

Insurance Intermediaries Quality Assurance Scheme

General Insurance Examination

Study Notes

2008 Edition

Study Notes for General Insurance Examination Update

Insurance Authority to start regulating insurance companies from 26 June 2017

The Insurance Authority has taken over the statutory functions of the Office of the Commissioner of Insurance ('OCI') to regulate insurance companies with effect from 26 June 2017. The OCI was disbanded on the same day.

This Update serves to set out the textual updates to the Study Notes for the General Insurance Examination (2008 Edition) to reflect the aforesaid development.

1. Updates to the Glossary:

1.1 The entry of "**Insurance Authority (保險業監督)**" is replaced by the text below:

Insurance Authority (保險業監管局) The independent insurance regulator established under the Insurance Ordinance (Cap. 41) to regulate the carrying on of insurance business and to regulate the insurance industry in Hong Kong for protecting policy holders and potential policyholders and for promoting the stable development of the insurance industry. **4.4(e)**

1.2 The entry of "**Insurance Companies Ordinance (《保險公司條例》)**" is replaced by the text below:

Insurance Ordinance (保險業條例) This is the legislation for regulating the Hong Kong insurance industry. It is formerly known as the Insurance Companies Ordinance (Cap. 41). With the relevant provisions of the Insurance Companies (Amendment) Ordinance 2015 coming into operation on 26 June 2017, the Insurance Companies Ordinance (Cap. 41) was renamed the Insurance Ordinance (Cap. 41). **4.4(b)**

2. For ease of reference, textual updates to the rest of the Study Notes are set out below:

Existing Wording	Updated Wording	Sections
Office of the Commissioner of Insurance	Insurance Authority	Preface Acknowledgements
Insurance Companies Ordinance / Insurance Companies Ordinance (ICO) / ICO	Insurance Ordinance	2.2.4(b)(iii), 2.2.5(a), 4.4(b), 4.4(d)-(e), 4.4(g) , Representative Examination Questions No.3 of Chapter 4 Glossary (page (iv), (xv))
“fit and proper” directors and controllers	fit and proper requirement for controllers, directors, key persons in control functions and appointed actuaries	4.4(b)(iv)
the Government	[text removed]	2.2.5(a)
<i>Government</i> : all governments are under a duty to protect the welfare of their citizens.	Regulator: the insurance regulator is under a duty to protect the policyholders and potential policyholders.	4(c)
<i>Government involvement</i>	<i>Regulator’s involvement</i>	4.1(d)
Government concern	the insurance regulator’s concern	4.1(d)
the Government / <i>the Government</i>	the insurance regulator / <i>the insurance regulator</i>	4.3.1
the Hong Kong Government	the insurance regulator	Representative Examination Question No. 1 of Chapter 4
Insurance Authority保險業監督 4.4(e)	Insurance Authority保險業監管局 4.4(e)	Index (page(4))
Insurance Companies Ordinance 保險公司條例 4.4(b)	Insurance Ordinance 保險業條例 4.4(b)	Index (page(4))

Insurance Authority

August 2017

PREFACE

These Study Notes have been prepared to correspond with the various Chapters in the Syllabus for the General Insurance Examination. The Examination will be based upon these Notes. A few representative examination questions are included at the end of each Chapter to provide you with further guidance.

Immediately following the descriptions of some aspects of the practice of general insurance, you will find actual cases of general insurance claims, which are there mainly to facilitate your understanding of the subject and to make your learning more interesting. The decisions you will find in those cases were based on their particular facts, including the actual wording used in the insurance policies in question. Some of these cases are decided cases of the Insurance Claims Complaints Bureau (ICCB), and the rest concern claims disputes that were ultimately settled between the claimants and the insurers concerned without being referred to the ICCB for adjudication. It is worth noting that the Complaints Panel of the ICCB is empowered by the Articles of Association of the ICCB to look beyond the strict interpretation of policy terms in making a ruling. In addition, as far as good insurance practice is concerned, the Complaints Panel relies heavily on the expected standards set out in The Code of Conduct for Insurers, with particular reference to “Part III: Claims”.

*Please also note that these Study Notes will not make you a fully qualified underwriter or other insurance specialist. It is intended to give a preliminary introduction to the subject of General Insurance, as a **Quality Assurance** exercise for Insurance Intermediaries.*

We hope that the Study Notes can serve as reliable reference materials for candidates preparing for the Examination. While every care has been taken in the preparation of the Study Notes, errors or omissions may still be inevitable. You may therefore wish to make reference to the relevant legislation or seek professional advice if necessary. As further editions will be published from time to time to update and improve the contents of these Study Notes, we would appreciate your feedback, which will be taken into consideration when we prepare the next edition of the Study Notes.

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Second Edition: June 2001

Third Edition: January 2005

Fourth Edition: June 2008

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NOTE

*If you are taking this Subject in the Insurance Intermediaries Qualifying Examination, you may also be required to take the Subject “**Principles and Practice of Insurance**”. Whilst the examination regulations do not require you to take that Subject first, it obviously makes sense to do so. That Subject lays a foundation for further studies and many of the terms and concepts found in that Subject will be assumed knowledge with this Subject.*

For your study purposes, it is important to be aware of the relative “weight” of the various Chapters in relation to the Examination. All Chapters should be studied carefully, but the following table indicates areas of particular importance:

Chapter	Relative Weight
1	46%
2	34%
3	10%
4	10%
Total	100%

1 INSURANCE PRODUCTS

In this Chapter, we shall look at the major classes of business in General Insurance. Whilst it will not be necessary for you to have a very detailed understanding of each and every class of business in a wide range of subjects, it is good for the professional insurance intermediary to have a working knowledge of the various products.

It must be noted that insurers generally differ from each other in the policy wording and terms adopted for the same type of insurance. In these notes, therefore, we shall present what may be considered a representative summary of the particular types of business. Insurance intermediaries should check specifically with the insurers regarding exact policy wording and available cover.

Important as the above point is from a professional viewpoint, it may be appropriate to mention again that the Insurance Intermediaries Qualifying Examination will be conducted on the basis that the Study Notes will contain everything sufficient for a successful examination result.

Before we look at individual classes, from the Core Subject of the said Examination, “**Principles and Practice of Insurance**”, we have three reminders, which concern topics that will be referred to later in these Study Notes:

(a) **Classification of Insurance**

One method of classifying insurance, sometimes called the *functional method*, is to look at insurances according to their subject matter. There are four categories under this classification and General Insurance is so wide in scope that it can provide cover of all four types. The categories are:

- (i) *Insurances of the Person*: Here, the term “person” means the body of a human being. So an “insurance of the person” is one whose subject matter is a human being’s life, limbs or health, or medical expenses. In General Insurance, this category includes **Personal Accident** insurance.
- (ii) *Insurances of Property*: where the subject matter of insurance consists of physical things, such as **buildings, ships, motor vehicles**, etc.
- (iii) *Insurances of Pecuniary Interests*: they cover financial interest in connection with potential loss of wealth or future income, including such classes as **Fidelity Guarantee, Business Interruption (or Consequential Loss)**, etc.
- (iv) *Insurances of Liabilities*: they cover liabilities at law for the death, bodily injury or disease of **third parties**, or for loss of or damage to their property.

(b) **Types of Cover with Property Insurances**

Many types of General Insurance cover loss of or damage to property belonging to or in the custody of the insured. Such **property insurances** cover either:

- (i) *Specified Perils* (or “*Named Perils*”): by which is meant that the loss or damage must be proximately caused by a peril (i.e. cause of loss) specifically mentioned (specified) in the policy, e.g. lightning under a fire policy. It will be for the claimant to prove that a loss has been caused by a specified peril.

Or

- (ii) “*All Risks*”: this form of cover means that loss or damage arising from any conceivable risk is covered by the policy **unless** an **exclusion** applies. The **claimant** merely has to show that an accidental loss has occurred, without the need to pinpoint its exact cause. It will then be for the **insurer** to prove that the loss is **not** covered if policy liability is to be denied.

Note: Technically the description of “all risks” is not totally correct, since some risks are **excluded** (that is why this term is usually expressed in inverted commas).

(c) **Fundamental Risks**

Put simply, a fundamental risk is basically one which offers such enormous potential of loss that it is usually considered to be uninsurable by commercial insurers. Two examples, which usually appear as standard exclusions in General Insurance policies, are:

- (i) *war and associated risks*; and
- (ii) *nuclear risks*.

It is important to understand and remember points (a) - (c) above. The substance of them is very likely to arise repeatedly, without further explanation, in the Notes ahead.

1.1 MOTOR INSURANCE

The significance of motor insurance is chiefly attributed to the fact that in Hong Kong use of motor vehicles on roads must be the subject of motor liability insurance. There are some exceptions to this compulsory motor insurance requirement, but these may be ignored for the purposes of this study.

We shall be looking at the three major classes of motor insurance: *Private Vehicle* (*Private Car*); *Motor Cycle* and *Commercial Vehicle*. First of all, let us consider some of their common features below:

(a) **Basic intentions and scope of cover**

All three major types of motor insurance cover **Third Party** liability (including such liabilities as are statutorily required to be covered). In addition to the third party cover, **property** insurance on the insured's vehicle is available. The types of motor cover available may be divided into three categories:

- (i) *Third Party Only cover*: this covers the insured for his **liability at law** to **third parties** for their death, injury or property damage.
- (ii) *Third Party, Fire & Theft cover*: this comprises the cover described in (i) above, and **property** insurance of the insured vehicle, but **only** for its loss or damage resulting from the risk of **Fire** or **Theft**.
- (iii) *Comprehensive cover*: being the widest form of motor cover available, this includes all that (i) and (ii) above cover, with "**all risks**" insurance on the insured vehicle. Obviously, the premium for comprehensive cover is the highest.

(b) **"Act" insurance**

There is another possible form of cover, known as **Act** (or **Act Only**) cover. The name derives from the original U.K. *Road Traffic Act 1930*, which laid down the requirements for compulsory motor insurance at that time. These requirements are closely followed in Hong Kong's *Motor Vehicles Insurance (Third Party Risks) Ordinance*.

According to the said Ordinance, liability for *death of or bodily injury* to any person caused by or arising out of the use of a vehicle on a road must be insured against. Policies which **only** comply with these minimum requirements are known as **Act Policies** – not "Ordinance Policies".

Three important things should be noted with "**Act**" insurance (referred to as "Third Party" insurance in the Ordinance):

- (i) The **minimum** amount of cover required in respect of Third Party **Death and Injury** liability is **HK\$100 million** (in practice, this is the **normal** amount of such cover with motor policies in Hong Kong). Liability for **Property Damage** to third parties is **not** a **compulsory** insurance requirement.
- (ii) The term "Third Party" has a double meaning. The Ordinance, when referring to "Third Party" risks, means potential liability for **death or injury** only. On the other hand, a motor insurance policy described as "Third Party", covers liability for **Property Damage** to third parties, in addition to liability for death or injury.

- (iii) Insurers do not advertise the availability of “Act” policies. Anyway, owing to the narrow scope of cover, they are not expected to be sought after.

(c) **No Claim Discount**

A significant and almost unique feature of motor insurance is the practice of granting a progressive discount on the renewal premium if the previous year has been claim-free. The customary scale of discounts varies. With private cars, one claim-free year earns a 20% **No Claim Discount** (NCD), the second year 30% and so on, rising to a maximum of 60% after five claim-free years. With other classes of vehicles, the discount is very likely to be only 10% per year, rising to a maximum of 30%. Some features to note about the no claim discount system are:

- (i) Originally, the system was known as a No Claim Bonus (NCB). Technically, this is an incorrect title, since a bonus implies the receipt of extra money. “No claim discount” (NCD), implying a reduction on next year’s premium, is more accurate.
- (ii) With private cars, the NCD system operates on what is called a “*step-back system*”. This means that a single claim will not necessarily destroy an entitlement to next year’s discount. For four or more years’ entitlement (i.e. 50% or 60% NCD), a single claim during the year reduces the discount on renewal to 20% or 30% respectively. Lesser entitlements coupled with a single claim in the year, or higher entitlements (i.e. 50% and 60%) coupled with two or more claims in a year, mean that there will not be a discount at renewal, so that one will have to be built up again from the ground as if the insured was a first time purchaser.
- (iii) With other types of vehicles, a single claim will mean that there will not be any NCD in the forthcoming year and a fresh claim-free year will be needed to earn the discount again.
- (iv) As the No Claim Discount is not a “no-blame” discount, the step-back system will apply as usual in circumstances where an insured has made an insurance claim arising out of an accident which was purely the fault of a third party.

(d) **Common exclusions/exceptions**

Some important limitations on the cover, common with the policies for all classes of vehicles, are such that cover will not be available in any of the following circumstances:

- (i) Accidents occurring outside the specified *Geographical Area* of cover.

- (ii) Use of the vehicle otherwise than in accordance with the specified *Limitations As To The Use Of The Vehicle*. The purpose of use is an important feature in determining the premium. So, for example, if a vehicle is insured as a private car but is being used as a taxi when an accident occurs, that will not be covered.
- (iii) Certain *fundamental or high risks* (except insofar as compulsory insurance may be required for the risks), such as:
 - (1) *War, civil war* and the like.
 - (2) *Nuclear and radioactive* risks.
 - (3) *Contractual liability*, i.e. liability of the insured which he has assumed under an agreement, and which would not otherwise have arisen. (Illustration: suppose a person in persuading his girlfriend to take a ride on his new sports car offers to indemnify her for any personal injury she may sustain during the ride *irrespective of legal liability*. Further suppose that an accident does occur during the ride, injuring the girl, wholly as a result of the fault of a third party. In such circumstances, the boyfriend would only be able to escape liability to the girlfriend for the injury had he not made the said indemnity agreement. Such liability is an example of “contractual liability”, a term used in liability insurance. On the other hand, if the boyfriend’s negligence has contributed to the injury, his share of liability to the girlfriend so arising – independently of the indemnity agreement - does not constitute “contractual liability”.)
- (iv) Driving by someone other than an “Insured Driver”, which means:
 - (1) The *insured*, anyone who is driving on the insured’s order or with the insured’s permission, or anyone designated on the policy schedule as an “Insured Driver”,
 - (2) who is duly *licensed*. Here “licensed” means that the driver must be holding, or must have held and not be disqualified from holding, a valid driving licence for the type of vehicle concerned. (The latter phrase, “or have held...”, means that the exclusion does not apply if the driver has not had their licence taken away from them - although it may be out of date.)
- (e) **Common rating features**

Individual features may affect the premium for particular risks, but as a general rule motor insurance premiums in Hong Kong are very likely to be based upon the following factors:

- (i) The *scope of cover* (i.e. Third Party Only; Third Party, Fire & Theft; or Comprehensive).
- (ii) The *engine power/carrying capacity*: The cubic capacity of the engine (or *carrying capacity* with commercial vehicles) directly affects the risk and therefore the premium.
- (iii) The *insured's estimate of car value* (if property insurance on the insured vehicle is to be included).
- (iv) The *use of the vehicle*: Clearly, extensive business use of a private car, for example, represents a higher risk than one used only for social and domestic purposes.

Note: *Other features* may also be taken into account, such as:

- 1 the *regular drivers* of the insured vehicle, e.g. their **age**, **driving** and **accident** experience;
- 2 the *physical features of the vehicle*, e.g. the **age** of the vehicle, whether it is a **high performance** vehicle, etc.

(f) **Standard policy excesses**

An **excess** (or a **deductible**) means that up to the stated amount of each loss is not insured. Usually applicable to property cover (i.e. insurance of the insured's own vehicle), an excess of HK\$2,000, for example, means that with damage of HK\$12,000 the insured can only recover HK\$10,000 under the policy. Sometimes, an excess provision is so structured that a stated proportion of each loss, subject to a minimum amount, is not insured.

An excess may either be a *voluntary* excess (i.e. requested by the insured, in return for a premium discount) or a *compulsory excess*. And a compulsory excess may either be an *underwriting* excess (i.e. imposed by the underwriter with no accompanying premium reduction to meet an undesirable underwriting feature with the risk concerned) or a *standard* policy excess (i.e. one applicable to **all policies** within the class). Features of standard excesses are:

- (i) They will always be in parallel with any *voluntary* or *underwriting* excess.
- (ii) They do not qualify for any discount on the premium.
- (iii) They may be applicable by reference to some particular features (age of driver, whilst vehicle parked, etc.) or universally applicable to eliminate small claims and to involve the insured in the cost of his own accident experience.

(g) **“Avoidance of Certain Terms and Right of Recovery” Clause**

There are situations where compulsory insurance requirements will not allow the insurer to deny policy liability for death or injury claims from third parties, even though there is a breach of policy terms on the part of the insured. Most commonly this will arise where the insured fails to report an accident to the insurer, or admits liability to a third party without obtaining the insurer’s prior written consent.

In such circumstances, if the insured is held liable to the third party, the insurer must meet the claim despite the breach. However, under this clause – a feature of each and every motor policy - the insurer has a right of recovery for such payment from the insured.

1.1.1 Private Vehicle

Also known as **Private Car** insurance, this form of cover has the following features:

(a) **Basic intentions and scope of cover**

In the context of motor insurance, a car is classified as “private car” on the basis of the use to which it is put, rather than of its construction. Thus, private car cover is intended for vehicles which are not used primarily for carrying goods, but for the personal use of the insured or for the carriage of passengers **not** for hire or reward.

The scope of the **comprehensive private car** policy is basically:

(i) *Loss of or damage to the insured vehicle:* This is property insurance on an “**all risks**” basis, covering the insured’s car, and accessories and spare parts whilst thereon. This section of the policy has some specific exclusions, such as:

- (1) Consequential loss (e.g. the cost of hiring another vehicle, whilst the insured vehicle is undergoing repairs after an accident).
- (2) Depreciation, wear and tear, and electrical or mechanical breakdown. (NB. It is loss or damage itself which is excluded, rather than loss or damage caused by “depreciation ...”. Therefore, where the insured vehicle is destroyed as a result of a collision consequent upon wear and tear of its brakes, only the destruction of the brakes will be caught by the exclusion.)

