

3. Whether the MC has exercised reasonable diligence in procuring third party risks insurance is subject to the court's decision having regard to the particular circumstances of each individual case. In reaching its decision, the court may consider a host of factors, for example, whether the MC members have contacted the insurance companies to get quotations for the insurance, explored with different insurance companies for an insurance policy which suit the need of the owners of the building concerned; whether the MC members have made an effort to step up the management and maintenance of the building which may lower the insurance premium; or if voting at OC meeting is need whether the MC members have explained the requirements on procuring third party insurance to the owners concerned.

4. Members have enquired in the case that owners of the building have voted against the proposal for taking out a third party risks insurance at a meeting of the corporation, whether MC members could have the authority to procure the insurance on behalf of the OC. We would like to advise that in procuring the insurance policy, the MC has to abide by the legislative requirements under the BMO (e.g. the procurement

requirements). There is no exemption provision in the main Ordinance of the BMO which allows for exemption from these requirements by the MC.

5. We would like to point out that it is in the interest of the OC to procure third party risks insurance so that it would be accorded with better protection against the accidental possibility of third party's death or bodily injury in relation to the common parts of their buildings. And the powers and duties conferred by or imposed by the BMO shall be exercised and performed on behalf of the OC by the MC. We believe that owners will make a rational choice having regard to the protection offered by the third party risks insurance and the legal requirement in the Regulation.

Information about OCs

6. At the meeting, we advised Members that as of September 2007, about 88% of buildings with OCs have already procured third party risks insurance in respect of the common parts of the buildings. Members enquired about the profiles of the remaining 12% of buildings with OCs which have not yet procured insurance policy. We do not have a comprehensive survey of the buildings concerned, which also change from time to time as more OCs are set up. However, according to our understanding, quite a number of these buildings are those aged 30 years or above and with less than 100 units.

7. To encourage the OCs of these buildings to step up the management and maintenance of the common parts and to procure third party risks insurance, both the Hong Kong Housing Society and the Urban Renewal Authority have introduced loan and incentive schemes targeted at these buildings. For example, under the Building Maintenance Incentive Scheme put forward by the Hong Kong Housing Society, owner of each flat of the eligible buildings (where eligibility criteria includes building age of 20 years or above and with less than 200 units) can receive a grant of up to \$3,000 for them to carry out maintenance and repair works in the common parts of the building. In addition, OCs which have completed the renovation works in the common parts will be reimbursed for the third party risks insurance premium of up to \$6,000 per annum for three consecutive years.

8. Some Members have also enquired about the reasons why some OCs have not yet procured third party risks insurance. We do not have a comprehensive survey of the OCs concerned. Yet, according to our

experience while some OCs finds it difficult to procure insurance because of say lack of financial assistance, many OCs may not have procured the insurance because of low awareness of the importance of such insurance for the better protection of the owners against the accidental possibility of third party's death or bodily injury. Other OCs or owners simply do not care about procuring third party risks insurance as it is not yet a mandatory requirement to do so. There are also some OCs which are carrying out maintenance work for their buildings and would be willing to procure the insurance only after the work is completed.

9. In these years, we have continued to publicize the importance of procurement of third party risks insurance for the better protection of the owners. We notice that owners are becoming more aware of the need to procure third party risks insurance over the years. In March 2005, only around 60% of the buildings with OCs have procured third party risks insurance. Yet, as of September 2007, about 88% of the buildings with OCs have already procured insurance. We believe that the enactment of the Regulation will help raise public's awareness in this regard and more OCs will be willing to procure third party risks insurance.

Home Affairs Department
October 2007