

Information provided by the Hong Kong Federation of Insurers

- 1) In procuring the third party risks insurance, the OC may be required to provide the following information about the building:
 - ◆ Year of completion;
 - ◆ Existing use;
 - ◆ Location;
 - ◆ Number of blocks/storeys/flats/lifts/car parking spaces;
 - ◆ Gross floor area;
 - ◆ Facilities provided (if any), e.g. carpark, clubhouse, swimming pool, sport facilities, etc;
 - ◆ External structures (if any), e.g. advertisement signboards;
 - ◆ Unauthorized structures (if any), e.g. building structures or modifications contravening the Buildings Ordinance (Cap.123), the BMO or other legal requirements;
 - ◆ Details of maintenance programme in place (if any);
 - ◆ Claims experience (if any) in the past 5 years: Is there any incident which is likely to give rise to a claim? If the building is insured, has the OC reported any potential claim or lodged any claim to the insurer? Details about such incident and claim (if any) have to be provided;
 - ◆ Outstanding repair order (if any) issued by the Buildings Department.
- 2) Liabilities that are ordinarily not covered by third party risks insurance and need separate insurance arrangement:
 - ◆ Liability to employees ➡ The OC should, in accordance with the Employees' Compensation Ordinance (Cap.282), take out **Employees' Compensation Insurance (also known as "Workmen's Compensation Insurance")** for its building management staff so as to provide compensation for those injured or died in the course of their employment;
 - ◆ Liability relating to damage to common parts of the building ➡ The OC should take out **Property-All-Risks Insurance (also known as "Property Insurance")** so that it can seek the insurance company for indemnity in respect of any loss or damage to the common properties of the building due to fire or other risks (e.g. storm, flood, malicious act, etc.) covered by the terms of the policy;
 - ◆ Any contractual liability.
- 3) If a third party makes a claim against an OC, in order not to prejudice OC's right of indemnity under its insurance policy, the OC should direct all communications to the insurance company unanswered.

For enquiries on the following matters, please contact the departments / offices / organizations concerned or visit their websites:

Building management matters (including the procurement of third party risks insurance)

District Building Management Liaison Teams of respective District Offices:

Central & Western	2119 5010	Islands	2109 4635
Eastern	3427 3469	Kwai Tsing	2494 4543
Southern	2814 5763	North	2675 1719
Wan Chai	2835 1999	Sai Kung	3740 5293
Kowloon City	2621 3406	Sha Tin	2158 5388
Kwun Tong	2171 7465	Tai Po	2654 1262
Sham Shui Po	2150 8175	Tsuen Wan	3515 5654
Wong Tai Sin	2324 1871	Tuen Mun	2451 3466
Yau Tsim Mong	2399 2155	Yuen Long	2470 1125

Home Affairs Department's Homepage on Building Management
(Including the relevant legal provisions and the list of insurance companies)
www.buildingmgt.gov.hk

Unauthorized Building Works

Buildings Department	1823	www.bd.gov.hk
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Procurement of Insurance (Including Standard Insurance Policy)

Hong Kong Federation of Insurers	2861 9329	www.hkfi.org.hk
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This leaflet outlines the statutory requirements for procurement of third party risks insurance by OCs, and highlights the points to note when taking out the insurance. This leaflet is prepared for general reference only. Users of this leaflet should read the legal provisions in the BMO and the Regulation and seek legal advice should there be doubts about the legal requirements.

Building Management (Third Party Risks Insurance) Regulation

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Introduction :

Section 28 of the Building Management Ordinance (Cap.344) (BMO) requires an owners’ corporation (OC) to procure and keep in force in relation to the common parts of the building, and the property of the corporation, a policy of insurance in respect of third party risks (also known as “Third Party Liability Insurance”). The Building Management (Third Party Risks Insurance) Regulation (the Regulation) sets out the detailed requirements (e.g. insurance coverage, minimum insured amount, etc.) for OCs to procure third party risks insurance.