Case 1 - Insured's responsibility for betterment contribution to cost of reinstatement

The insured vehicle was damaged in an accident. The repair cost was agreed at HK\$73,000, of which the insurer requested the insured to bear HK\$10,000 for an excess and HK\$13,000 for depreciation. The insured agreed to bear the excess, but not the depreciation cost.

It was stated in the exclusions of the subject motor policy that the insurer would not be liable for depreciation. As the insured vehicle was already eight years old at the time of the accident, the insurer requested the insured to bear a betterment contribution of 35% towards the value of the new parts. The insurer indicated that its use of a 35% depreciation rate was very favourable in view of the normal 50% depreciation rate for an eight-year-old vehicle.

The Complaints Panel noted that the subject motor policy was an indemnity policy whose compensation shall mean an exact financial compensation sufficient to place the insured in the same financial position after a loss as he enjoyed immediately before the accident occurred. As the life span and condition of the new parts were obviously better than the original parts that had been used for a long time, depreciation or betterment allowance should be applied to reflect the post-repairs better-off position. Furthermore, having considered the year of manufacture and the mileage of the insured vehicle, the Complaints Panel considered that the 35% depreciation rate the insurer used was reasonable.

As the subject policy specifically excluded depreciation, the Complaints Panel ruled that the insurer's claim decision was appropriate and the insured should be responsible for a 35% betterment contribution.

Remarks: the issue of depreciation rate is rather problematic partly because there is not a universally accepted method of calculation.

- (3) Damage to tyres unless other damage to the car is caused at the same time.
- (4) Any policy excess (of whatever kind). The standard policy excesses relate to a number of situations, including:

- (A) Driving by an **Unnamed driver** (note that this driver must be an insured driver; otherwise cover will not be available at all (see **1.1(d)(iv)**));
 - (B) Driving by a **Young driver** (usually defined as one below age 25);
 - (C) Driving by an **Inexperienced driver** (usually defined as one having less than 2 years' driving experience with a full licence);
 - (D) Loss or damage whilst the car is parked;
 - (E) Loss or damage arising from theft.
- (ii) *Legal liability* (Third Party liability): This includes **compulsory insurance** cover (usually for the minimum **HK\$100 million** any one event required by law) and **property damage** liability towards third parties (the customary private car policy gives cover of **HK\$2 million** any one event). The third party liability cover applies to:
- (1) The insured and any other **insured driver**; and
 - (2) Any passenger (who may cause an accident by negligently opening a door, for example);

Note: The “driving other cars extension” is rarely granted nowadays, which provides third party liability cover whilst the insured (being a natural person) is driving another private car not belonging to him, and not hired by him whether or not under a hire purchase agreement.

The specific **exclusions** applicable to this section include:

- (1) No cover if the person claiming (e.g. one of the Insured Drivers) is covered by another policy. (This person does not mean a third party claimant.)
- (2) Claims within the scope of Employees' Compensation insurance. This exclusion may operate, for instance, when a domestic servant of the insured was injured in a car accident caused by the insured's negligence. It operates even where no employees' compensation policy was in force.
- (3) Property belonging to or held in trust by the insured – this risk is supposed to be dealt with under a property insurance policy instead of a liability insurance policy.

(4) Any applicable policy excess (although this is not common with third party cover).

(iii) *Medical expenses*: This is an insurance of the person on an *indemnity* basis, but not liability insurance. It applies to the insured and any occupant of the insured vehicle. However, with many insurers, the limit of cover on any one event is very low.

Note: 1 Policies which only provide **Third Party** cover will only consist of (ii) above. **Third Party, Fire and Theft** cover, of course, is merely a combination of fire and theft own damage cover and the third party cover.

2 The HK\$2 million third party **property** damage liability limit may be **increased** for extra premium.

(b) **Other Features**

These have largely been dealt with under previous comments, but one or two further points may be mentioned, such as:

(i) **Extra benefits**: A number of extensions of policy cover may be possible on payment of extra premium. These include:

(1) Deletion of a policy exclusion, such as **riot**.

(2) Adding benefits, such as extended **personal accident** cover, **loss of use** (i.e. expenses of hiring another car during repairs to the insured vehicle), etc. Specific details vary with insurers and enquiries as to available cover would need to be made.

(ii) **Special terms**: These may be available to selected risks, and might include a new replacement vehicle if a brand new insured car is destroyed, or stolen, in the first year of its registration. Again, these terms are individual to different insurers.

(iii) **Discounts**: Apart from **NCD** and discounts for **voluntary excesses** (see above), discounts may be available for insuring more than one car under the same policy, or whilst a car is “laid-up” (i.e. temporarily out of use) for a minimum period.

1.1.2 Motor Cycle

Like the Private Car policy, the Motor Cycle insurance is primarily intended for use of privately owned vehicles used largely for social and domestic purposes. There is a relatively limited market for commercial motor cycles and scooters (e.g. pizza delivery scooters, etc.). Motor cycle cover is similar to that applicable to private cars, except for:

- (a) **“Own Damage/Accidental Damage”** (OD/AD), i.e. loss of or damage to the insured vehicle. Two things should be noted:
 - (i) **Theft** claims are only admissible if the whole machine is stolen. Loss of accessories alone is therefore not covered.
 - (ii) There is usually a **standard excess** in respect of any loss of or damage to the insured machine (other than that arising from **fire** or **theft**).
- (b) **Third Party** cover: It is not usual to grant cover for the liability of passengers. Of course, cover for liability to passengers in respect of death or injury is statutorily required.

Market practice recommends the minimum **HK\$100** million limit of liability (or “limit of indemnity”) any one event required by law for third party **death/injury** liability, and **HK\$1 million** any one event (increasable for extra premium) for third party **property damage**.

- (c) **Medical expenses**: There is no corresponding standard policy section for these.

1.1.3 Commercial Vehicle

- (a) **Basic intentions and scope of cover**

A moment’s thought will bring to mind that there are immense varieties of vehicles which fall under this category, ranging from taxis and light vans to huge container lorries. In addition, there are numerous examples of specially constructed or adapted vehicles, intended for specialized use. The scope of commercial vehicle policies may be summarized as follows:

- (i) **OD/AD cover** (for loss of or damage to the insured vehicle): This is very likely to be on an “**all risks**” basis, similar to that for other types of vehicle, with an additional exclusion of damage caused by **overloading** or **strain**.
- (ii) **Third Party cover**: it is subject to certain exclusions which are not applicable to private car third party cover:
 - (1) Use of the vehicle as a **tool of trade** (e.g. a mechanical digger whilst being used as such), except as required by the statutory provisions regarding compulsory insurance. (This exclusion is known as the “tool of trade clause”.)
 - (2) Food poisoning and related claims (in case the vehicle is used as a mobile food-vending outlet).
 - (3) Damage to stock-in-trade and specified categories of equipment on the vehicle.
 - (4) Damage caused by vibration or the weight of the vehicle to any road, weighbridge, etc. or anything beneath.
- (iii) **Medical expenses**: These are not insured under the basic policy, although cover may be available as an extra benefit, for extra premium.

(b) **Features**

The range of vehicles under this heading is so wide that it is not possible in this abbreviated study to cover all aspects of commercial vehicle insurance. It will be readily understood that there are very considerable differences in the underwriting of taxis, buses, privately owned small and heavy goods vehicles and a host of other specialized vehicles. Some considerations may be mentioned, however, by way of example:

- (i) **Liability limits**: Market practice recommends the minimum **HK\$100 million** limit of liability required by law in respect of third party **death/injury** cover and **HK\$1 million** for third party **property damage**. These figures are for standard policy cover, and the latter may be increased for extra premium.
- (ii) **Specialized vehicles**: Vehicles with unusual risk exposures, such as ambulances and vehicles used by undertakers, warrant special terms.

- (iii) **Fleet rating:** A “fleet” of vehicles mean a number of vehicles under the same ownership or management (perhaps a minimum of five vehicles). Included in such classification could be taxis and vehicles belonging to large companies. Such risks usually have rating related to the loss experience of the particular fleet, rather than the average industry experience.
- (iv) **Motor Trade risks:** Garages and similar risks, whose business largely concerns motor vehicles, have special insurance needs. Policies for such risks may relate to the road use of vehicles or premises risks, with various combinations of cover available.

1.2 HEALTH INSURANCE

Health insurance (also known as “accident and health insurance”) is a type of “insurance of the person”, in the sense that the subject matter of the insurance is the life, limbs or health of a human being. Some insurers now offer this kind of cover through their life insurance departments, but originally it was general insurance business, and still is for the purposes of this study.

1.2.1 Personal Accident (PA) and Sickness Insurance

(a) Basic intentions and scope of cover

PA insurance was the first major class of accident insurance, originally developed to deal with a demand arising from the many accidents involving the early railways. Its basic intentions have remained constant, although the scope of cover has widened over the years.

The policy cover may be described under three main headings:

- (i) *Lump sum benefits:* As the name suggests, these are single amounts payable in the event of death or other specified injury arising from an accident.
- (ii) *Weekly benefits:* These are periodic payments related to temporary total (i.e. 100%) disablement or temporary partial (i.e. less than 100%) disablement. The benefit is calculated weekly, but payments are usually made monthly during disablement, subject to a maximum period (often 104 weeks) of payment.
- (iii) *Medical expenses:* The expenses must arise from accidental injury and are subject to a limit any one event.

To expand slightly on (i) and (ii) above:

- (1) Compensation under (i) above is usually expressed as a percentage of a sum specified in the policy (often called the *Principal Sum Insured*). Death merits a 100% benefit so does total permanent disablement (as defined). Any one of the specified *major* injuries (such as *Loss of Two Limb and Total Loss of Sight*) also merits a 100% benefit. Lesser, but still serious and permanent, injuries have lower percentages, ranging from, for example, 50% for the loss of sight in one eye, to as low as 5%, for example, for the loss of a single finger joint. The table of specified benefits included in the policy may be quite detailed.
- (2) Weekly benefits apply for temporary disablement from the insured's *usual occupation*, although other policy wording may relate to "*any occupation*" or some other description. There are usually two divisions for this cover: *Temporary Total Disablement* and *Temporary Partial Disablement*, obviously providing different amounts of compensation.

Case 2 Different benefit amounts for Temporary Total Disablement and Temporary Partial Disablement

The insured was a businessman who frequently travelled between Hong Kong and the Mainland of China. He sustained a back injury due to a fall at work in October 1998. A scan of lumbar spine confirmed a disc herniation. In January 1999, he received laminectomy in a hospital in Shanghai. Medical reports respectively dated April and June 1999 from the insured's attending doctors confirmed that he still had right thigh and left toe pain/numbness and could not walk for a long distance. Medical certificates also stated that he was unable to perform any work until 15 July 1999.

The insurer had already paid the insured 159 days' Temporary Total Disability benefits. However, having learned from the medical examiner that the insured's range of trunk movement had reached three quarters of his normal range since 15 May 1999, the insurer then decided that the insured was only entitled to Temporary Partial Disability benefits. This was because his present condition would not prevent him from performing his duties.

Facing conflicting medical opinions from the insured's attending doctors and the insurer's in-house medical consultant, as to whether the injury had prevented the insured from performing any of his duties or not, the Complaints Panel was inclined to believe that the insured's attending doctors were in a better position to comment on the health condition of the insured, and thus put more weight on their views. As such, the Complaints Panel ruled that the insured should continue to receive Temporary Total Disability benefits from 15 May to 15 July 1999.

Remarks: as a personal accident policy normally provides different benefit amounts for temporary total disablement and temporary partial disablement, it is important to determine which of these the insured person has sustained.

Case 3 Different benefit amounts for Temporary Total Disablement and Temporary Partial Disablement

The insured was involved in a motorcycle traffic accident and suffered multiple fractures of upper limbs and skin abrasions. He was given a total of 122 days of sick leave by his doctor.

The insurer granted him 100 days' Temporary Total Disability benefit and 22 days' Temporary Partial Disability benefit. However, the insured was not satisfied with the settlement and considered that the insurer should settle his entire claim as 122 days' Temporary Total Disability benefit. The difference in the claim amount was nearly HK\$6,400.

The Complaints Panel noted from the physiotherapy report that the insured's condition was much improved after attending 10 physiotherapy treatment sessions during his first 100 days of sick leave but he defaulted on further treatment. In view of his improved condition, the Complaints Panel agreed that the insured should be able to perform certain parts of his duties as an air-conditioning repairer during his last 22 days of sick leave. It thus concluded that the insurer's decision to pay Temporary Partial Disability benefit for the last 22 days was fair and reasonable.

Remarks: as a personal accident policy normally provides different benefit amounts for temporary total disablement and temporary partial disablement, it is important to determine which of these the insured person has sustained.

Case 4 Different benefit amounts for Temporary Total Disablement and Temporary Partial Disablement

The insured slipped and hit herself on a washing basin at home and sustained contusion over her sacrum area. She was granted a total of 13 days of sick leave. The insurer paid her eight days' temporary total disability benefit and five days' temporary partial disability benefit. However, the insured was not satisfied with the settlement and considered that the insurer should settle her entire claim as 13 days' temporary total disability benefit.

The Complaints Panel noted that the insured had no fracture or nerve injury and there was also no healing complication. As the insured was a self-employed director and her job mainly involved office duties, the Complaints Panel, in the light of the nature of the injury and the degree of severity and complication, was of the view that she should be able to perform some of her duties eight days after the injury.

As the insured's condition during her last five days of sick leave only fulfilled the definition of Temporary Partial Disability but not Temporary Total Disability in the policy, the Complaints Panel concluded that the insurer's claim offer was appropriate.

Remarks: as a personal accident policy normally provides different benefit amounts for temporary total disablement and temporary partial disablement, it is important to determine which of these the insured person has sustained.

(b) Limitations and exclusions

- (i) *Accidental bodily injury*: Its definition frequently includes such words as "physical injury from accidental, external, violent and visible means". Some policies use somewhat different wording, but each is very likely to insist that the injury/disablement only arises from the accident. Customary wording includes a phrase such as "solely and independently of any other cause result in".

Case 5 Personal accident policy requires "accidental" bodily injury

After an operation to remove a craniopharyngioma, the woman became blind in the right eye. She considered her blindness an unfortunate accident and submitted a claim under her personal accident policy, which the insurer rejected.

A key issue in the claims dispute was whether the injury of blindness had resulted from an “accident” or not, which was defined in the policy as ‘an unforeseen and involuntary event which causes a bodily injury’. The woman was referred to have the operation because the craniopharyngioma had caused deterioration and visual field defect to both eyes. The insurer believed that the woman should have been informed of the possible risks, including blindness, for undergoing such a complicated operation. In other words, the woman’s blindness should have been a risk known to her, rather than an injury caused by an ‘unforeseen and involuntary event’.

Having considered all available facts, the Complaints Panel agreed that the woman’s blindness was not caused by an accident, but was one of the foreseeable consequences of the surgery. Thus, the insurer’s decision to reject the accident claim was upheld.

Remarks: it is normal for each personal accident policy to specifically define “accident” for the purpose of qualifying the insured bodily injury.

Case 6 Personal accident insurance claimant is required to produce evidence of “accidental bodily injury”

The insured, who works as a store assistant in a fruit juice store, sprained his lumbar region while carrying a heavy load of sugar cane shoots. He was granted 14 days’ sick leave due to the sprain back injury.

The insurer rejected the insured’s claim for accident benefit on the grounds that no visible contusion or wound was noted on his body. Moreover, the x-ray taken showed no abnormal finding.

The Complaints Panel learnt from the attending physician’s report that there was redness, stiffness and swelling noted on the insured’s para lumbar region and the injury would have prevented him from working as the pain had limited his lumbar movement. The Complaints Panel believed that such physical signs and findings could reasonably be interpreted as a visible sign of an injury. Having further taken into consideration relevant circumstances, the nature and the extent of the injury, the Complaints Panel was convinced that a genuine accident had taken place resulting in the insured’s back injury. It therefore ruled in favour of the insured and awarded him 14 days’ temporary disability benefit.

Remarks: *the Complaints Panel was apparently of the view that what the policy in question required as evidence of an “accidental bodily injury” was a “visible sign of the injury”, which was not necessarily an open wound.*

- (ii) *Injury/disablement definitions:* These will vary between insurers, but typically the following will apply:
 - (1) **Permanent** means lasting for at least 12 months, at which time there is no reasonable hope of improvement.
 - (2) **Loss of limb** means physical separation at or above the wrist or ankle, or permanent loss of use of such a limb.
 - (3) **Loss of sight** means total and irrecoverable loss of all sight in the eye(s) concerned.
- (iii) *Time limits:* Insured death or disablement must take place within 12 months (or some other specified period) of the injury concerned. Of course, special circumstances (e.g. a long-lasting coma and then death) would merit sympathetic consideration.
- (iv) *Benefit limitations:* Policies usually provide that there is no accumulation of benefits, except for weekly benefits entitlement followed by the death of the insured person. As stated, temporary benefits are normally limited to 104 weeks.
- (v) *Exclusions:* There are a number of these and they may be considered under various headings:
 - (1) **Fundamental risks** which would include war, nuclear and, increasingly these days, AIDS.
 - (2) **Hazardous activities**, such as dangerous sports (mountaineering, winter sports, etc.) and aviation, other than as a fare-paying passenger.

Case 7 “Winter-sports” are generally excluded from personal accident insurance

The insured sustained an accident while engaging in ice-skating with his son in a shopping complex in Hong Kong. He was granted a total of 67 days’ sick leave due to fracture of the left tibia and fibula.

As the insured's injury was caused by participating in ice-skating, the insurer declined his claims for hospital income and disability benefits on the grounds that the policies explicitly excluded any loss caused by or related to participating in or training for winter-sports.

Although the policies failed to provide any definition for "winter-sports", the Complaints Panel believed that "winter-sports" generally refer to sports that take place on snow or ice. As such, ice-skating (whether outdoor or indoor) should be a kind of winter-sports.

As the policies specifically excluded loss resulting from participating in winter-sports, the Complaints Panel endorsed the insurer's decision to reject the insured's claims.

Remarks: for the purposes of the winter-sports exclusion, winter-sports are not restricted to sports actually played in winter time, or sports played outdoors.

