

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 –

- (a) an order, notice or direction issued under an Ordinance requiring –
 - (i) any maintenance, improvement, alteration, repair or demolition work to be carried out in relation to the building;
 - (ii) any fire safety installation or improvement work to be carried out in relation to the building; or
 - (iii) any relevant person to be appointed to carry out investigation in relation to the building; or
- (b) a notice or direction issued under an Ordinance specifying that the notice or direction will be registered in the Land Registry if any maintenance, improvement, alteration, repair or demolition work, or any fire safety installation or improvement work, is not carried out in relation to the building before a particular date;

“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 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 1.

(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) 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) 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.

(4) 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.

(5) 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.

(6) Nothing in subsection (5) 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

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Insurance Company