Under section 28 of the BMO , if an OC fails to comply with the requirement to procure third party risks insurance in relation to the common parts of the building and the property of the corporation, every member of the management committee (MC) shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$50,000.

“A corporation shall procure and keep in force in relation to the common parts of the building and the property of the corporation, such policy of insurance with an insurance company in respect of third party risks as complies with any requirement prescribed for the purposes of this section.”

Section 28(1) of the Building Management Ordinance (Cap.344)

Why is it necessary to procure the third party risks insurance?

An OC is a building management body set up under the BMO. It possesses an independent status and the requisite powers of a corporate body. It is responsible for maintaining the common parts of the building and the property of the OC in a state of good and serviceable condition.

Whilst an OC may have tried its best to perform its duties of managing and maintaining the building, accidents could still occur in the common parts of a building, causing bodily injury to or in the most unfortunate event, the death of a third party. The civil liability of an OC and owners could be heavy in financial terms. If an OC procures sufficient third party risks insurance for the building, the risks faced by owners in times of accidents will be reduced.

Apart from OCs which have to comply with the mandatory requirement, owners of buildings with other building management bodies (e.g. owners’ committee) should also as far as possible procure the third party risks insurance in order to reduce their risks in times of accidents.

Major legal requirements

1. The scope of the third party risks insurance

The Regulation requires the third party risks insurance policy to cover liabilities incurred by an OC in relation to the common parts of the building and the property of the OC in respect of the bodily injury to or the death of a third party.

It is important to note that it is not a mandatory requirement for an OC to take out an insurance policy to cover liabilities arising from unauthorized building works. Besides, it is also not mandatory for the OC to take out an insurance policy to cover terrorist acts, wars etc. as specified in the Regulation.

2. Minimum insured amount

The minimum insured amount of each policy shall be \$10 million per event.

3. Notice to owners

- When an insurance company issues a policy to an OC, it should also issue a notice of insurance giving particulars of the policy. The OC is required to display the notice in a prominent place in the building as long as the policy is in effect.
- The MC secretary shall, within 28 days after the OC has procured the policy, give notice of the name and address of the insurance company and the period covered by the policy to the Land Registry in such form as the Land Registry may specify.
- An owner can, at any reasonable time, inspect the policy and receipt for the premium issued by the insurance company. On payment of copying charge, the owner can demand copies of the policy and receipt for the premium from the treasurer of the MC.

4. Protection for the OC and the third party

- If a third party makes a claim against an OC, the OC shall, within 10 days after receiving the party’s written request, state whether it is insured in respect of that liability, and give particulars of the policy.
- If a policy restricts the insurance of an OC regarding its liability that is required to be covered by a policy under the Regulation by reference to the number of claims made by the OC, the age, condition or maintenance of the building, the number of flats in or the use of the building, or the existence of a statutory instrument in relation to that building, such policy provisions are of no effect. In this connection, the insurance company is required to pay compensation in respect of the OC’s liability first but is then entitled to recover the sum from the OC.
- An agreement made between an OC and a third party is of no effect if it purports to negative or restrict the liability of the OC towards the third party.
- Among other exceptions specified in the Regulation, an insurance company shall pay compensation to a third party up to the policy amount only if a judgment is passed against the OC in respect of the prescribed liability.
- If the OC is wound up, its liability to a third party covered by the policy will not be affected.

Points to note when taking out insurance

- When taking out insurance, attention should be paid to the coverage, terms and conditions of the policy. The coverage and the sum insured shall comply with section 28(1) of the BMO and the Regulation.
- A reputable insurance company should be chosen. It is advisable that quotations from a number of insurance companies should be compared before effecting any policy.
- If the premium exceeds or is likely to exceed the sum specified in section 20A of the BMO in respect of procurement arrangements, the OC shall invite tenders or convene a general meeting of the OC in accordance with the provision.
- The policy shall be taken out in the name of the OC.
- Information given to the insurance company must be accurate. Failure to do so may render the policy invalid and compensation may not be paid. If the OC is unsure about certain information, it should inform the insurance company that it does not know or is uncertain about such information.