Case 8 – Exclusion of motorcycling (whether direct or indirect) from personal accident cover

The deceased was killed in a traffic accident, when he was a passenger on a motorcycle.

It is stipulated in the policy exclusions that "no benefit will be payable for any accidental death directly or indirectly caused by or resulting from engaging in hazardous activities including but not limited to...motorcycling...". Considering that the circumstance leading to the deceased's death was outside the scope of the policy cover, the insurer refused to pay accidental death benefit.

The deceased's mother presented a traffic accident report in order to substantiate that her son's death was caused by the negligence of the driver of a public light bus, who talked on a mobile phone while driving. She emphasized that her son was merely a passenger at the time of the accident and was not being engaged in hazardous activities.

Although the deceased was merely a motorcycle passenger at the time of the fatal accident, the Complaints Panel, having thoroughly studied the subject exclusion clause, was of the view that a motorcycle passenger should be treated as indirectly engaging in motorcycling. In the circumstances, the Complaints Panel resolved to uphold the insurer's decision to decline the claim for accidental death benefit.

Remarks: the scope of certain excluded causes of loss is sometimes broadened by using the term “directly or indirectly”.

- (3) **Anti-social activities** which include suicide, deliberately self-inflicted injury, abuse of alcohol or other substance.

Case 9 – Injury must have been caused by an accident for purposes of personal accident claims

The insured submitted an accident claim for multiple chop wounds sustained during an attack by a gang. According to the insured’s statement made to the police, he went to the scene of a fight with the intention of rescuing his friends from a mob’s assaults. In his rescue mission, the insured was seriously wounded by the assailants who were armed with weapons.

Although the insurer rejected the claim on the grounds that the circumstances of the incident which led to the injury of the insured had violated the law, the Complaints Panel was in no doubt that the insured had deliberately joined the fray himself. The Complaints Panel was of the view that it was an easy matter to foresee that pushing some of the mobsters at the scene of the fight would result in the insured being attacked. As that was what actually happened, the Complaints Panel reached the finding that the insured’s injury was not accidental but was a natural consequence of his own actions. It therefore ruled in favour of the insurer.

Remarks: the insured person’s foreseeability of being attacked as a result of his own deliberate action has taken his injury out of the scope of injury caused by an “accident”.

Case 10 - Exclusion of “violation of the law” from personal accident cover

The insured, a truck driver, died in a traffic accident in the Mainland of China as a result of his truck colliding with another vehicle, whose driver fled the scene after that. According to the police, the deceased had failed to observe traffic conditions and keep a safe distance from the car in front, which did not have appropriate lighting. The police report concluded that the deceased should be responsible for 70% of the economic loss while the vanished driver the remaining 30%.

The insurer refused to pay the accidental death benefit by exercising an exclusion clause in the policy, which specifically excluded any loss directly or indirectly, wholly or partly caused by violation or attempted violation of the law.

The Complaints Panel noted that the reports were made by the officers who arrived at the scene after the accident. It transpired that the allegations made against the deceased were not supported by eyewitnesses or circumstantial evidence. In addition, there was no clue as to how the official findings were arrived at. In this regard, the Complaints Panel found the contents of the police reports dubious and was not fully satisfied that they were safe and could be relied upon.

Furthermore, in the law related to insurance contracts, the following fundamental principles are relevant in the present case:

1. The fact that the document records a contract means that the parties' intention is paramount.
2. Where two constructions are possible, the one which tends to defeat the intention or to make the contract practically illusory shall be rejected. Similarly, where a literal construction manifests absurdity, it shall be rejected in favour of a construction which is broad, liberal and reasonable, where both constructions are possible.
3. An exclusion clause shall be construed in such a way as to be consistent with the purpose or objects intended to be effected by the contract.

The policy in question was a personal accident policy containing the term "...sustain injury effected directly and independently of all other causes through external, violent and accidental means...". The Complaints Panel was of the view that the intention of both parties must have been to cover claims arising from accidents, i.e. events that are unforeseen and unintentional. Taking a purposive approach, the Complaints Panel interpreted "violation of law" as criminal acts of an intentional nature instead of mere infringements of traffic regulations.

Based on the above facts and reasoning, the Complaints Panel decided to rule in favour of the claimant and award her the death benefit.

Remarks: *on the facts of the case, the Complaints Panel adopted a purposive approach to the interpretation of the exclusion, rather than the more widely known 'literal approach' to contract construction. At common law, courts consider themselves empowered to adopt this approach whenever they see it fit to do so.*

- (4) Other exclusions, for example, childbirth or pregnancy and whilst on duty with the fire or armed services.

(c) **Premium basis**

Quite a number of individual features (e.g. age) may have underwriting consequences, but the standard premium calculation is based upon the insured's occupation. All occupations will be classified according to their potential accident risk into as few as three or seven or more classes. Other things being equal, premium rates will be the same for male and female risks.

(d) **Sum Insured**

Cover may be purchased on the basis of one or more units, each having a table of benefits. Alternatively, individual sums insured may be selected for different kinds of benefits. Technically, there is no limit to the sums to be insured, since the insured has an unlimited **insurable interest** in himself. In practice, however, insurers would be reluctant to issue cover for amounts well in excess of normal requirements, or where weekly benefits represented far more than the insured is very likely to be earning.

(e) **Other features**

(i) **Group policies:** Increasingly, PA cover may be provided as a "fringe benefit" by employers. Cover under such policies may be restricted to **working-hours** only, but is more likely to be on a **24 hours** basis.

(ii) **Sickness cover:** The above comments refer almost exclusively to **Accidents Only** covers. Sickness benefits may be included within the policy, but these will only be for *Temporary Disablement* benefits. Death from sickness, for example, is never covered under a PA policy, it being deemed a life insurance risk. Because of a perceived higher morbidity (sickness) rate, sickness insurance premiums for female risks may be higher.

Note: Sickness cover, whilst traditionally linked with PA insurance, is now unlikely to be included with PA policies in Hong Kong. PA policies in Hong Kong may therefore be said to be **Accidents Only** policies.

(iii) **Other policies:** Frequently, PA benefits are given as part of a "package" policy cover with other classes of insurance. They are frequently added to life insurance policies, for example. In general insurance, also, PA benefits may be part of the cover for a number of policies, e.g. travel insurance, money policies (attacks on staff carrying cash) and household insurances. They may also sometimes be added as an extra benefit, e.g. with motor policies.

- (iv) **Cancellable:** PA policies normally represent **annual** contracts, which may or may not be renewed. In addition, policies normally allow the insurer to **cancel** the policy during its currency.
- (v) **Age limits:** Although premiums are not based on the age of the insured person, policies usually specify an insurable band of ages (e.g. 16 to 65 years).

1.2.2 Medical Insurance

(a) **Basic intentions and scope of cover**

Whereas PA insurance is primarily intended to provide a benefit to the insured in the event of death or injury from accident, medical insurances are intended to cover *medical expenses* arising from **accident** or **sickness**.

Policies usually represent **annual** contracts, although these may be renewed and **days of grace** are usually allowed for premiums other than the first one. Practice varies as to **cancellation** entitlements. Most policies allow cancellation by the **insured**, but not all grant the same rights to the **insurer**. Indeed, with some schemes, the intention is for the contract to be renewable at the **option of the insured**. Technically, however, this may render such a policy “long-term” in nature.

(b) **Limitations and exclusions**

- (i) *PA exclusions:* As the cover includes circumstances covered by PA policies (e.g. an injury sustained while participating in mountaineering may result in both medical expenses and disablement), nearly all the usual PA exclusions apply (see above).
- (ii) *Special exclusions*, including:
 - (1) **Congenital conditions;**
 - (2) **Pre-existing** (i.e. prior to insurance) **conditions and disabilities;**

Case 11 Pre-existing conditions are excluded from medical insurance

The insured was admitted to hospital for abdominal pain and blood in stool 10 days after she has effected a hospitalization policy. Histopathology report confirmed a colon tumour measuring about 5 cm.

The insurer revealed that the insured had consulted for rectal bleeding with hard stool 15 months prior to her application for insurance. Furthermore, based on the size of the tumour, the insurer was of the view that the tumour could not have developed within 10 days. As such, the insurer rejected her hospitalization claim on the basis of pre-existing condition.

The insured alleged that her consultation for rectal bleeding some 15 months ago was only due to haemorrhoid and she had fully recovered. She believed that the insurer was unreasonable to decline her hospitalization claim as the diagnosis of carcinoma of colon was made 10 days after the policy inception date.

Although the available information failed to indicate the exact onset date of the insured's colon cancer, the Complaints Panel, having taken into account the size of the colon tumour, was of the view that the tumour might take some time to grow until it was revealed by colonoscopy.

Given the diagnosis of carcinoma of colon was made only 10 days after the policy was effected, the Complaints Panel was of the view that tumour of that size could not have developed within less than 10 days after the commencement date of the policy. As the policy excludes any illness or injury that commenced or presented signs and symptoms prior to the policy commencement date, the Complaints Panel endorsed the insurer's decision to reject the hospitalization claim.

Remarks: a problem often met in applying the "pre-existing condition" exclusion is that it could be difficult to ascertain the exact onset date of a condition.

- (3) **Birth control/infertility treatment;**
- (4) **Cosmetic surgery;**
- (5) **Routine medical examinations** and check-ups;
- (6) **Dental treatment** (unless arising from an accident during policy cover).

(c) **Premium basis**

Clearly, again remembering the accident content of this cover, the insured person's profession is important. Remembering also the sickness element of cover, the age and health of the insured person may also play an important part with this kind of insurance. Other considerations include sex, levels of cover and geographical limits.

(d) **Other features**

- (i) **Group policies:** These policies are often on a group or family basis.
- (ii) **Variations:** Some insurers offer, as standard or available extra benefits, such cover as maternity and dental related expenses.
- (iii) **Hospitalization cover:** A medical insurance policy may provide a stated benefit per day spent in hospital as an in-patient. Alternatively, an indemnity cover may be given.

1.3 COMBINED AND PACKAGE POLICIES

Either the combined policy or the package policy is a single policy document representing more than one type of insurance, e.g. fire insurance, business interruption insurance, theft insurance, employees' compensation insurance and public liability insurance. This is increasingly the trend, as large policyholders particularly become more sophisticated in their risk management and insurance appreciation. The form of such policies may be relatively simple, involving little more than a series of policy sections for the respective cover traditionally provided by separate policies. Alternatively, the policies may be very progressive in design, quite unlike traditional forms of cover.

The major difference between the combined policy and the package policy is that whereas each section or class of insurance of the combined policy is underwritten and rated separately, the package policy has pre-determined restrictions in cover and sums insured (and limits of liability) and has a radically different rating structure.

1.3.1 Household Insurance

Household insurance (or "home insurance") represents a major element in *private insurances* (sometimes called **personal** or **private lines**) which most offices issue through their Fire Department. This class of business also represents one of the oldest forms of a "package" policy, including not only **property insurance** (mainly "all risks"), but also some **liability insurance** and even some **insurance of the person** and **pecuniary insurance** (details later).

(a) **Basic intentions and scope of cover**

The main element of cover for household insurance is **property insurance** of the buildings and/or contents belonging to the insured. Cover may be purchased insuring the respective interests of landlords and occupiers:

- (i) *Buildings only cover*
- (ii) *Contents only cover*

(iii) *Buildings and contents cover*

Cover may either be on a **specified perils** basis or “**all risks**” basis. Buildings cover tends to be on a specified perils basis whereas contents cover on an “all risks” basis. The wording used to describe cover is detailed and complex and varies from one insurer to another, requiring careful study, but an outline of the cover provided includes:

- (1) *Buildings* belonging to the insured or for which he is responsible. The **specified perils** cover starts with **Fire** and goes on to include, as part of the basic cover, most of the **Extra Perils** available with fire insurance. (The list of Extra Perils is long and includes items such as **Storm/Cyclone, Earthquake, Explosion, Animal/Vehicle Impact**, etc.) In addition, loss or damage from **Theft** is included.
- (2) *Contents* belonging to the insured or members of his family permanently residing with him. If not otherwise insured, property of resident household servants is also covered. With **specified perils** cover, the list of insured perils is similar to that for Buildings.

Note: If the cover for (1) or (2) above is on an “**all risks**” basis, all loss of or damage to the insured property is covered, unless the cause is specifically **excluded**.

- (3) *Contents temporarily removed* but contained in premises within the specified geographical area.
- (4) *Contents in transit* to a new home.
- (5) *Other “property” cover* including such miscellaneous items as replacing locks if keys are lost or stolen, and replacing frozen food which spoils owing to breakdown of refrigerators.
- (6) *Architects’ and Surveyors’ Fees* in respect of reinstatement of damaged buildings.
- (7) *Accommodation/Rent:* if the insured premises are uninhabitable because of an insured peril, the policy may provide for the additional costs involved with alternative accommodation or (in the case of a landlord) the loss of rent. (These, of course, are **pecuniary** insurance.)
- (8) *Liability* towards third parties incurred as an owner or occupier of the insured premises.

- (9) *Personal accident*: a lump sum PA benefit is payable if the insured or any of his family members should die in a fire or at the hands of thieves.
- (10) *Free services of referral to*: locksmiths, plumbers, electricians, air-conditioning technicians and the like.

(b) **Limitations and exclusions**

- (i) *War, riot* and similar risks;
- (ii) *Nuclear* risks;
- (iii) *Consequential loss* (other than (a) (7) above);
- (iv) *Unoccupancy*: Policies usually suspend cover (sometimes still covering fire and natural perils) if the premises are unoccupied for more than, say, **60 consecutive days**;
- (v) *Policy excesses*: Some perils (e.g. windstorm, etc.) are very likely to be subject to a specified excess, partly to eliminate trivial losses and partly to involve the insured in his own loss experience. On the other hand, “all risks” property cover is universally subject to excesses;
- (vi) *Pro rata average condition*: Where the premium is based on a sum insured selected by the insured, the policy terms will include a pro rata average condition, so that if under-insurance exists at the time of a loss, the insured will not be fully covered. For example, if at the time of the loss the sum insured represented only 80% of the value at risk, the claim payment would be limited to 80% of the loss, in no case exceeding the sum insured. On the other hand, where the household policy provides for limits of liability instead of a sum insured and the premium is based on the gross floor area of the insured premises, no pro rata average condition will be included so that losses are payable up to the applicable limit of liability without the exemplified proportional reduction.

(c) **Premium basis**

Although a number of different types of risk are covered, the premium is traditionally based upon a rate per cent (per \$100) or per mille (per \$1,000) applied to the value of the buildings and/or contents (different rates) insured. Today more often than not the insurers in Hong Kong base the premium for household contents on the gross floor area of the insured flat, with standard limits of liability.

1.3.2 Domestic Helper Insurance

(a) Scope of cover

Offered as a standalone policy or as an optional cover under a household policy, domestic helper insurance is basically a package of cover for *employers' liability* to domestic helpers and *employees' benefits* to them such as:

- (i) *medical expenses*;
- (ii) *repatriation expenses*: i.e. the costs of returning the domestic helper or his or her remains to his or her home country (as the case may be) in the event of his or her physical incapability to continue to be employed or death;
- (iii) *personal accident benefits*; and
- (iv) *public liability*: i.e. the domestic helper's legal liability incurred in Hong Kong towards third parties.

The following may also be covered: *temporary domestic helper allowance* to the insured householder and the *cost of replacing the domestic helper* in the event of his or her disability or death, and financial loss to the insured due to the domestic helper's *infidelity*.

(b) Limitations and exclusions

These will be in line with the various types of insurance offered, e.g. personal accident cover will be subject to the customary PA exclusions (winter sports, suicide, childbirth, pregnancy, etc), and medical expenses cover will exclude pre-existing condition, cosmetic surgery, routine medical examinations, etc.

- (c) **Premium**: a flat premium per domestic helper is charged.

1.3.3 Travel Insurance

With increased prosperity and higher standards of living, international travel is now commonplace for many in Hong Kong. This has given rise to a demand for travel insurance, another "package" policy of many years' standing.

(a) Basic intentions and scope of cover

The intentions are virtually self-explanatory, to meet unforeseen financial and other problems encountered whilst on holiday. Specifically, the cover provided is very diverse and is very likely to include:

- (i) *Medical expenses*: Private medical treatment in some countries, notably the United States and Canada, is very expensive. High limits of cover for necessary medical treatment incurred whilst on holiday are therefore given, sometimes amounting to several millions of dollars.
- (ii) *PA benefits*: On a similar basis to PA cover already discussed.

Case 12 Definition of “loss of one limb” for the purposes of personal accident insurance cover

The insured had a fall and fractured his right elbow bone during a trip to the USA. He submitted claims for medical expenses incurred and partial disablement of his right hand under his travel insurance.

The insurer paid the medical expenses incurred but rejected his claim for partial disablement of right hand since the insured’s physical condition did not fulfil the definition of “Loss of one Limb” or any other insured injuries under the personal accident section of the travel policy. In the policy, “Loss of one Limb” is defined as “loss by physical severance of a hand at or above the wrist or of a foot at or above the ankle, or loss of use of such hand or foot” and “Loss of Use” is defined as “total functional disablement”.

Although the insured was confirmed by an occupational therapist that some of the functional abilities of his right hand were permanently affected and the injury had caused a lot of inconvenience to his daily life, there was no physical severance of a hand at or above the wrist or total functional disablement. As such, the Complaints Panel did not agree that his physical condition fulfilled the basic claim requirement for the benefit of “Loss of one Limb”.

More importantly, the policy does not specify any proportional compensation for partial permanent disability or partial functional loss. The Complaints Panel concluded that the insured’s physical condition did not qualify for the “Loss of one Limb” benefit. It therefore supported the insurer’s decision to reject the claim.

