

立法會

Legislative Council

LC Paper No. CB(2)465/10-11(04)

Ref : CB2/PL/HA

Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 10 December 2010

Procurement of third party risks insurance by owners' corporations

Purpose

The mandatory requirement for owners' corporations ("OC") to procure third party risks insurance will take effect on 1 January 2011. This paper updates members on the latest situation about the procurement of such insurance by OCs, and summarizes the key views and concerns of Legislative Council ("LegCo") Members on matters relating to the implementation of the mandatory requirement.

Background

2. In 2007, LegCo passed the amendments proposed to section 28 of the Building Management Ordinance (Cap. 344) and the Building Management (Third Party Risks Insurance) Regulation ("the 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. It is not a mandatory requirement for OCs to take out third party risks insurance covering any liability arising out of a breach of duty imposed by law in relation to unauthorised building works ("UBWs").

3. Upon commencement of the mandatory requirement, 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") 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.

4. The Administration had originally intended to commence the mandatory requirement on 1 January 2009. However, members of the Subcommittee on Building Management (Third Party Risks Insurance) Regulation were of the view that the insurance premium of old buildings would pose a heavy financial burden to owners. Some owners might dissolve their OCs if they failed to comply with the requirement. The Administration therefore agreed to defer the commencement date of the mandatory requirement. After consulting the Home Affairs Panel ("the Panel") on 12 December 2008, the Administration announced that the mandatory requirement would take effect on 1 January 2011.

Procurement of third party risks insurance

5. In response to a Member's written question on 17 November 2010, the Administration provided the following figures on the procurement of third party risks insurance for buildings with OCs as at 30 September 2010 -

District	Number of buildings with OCs which have procured third party risks insurance	Number of buildings with OCs which have not procured third party risks insurance	Total
Central & Western	1463	91	1554
Wan Chai	1157	36	1193
Kowloon City	1293	109	1402
Sham Shui Po	970	130	1100
Yau Tsim Mong	1278	147	1425
Tsuen Wan	397	49	446
Other Districts	8984	193	9177
Total	15542 (95.4%)	755 (4.6%)	16297

6. The Administration has advised that of the 755 buildings with OCs which have not procured third party risks insurance, about 30% have indicated that their buildings are under repair and they will procure insurance upon completion of the repair work, while about 20% are asking insurance companies for quotations.

7. In early November 2010, the Home Affairs Department issued letters to all OCs, informing them that if an OC encountered difficulties in procuring insurance for its building, the Administration would not take prosecution against the OC immediately when the mandatory requirement came into effect, provided that it could prove that it had taken the initiative and tried its best to procure insurance.

Members' views and concerns

8. Issues relating to the implementation of the mandatory requirement for OCs to procure third party risks insurance were discussed by Members in various forums in LegCo. Members' views and concerns are highlighted in the ensuing paragraphs.

Enforcement of the mandatory requirement

9. Some Members expressed concern about how the Administration would work with the insurers to ensure that the mandatory requirement could be enforced in January 2011, and the measures which would be put in place to help OCs which had yet to secure insurance.

10. The Administration advised that it would adopt a targeted approach in providing assistance to OCs which had yet to procure insurance. If the MCs were not active, the Administration would assist the OCs to convene MC or OC meetings to procure insurance. If an OC needed financial and technical support in carrying out building maintenance works before procuring insurance, the Administration would brief owners about the building maintenance loan and grant schemes offered by the Buildings Department, Hong Kong Housing Society and Urban Renewal Authority.

Financial burden of the mandatory requirement on owners

11. Some Members were concerned about the financial burden of the mandatory requirement on owners. They were worried that owners with low income living in old buildings might have to dissolve their OCs, if the level of insurance premium was beyond their affordability. Some Members expressed concern about the insurance premium. To reduce the burden of these owners, they suggested that consideration be given to allow them to procure a joint third party risks insurance. They also urged the Administration to consider, among others, procuring insurance on behalf of the OCs and recovering the cost from the owners/OCs concerned in future, or subsidizing the insurance premium for owners of private buildings.

12. The Administration responded that it was the owners' responsibilities to manage their own buildings, and it would be inappropriate for the Administration to use public money for such purpose. The Administration also advised that the level of insurance premium depended on a host of factors. According to the Hong Kong Federation of Insurers, there was a rough indication that the annual insurance premium for a 20-flat old building with good maintenance conditions should be in the range of \$5,000 to over \$10,000 for an insured amount of \$10 million.

Problem of UBWs

13. Some Members expressed concern that OCs might not be able to comply with the mandatory requirement because of the existence of UBWs. If UBWs could not be demolished, insurance companies might refuse to cover such works or the premium might be unreasonably high. They urged the Administration to expedite the clearance of all high risk UBWs prior to enforcement of the mandatory requirement. They considered that UBWs should be covered by third party risks insurance for the better protection of the third parties.

14. The Administration advised that issues on the provision of third party risks insurance for UBWs and the commencement of the mandatory requirement should be handled separately. The Administration would endeavour to expedite the removal of UBWs on the one hand, and persuade OCs that had yet to meet the mandatory requirement on the other. The Administration pointed out that most UBWs posing imminent hazard to life and property had been demolished.

Buildings without OCs

15. Some Members expressed dissatisfaction that only buildings with OCs would be subject to the mandatory requirement, as this arrangement would discourage building owners from forming OCs. They urged the Administration to apply the mandatory requirement to all buildings for the better protection of all owners and third parties.

16. The Administration advised that the mandatory requirement would first target buildings with OCs. In future, the Administration might further explore the feasibility and desirability of extending the mandatory requirement to other buildings.

Latest development

17. The Administration will report to the Panel matters relating to the procurement of third party risks insurance by OCs at its meeting on 10 December 2010.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
8 December 2010

Appendix

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
	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

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