

*Building Management
(Third Party Risks Insurance)
and
Directors & Officers
Liability Insurance Policy*



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Building Management (Third Party Risks Insurance)

The Law

- Building Management Ordinance (Cap. 344)
- Building Management (Third Party Risks) Insurance Regulations (Cap. 344B)

The Regulation

- What does it say?

A policy is required to insure the corporation in respect of “death, bodily injury”

exclude: EC, Motor,

include: interest, costs and expenses

- Mini cover: 10 mil – one event

What would happen if the O. I. does not take out a 3rd party risk insurance?

- level 5 fine (\$50,000)

If the “compulsory policy” is not enough to cover the liabilities, what would happen?

Does O. I. need to buy a policy to cover its own liability? e.g. similar to D & O Liability

Overlapping

Should the coverage under the compulsory IO
TPL policy be extended to cover Management
Company or Contractors?

Independent Contractor Liability (CAR Policy) extension

- How much should it be insured
- Total 10 mil or top up
- Seek contribution?

FAQ

- i. How to handle if there is more than one IO in a building.
- ii. Is policy excess/deductible allowed according to the Ordinance?
- iii. If the Optional Property Damage cover is also taken out under the Compulsory Policy, what would be the minimum limit of cover?

FAQ

- iv. Payment priority if more than one policies are involved in a claim.

- v. Can a 3rd party execute against the Insurance Company first?
(Motor, E.C.)

Case Study:

Aberdeen Winner Investment Co. Ltd.

v.

The I. O. of Albert House

(CACV 42/2004)

(CACV 236/2004)



Directors & Officers Liability

Civil Liabilities

Non-Statutory Guidelines on Director's Duties – Companies Registry

(Copy Right Reserved)

- Duty to act in good faith for the benefit of the company as a whole
- Duty to use powers for a proper purpose for the benefit of members as a whole
- Duty not to delegate powers except with proper authorization and duty to exercise independent judgment

(Copy Right Reserved)

- Duty to exercise care, skill and diligence
- Duty to avoid conflicts between personal interests and interests of the company
- Duty not to enter into transactions in which the directors have an interest except in compliance with the requirements of the law

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- Duty not to gain advantage from use of position as a director
- Duty not to make unauthorised use of company's property or information
- Duty not to accept personal benefit from third parties conferred because of position as a director

- Duty to observe the company's memorandum and articles of association and resolutions
- Duty to keep proper books of account

Criminal/Regulatory/Statutory Liabilities

(For both Listed and Non-listed Companies)

- Regulatory
- | | |
|---------------------------|--|
| 1. CO (s.168) | 7. EO (s.64B) |
| (s. 40) - Prospectus | 8. Factories and Industrial Undertaking Ord (s.14) |
| 2. SFO – MMT – PSI | 9. Competition Bill (Disqualification Order against Director) – s.99 |
| 3. IRO (s.57) | |
| 4. EOC (School Principal) | |
| 5. PDPO | |
| 6. Copy Right Ord (s.125) | |

Cost of defence, if successful.

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Flow of Claims

Employee

Customer

Government

} — Company — Company suffers

Pay Compensation (fine) — Shareholder suffers

Shareholder sues director

BY LIQUIDATOR

Liquidator of Wing Fai Construction Co Ltd v Yip Kwong Robert

28 March 2011

Court of First Instance

Companies (Winding-up) Proceedings No 735 of 2002

HCCW 735/2002

Liquidators sued Directors for misappropriated funds -- Directors owe duty to insolvent company – liable to compensate company for misfeasance – Directors applied to strike-out – Directors ordered to pay the legal fees

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BY SFC

Securities and Futures Commission v Yeung Kui Wong

1 March 2011

Court of First Instance

Miscellaneous Proceedings No 1742 of 2009

HCMP 1742/2009

[2011] HKEC 297 English Judgment

A listed company -- directors disqualification -- failure to disclose specified matters -- appropriate periods of disqualification

Directors' misfeasance/misconduct with intent -- Withholding information from shareholders and members -- Company shares value drop -- Directors disqualified for 2-5 years



BY DIRECTOR

Director v. the Rest of the Directors

(Copy Right Reserved)



BY CREDITOR

Creditor v. Director

(Copy Right Reserved)

BY COMPANY

Kishimoto Ltd v. Akio

M. D. left the company

Co sue M. D. for breach of fiduciary duties

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BY COMPANY

China Everbright Ltd v. Chong Pok

CEO obtained majority
shareholding in the company



BY SHAREHOLDER

Shareholder v. Director

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BY COMPETITOR

Competitor v. Director

Competition Bill

BY ANY PERSON

(who suffer pecuniary loss)

Any Person v. Director

MMT

Directors Personal Liabilities

Civil - Damages

- Legal Costs

- winning parties costs

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Directors & Officers Liability Insurance

S165(1) Companies Ordinance

Exemption of liability of D&O or indemnity for them against liability to the company in respect of

- (a) negligence
- (b) default
- (c) breach of duty
- (d) breach of trust

are **VOID** unless the liability is for defending any proceeding (civil/ criminal) and D&O win the case or court so orders.

S165(3)

A company may purchase insurance for its D&O:-

- (a) against any liability to the company itself in respect of negligence, default, breach of duty, breach of trust (except fraud) for which D&O may be guilty in relation to the company.

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S165(3) (Con't)

(b) against any liability incurred by D&O in
defending any proceeding (civil/ criminal)
taken against him for negligence, default, breach
of duty, breach of trust (including fraud).

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Things to Look Out

- Coverage
- Jurisdiction?
- US, EU, PRC
- Premium involved
- Is the Company covered?
(in addition to D & O)

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Policy Coverage

- On claim made basis (usually)
(non-disclosure)
- Claim arising during the period of
insurance

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Insured Persons

Cover usually applies to:

- All Directors including non-executive (What about corporate director?)
- All Officers including managers or company secretary
- Past Directors (of old company?)
- New positions created after inception of the policy
- Outside directorship?

Limitation

- crime, fraud?
- legal expense in case of losing?
- fine/compensation?
- liability of company (in addition to D & O)?
- retention/excess
- exclude major shareholder suing director?

Exclusions

- Fines and penalties
- Compensation
- Deliberate dishonesty or fraud by any D&O,
Defence costs if case lost
- Exclude payment arising from
placement/offering exceeding certain amount

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Questions

Will Insurance Company take over the conduct of litigation?

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Q & A Session



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PLEASE NOTE

The law and procedure on this subject are very specialised. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

請注意

本題目之法律及程序十分專門。此文章只屬一般性之解釋，供你參考，而不應被依賴為關於任何特定事件之法律意見。如需法律意見，請與我所律師聯絡。

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