Remarks: *the specific policy definition for “loss of one limb” was well respected by the Complaints Panel.*

- (iii) *Luggage loss/damage*: On an “**all risks**” basis, this cover may cover the ultimate loss with an additional sum for emergency purchases as required.
- (iv) *Loss of deposits*: In certain circumstances (such as death/illness of the insured or a close relative), all or part of the money paid in advance or payable for a holiday may be lost. The policy covers such losses.
- (v) *Loss of money*: A limited amount of cover is available for money lost or stolen whilst on holiday.
- (vi) *Delays*: A specified sum is payable in the event of inordinate delays of aircraft for time in excess of a stated period.
- (vii) *Repatriation expenses*: The extra expenses involved with returning an injured insured, or his remains in the event of death on holiday.
- (viii) *Personal liability cover*: The liability of the insured towards third parties in respect of death, injury or property damage.
- (ix) *Miscellaneous cover*: A wide variety of cover and services may be found in this competitive class of business, including a benefit for **Hijack, consultation and advice** on an international “helpline”, a daily **Hospitalization** benefit, etc.

(b) **Limitations and exclusions**

- (i) *Generally*: These will be in line with the various types of insurance offered, e.g. PA cover will be subject to the customary PA exclusions, and liability cover may exclude liability arising from the use of motor vehicles, etc.
- (ii) *Excesses*: Most sections of the policy are very likely to be subject to an excess, perhaps of \$100 or more, mainly to eliminate trivial claims.

(c) **Premium basis**

Sometimes policy cover is offered as a “package” deal, where units of cover may be purchased. In other cases, individual cover and sums insured may be selected. In either case, the important elements in deciding the premium are:

- (i) *Geographical area*: Many insurers offer either World-Wide cover, or two bands of cover: (a) about a dozen of named Asian or East Asian countries, and (b) World-Wide, obviously with increasing premium rates.

- (ii) *Duration*: Premiums are usually quoted according to the number of days involved with the trip.
 - (iii) *Persons covered*: Travel insurance is obviously related to family holidays. The insured's spouse and family or friends travelling with him may be offered advantageous overall rates.
 - (iv) *Annual policies*: For frequent travellers (business and/or holiday) an annual contract may be arranged at an attractive single premium.
- (d) **Other features**
- (i) *Underwriting*: A feature of this type of business is that everything is made as simple as possible, because cover is usually obtained at the last minute and a product which is not "user friendly" with this mass market is not likely to succeed. As a consequence, there is little individual underwriting of risks.
 - (ii) *"Master policies"*: It is quite common for "master policies" to be issued to travel agents, who arrange many "package" holidays. Individual customers merely receive an insurance certificate outlining the major insurance provisions.
 - (iii) *Accumulation*: Although individual policy underwriting is very limited with travel insurance, the underwriter must be aware of the real danger of an accumulation of policyholders being involved in a single accident. A dramatic example would be the crash of a holiday charter flight with perhaps hundreds of fatalities. The accumulation of personal accident payments could be very significant. This is a very technical, but nevertheless important matter for the insurer, who will have appropriate **reinsurance** programmes for this.

1.3.4 Commercial Combined Policies

The nature of such policies is that they are often individually designed by a particular insurer and/or for a particular client. As such, detailed descriptions are not really feasible in these Study Notes. However, the existence of such cover and certain features may usefully be mentioned.

(a) *Combined Property and Pecuniary Policy*

This tends to offer cover on an "**all risks**" basis, covering both material damage and business interruption under the same policy.

(b) *Combined Liability Policy*

Typically, such a policy includes within a single document cover for **Public Liability**, **Products Liability** and **Employees' Compensation Liability**. Individual clients may also require **Directors' and Officers' Liability** cover and/or **Professional Liability** cover.

(c) *Combined "Umbrella" type cover*

These could include any types of cover, including **property**, **pecuniary** and **liability** risks. They are very likely to be individually designed to the requirements of specific insured. It is not feasible in these Notes to identify specific limitations or other features with such cover, as they are so individual. One common intention, however, is that the insured would look not only to the convenience of single-document cover, but would also expect overall savings in premiums.

CAUTION: The insured, or his agent, should take great care to ensure that each of the policy sections or types of insurance is the subject of a separate contract as reflected by completely clear policy wording, despite a possible argument that that is implicitly intended. Otherwise, the breach of a contract term which seems to be applicable solely to a particular section or type of insurance may, when a claim arises, possibly be found to be construed as having the effect of tainting all other sections or insurances as well on the basis that the policy represents a single contract, rather than concurrent, separate contracts. In this regard, particular attention should be paid to the use of warranties, the nature of which is such that their operation does not turn on materiality or causation (see 2.3.4(a) below).

1.4 PROPERTY INSURANCE AND PECUNIARY INSURANCE

To remind you, **property insurance** means that the subject matter of insurance is physical objects (buildings, ships, etc.) and **pecuniary insurance** covers a non-tangible financial interest that may be threatened by an insured event (loss of future rent, incurring of extra expenses, etc.).

1.4.1 Fire and Extra Perils Insurance

While a preponderance of property insurance policies on commercial property are now effected on an "all risks" basis, the traditional fire policy (perhaps with extra perils extension) is largely purchased by home owners for the benefit of the mortgagees as well as themselves.

(a) **Basic intentions and scope of cover**

This is virtually self-explanatory for this class of business, but specifically the policies cover:

- (i) *Fire* loss or damage: This may seem totally obvious, but some features need to be noted:
 - (1) “Fire”, as a peril, means actual ignition of something (whether or not it be an insured property) that *should not be on fire*, not deliberately caused or arranged by the insured (i.e. not fraudulent). [Illustration: fire in a fireplace is intended, and is therefore not covered by the fire policy. However, if sparks from such fire ignites pieces of wood lying somewhere close to the fireplace, such wood is said to be damaged or destroyed by “fire” within the meaning of the fire policy.]
 - (2) “Fire” damage will include damage caused by smoke, heating and extinguishing water, if the proximate cause is fire as understood above. Damage reasonably caused by the fire brigade or others fighting a fire is also covered.
 - (3) The fire does not have to be on the **insured premises**. Thus, a fire as defined above in a neighbouring property could create a valid fire claim from heat, smoke or water damage, etc. to the insured property.
- (ii) *Lightning*: whether followed by fire or not.
- (iii) *Explosion*: although there is an excluded peril of explosion under the standard fire policy, the relevant exclusion clause explicitly does not apply to damage arising from the insured peril of explosion of gas (or boiler) used for **domestic** (not commercial) purposes.
- (iv) *Extra perils*: also known as **special perils**, **allied perils**, or **extended perils**. These are perils (causes of loss) traditionally available for extra premium as additions to the standard fire policy. There are many such perils and the usual practice with insurers is to attach a complete list of available cover to each policy, and state in the policy schedule which of the extra perils apply.

(b) **Limitations and exclusions**

- (i) *Pro rata average*: The customary property insurance requirement for full insurance, with a penalty for under-insurance in the event of a claim, applies.

- (ii) *Excesses*: It is not usual to have an excess in respect of the basic cover (i.e. fire, lightning, and “limited” explosion), but a standard one will apply with certain of the **extra perils**.
- (iii) *Policy exceptions*: The “standard” exclusions relating to war and nuclear incidents appear, with a number of others, some of which may be added as extra perils. It is not necessary for us to make a complete list of the policy limitations, but it should be noted that **Theft** during or after the occurrence of a fire is specifically excluded.

(c) **Premium basis**

As with most property insurances, the premium will be based on a rate (per cent or per mille) applied to the sum insured. Properties are classified according to relative risk for rating purposes, with loading or discounting of premium as appropriate according to individual features such as the height of the insured buildings, their remoteness or otherwise, and their fire fighting facilities.

(d) **Other features**

- (i) The proposer’s selection of appropriate **extra perils** is important.
- (ii) The need for an adequate **sum insured** is also important, because of the **average condition**.
- (iii) Because of the complex nature of fire risks and the considerable values at risk, it is sometimes necessary for a **risk survey** (physical inspection) of the premises to be insured to be carried out by or on behalf of the insurer.
- (iv) It is common for separate sums insured to be shown on a fire policy for:
 - (1) **buildings**;
 - (2) **stock in trade**;
 - (3) **machinery**;
 - (4) **other contents**.

1.4.1a Fire Business Interruption Insurance

This is a pecuniary insurance, separate from but very closely connected with fire insurance. Whereas fire insurance (or fire material damage insurance, to be more specific) indemnifies for loss of or damage

to physical property, fire business interruption insurance compensates for other types of after-effects of a fire, etc. (in the form of loss of profit, extra expenses, etc.). Of course, a business interruption policy may be effected in association with other types of material damage cover, e.g. commercial property “all risks” cover and marine cover.

(a) **Scope of cover**

- (i) Loss of **Gross Profit** (as defined in the policy) caused by an insured peril.
- (ii) **Additional expenses** necessarily and reasonably incurred as a result of an insured peril (e.g. hiring alternative premises).
- (iii) **Wages** (sometimes included with (i) above instead) paid during an interruption period.

(b) **Limitations and exclusions**

The policy wording is similar to the fire policy wording, covering almost the same set of perils (fire, lightning, etc), but two important features of the business interruption policy should be noted:

- (i) **Material damage proviso:** If no valid fire insurance covers the physical (or material) damage, no claim can be admitted under the fire business interruption (BI) policy. Otherwise, it can easily be seen that the interruption period is very likely to be greatly extended at the expense of the BI policy.

Technically the material damage insurance need not be with the BI insurer, but no Hong Kong insurer is very likely to give BI cover without also covering the material damage risk.

- (ii) **Policy specification (or Specification):** A very important part of the BI policy is the definitions of **gross profit** (which has a different meaning from that normally used by accountants) and other terms applicable to the cover.

(c) **Premium basis**

The premium calculation is complex, but it begins by using the rate charged for insuring the **contents** of the building for **fire** insurance. This is then loaded according to the **time factor** involved with the cover (see below).

(d) **Other features**

These notes give a much abbreviated summary of a fairly complicated class of business, but the following should be noted:

- (i) *Alternative names:* “Business Interruption Insurance” is the most modern term for this class of business, but it may also be called “**Consequential Loss Insurance**” or “**Loss of Profits Insurance**”.
- (ii) *Time element:* With material damage, the most important time is the date of the fire, since the amount of claim will be related to that. With BI insurance, the loss is spread over a period after a fire, etc. Clearly there must be a limit to this interruption period (the “**Indemnity Period**”). Known as the “**Maximum Indemnity Period**”, this limit may be as short as three months or much longer (even two or more years) from the date of an insured accident (e.g. a fire). The features of individual risks and their ability to return to normal business levels (e.g. the likely length of time taken to repurchase pieces of specialized equipment) are vital in this area.
- (iii) *Loss calculation:* This is a very complex matter, usually requiring the help of professional accountants. In essence, however, an attempt is made to measure the loss sustained during the indemnity period by comparing income, etc. during that period with the comparable period last year (when business was not interrupted), making any necessary “**trend adjustments**” for such factors as increased market competition and an outbreak of the SARS epidemic happening during the indemnity period which in no way are imputed to the accident that has occurred.

1.4.2 “All Risks” Insurance

When this class of business was first introduced, it was thought to be very daring on the part of the insurers concerned. For the first time, accidental loss or damage, sometimes even without knowing the real cause, was covered. To remind you, “**all risks**” insurance means that all loss or damage is covered unless specifically **excluded**. And it is the legal responsibility of the **insurer** to prove that an exclusion applies if liability is to be denied.

(a) **Basic intentions and scope of cover**

The nature of the cover is described above. It will immediately be seen that the scope of cover is very wide. Originally, “all risks” cover was offered only in respect of individually specified articles of significant

value, such as jewellery, furs, etc. (in the early days, also limited to well-known and trusted clients). Competition and the development of the market led to the cover being provided much more freely on virtually any kind of tangible property.

(b) **Limitations and exclusions**

The name “all risks” is usually expressed in inverted commas, to signify that strictly speaking not **all** conceivable risks are insured. There are exclusions, which are very likely to include:

- (i) *Inevitable loss*: **wear and tear, depreciation**, etc. will certainly happen and are therefore uninsurable.
- (ii) *Lack of routine care*: Losses from the effects of light, vermin and atmospheric conditions are foreseeable and are either inevitable or should be prevented by reasonable precautions.
- (iii) *“Standard” exclusions*: War and nuclear risks.
- (iv) *Unreasonable causes*: It is not considered proper to insure losses deliberately caused by the insured or suffered while participating in illegal activities (including confiscation by customs or other authorities).

If the insurance includes **unspecified** items, the cover is very likely to be subject to **average**. Average does not always apply where each item has its own sum insured.

(c) **Premium basis**

The premium will invariably be based upon a rate applicable to the sum insured, with different rates for different geographical areas of cover (world-wide cover naturally being the most expensive).

(d) **Other features**

- (i) *Application*: “All risks” cover applies in many types of insurance. As a separate class of business, it is mainly concerned with **personal** property owned by individuals. However, “all risks” cover on commercial property has become very common, particularly for large clients.
- (ii) *Agreed values*: The original intention for “all risks” cover to insure valuable items is still important. With high-value items insured on this basis, **agreed value** cover is common (sum insured payable for total losses, without regard to actual value) subject to an initial independent professional valuation.

1.4.3 Theft Insurance

(a) Basic intentions and scope of cover

The intentions are virtually self-explanatory; to cover loss of or damage to the insured property caused by theft or attempted theft. For domestic and personal risks, such cover is very likely to be provided by a household or “all risks” policy. A standalone **theft** policy is therefore largely confined to **commercial** risks.

One important feature about the scope of the cover is that policies normally include **damage** caused by thieves to the insured premises in making **forcible and violent entry to or exit from** the insured premises (see (b)(i) below). The policy has no separate sum insured for such damage, cover normally being specified for **stock** and other **specified contents**.

(b) Limitations and exclusions

- (i) *“Theft”*: Under policy terms, there must be some breaking down of the security defences of the insured premises before any claim is payable. A customary limitation is that theft is only covered if accompanied by “**forcible and violent** entry to or exit from” the insured premises. Such an entry can be made by, say, damaging the lock on a door or smashing a window. Sometimes, a thief may enter, say, a department store as a customer, hide somewhere until it is close for business, and escape with stolen goods by force and violence to the doors or windows of the premises. (**Note**: insurers do not construe the phrase to include force and violence to people.)
- (ii) *Theft by staff*: Theft by staff is a **fidelity guarantee** risk (see **1.4.6** below) and is excluded from the theft policy. Theft with the **collusion** of staff members is also not covered.
- (iii) *Fire damage*: It is not unknown for thieves to start a fire to destroy evidence of their theft. But damage by fire is excluded under the theft policy.
- (iv) *Average*: Full value insurance is normally expected, so pro rata average will apply in any under-insurance situation.
- (v) *Warranties*: It is quite common for theft policies on valuable property to be subject to warranties. Examples include requirements for specific security devices (types of lock, iron bars, etc.) and/or security measures (systems regarding keys, stock left in public view overnight, etc.). (A breach of warranty automatically discharges policy liability as from the date of the breach.)

(c) **Premium basis**

The premium will invariably be calculated by applying a rate to the sum insured, which varies with the attractiveness of the property to thieves.

(d) **Other features**

- (i) *Extensions of cover*: Various extensions are available, e.g. **Hold-up** cover, which insures against theft accompanied by actual violence or the threat of violence, but where violence to the security defences of the insured premises is not involved. Also, PA cover for staff may be included.
- (ii) *Risk surveys*: Frequently necessary, particularly where substantial values or attractive stock is to be insured, or where the proposal comes from a new client.
- (iii) *“Target risks”*: Some goods are particularly attractive to thieves. They include gold, jewellery, furs and other high value/low bulk items. Target risks are very likely to face more severe policy terms and premiums.
- (iv) *Alternative title*: Originally, this class of business was known as **Burglary** insurance. Some insurers in Hong Kong may still be using this title.

1.4.4 Glass Insurance

(a) **Basic intentions and scope of cover**

It is immediately obvious in Hong Kong how glass has become a very fashionable building material. Such structures, particularly with very large areas and/or tinted glass involved, are very expensive. The need for separate insurance is therefore apparent.

The insurance is on an “**all risks**” basis, covering not only actual breakage of the fixed glass insured but any attendant cost in required temporary boarding-up of the premises concerned.

(b) **Limitations and exclusions**

- (i) *Fire risks*: Risks insurable under a fire policy, such as fire, storm and earthquake, are excluded.
- (ii) *Wear and tear, etc.*: As is customary with “all risks” cover, losses attributable to the effect of time (in this case dilapidation of frames or framework) are excluded, as is scratching without actual breakage of the glass.

- (iii) *Standard property insurance exclusions*: War and similar risks, nuclear risks, etc.
- (iv) *Consequential loss*: Loss of business and extra expenses (other than boarding-up expenses) resulting from breakage of the insured glass are excluded.

(c) **Premium basis**

Clearly, the quality of the glass concerned has an influence on the premium, which is generally based on the area of the glass to be insured.

(d) **Other features**

- (i) *Decoration, etc.*: Commercial glass is frequently decorated with words or pictures. If such decoration is to be covered, it need be specified in the policy, which otherwise will only replace the broken glass.
- (ii) *Social disorder*: Glass in public places is particularly vulnerable in the event of any strikes, riots, etc. Such perils are **excluded** by the glass policy, so enquiries should be made whether the glass or fire policy can be extended to cover such risks.
- (iii) *Alternative title*: Originally, this class of business was known as **Plate Glass** insurance (since it only covers fixed glass installations). Some insurers in Hong Kong may still be using this title.

1.4.5 Money Insurance

This is another class of business which in earlier days was thought to be too hazardous to contemplate. Experience has proved otherwise and this is now commonly provided for a wide range of commercial organizations.

(a) **Basic intentions and scope of cover**

Originating from a class of business called **Cash in Transit Insurance**, the modern money policy covers various forms of money in various locations. Features to note are:

- (i) *Cover* is on an “**all risks**” basis. In addition to the loss of money, damage to safes and strong-rooms, etc. caused by thieves is usually covered.
- (ii) “*Money*” means much more than legal tender, extending to include cheques, bank drafts and other forms of financial documents.

- (iii) *Location*: While **cash in transit** remains a major element of cover, cover at other locations (including the homes of specified staff and the insured's business premises) is also very likely.

Case 13 – Loss of cash outside business hours

On the way back home after her shop had closed, a shop owner discovered that her wallet together with some cash was missing from her bag. She immediately reported the loss to the nearest police station.

