

LCQ14: Building Management Ordinance

Following is a question by the Hon Frederick Fung and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (November 17):

Question:

The amended section 28 of the Building Management Ordinance (Cap. 344) and the Building Management (Third Party Risks Insurance) Regulation (Cap. 344, sub. leg. B) will come into operation on January 1, 2011. These provisions require all owners' corporations (OCs) to procure and keep in force policies of third party risks insurance in relation to the common parts of the buildings and the properties of OCs. Should an OC fail to comply with such requirement, members of the OC's management committee (MC) shall be held responsible and liable on conviction to a maximum fine of \$50,000. In this connection, will the Government inform this Council:

(a) of the publicity and promotional activities conducted in respect of the aforesaid provisions (including the number of times and the circumstances in which District Offices communicated and made contacts with OCs); whether the authorities have assessed the possible difficulties faced by OCs in complying with the aforesaid requirement; if they have, of the difficulties; whether they have considered and offered any support and assistance; if not, the reasons for that, and whether the authorities have been preoccupied solely with amending the legislation and have not taken into account the actual circumstances and have not provided adequate corresponding measures; and

(b) given that some owners have pointed out that at present, around 800 private buildings have not been able to procure policies of third party risks insurance due to problems in raising funds or excessively high insurance premium, which may ultimately lead to a substantial number of cases of breaches or even an upsurge of resignation of MC members, whether the authorities have looked into the situation concerned and offered appropriate assistance (including liaising with building owners, assisting in fund-raising and acting as an intermediary in their discussion with insurance companies and banks), so as to increase their opportunities of procuring policies of third party risks insurance; and whether the authorities will consider deferring enforcement of the amendment for one year to allow sufficient time for OCs

to procure policies of third party risks insurance?

Reply:

President,

The mandatory requirement for an owners' corporation (OC) to procure a third party risks insurance policy (insurance policy) in respect of the common parts of the building and the property of the OC aims at reducing the risks faced by owners in case of accidents and, at the same time, offering better protection for the public.

In 2007, the Legislative Council passed the amendments to Section 28 of the Buildings Management Ordinance (the Ordinance) and the Building Management (Third Party Risks Insurance) Regulation (the Regulation). After consultation with the Panel on Home Affairs of the Legislative Council in December 2008, the Government announced that the legislation concerned would come into effect on January 1, 2011 to allow OCs to have sufficient time to procure insurance policies for their buildings.

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 and/or the death of a third party. The minimum insured amount of each policy shall be \$10 million per event.

Upon commencement of the legislation, if an OC fails to comply with the requirement to procure insurance, every member of the management committee (MC) shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000. However, it would be a defence for members of the MC if they can demonstrate that they have exercised all due diligence to procure insurance.

The reply to the two parts of the question is as follows:

(a) All District Offices (DOs) have taken an active role in encouraging and assisting OCs in procuring insurance. We have taken the initiative to contact individual OCs and, taking into account their circumstances, provided them with a full range of assistance which include promoting the importance of procuring insurance policies to owners, providing information on insurance procurement and assisting OCs to convene meetings to discuss matters on insurance procurement, etc.

As far as we understand, upon receipt of an OC's request for procurement of insurance, an insurance company will normally conduct a risk assessment based on a number of factors, such as building age, existence of unauthorised structures, repair and maintenance condition of the building and claim history. Whether the insurance company accepts the insurance and the level of premium charged are quantitative risk indicators. We are aware that the OCs of some old buildings or those with unauthorised structures may be declined for insurance or required to pay higher premiums. To deal with such cases, we have been actively introducing to OCs various building maintenance loan and assistance schemes available and encouraging them to carry out maintenance to improve the conditions of their buildings. Once the required maintenance work is completed, the OCs may enjoy lower premiums.

(b) With the above efforts made by DOs, as at September 2010, 15,542 or 95.4% of the total number of buildings with OCs have procured insurance policies. There are about 750 or 4.6% of the total number of buildings with OCs which have not procured third party risks insurance, among them about 30% have indicated that their buildings are under repair and they would procure insurance policies upon completion of the repair work, while about another 20% are asking insurance companies for quotations. If an OC encounters difficulties in procuring an insurance policy for its buildings, we will not take prosecution against the OC immediately when the relevant sections of the Ordinance have come into effect, provided that it can prove that it has taken the initiative and tried its best to procure an insurance policy by taking the following steps:

Firstly, the OCs should contact their respective DOs immediately. We will provide the owners with information of insurance procurement and assist the OCs to convene meetings to discuss matters related to insurance procurement.

Secondly, if an OC has been declined for insurance, we will refer the case to the Hong Kong Federation of Insurers (HKFI) for assistance. We will also provide the OC with a list of insurance companies authorised by HKFI as insurers of third party risks insurance for buildings and a list of insurance consultant companies provided by the Professional Insurance Brokers Association to facilitate the OC's procurement of an insurance policy.

Thirdly, if the OC of an old building needs assistance in co-ordinating repair works, after knowing the reasons of decline for insurance, we will arrange for one-stop building management services to be provided by property management professionals so that the OC can secure insurance coverage within a reasonable period of time.

These include providing assistance in electing members to fill vacant posts of the MC so as to restore normal operation of the OC, giving advice on how to improve the maintenance condition of the building, assisting the OC to invite tenders, and helping the OC to apply for financial assistance from various loan and assistance schemes administered by the Government and other supporting organisations.

To further dispel doubts and worries of OCs and owners over the relevant legislation, the Home Affairs Department (HAD) has issued letters to all OCs early this month, informing them of the above arrangements and inviting them to attend a new round of district talks jointly organised by HAD and HKFI later this month. During such talks, enquiries from OCs and owners who have not procured insurance policies will be answered.

Ends/Wednesday, November 17, 2010

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