

## Building Third Party Risk Insurance

### Background

1. Starting from 1 January 2011, owners' corporations (OCs) are required by law to procure third party risks insurance of no less than HK\$10 million per event to cover potential liability claims arising from injuries to and/or death of a third party occurring in common areas of their properties. There have been allegations of unscrupulous practices of insurance companies making use of the opportunity to over-charge customers by offering policy coverage over and above the legal requirements.
2. The purpose of this note is to set out the position of the matter and suggest a way forward to address the key concerns raised.

### Legal Requirements and Role of Insurance Companies

3. This policy coverage, to all intents and purposes, is a compulsory class of insurance mandated by LegCo in 2007 under the Building Management (Third Party Risks Insurance) Regulation. The principal objectives are to ensure that:
  - third parties are duly protected; and
  - OCs as a legal entity would be financially capable of dealing with such claims by way of transferring the potential risks to insurers.
4. The legislation, in the way it has been framed, places such legal responsibility solely on OCs. And the coverage of HK\$10 million per event is designed exclusively to cover claims related to bodily injuries and/or death of a third party. Damage to third party property, which is normally covered under a conventional public liability policy, is not covered under the legislation.
5. As we see it, our role as insurers would be to:
  - work with the Administration to educate the public on how to procure the required insurance; and
  - provide the relevant coverage with suitably designed products and solutions in full compliance with the legal requirements.
6. Since 2008, the Hong Kong Federation of Insurers (HKFI) has conducted about 70 seminars in various districts and for various organizations on this topic. In March 2009, we spoke at a forum specifically organized for staff of the Home Affairs Department so that they would be better equipped to answer questions from OCs and members of the public.

7. Also, the HKFI set up a working group to come up with a tailor-made standard policy to ensure that OCs are able to procure the required insurance coverage as set out in the Regulation referred to above.
8. At present there are over 60 insurers writing liability insurance. So there are more than enough choices for customers to choose an insurer which, in their view, offers the best product, service and price to suit their specific needs.

#### Issues of Concern

9. Allegations of over-charging mainly centre on two areas:
  - (a) Why OCs have formed a perception that they are asked to take out excessive policy cover on top of the conventional public liability policy?
  - (b) Why it would not be a preferable option for an OC to have a joint-name policy with a property management company?
10. A conventional public liability policy is fundamentally different from a building third party risk insurance policy. They are two different policies as briefly explained in paragraph 4 above. Suffice it to say that:
  - For (a), a conventional public liability policy covers claims related to both property damage and bodily injury/death of a third party. In case it is a HK\$10 million public liability policy, it would be necessary for the OC to take out a separate policy or amend the existing policy to provide coverage of no less than HK\$10 million for bodily injury/death according to the law throughout the entire period of insurance. And this might increase the risk exposure and cost and would also involve extra work for insurers.
  - In case the public liability policy has a coverage of more than HK\$10 million, it would still be necessary as required by law to amend the insurance contract to:
    - (i) make special provisions for third party bodily injury/death claims; and
    - (ii) ensure that the indemnity of HK\$10 million is provided in compliance with (i) above.
  - As for (b), the legal status of "joint-name policy" has not yet been firmly ascertained. That being the case, it would be an option in the interest of legal clarity for OCs to take out an independent policy. Alternatively, a policy should be properly worded to meet the legal requirements as stipulated in the Regulation.

#### Latest Initiatives Made by HKFI

11. We set up a telephone hotline (2861 9329) to answer enquiries from OCs and other

stakeholders and post FAQs on our website for public information. We also conducted a briefing for member insurers informing them of the public concerns raised and issued an advisory note to them recommending a set of best practices in assisting OCs to procure the required insurance in compliance with the law.

12. As of today, we at the HKFI have handled over 100 telephone enquiries and 25 complaint cases referred to us by the Home Affairs Department and political parties. We have spoken to all of them one by one and provided them with the necessary information and professional advice. We can confirm that according to the available information shown to us, there is no evidence of unscrupulous practices of customers being over-charged for unnecessary policy coverage.
13. Hundreds of OCs have attended the seminars referred to in paragraph 6. As far as we know, they are not among those 25 complaint cases. In other words, those OCs which are better informed of the new legal requirements have no problems making satisfactory insurance arrangements.

#### Way Forward

14. With hindsight, we can say that this is mainly an issue of communication. The HKFI will continue to work in close collaboration with the Administration to step up public education to ensure that all OCs fully understand what is required under the law and what needs to be done.
15. Property management companies do play a vitally important role in this matter. Consideration should be given to securing their support and participation to help ensure the smooth implementation of the new legislation.

The Hong Kong Federation of Insurers  
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