Declaring that the lost cash was business income, with which goods were to be purchased, the insured shop owner submitted an insurance claim for the loss under a money policy. The policy covers “loss of money and securities caused by robbery, burglary or theft only up to a specified limit outside the Insured Premises while being conveyed by messenger during normal business hours and within the territory of Hong Kong.”

Since the loss had occurred outside business hours, the claim was rejected.

Remarks: *intending to insure only business money (rather than personal money), the money policy normally restricts insured losses to losses occurring during normal business hours.*

(b) **Limitations and exclusions**

- (i) *Separate sums insured* may apply to different locations.
- (ii) *Security*: It may be required that money be kept in a safe or a similar secure place, except for limited amounts and limited times. Money is required to be deposited with a bank as soon as possible.
- (iii) *In transit*: Still on the question of security, the policy may require that money be transported only by male escorts (at least two with sums exceeding a specified amount) and the manner or route of transit may have to be agreed.
- (iv) *Theft committed by staff* or with the collusion of staff is insurable by fidelity guarantee insurance and is therefore excluded.

(c) **Premium basis**

The premium is calculated by applying a rate to the estimated annual carryings of money to and from the bank. As such, a **provisional** premium is payable, subject to an **annual adjustment** when the final figures are known.

(d) **Other features**

- (i) *Proof of loss*: Adequate records must be kept to establish loss figures and to enable premium adjustment.
- (ii) *Extensions*: It is quite common to provide a PA extension to money policies, covering injuries caused to staff by thieves.

1.4.6 Fidelity Guarantee Insurance

(a) **Basic intentions and scope of cover**

Perhaps the earliest form of **accident** insurance, fidelity guarantee insurance is a **pecuniary** insurance, its primary function being to indemnify an employer against thefts by his own staff. Features to note with the general scope of this class of insurance are:

- (i) *Causes of loss*: The policy covers **dishonest** acts by guaranteed staff. It will therefore not apply to general errors and omissions.
- (ii) *Staff covered*: Various forms of policy cover are available, the commonest being:
 - (1) **Individual cover**: the guaranteed staff are individually named and subject to a specified limit.
 - (2) **Combined cover**: where a schedule of names (or positions) is given, either with separate sums insured, or with a floating sum insured (i.e. a sum insured not divided among the insured individuals or positions), or a combination of the two.
 - (3) **Blanket cover**: where the policy covers all the insured's staff, usually with separate categories (inside/outside, handling/not handling cash, etc.) and separate sums insured.

(b) **Limitations and exclusions**

- (i) *System of check and supervision* is a very important underwriting consideration. The approved system must not be varied without the written consent of the insurer.

(ii) *Second chance*: Employers may sometimes be very forgiving and allow persons who have defrauded them to continue in their employ. In this regard, the policy provides that any knowledge of or reasonable suspicion about an employee's dishonesty must be reported to the insurer, who will suspend cover until he is satisfied otherwise.

(c) **Premium basis**

A rate is applied to the amount guaranteed, influenced considerably by the nature of the employment and some other factors.

(d) **Other features**

(i) A "*guarantee*": As far as the **employee** is concerned, it is a **guarantee**. But to the **employer**, it is insurance. The main difference is that the dishonest employee is liable in law to reimburse the **guarantor** (in this case the insurer) for payments the latter makes to his employer on account of his default. In practice, this may not be worth much.

(ii) *Default items*: Originally, these policies only covered defaults relating to **money**. It is now quite normal for the policy to cover defaults concerning **stock** as well.

1.4.7 Bonds

Most insurance contracts are **simple contracts** and thus do not have to be evidenced in writing (although they almost invariably are). **Bonds**, on the other hand, are very formal types of contract.

(a) **Basic intentions and scope of cover**

Bonds are often met in situations where the insurer acts as a **surety** or **guarantor** to a construction company or some other commercial organization in respect of obligations towards the principal of an engineering project.

A typical example is where the Government contracts work for constructing roads or buildings, but they will only grant the contract subject to the provision of a **Performance Bond** in their favour. This guarantees that if the work is not completed as per the contract, the bond is **forfeit** and the insurer pays the stated sum (known as the **penalty**) to the Government. The insurer then acquires rights of recovery against the contractor.

(b) **Limitations and exclusions**

Claims with bonds are simplicity itself. In fact, claims do not often arise, but when they do there are no arguments - the insurer pays, and he pays the full amount. Almost none of the usual exclusions and limitations surrounding insurance contracts applies.

(c) **“Premium” basis**

The payment to the surety (insurer) is not a premium, and is more properly called a “fee” or a “charge”. It is usually a **single payment**, as agreed with the person guaranteed (perhaps a contractor), who is responsible for the payment.

(d) **Other features**

- (i) *No renewals*: Normally, a bond is not subject to a renewal, although an extension of the designated time for the contract may arise. Technically, a renewal is not necessary because a bond has no expiry date.
- (ii) *Counter guarantees*: The surety usually requires **personal counter guarantees** in its favour from the directors of the person guaranteed or of its parent company, or others, to safeguard recovery prospects in the event of a claim.
- (iii) *“Signed, sealed and delivered”*: A bond must be evidenced in writing and must be issued **under seal**. The classic phrase used with such contracts is that they must be “signed, sealed and delivered” and these words usually appear in the bond document. Bonds are usually issued from the **Fidelity** or **Accident** department of the insurer concerned.

1.5 ENGINEERING INSURANCE

Most of the insurances under this heading are technically complex and both underwriting and claims work associated with them is very likely to need the technical help of suitably qualified experts. These Notes, therefore, will be briefer than for classes of business previously discussed. Only outline knowledge of this insurance is needed.

1.5.1 Boiler Explosion Insurance

(a) **Cover**

The name virtually tells us the basic intention of the cover, which is to insure against the results of an **explosion** or **collapse** of a boiler or pressure vessel “*whilst in the course of ordinary working*”. The cover usually consists of the following:

- (i) *Property insurance*: for damage to the boilers, pressure vessels or other property of the insured.
 - (ii) *Liability insurance*: for damage to third party property.
 - (iii) *Liability insurance*: for death of or injury to third parties.
- (b) **Exclusions/limitations**
- (i) *Risks normally insurable by other policies*, such as fire and extra perils.
 - (ii) “*Standard*” *exclusions*, such as war and similar risks.
 - (iii) *Inappropriate cover*, such as wilful neglect by the insured, and wear and tear.

1.5.2 Machinery Breakdown Insurance

(a) **Cover**

It is an “**all risks**” cover for “*unforeseen and sudden*” physical loss of or damage to insured plant and machinery.

(b) **Exclusions/limitations**

- (i) *Policy deductible*, which may be of a fairly significant amount.
- (ii) Perils insurable by a standard fire and extra perils policy.
- (iii) “*Standard property insurance exclusions*”, such as war and similar risks, nuclear risk, etc.
- (iv) *Consequential loss*, arising from the machinery breakdown.

1.5.3 Contractors’ “All Risks” Insurance

With enormous amounts of construction work of all kinds constantly going on in Hong Kong, this is a very important class of business, involving a huge premium volume.

(a) **Cover**

The usual form of policy is in two Sections:

- (i) **Section I** provides **property** insurance on an “**all risks**” basis in respect of specified property, which is very likely to include the **contract work, materials** supplied by the Principal, construction **plant and equipment** and construction **machinery**. **Clearing of debris** costs may also be included.

- (ii) **Section II** provides **liability** insurance for third party injury or property damage arising out of the construction work.
- (b) **Exclusions/limitations**
- (i) **Section I** has the usual exclusions applicable to “all risks” cover. Other specific exclusions include **faulty design** and losses only discovered on taking an inventory.
 - (ii) **Section II** excludes liability in respect of loss of or damage to property belonging to the insured (e.g. work covered under Section I of the policy) and various perils, including **weakening or removal of support** to other buildings (which cover can be added to the policy for extra premium).
 - (iii) **Deductibles** are normal with Section I, varying in amount according to the peril and property concerned. Rather unusual among liability insurances, it is also the custom to have a deductible under the liability section (i.e. Section II) of the policy.

1.5.4 Erection “All Risks” Insurance

This form of policy very closely follows the format and wording of Contractors’ All Risks (see above). With the latter, however, the work involves the actual construction (making) of buildings, etc. With erection all risks, the basic components are normally not constructed on site, but are assembled and installed (e.g. bridge construction, powerful transmitters, large storage installations, etc.).

1.6 LIABILITY INSURANCE

Several of the products we have already considered contain policy divisions giving third party (or liability) cover. Those in this section, however, are exclusively third party cover. The liability for respective cover may arise from **Statute** (i.e. law made by the legislature) and/or in the **Common Law** (usually **negligence**). Liability at law can also arise under **Contract**, but it is usual to exclude from liability cover liability assumed under an **agreement**. For example, a motorist may, in inviting a friend to have a ride on his motor cycle, promise to indemnify the latter against resultant injury even where it is due to *no fault* of his. Such liability, if incurred, will constitute “liability assumed under an agreement”.

Before going to the specific types of liability insurance, we should look at two of the common features of liability insurance as follows:

- (a) *“Long-tail” business*: All liability insurances are long-tail in nature, i.e. claims may arise and develop over a long period of time (even years after policy expiry), so it is necessary to keep the relevant files and claims reserves open for much longer than with “short-tail” business, such as property insurances generally.
- (b) *“Claims-made”* and *“Claims-occurring”* bases: Policies on a “claims-made” basis limit cover to third party claims actually *made* upon the insured during the currency of the policy, or a specified limited ensuing period. The basic idea of restricting claims to the policy year or shortly thereafter “shortens the tail” considerably and is therefore attractive to the insurer. Whether the insured will be happy for his cover to expire, so that he may be uninsured when a claim develops later is another matter. Some policies are instead written on a “claims-occurring” (or “losses-occurring”) basis, meaning that they respond to an insured event that occurs during the period of insurance.

1.6.1 Employers’ Liability Insurance

This is not a title used with Hong Kong policies, but it usefully describes the nature of cover provided by the **Employees’ Compensation** (EC) policy. As with **motor** insurance, EC insurance represents a major branch of compulsory insurance.

(a) **Basic intentions and scope of cover**

EC policies cover the legal liabilities of the insured **employer** towards his **employees**. The liability covered is very often classified into the following two types, both being subject to the compulsory requirement for insurance:

- (i) *Liability under the Employees’ Compensation Ordinance*: This is the **statutory** liability which is placed upon an employer to pay **compensation** in stipulated amounts (which may possibly fall short of the actual losses in individual cases) to employees or their dependants in respect of injury or death caused by accident arising *out of and in the course of* their employment. Such liability is “strict” (as opposed to “fault-based”) in the sense that it is not dependable on fault on the part of the employer.

Case 14 – Accident happening outside working hours

A worker was injured in a traffic accident when she was on her way home by taxi after having a meeting with a client at nighttime. This gave rise to the question of whether the injury was covered by the employer’s EC policy or not, which required that the injury must have been caused by accident arising out of and in the course of the injured employee’s employment.

Considering that this criterion had not been satisfied, the insurer rejected the employer's claim under the EC Policy.

Remarks: since the EC policy only intends to cover the insured's liability incurred in the capacity of an employer, injuries not caused by an accident that has "arisen out of and in the course of employment" will not be covered.

- (ii) *Liability independent of the EC Ordinance* (much more often referred to as "*common law liability*", which is a misnomer): This is employers' liability that arises otherwise than under the EC Ordinance, and relates to liability in **tort** (mainly **negligence**) in respect of death of or injury to **employees**, again arising out of and in the course of their employment. Included under this head are employers' liability incurred in the common law and that which arises from a breach of certain statutory provisions concerning industrial safety. Injured or deceased employees or their dependants are entitled to full compensation, but the liability of the employer must be proved and it is contestable by the employer or his insurer. "Liability independent of the EC Ordinance" comprises fault-based liability and strict liability. Court award for such liability will be net of any compensation paid or payable under the Ordinance.

(b) **Limitations and exclusions**

As EC is a compulsory class of business, there are not many exclusions and those may be overruled by statutory provisions (see below). Typically, however, the policy will exclude:

- (i) contractual liability (see **1.1(d)(iii)(3)** above);
- (ii) liability to the employees of the insured's **contractors**;
- (iii) injured or deceased persons who are not **employees** within the meaning of the EC Ordinance;
- (iv) "**standard**" exclusions, such as war and nuclear risks.

(c) **Premium basis**

This is usually a rate per cent or per mille (mainly according to the type of business carried on by the employer) applied to the **annual payroll** of the employer. As such, the initial premium must be **provisional**, subject to **adjustment** when the final figures for the year are known.

(d) **Other features**

- (i) *“Avoidance of certain terms and right of recovery” clause:* This clause is identical in intent to that in motor policies. It gives the insurer a right of recovery from the insured if the compulsory insurance legislation compels the insurer to pay a claim when a breach of contract terms would otherwise allow the insurer to avoid liability.
- (ii) *Premium adjustments:* It is widely said that many employers understate their payroll when the provisional premium is being calculated. So following up premium adjustments is quite important to maintaining an equitable premium system.
- (iii) EC policies are written on a “**claims-occurring**” basis.

(e) **Employees’ Compensation Insurance Residual Scheme (ECIRS)**

There have been cases in which employers appear to have difficulty obtaining EC insurance in respect of employees engaged in certain high-risk occupations. To tackle this problem, a scheme named the “**Employees’ Compensation Insurance Residual Scheme**” was launched to act as a market of last resort for employers of any of 19 high-risk trades. By a market agreement, all employees compensation insurers must become members of the ECIRS, taking on risks on a collective basis (in other words, under a co-insurance arrangement).

Under this scheme, any employer who has been declined by 3 or more insurers in a row or has received 3 successive insurance quotations in excess of the benchmark premium rate for the trade concerned are eligible to apply for cover with the scheme. For each of the 19 high-risk trades, a benchmark premium rate is derived and regularly updated by an independent actuarial firm. If necessary, the benchmark premium rates will be loaded or discounted to arrive at actual premium rates, in order to discourage insured employers from safety malpractices or encourage them to adopt good safety practices.

1.6.2 Products Liability Insurance

A manufacturer or seller owes a duty of care to his consumers not to cause them injury or damage by making or selling to them “defective products”. A products liability policy covers liability in respect of injury or damage caused by goods sold, supplied or repaired, services rendered, etc. and happening elsewhere than at premises owned or occupied by the insured. Such liability as happens at the insured’s premises should be insured against under a public liability policy.

The basic cover and wording bear a resemblance to the Public Liability policy (see **1.6.5** below) very closely. Here are the special features that should be noted:

- (a) *Defendants*: Those who may incur product liability include manufacturers, assemblers, repairers, and suppliers.
- (b) *Claimants*: The range of claimants has been extended from consumers with or without contractual relationships with the defendants to those who are not strictly “consumers” (e.g. bystanders of a motor repairing process who is injured by flying fragments).
- (c) *Exclusions*:
 - (i) Common liability exclusions: employers’ liability, property in the insured’s custody, contractual liability (see **1.1(d)(iii)(3)** above), etc.
 - (ii) Liability arising from the design, plan, formula or specification of the goods. (Suppose a TV cabinet which was designed to carry an *unusually light* maximum weight of 50 kg cannot bear the weight of a 55 kg TV and collapses. Liability so arising, if any, is not normally insurable by a products liability policy.)
 - (iii) Liability arising from instruction, advice or information on the characteristics, use, storage or application of the goods.
 - (iv) Liability in respect of the repair, alteration or replacement of any goods. (Suppose an insured is a supplier of CD players, and a consumer has had one of these properly installed in his car. Owing to some manufacturing defect in this CD player, it catches fire when being in use, destroying itself and the whole car. In such circumstances, only the liability in respect of the destruction of the car will be covered, but not the responsibility for replacing the CD player.)
- (d) *Policy limit*: The limit of indemnity may be an **aggregate limit**, so that early claims reduce the amount of cover available for the rest of the year unless additional coverage is purchased.
- (e) *“Dangerous” markets*: Some parts of the world are notoriously claims-conscious, especially the U.S. and North America generally. Supplying products to these markets is fraught with risk and cover may be expensive or difficult to obtain.
- (f) *“Claims-made” policies*: These are described above and are slightly more likely with products liability insurance.

1.6.3 Professional Indemnity (PI) Insurance

PI policies are intended for “**professional**” people, such as lawyers, doctors (**Medical Malpractice** insurance or medical indemnity insurance), accountants, architects, fund managers, trustees and the like. The cover is therefore intended to protect against mistakes in professional acts and omissions, including the giving of incompetent advice.

This is a specialized class of business, requiring high expertise to run successfully. International exposures, if any, may again raise the issue of claims-conscious cultures.

(a) **Basic intentions and scope of cover**

Numerous policy forms are available in the professional indemnity insurance market which will vary depending on the activities or profession involved, and from one insurer to another. Typically the professional indemnity insurance policy covers the insured’s **legal liability** in respect of *third party claims first made* against the insured **during** the policy period for third party injury, third party property loss or damage, or third party financial loss (depending on the activities or profession being covered), caused by a “wrongful” (or “negligent”) act or omission on the part of the insured.

In addition to liability in respect of injury, property loss or damage, or financial loss (as the case may be), the policy also covers **legal expenses**, of both the insured in defending or resisting third party claims and the successful third party. The policy is usually subject to an aggregate limit of liability applicable to all claims made within the insurance period, which limit is either inclusive or exclusive of the insured legal expenses.

(b) **Limitations and exclusions**

- (i) *Pollution and contamination* are excluded.
- (ii) *Dishonesty*: Liability arising from or contributed to by any dishonesty, fraudulent, criminal or malicious act or omission of the person claiming indemnity under the policy is excluded.
- (iii) *Fines, penalties, punitive damages, exemplary damages and non-compensatory damages* are irrecoverable.
- (iv) *Geographical Area*: Activities performed outside the specified *geographical area* are not covered. Also, by virtue of a *jurisdiction clause*, third party claims are restricted to those subject to the prescribed legal jurisdictions.

- (v) *Contractual liability* is excluded (see **1.1(d)(iii)(3)** above).
- (vi) “*Standard*” *exclusions* of war, nuclear risks, etc.
- (vii) *Deductible*: A deductible could be included which applies to each third party claim.

(c) **Premium basis**

The premium is very likely to be **adjustable**, i.e. based upon a variable factor, such as **annual revenue** in the case of cover for accountants or **aggregate fund size** in the case of cover for fund managers. Thus, a provisional premium is paid initially, adjusted to the correct amount when final figures are available. Obviously, the rate charged will reflect the potential risk, according to the profession of the insured.

(d) **Basis of cover**

PI insurance is most likely to be written on a **claims-made** basis, which means that third party claims which have arisen from an act or omission done at a time prior to the policy inception may still be covered, subject to the full terms and conditions of the policy. A claims-made PI policy normally provides that such act or omission must not be one done at a time prior to the Retroactive Date specified in the policy schedule.

Note: It will be remembered that **insurance brokers** in Hong Kong are required to carry PI cover, for enhanced security to their clients, before they can be authorized to do business here.

1.6.4 Directors’ and Officers’ Liability Insurance

The Directors’ and Officers’ liability insurance policy (or D&O policy) protects both the insured company, and its directors and officers. The company’s shareholders, employees, customers and creditors are among the possible third party claimants. Although various policy forms are in use, they follow the same basic principles.

(a) **Basic intentions and scope of cover**

D&O insurance covers liability of a company’s directors and officers and, normally, that of the company as well, to pay damages in respect of “wrongful acts”, which may be defined in the policy to include omission, breach of duty, breach of trust, breach of warranty of authority, misstatement and misleading statement. It is not unknown for a D&O policy to define the term “insured” to include all employees of the company for the purposes of, say, claims relating to harassment, discrimination or wrongful termination of employment.

The policy also covers **legal expenses**, of both the insured in defending or resisting third party claims and the successful third party. The policy is usually subject to an aggregate limit of liability applicable to all claims made within the insurance period, which limit is either inclusive or exclusive of the insured legal expenses.

(b) **Limitations and exclusions**

- (i) *Pollution and contamination* are excluded.
- (ii) *Personal profit*: The policy excludes claims based upon or attributable to a director or officer gaining personal profit or advantage to which he was not entitled.
- (iii) *Dishonesty or fraud*: The policy excludes claims brought about by or contributed to by the dishonesty or fraud of the individual director or officer who is claiming indemnity under it. However, costs incurred in *successfully* defending an allegation of dishonesty or fraud will usually be covered.
- (iv) *Breach of professional duty*: Claims for alleged breach of professional duty are excluded – they are properly covered under a professional indemnity policy.
- (v) *Guarantee or warranty*: Liability arising under guarantee or warranty (other than warranty of authority) is excluded.
- (vi) *Known circumstances*: Any circumstance known or which ought reasonably to have been known about at policy inception is excluded.
- (vii) *Fines, penalties, punitive damages, exemplary damages and non-compensatory damages* are irrecoverable under the policy, except for punitive or exemplary damages in respect of libel or slander.
- (viii) *Geographical Area*: Activities performed outside the specified *geographical area* are not covered. Also, by virtue of a *jurisdiction clause*, third party claims are restricted to those subject to the prescribed legal jurisdictions.
- (ix) *Public liability risks*: Third party bodily injury, and loss of or damage to third party material property are excluded.
- (x) *Contractual liability* (see **1.1(d)(iii)(3)** above) is excluded.
- (xi) “*Standard*” exclusions of war, nuclear risks, etc.

(xii) *Deductible*: Deductibles, if any, will very likely apply to each director or officer insured, with an aggregate deductible for all claims made against any of the insureds during the insurance period.

(c) **Premium basis**

A flat premium is normally charged.

(d) **Basis of cover**

D&O insurance is written on a **claims-made** basis. Therefore individual directors will need to consider how cover can be maintained for them after they leave the company. Besides, consideration will have to be given to the extent to which cover should be maintained if a company ceases trading or is dissolved or taken over. Some insurers automatically grant retroactive cover for the period for which D&O insurance has been held, excluding claims and circumstances notified under previous insurance policies, prior or pending litigation, and matters involving substantially the same facts as such prior or pending litigation.

1.6.5 Public Liability (PL) Insurance

The PL policy covers liability in respect of death, injury or property damage that is not insurable by specialized liability insurances such as motor insurance, EC insurance, products liability insurance and professional indemnity insurance.

(a) **Basic intentions and scope of cover**

This is to cover the insured's **legal liability** (sometimes expressed as "liability at law") in respect of *accidents occurring during* the policy year. *Claims arising* from such accidents may do so late (sometimes years later), but they are still covered, provided the insured satisfies the notification requirement specified in the policy.

Normally the policy will cover third party injury and property damage liability. It also covers **legal expenses**, of both the insured in defending or resisting such claims and the successful third party. The policy is usually subject to a limit of liability, which applies for any one claim (and sometimes for any one insurance year). The insured legal expenses are usually payable *in addition* to the limit of liability.

(b) **Limitations and exclusions**

(i) *Geographical Area*: Accidents occurring outside the specified *geographical area* are not covered. Also, by virtue of the typical *jurisdiction clause*, third party claims are restricted to those subject to the legal jurisdiction of Hong Kong.

- (ii) *Other policies*: Other types of policies may cover liability risks. To avoid overlap and confusion, such risks (e.g. motor and EC) are excluded.
- (iii) *Contractual liability* (see 1.1(d)(iii)(3) above).
- (iv) “*Standard*” exclusions of war, nuclear risks, etc.

(c) **Premium basis**

The premium may be **adjustable**, i.e. based upon a variable factor, such as **wages** or **turnover** (but see **Note** below). Thus, a provisional premium is paid initially, adjusted to the correct amount when final figures are available. Obviously, the rate charged will reflect the potential risk, according to the occupation or business of the insured.

Note: Although the traditional premium basis for these policies was adjustable, to reflect the actual volume of business activity during the policy year, it is now quite common to find non-adjustable premiums being used in Hong Kong. With these, the insurer accepts the projected waggeroll/turnover as the final figure, so that no additional or refund premium has to be considered.

(d) **Basis of cover**

Whilst not unknown, “claims-made” basis is not common with public liability insurance, which is usually on a “**claims-occurring**” basis.

1.7 MARINE INSURANCE

Perhaps the most ancient class of business, marine insurance is really a profession in its own right, with terminology at times quite different from all other types of insurance. Without trying to give a comprehensive summary, we should mention a few points about marine insurance before we look at some different forms of cover.

- (a) **Average**: When we were referring to a property insurance contract being “subject to average”, in earlier notes, this means that full insurance is expected and that there will be a claims penalty according to the degree of any under-insurance. In marine insurance, “average” means **partial** (i.e. non-total) **loss**. There are two kinds of average in marine insurance:
 - (i) *Particular Average (PA)*: Put simply, this is “Average” (i.e. partial loss) affecting the subject matter insured, other than a *General Average Loss* (see (ii) below).

- (ii) *General Average (GA)*: A General Average Loss is a loss caused by a General Average Act (the word “average” here means that the loss is a partial loss of a whole marine adventure (i.e. the combined interests represented with a ship’s voyage, especially including the vessel itself and cargo being carried on the vessel)). There is a General Average Act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure. GA Sacrifice, as opposed to GA Expenditure, is physical loss or damage. For example, throwing heavy cargo overboard in the event of stranding or the like is a GA Act leading to a GA Loss known as GA Sacrifice. GA Expenditure may be incurred, say, in circumstances where a disabled ship and its cargo have to be towed to a port of distress.

Where there is a *General Average Loss*, the party on whom it falls (e.g. the owner of a cargo which the master has thrown overboard as a *GA Act*) is entitled, subject to the conditions imposed by maritime law, to a rateable contribution (“*General Average Contribution*”) from each of the parties interested (the shipowner, the cargo owners, etc.) who have been saved by the *GA Act*, including himself. One of those conditions is that the *GA Act* must have achieved its purpose, i.e. the adventure must, as a result of the act, be free from a total loss. Such a condition will be satisfied if, for instance, the total loss of a cargo has saved the ship and all other cargoes from a total loss.

Note: Whilst participants in a marine adventure are potentially liable for *GA Contributions*, it is customary to insure against such liability under marine insurance policies.

- (b) **Salvage:** With non-marine insurances, the word “**salvage**” refers to any residual value in what is left of the subject matter of insurance (e.g. scrap value of a destroyed vehicle). On the other hand, the term “salvage” has a very different meaning in maritime law - it usually refers to saving a vessel or other maritime property from perils of the sea, pirates or enemies, for which a sum of money called “salvage award” or “salvage” (or “salvage charges” in marine insurance clauses) is payable by the property owners to the salvor provided that the operation has been successful. The term is sometimes also used to describe property which has been salvaged.
- (c) **Sue and Labour Charges:** This curious expression refers to expenses reasonably incurred by the assured in preserving the insured property from an insured loss or in minimizing an insured loss. Such expenses are covered in addition to the sum insured. (NB: although such charges are invariably insured by marine cargo policies, the term “sue and labour charges” is not used in their wording.)
- (d) **Actual Total Loss:** Total loss (TL), in marine insurance, comprises “actual total loss” (ATL) and “constructive total loss” (CTL). There is an ATL:

- (i) where the subject matter insured is destroyed,
- (ii) where it is so damaged as to cease to be a thing of the kind insured (e.g. where a cargo of cement has irreversibly turned into solid masses due to raining), or
- (iii) where the assured is irretrievably deprived of the subject matter insured (e.g. where a cargo of gold bullion has sunk into the deep sea).

Note: in marine cargo insurance, there is total loss of an apportionable part, such as each craft load of goods.

- (e) **Constructive Total Loss:** Short of an **actual total loss**, a property loss may in certain circumstances (e.g. where the damage, although technically repairable, is by the relevant legal or policy standard uneconomical to make good) constitute a **constructive total loss**, in which case the insured can treat it as if it was an actual total loss. (This term, when used in other classes of insurance (e.g. motor insurance), does not have a policy or legal definition.)
- (f) **Valued Policies:** For the sake of commercial convenience, insurance on ships or cargo is normally made on an agreed value basis – an agreed value, as well as an amount insured, is specified in the policy. For the purposes of both total and partial losses, the agreed value (instead of the actual value of the property insured) is taken as the property value that prevails at the time of loss.
- (g) **Liability Insurance:** In addition to the collision liability cover which we shall mention in 1.7.2(a)(iv) below, another major type of liability cover called “P&I” liability cover is available. It is provided by **Protection and Indemnity Associations** (or “**P&I Clubs**”), which were established to provide their member shipowners with certain insurances not readily made available by commercial insurers. Please see 1.7.4 below for the statutory requirements for compulsory launch and vessel liability insurance.
- (h) **Institute Clauses:** Commercial marine insurances in Hong Kong mostly use these Clauses with their policy wording. **Institute** (the Institute of London Underwriters, or **ILU**) **Clauses** are renowned throughout the international marine insurance world and form a recognized policy wording. These forms of cover are accepted almost universally by insurers, banks and interested organizations.

1.7.1 Cargo Insurance

(a) Basic intentions and scope of cover

Apart from cover for GA Contributions and Salvage Charges, which are in the nature of legal liability, insurance on marine cargo is substantially property insurance, usually in the form of a set of Institute Cargo Clauses (**ICC**). The three most well-known sets of ICC are:

- (i) *ICC (A)*: The own damage cover is on an “**All Risks**” basis and is in most cases the only cover acceptable to banks who are advancing money or giving guarantees in respect of cargo shipments;
- (ii) *ICC (B)*: The own damage cover is on a **specified risks** basis (see (d) below); and
- (iii) *ICC (C)*: The own damage is covered for even fewer **specified risks** (see (d) below).

Marine cargo cover is mostly on a so-called “**Warehouse to Warehouse**” basis, meaning that the cargo is covered from the time it leaves the sender’s premises until it reaches the final storage destination. This almost always will involve both **land and sea** transits.

(b) **Exclusions**

The ICC (A), (B) and (C) each contains a number of exclusions, including:

- (i) loss due to *wilful misconduct* of the assured.
- (ii) *expected losses*, such as wear and tear, ordinary loss in weight, etc.
- (iii) loss due to *inadequate packing*, bearing in mind the journey and nature of the cargo.
- (iv) loss due to *inherent vice*, that is, damage arising from the quality in the insured cargo itself (e.g. meat or fish which goes bad, wine which turns sour, etc.).
- (v) loss due to *unseaworthiness* of the carrying vessel, of which the assured is aware at the time of loading.
- (vi) loss due to *war, strikes, etc.*, which are, nevertheless, insurable for extra premium.

(c) **Premium basis**

In the case of large turnover, the identity and loss record of the assured have an important bearing upon the premium charged, which is normally as a rate per cent on the amount insured.

(d) **ICC (B) and (C)**

In addition to **General Average sacrifice**, the **ICC (B)** covers own damage due to any of the following perils:

- (i) **specified major casualties** (fire, stranding, sinking, collision, etc.);

- (ii) **earthquake, volcanic eruption and lightning;**
- (iii) **discharge** of cargo at a **port of distress;**
- (iv) **jettison** and **washing overboard;**
- (v) entry of sea, lake or river **water;**
- (vi) **total loss** (only) of any package lost, etc. whilst **loading** or **unloading.**

The **ICC (C)** is more limited, covering GA sacrifice, jettison, and (i) and (iii) above.

The **exclusions** with both sets are the same, being very similar to those in the **ICC (A)**, except that whereas the **ICC (B)** and **(C)** expressly exclude the deliberate or wrongful act of **any person**, the **ICC (A)** impliedly does not cover such an act on the part of the **insured** or the **claimant**. Thus fire damage caused by such an act on the part of anyone other than the insured and the claimant is recoverable under the **ICC (A)** but not under the **ICC (B)** and **(C)**.

1.7.2 Hull Insurance

(a) **Basic intentions and scope of cover**

- (i) **Property Damage:** The **hull** of a vessel is its main body, or shell. “Hull” or “Hull and Machinery” insurance cover, in addition to the shell of the insured vessel, its equipment, stores, fuel for propelling the vessel, safety boats, etc. Institute Hull Clauses normally provide property cover on a specified perils basis (perils of the sea, fire, explosion, etc.). Claims are payable on a new for old basis, i.e. without deduction for wear and tear, or depreciation.
- (ii) **General Average and Salvage Charges** (as defined above) are covered.
- (iii) **Sue and Labour Charges** (see **1.7 (c)** above) are covered.
- (iv) **Collision Liability:** Here the cover only applies to liability arising from the insured vessel’s **collision** with another vessel and only **75%** (always expressed as **3/4ths**) of such liability is covered. The other **25%** of such liability, together with certain other “shipowner’s liabilities”, is insured with a **P&I Club**. It is important to note that such collision liability cover, whether provided by a commercial insurer or by a P&I Club, excludes loss of life, personal injury and illness. Please see **1.7.4** below for the statutory requirements for compulsory launch and vessel liability insurance.

(b) **Limitations and exclusions**

- (i) “*Standard*” *exclusions* of war, nuclear and similar risks apply but with marine insurance, it is interesting to note that **War Risks** insurance can be purchased (either separately, or on the same hull policy).
- (ii) *Deductible*: Policies are usually subject to a deductible for **partial loss** claims. With both actual total loss and constructive total loss, the deductible does not apply. This is quite different from the practice with other classes of insurance.

(c) **Premium basis**

The premium is a matter which heavily depends upon the claims experience of the individual assured. Very different premiums could be payable in respect of the same vessel, under different ownerships or management.

1.7.3 **Pleasure Craft Insurance**

Many such craft are insured under a policy against both **property** and **liability** risks. The commonly used **Yacht Clauses** include the following features:

- (a) *Specified perils cover*: The perils specified include **perils of the seas**, fire, lightning, explosion and earthquake.
- (b) *Exclusions* include:
 - (i) **Outboard motors** dropping off or falling overboard.
 - (ii) **Personal effects**.
 - (iii) **Consumable stores**, fishing gear, etc.
 - (iv) **Ship’s boat** if it is not permanently marked with the parent boat’s name.
- (c) There is a warranty of maximum designed **speed** of 17 knots (note: craft capable of greater speeds than that are **speedboats**, requiring quite different contract terms).
- (d) *Deductible*: The provisions are similar to those with commercial vessels, the deductible not applying to a **total loss** claim.
- (e) *Own damage claim settlements* are on a new for old basis, except that deduction up to one third may be made for depreciation, etc. on specified items (e.g. sails and outboard motors).

- (f) *Liability cover:* Unlike commercial hull policies, the pleasure craft policy provides full (i.e. 100% rather than 75%) third party insurance, covering liability for **personal injury** or **property damage** and **legal costs**. Please see **1.7.4** below for the statutory requirements for compulsory launch and vessel liability insurance.

1.7.4 Statutory Requirements for Third Party Risks Insurance

It is a statutory requirement that no owner, charterer or coxswains of a local vessel (see Glossary), with a couple of exceptions, may use, or cause or permit any other person to use, the vessel in the waters of Hong Kong unless there is in force a liability insurance policy in respect of the death of or bodily injury to any person caused by or arising out of such use by such owner, charterer or coxswain or by that other person, as the case may be. The minimum cover (or limit of indemnity) that the law requires varies primarily according to the number of passengers permitted to be carried by the vessel under the conditions of its operating licence: \$5 million any one occurrence in the case of a vessel of more than 12 permitted passengers (except where it falls within one of two prescribed categories of vessel), or \$1 million any one occurrence in any other cases.

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Representative Examination Questions

Type “A” Questions

- 1 The widest form of motor insurance cover is:
- (a) “Act” only;
 - (b) Third Party only;
 - (c) Comprehensive;
 - (d) Third Party, Fire and Theft.

[Answer may be found in **1.1(a)**]

- 2 A “standard” policy excess is one that:
- (a) applies to all policies of a particular class;
 - (b) does not apply if the risk has any abnormal features;
 - (c) is chosen by the insured to obtain a premium discount;
 - (d) is imposed by the underwriter to counteract an adverse feature.

[Answer may be found in **1.1(f)**]

- 3 With a commercial vehicle which is also used in construction work, for example to dig holes, the commercial motor policy may exclude cover during such operations. This exclusion is known as the:
- (a) business use clause;
 - (b) tool of trade clause;
 - (c) working operations clause;
 - (d) professional liability clause.

[Answer may be found in **1.1.3(a)**]

- 4 Which of the following is/are very likely to be found in a conventional personal accident insurance policy?
- (a) lump sum benefits;
 - (b) medical expenses cover;
 - (c) weekly benefits for temporary disability;
 - (d) all of the above.

[Answer may be found in **1.2.1(a)**]

- 5 The primary consideration in calculating the premium for any personal accident insurance is the proposer's:
- (a) age;
 - (b) sum insured;
 - (c) insurable interest;
 - (d) profession or occupation.

[Answer may be found in **1.2.1(c)**]

- 6 The premium calculation most commonly used in Hong Kong for household contents insurance is very likely to be based upon:
- (a) the age of the proposer;
 - (b) the square feet area of the insured flat;
 - (c) the sum insured selected by the proposer;
 - (d) the amount of mortgage loan advanced by a bank.

[Answer may be found in **1.3.1(c)**]

- 7 Which of the following is **not** very likely to be within the **standard** cover of a commercial fire insurance policy?
- (a) fire;
 - (b) lightning;
 - (c) earthquake;
 - (d) explosion of gas used for domestic purposes.

[Answer may be found in **1.4.1(a)**]

- 8 A fire business interruption insurance policy is primarily intended to cover losses:
- (a) of buildings destroyed by a fire;
 - (b) of the contents of building destroyed by a fire;
 - (c) to the insured in respect of legal liabilities to third parties;
 - (d) arising after an fire or other insured event, which are not material, such as loss of profit.

[Answer may be found in **1.4.1a**]

- 9 Which of the following are very likely to be excluded from “all risks” insurance policies?
- (a) wear and tear;
 - (b) war and similar risks;
 - (c) confiscation of property by customs authorities;
 - (d) all of the above.

[Answer may be found in **1.4.2(b)**]

- 10 Which of the following is **not** within the usual basic cover of a boiler explosion insurance?
- (a) damage to the insured boiler;
 - (b) liability for third party injuries;
 - (c) liability for damage to third party property;
 - (d) personal accident benefits for the insured and his employees.

[Answer may be found in **1.5.1**]

- 11 “Common law” cover is normally given under Employees’ Compensation (EC) policies. This means that cover is applicable:
- (a) in respect of benefits under the EC legislation only;
 - (b) only when liability has been incurred in a common law jurisdiction;
 - (c) only in respect of liability applicable under Hong Kong law;
 - (d) when the insured has incurred employers’ liability otherwise than under the EC Ordinance.

[Answer may be found in **1.6.1**]

- 12 A “claims-made” cover in liability insurance means that claims are only admissible if they:
- (a) occurred during the policy year;
 - (b) were made before the policy began;
 - (c) are actually settled during the policy period;
 - (d) are made during the period of insurance or a specified period thereafter.....

[Answer may be found in **1.6**]

Type “B” Questions

13 Which **three** of the following are always included within the comprehensive private car cover?

- (i) Fire damage to the car
 - (ii) Impact damage to the car
 - (iii) Hiring an alternative vehicle
 - (iv) Theft or attempted theft of the car
-
- (a) (i), (ii) and (iii);
 - (b) (i), (ii) and (iv);
 - (c) (i), (iii) and (iv);
 - (d) (ii), (iii) and (iv).

[Answer may be found in **1.1.1**]

14 Which of the following are very likely to be included in travel policies issued in Hong Kong?

- (i) Personal liability cover
 - (ii) Medical expenses cover
 - (iii) Personal accident benefits
 - (iv) Loss of or damage to luggage
-
- (a) (i) and (ii) only;
 - (b) (ii) and (iii) only;
 - (c) (i), (ii) and (iii) only;
 - (d) (i), (ii), (iii) and (iv).

[Answer may be found in **1.3.3(a)**]

15 Which **two** of the following circumstances are covered by the usual form of commercial theft insurance policies in Hong Kong?

- (i) Theft after entry is gained by smashing a window
 - (ii) Theft of stock by members of the insured’s own staff
 - (iii) Theft after thieves crash a vehicle into the insured shop
 - (iv) Damage caused by thieves setting fire to the insured premises
-
- (a) (i) and (ii);
 - (b) (i) and (iii);
 - (c) (ii) and (iii);
 - (d) (iii) and (iv).

[Answer may be found in **1.4.3**]

16 Which of the following comments regarding **general average** (GA) contributions are true?

- (i) The GA act must have been deliberately done.
- (ii) The sacrifice must have achieved its desired objective.
- (iii) The loss is to be shared by all interests in the marine adventure.
- (iv) The loss is to be shared by all except the owners of the goods sacrificed.

- (a) (i) and (ii) only;
- (b) (ii) and (iii) only;
- (c) (i), (ii) and (iii) only;
- (d) (i), (ii), (iii) and (iv).

[Answer may be found in **1.7**]

***Note:** The answers to the above questions are for you to discover. This should be easy, from a quick reference to the relative part of the Notes. If still required, however, you can find the answers at the end of the Study Notes.*

2 UNDERWRITING AND POLICY WORDING

In this and later Chapters we look at the practical applications of the principles and terminology introduced in the Core Subject “**Principles and Practice of Insurance**”. From the Notes for that Subject, you will recall that **underwriting** concerns two very important processes:

- (a) the *selection of risks* (i.e. determining their insurability); and
- (b) deciding the *terms of the contract*.

Bearing this simple summary in mind will help considerably with the Notes below.

2.1 PROPOSAL AND MATERIAL FACTS

Again to assist with understanding the applications we shall meet, it is good to remember basic definitions:

- (a) **Proposal Forms** may also be called **Applications**, a term more commonly used in life insurance. These are documents in the form of a **questionnaire** that the proposer completes when making an application for insurance cover. They will be considered in more detail in **2.1.3** below.
- (b) A **Material Fact** is legally defined as “every circumstance which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will accept the risk”. In practice, underwriters are generally interested in any fact that makes a difference with the **insurability** of or **terms** to be applied to a risk.

It will be remembered that at law, a proposer is under a duty of **Utmost Good Faith**, a duty to reveal all material facts, *whether the insurer asks specific questions or not*.

2.1.1 Material Facts and Risk Assessment

(a) Material Facts

We looked at a definition of these above. An alternative description for the term could be “*facts which must be disclosed*” (by law, and in order to enable the underwriter to make a professional assessment of the risk). These include facts which:

- (i) render a **risk** greater than would otherwise be supposed, e.g. highly flammable materials stored on the insured premises (fire insurance), when the insured's business would not lead a prudent underwriter to assume this;
- (ii) render a potential **loss** greater than would otherwise be supposed, e.g. stock items of gold and other precious materials in a general store where a prudent underwriter would not expect such things (theft insurance);
- (iii) relate to **previous losses** or claims' experience;
- (iv) relate to **previous adverse insurance** experience, e.g. being refused cover or having special terms applied by another insurer;
- (v) describe and assist in understanding the nature of the **subject matter** of the proposed insurance;
- (vi) may affect the legal rights of the insurer, e.g. special terms of trade which waive all future **subrogation** rights.

(b) **“Non-material” Facts**

Obviously, any facts that do not constitute material facts need not be revealed (e.g. one's exact age when seeking fire insurance). There are certain facts, however, which might fall under the definition given in **2.1** but which do not have to be revealed, because that is what the law provides for. These include facts which:

- (i) improve or **decrease** the risk, e.g. having an **automatic sprinkler system** (fire insurance);
- (ii) are matters of **common knowledge**, e.g. Hong Kong is subject to the risk of typhoons (extra perils insurance);
- (iii) an insurer may be **deemed to know**, e.g. the normal processes and dangers involved with various occupations (EC insurance);
- (iv) the proposer cannot **reasonably** be expected to know, e.g. he is suffering from an undiscovered brain tumour (medical insurance);
- (v) were open to discovery but were **not** discovered in a **risk survey** carried out by or on behalf of the insurer, e.g. with public liability insurance;

- (vi) should have been the subject of **further enquiry** by the insurer, e.g. some questions on a proposal form have been left blank or answered in uncertain terms.

Note: 1 It is the proposer's legal responsibility to reveal material facts, but the courts are very reluctant to allow this to be too strong a weapon for insurers. Judges will want very good evidence that information is indeed **material**, if there is no specific question from the insurer concerning it. Also, they will expect the most scrupulous care to be given to any information supplied, so that any suggestion that the insurer should have been **put on enquiry** or should reasonably have been aware of materiality will very much count against the insurer in any formal dispute.

2 The normal situation is that with any uncertainties it will be the responsibility of the **insurer** to prove that a fact was indeed **material** and that information supplied was **inadequate**. This is not an easy responsibility to discharge.

(c) **Risk Assessment**

This briefly describes the process of underwriting the proposed risk with a view to determining the **insurability** of a risk and, if it is insurable, the **contract terms** to be offered. These considerations will be examined in more detail in the Notes below. However, with general insurance (unlike **life insurance**), risk assessment is an **on-going**, or at least a **repeatable** process. It arises:

- (i) at the **proposal** stage.
- (ii) at policy **renewal**. General insurances are normally **one-year** contracts, with no binding obligations on either party to continue for a further period. Of course, insurers normally like to **retain** business, but renewal gives an opportunity to review both insurability and terms again.
- (iii) with **claims**. Facts may emerge in a claim situation (concerning the **risk** or the **insured**) which may give rise to second thoughts. Many general insurance policies have a **cancellation clause**, allowing the insurer to cancel the policy by giving, say, seven days' notice. This is not often used, but the opportunity is there, if circumstances warrant it.
- (iv) with important proposed **changes to present terms** (e.g. an increase in the sum insured). The above remark about cancellation applies.

- (v) where the **original circumstances** under which the risk was insured have altered for the worse. Again, the above remark about cancellation applies.

(d) **Risk Assessment Factors**

Whilst later Notes will concentrate on some specific areas of attention in underwriting, it may be helpful to mention at this stage a few things that risk assessment is very likely to embrace:

- (i) *acceptance* (under **any** terms): it is always easy to say “no”, but if we always say “no”, we are soon out of a job, or of business;
- (ii) *standard premium?*: if the risk is insurable, do we need more than or less than the normal premium for various reasons?
- (iii) *standard wording?*: can we issue the normal policy form, or are amendments (or even a specially drafted wording) needed?
- (iv) *warranties*: do we need to insist that the insured does something, or refrains from doing something, to make the risk insurable? See **2.3.4** below;
- (v) *excess/deductible*: do we wish to eliminate small claims and/or wish the insured to bear part of his loss? See **2.3.3** below;
- (vi) *expert help*: do we need further information on technical matters, so that a **surveyor** or other professional (**medical, engineering**, etc.) needs to be engaged before we can quote final terms?

We shall meet most of these considerations again, but it should be remembered that the assessment of risk, carried out conscientiously and **at the right time**, is the foundation of success in the insurance business. Failure to conduct this process, or to do it properly, means we are leaving too much to chance. That is not insurance. It is **gambling!**

2.1.2 Physical and Moral Hazards

In assessing a particular proposal, an underwriter needs to gain a complete picture of the risk presented. Of course, there will be other factors which he will have to take into account, such as the state of the **market** (e.g. the intensity of market competition), his **company's** marketing and business **philosophy**, individual or company premium **targets**, etc. As far as the essential (or **intrinsic**) technical qualities of a risk are concerned, however, he is very likely to form his assessment on two important **aspects**:

(a) **Physical Hazards**

They are the **objective** features of a risk, i.e. the factors which are self-evident or easily ascertained, which bear upon the likelihood or possible severity of claims.

The word “*hazard*” normally suggests “danger” or some such adverse meaning. In the context of insurance, the term “hazard”, when used without qualification, is neutral. It is therefore perfectly correct to talk of “good” or “excellent” physical hazard, where the nature of the subject matter of insurance or other related factors make claims less unlikely or less serious, a state-of-the-art fire protection system being an example of good hazard.

Mostly, physical hazards concern matters of **common sense**, and examples of physical hazards will easily come to mind with different classes of business. Some examples are given below:

- (i) *Construction materials* have an obvious significance with fire insurance. Buildings of wood are naturally likely to warrant higher premiums than comparable buildings of concrete construction.
- (ii) *Attractiveness to thieves* will be an important underwriting feature with theft insurance. High value/low bulk items, like gold, cigarettes, certain Chinese medicines, and drugs will clearly represent adverse physical hazards.
- (iii) *Physical and health condition* can be important with PA and/or sickness cover.
- (iv) *Dangerous occupations*: PA cover for construction or demolition workers will clearly warrant different terms from clerks.
- (v) *Engine power* will be an important consideration with motor and pleasure craft insurances.

The list could be endless, but perhaps sufficient has been said to appreciate the significance of this (perhaps primary) factor in underwriting.

(b) **Moral Hazards**

In many ways, this is an unfortunate expression, because it tends to focus upon the moral behaviour and ethics of the insured. Whilst these are important, and certainly part of the **moral hazard** picture, the term embraces wider issues, to include such things as **attitudes, life styles** and **carelessness**. A person (e.g. a particular actor) may be an excellent

person, as far as the normal understanding of morality is concerned, but still represent **poor moral hazard** (perhaps because of the typical life style of an actor).

Perhaps a better understanding will arise if we think of moral hazard as the “**human element**”, i.e. those features and characteristics surrounding **attitudes, behaviour and conduct** of the insured and others who may be associated with the risk (e.g. family members and employees).

This aspect is more difficult and **subjective**. Also, the true nature of the insured may not be apparent until a claim arises. However, we may briefly say that moral hazard, in its **adverse** form, could show itself in:

- (i) *Dishonesty*: in extreme or serious forms, this means **fraud**;
- (ii) *Carelessness*: which can easily produce losses or accidents;
- (iii) *Unreasonableness*: a person may be totally honest in the accepted sense of the word, but they may create big problems by opinionated views and inflexibility;
- (iv) *Social behaviour*: by which is meant general public behaviour, expressing itself, for example, in vandalism and social disturbances.

As with many things in life, a total appreciation must take into account not only the **physical** factors, but also the **human element**, which is sometimes equally or even more important.

2.1.3 Proposal Forms

These are the actual documents on which the prospective insured submits details of the risk to be insured. As such, it is extremely important. The questions on it are designed by the **insurer**, and presented in such a way as to be as “**user-friendly**” as possible, whilst at the same time covering all important areas in which the underwriter needs information.

Bearing in mind the attitude of the courts with **utmost good faith** (see above), it is most important that proposal form questions are devised carefully.

There will be many different questions arising with specific classes of business, but some common features in virtually all proposals include:

- (a) *Proposer's details*: such as **name**, **address** and **occupation**. These may have a bearing on the physical hazard, and are in any event needed for identification and communication purposes.
- (b) *Insurance history*: the underwriter will want to know whether there are other existing insurances, and whether refusals to insure or special terms (such as premium loading) have been applied by other insurers.
- (c) *Losses/claims history*: this could have an obvious importance with the present application.
- (d) *Insured's valuations*: with many classes of business, these include the sum insured. This represents the insurer's **maximum** liability and in many cases is also the basis of premium calculation.

There are other features, of which we shall look at some examples in **2.2.2** below, but the above are typical areas from which **material facts** may be supplied.

2.1.4 Methods of Obtaining Material Facts

There are a number of ways in which and sources from which the underwriter may obtain details of **material facts** applicable to a proposed risk. These include:

- (a) *Proposal form*: as considered above. In some classes of business (mostly **personal lines** e.g. private car), the proposal form is virtually the only source of information for underwriting. On the other hand, it is not unknown for insurers to dispense with the use of proposal forms in certain classes of insurance business.
- (b) *Professional help*: sometimes the insurance involves technical matters, where the assistance of qualified professionals is needed. This ranges from **medical** matters (not often required with general insurance), to **risk surveys** and **reports** from various technical experts (e.g. concerning boats, engines, boilers, buildings, etc.).
- (c) *Risk surveys*: a physical site inspection of a proposed risk is often advisable (e.g. fire, theft and liability business). This may be carried out by independent surveyors, etc., or it may be conducted by the insurer's own staff.

- (d) *Insurance intermediaries*: especially **insurance brokers**. As agent of the **proposer**, an insurance broker is identified with the **proposer** and bound in law to disclose **material** information he has concerning the client and the proposed risk. Technically, if an insurance broker withholds or misdescribes material facts, this is a breach of **utmost good faith** imputed to the proposer.
- (e) *Recording*: material facts may be given in the form of **answers** on the proposal form, or other enquiry documents. They may also be **verbally** disclosed, in response to direct questions on a risk survey or during pre-contract discussions. It is usually advisable to have written confirmation of verbal understandings, in correspondence or otherwise, to avoid possible misunderstandings later.
- (f) *Miscellaneous*: several other possible sources exist for obtaining material information. These include:
 - (i) enquiries with **previous insurers** (e.g. about past claims);
 - (ii) enquiries with professional **enquiry agents** (e.g. with fidelity guarantee proposals);
 - (iii) enquiries regarding possible **hire-purchase** commitments (e.g. with motor vehicles);
 - (iv) confidential **market intelligence** exchanges among insurers (should there be any possibility of earlier **fraud**, etc.).

Note: As with other Notes, the above give a representative selection only.

2.2 UNDERWRITING PROCEDURES

2.2.1 Quotations

It is very common, in several classes of general insurance, for a prospective insured or his representative (usually an **insurance broker**) to seek information about the terms the insurer might be prepared to offer, without any commitment on the part of the prospective insured. Such information is given in the form of a **quotation**, which will consist of one or more of the following features:

- (a) it may be **in writing** or **verbal**;
- (b) it may concern the envisaged **premium** only, or refer to other **contract terms** as well;

- (c) as a **quotation**, it will very likely be interpreted in law as representing a formal **offer** from the **insurer** (with proposal forms, the completed form is usually the offer, from the **proposer**);
- (d) if the insurer does not wish to be formally bound by a quotation, he should indicate appropriately, e.g. by saying that the quotation is for **illustration purposes only** (or similar qualifying remarks), or make it subject to certain other conditions (satisfactory proposal, etc.);
- (e) if a **proposer** is only seeking information about terms, he or his representative, could mark his completed proposal form with words such as “**for quotation purposes only**”. This means that the completed form is **not** the formal **offer** in the proposed contract;
- (f) the quotation may be a relatively minor “**price enquiry**” for a personal insurance, or it may concern a very formal major contract issue (e.g. the insurance of huge developments, such as cross-border bridges and highways contracts). The latter effectively becomes sophisticated **tenders** for the insurance concerned, requiring great expertise and a considerable effort to formulate.

2.2.2 Proposal Forms

These we have already considered, from various perspectives. As part of the underwriting process, we may note (or note again):

- (a) *only source of underwriting material*: with relatively minor risks, the proposal form is the only enquiry made, and risks may be accepted or otherwise solely on its answers;
- (b) *the “trigger” for other enquiries*: answers or deductions from the information supplied on proposal forms may indicate that further enquiries need to be made. These may be additional questions to the proposer, or more formal enquiries through **surveyors** or other professional experts;
- (c) *basis of the contract*: the information supplied on the proposal is the main (and sometimes the only) information available to the underwriter, and on which he bases his acceptance and terms. All proposal forms contain a **declaration** which will bring this fact to the proposer’s attention, and may well be in the form of an **insurance warranty** regarding the truth of the statements given (called the “basis of contract clause”), a breach of which will render the contract void as from inception;
- (d) *a “permanent” document*: because the completed proposal has a fundamental role with the contract, it should not be regarded as a temporary document. Because of its importance, some insurers may include a photocopy of the completed proposal when sending out the policy document. This will be a reminder to the insured of the information he supplied, which formed the basis of the insurer’s undertakings;

- (e) *supplementary information*: any experts' reports or other documentation, perhaps arising with (b) above, must be considered part of the proposal, and this fact should be brought to the proposer's attention.

2.2.3 Issue of Cover Notes, Policies and Certificates of Insurance

These documents all fulfil roles in the underwriting process. A brief reminder of their respective functions will be sufficient to identify the roles concerned:

(a) Cover Notes

A cover note is a **temporary** document, effectively constituting a temporary policy. However, as its name suggests, it does provide **cover**, i.e. it is **not conditional** upon a satisfactory proposal form, to be submitted later. A cover note **binds** the insurer. The following features may be noted:

- (i) Its *primary purpose* is to give **documentary evidence** to the insured that insurance exists. Commonly, cover notes are issued with **motor** insurance, incorporating a **temporary certificate** of insurance (see (c) below), which confirms that insurance required by law exists. The motor cover note may then be used to assist with **vehicle registration**, etc.;
- (ii) *other functions*: motor is not the only class of business where cover notes may be found. A bank, for example, may require evidence that **fire** insurance exists, before it advances an agreed **mortgage loan**;
- (iii) *not "conditional"*: to repeat what was said above, the document does provide **unconditional cover**. However, cover notes frequently have **cancellation** provisions, so that the insurer may come off cover, after giving notice in a prescribed manner;
- (iv) *"temporary"*: again to reinforce previous comment, a cover note is a convenient way of confirming the insurance immediately, but cover is very likely to be effectively for only say 30 days, or other short period. While a **policy** should eventually replace the cover note, it is possible for **additional** (continuation) cover notes to be issued, as necessary.

(b) **Policies**

A **policy** is visible evidence of the **invisible contract** of insurance. As previously mentioned, most general insurances are **simple contracts**, which technically do not have to be in writing. In practice, a policy is almost invariably issued. However, issuing the policy is usually the **last** stage in the underwriting process, representing as it does the final result of all enquiries, deliberations and decisions of the underwriter. We shall look in more detail at policy structures in **2.3**, but within the **underwriting** context we may note the following:

- (i) *evidence of the contract*: legally, the correctness of the policy may be challenged, but the law will assume that its contents represent the **intentions** of the parties, unless compelling evidence is produced proving otherwise;
- (ii) *incorporates other material*: the policy will specifically incorporate the completed **proposal form** and any other supplementary documentation, etc. as being part of the overall contract;
- (iii) *replaces any cover notes*: as noted above, **cover notes** may be considered as temporary policies. As such, the final policy document replaces them.

(c) **Certificates of Insurance**

Insurance certificates may have differing roles. When issued as a summary of cover provided under a **master policy**, as is sometimes the case with **travel** and **marine cargo** insurances, certificates have more or less the same function as **cover notes** (see (a) above). Unlike the case with cover notes, a separate policy is not subsequently issued except in the case of motor insurance.

The more usual understanding of an **insurance certificate**, however, embraces the following features:

- (i) *proof of compulsory insurance*: with **motor** and **pleasure vessel** insurances, a certificate of insurance provides **proof** to people who need to know (e.g. **police**, and **registration authorities**) that insurance required by law does exist;
- (ii) *independent of the policy*: a certificate is a totally **separate** and **permanent** document (unlike a cover note). However, a **temporary** motor insurance certificate is usually incorporated in a motor cover note, as noted above;

- (iii) *contents and format*: a cover note will have an abbreviated summary of policy cover, but a certificate may or may not. You cannot tell from a certificate of motor insurance, for example, whether the policy is **Comprehensive** or even **Act Only**; it merely confirms the existence of **compulsory** motor insurance in a form prescribed under the relevant Ordinance;
- (iv) *why issued*: certificates of compulsory insurance are issued solely because the **law** requires them. If one is not issued by an insurer, this constitutes a **criminal offence**, for which both the **insured** and the **insurer** may be prosecuted. In **motor** insurance, the certificate has such a legal importance that it is essential for the insurer to recover the document if the policy is **cancelled**.

2.2.4 Premium

(a) Method of Calculation

As to the method of premium calculation, within the context of underwriting procedures, individual comments were made in respect of different classes of business in Chapter 1 of these Notes, but we may also note the following:

- (i) *Risk classification*: With many types of insurance, the risk is assigned to a particular category, to which pre-determined average premium rates will apply. For example, in personal accident insurance, risks are classified into four or more classes by reference to the insured person's occupations.
- (ii) *Risk discrimination*: Any idea of "discrimination" is not politically correct these days, but the term is of very long standing with insurance underwriting where it has no wicked implication. It refers merely to distinguishing the features (good or bad) of individual risks falling within the same risk category, so that adjustment up or down to the broad classification premium can be made. Suppose a fire underwriter is underwriting two private warehouse risks located in the same building, the first one being in the basement and the other on the second floor. Although they belong to the same risk category, "private warehouse", the underwriter may impose a premium loading for the first risk because it is considered to be an above average risk, and charge the average (or normal) premium for "private warehouse" for the second risk.
- (iii) *Different bases*: general insurance has a very wide range of different products, so it is only to be expected that the premium base will differ between various classes. Frequently, a designated rate (usually per cent or per mille) is applied to a factor such as:

- (1) the **sum insured**;
- (2) the **annual turnover**;
- (3) the **annual wageroll**;

but different classes of insurance may have different criteria, as previously noted.

(b) **Relevance of Premium Payment for Valid Cover**

With **life** insurance, it is almost the invariable practice that cover does not commence until after the first premium has been received. This is not necessarily the case with general insurances. This is an important issue, so the following comments should be noted carefully:

- (i) *Common Law position*: unless the **contract terms** specify to the contrary, payment of the premium is **not a condition precedent**, i.e. the contract may exist, even though the premium has not yet been paid. When a valid claim arises, it will have to be paid, with the insurer having a separate right to the premium.
- (ii) *Policy provisions*: practice varies with policy wording. Some policies strictly provide that cover is **conditional** upon the premium having been received. Other policies may require that the insured “has paid **or agreed to pay**” the premium. An insured’s conduct of paying premiums in past years may possibly constitute a current **agreement** to pay premiums.
- (iii) *Other considerations*:
 - (1) Payment to **insurance intermediaries**: A question arises as to whether a premium payment made to an insurance intermediary constitutes payment to the insurer. It hinges upon on whose authority the payment has been received or paid. Was it the insurer who has given authority to the insurance intermediary to receive the payment? Did the insured authorize the insurance intermediary to make payment to the insurer? Of course, that provision of the Insurance Companies Ordinance which makes an insurer vicariously liable for the conduct of its appointed insurance agent in *prescribed circumstances* is relevant to these issues. Also note that another provision of the Ordinance prohibits an insurer from excluding or limiting such liability.

- (2) **Waiver and estoppel:** In the context of punctuality of premium payment, waiver is a clear representation or conduct on the part of the insurer that it will not insist on an express contractual requirement of premium payment before cover. Thus, if an insurer has in the past accepted late payment of premium without hesitation, he may possibly be regarded as having waived punctuality in the future. For the doctrine of estoppel to apply alternatively, the insured must show that he has reasonably relied on the said representation or conduct.

Note: These are complex areas, in which important legal issues may arise. Appropriate legal advice should therefore be obtained with specific cases.

2.2.5 Levies

(a) **Motor Insurers' Bureau of Hong Kong**

These Notes do not examine the operations of the Motor Insurers' Bureau of Hong Kong (MIB), but by way of reminder it exists to give substance to the intentions of compulsory motor insurance, in cases where the required insurance is **ineffective** or **does not exist**. As a condition for obtaining authorization under the Insurance Companies Ordinance to carry on compulsory motor insurance business in Hong Kong, an insurer must become a member of the MIB, which promises the Government to meet all "Act" liabilities (i.e. liabilities in respect of death or injury arising out of the use of a motor vehicle on a road that are statutorily required to be insured against) in the event of (a) a motor policy being ineffective because of the insurer's insolvency, or (b) unsatisfied judgments in respect of such liabilities.

Funding for payments made by the MIB comes from a premium **levy**, imposed by insurers on **all** motor policies they **issue**. The levy does not belong to the insurers, and must be passed to the MIB. The levy is set at a rate of **3%** of **Motor Premiums**, one-third being allocated to the Insolvency Fund Scheme, which was established for the purpose of compensating certain motor vehicle accident victims in the event of the **insolvency of the motor insurers concerned**, and two-thirds to the First Fund Scheme, which was established for the dual purpose of compensating claimants arising from **uninsured motorists** and the victims of "**hit and run**" motor accidents. The first purpose of the First Fund Scheme includes the circumstances in which a claimant's judgment debt has only been partially satisfied because the amount of the debt exceeds the limit of indemnity on third party risks imposed by the policy of the wrongful motorist so that this Scheme will settle the uninsured portion of the debt.

The First Fund Scheme has also set up a facility of up to \$200 million for the purpose of satisfying third party death or bodily injury claims under motor insurance policies arising from a terrorist act through the use of a motor vehicle on a road in Hong Kong.

(b) **Employees Compensation Assistance Scheme (ECAS)**

The objectives of the Employees Compensation Assistance Scheme (ECAS) are the same as with the MIB, except that the application is to the other major compulsory insurance requirement in Hong Kong, **EC**. With effect from 1 April 2004, the ECAS is no longer responsible for dealing with cases of EC insurers' insolvency, which has since then been taken over by the ECIIB referred to in (c) below. Funding for ECAS purposes comes from an EC premium levy at a current rate of **1.2%**..

(c) **Employees Compensation Insurer Insolvency Bureau**

The Employees Compensation Insurer Insolvency Bureau (ECIIB) is an organization of all EC insurers in Hong Kong, which has been set up for operating the Employees Compensation Insurer Insolvency Scheme. The objective of the Scheme is to indemnify EC policyholders against their insurers' failure to pay EC insurance claims because of their insolvency. It is funded by way of contributions made by EC insurers calculated by a rate of **2%** of gross EC premium income.

2.3 POLICY WORDING, TERMS AND CONDITIONS

To remind you, the policy is the **written evidence** of the **insurance contract**. It is therefore of great importance to understand the usual form that insurance policies take in Hong Kong. Before we do so, however, two points should be noted:

- (a) Policy wording in Hong Kong is **not regulated**. Insurers are therefore free to construct and market their own individual products.
- (b) Most insurers in fact tend to provide wording which is very similar to what is found in the market. We shall thus use **representative** examples, which will broadly suffice to explain general practice.

2.3.1 Policy Forms and Policy Schedules

General insurance policy forms in Hong Kong are predominantly scheduled forms, and are increasingly written in plain English.

- (a) *“Plain English” policy forms*: They are a result of a modern attempt to avoid the formal traditional language of a legal document. In an effort to make the document more **“user- friendly”**, the text is expressed in the first

and second person, rather than the impersonal third person, so that it talks of “**we**” and “**you**”, rather than “**the company**” and “**the insured**”, etc. The policy is also very likely to be in a smaller **booklet** form, perhaps with diagrams and cartoon drawings.

This style of policy presentation is used with **personal lines** insurance, rather than with **commercial** risks. The extent to which this style really does enable and encourage people to read and understand their insurance policies is not yet established.

- (b) *Scheduled policy forms*: The “**Schedule**” (or “**Policy Schedule**”) is that part of the policy which contains all information relating solely to the risk concerned. The rest of the policy is a standard wording, for all policies in that class of business, presented in separately designated section, having different functions.

The scheduled policy form is of long-standing tradition, and will be the basis for comment and study in the Notes that follow.

The **scheduled** policy form consists of the following sections:

- (i) *The Schedule*: as mentioned, this contains all information which applies exclusively to the specific contract concerned. It is to this section that attention must be given, for example, to ascertain:
- (a) policy **Number**;
 - (b) details of the **Insured** (name, address, occupation, age, etc.);
 - (c) policy **Limits** (sums insured, limits of liability, etc.);
 - (d) effective **Dates** (commencement date, renewal/expiry date, etc.);
 - (e) description of the **Subject matter of insurance**;
 - (f) the **Premium**;
 - (g) the identity of the **Insurance Intermediary** (where shown in the policy);
 - (h) any **special terms** applicable (special warranties, special exclusions, etc.);
 - (i) **extra benefits** applicable to this contract (extra perils, etc.);

- (j) all **endorsements** (i.e. modifications and amendments of any kind).

- (ii) *The Recital Clause*: whilst this name, as such, does not appear in the policy document, the recital clause is effectively the **introduction** to the contract. It will make reference to the **contracting parties** (not by name, which is shown in the Schedule). It will also refer to the **proposal form** and **declaration**, recognizing them as being incorporated in and forming the **basis** of the contract. **Premium payment** (not by amount) may also be mentioned.

- (iii) *The Operative Clause*: this indicates the circumstances under which **cover** is **operative** (hence, it is sometimes called the **Insuring Clause**). Again, this title does not appear in the document. The Operative Clause usually follows the **Recital Clause**. The following features of this clause should be noted:
 - (a) it may be quite **short** (e.g. with glass insurance) **or quite long** (e.g. with **motor** insurance);
 - (b) it specifies the **perils** covered or mentions that cover is on an “**all risks**” basis (with **property** insurance);
 - (c) it may comprise one, two or more **sections** (e.g. **motor** insurance);
 - (d) these sections may have their own **exceptions**, limiting the cover for **that section** only (see (iv) below);
 - (e) any **excess/deductible** for the section concerned may be shown (or referred to and appearing in the Schedule).

- (iv) *General Exceptions*: the word “**General**” in this context means that the exceptions apply to the **whole** contract (i.e. **every** section of the policy). As noted above, individual sections in the Operative Clause may have their own exceptions (e.g. cover against damage to the insured vehicle, with a **motor** policy, may exclude damage to tyres unless another part of the vehicle is also damaged). **General** exceptions apply with every type of claim (e.g. in motor, a non-permitted use of the vehicle).

The title “**General Exceptions**” is clearly indicated in the policy document, although the term “**Exclusions**” or less often “**Provisos**” might be used instead.

- (v) *Policy Conditions*: Put simply, these are various printed provisions **regulating** the insurance contract. We shall discuss them in more detail in **2.3.2** below.
- (vi) *Signature Clause*: Not given this title in the policy, this section is very short (often appearing in the **Schedule**), providing for the signature(s) on behalf of the insurer, to confirm the terms of his undertakings as expressed in the policy document. (The policy document is **not** signed by the insured.) For this section, some insurers may use the rather more elaborate term of the “**Attestation Clause**”.

2.3.2 Common Policy Exceptions and Conditions

Individual risks may have specific provisions and/or limitations imposed by the underwriter, but we shall consider this topic in general terms, as follows:

(a) Policy Exceptions

These we examine specifically under the heading of “**Exclusions**” in **2.3.5** below, but by way of reminder **exceptions** may apply to the **whole** of the contract (“**General Exceptions**”) or be intended merely to limit that part of the cover which is represented by a specified policy section (“**sectional**” exceptions). All insurance contracts will have some exceptions. As a commercial undertaking, it is not possible to provide cover with **no** limitations. Even if no exceptions as such appear in the policy document, there will always be provisos which the law **implies** (i.e. shall be **read into** any insurance contract), e.g. the exclusion of **fraud**.

(b) Policy Conditions (or Conditions)

Non-marine policies usually contain a group of terms labelled as “policy conditions” or “conditions”, which lay down the important relationships, rights and duties of the insurer and the insured. Some commonly met “policy conditions” are:

- (i) *Claims*: relating to procedures and rights and obligations associated with making a claim under the policy (see **3.1.3**, etc. below);
- (ii) *Arbitration*: outlining the procedure for settling claim disputes between the insured and the insurer by involving arbitrators as their “private judges” (see **3.2.1** below);
- (iii) *Cancellation*: the usual provisions give the **insurer** the right to cancel, in which event **due notice** and a **pro rata** refund of premium must be made. Many policies in addition give the **insured** the right to cancel **immediately**, in which event a **short-period** refund premium is also payable (see **2.4.2** (a) and (b) below for more details);

- (iv) *Average*: the provision for a penalty for **under-insurance** existing at the time of a loss;
- (v) *Policy modifying legal positions*: where policies provide an **indemnity**, the attendant principles of **subrogation** and **contribution** are very likely to be mentioned, with contractual modifications to their applications (studied in “**Principles and Practice of Insurance**”);
- (vi) *Adjustable premiums*: where premiums have to be on a provisional basis because they are based upon variable factors (e.g. payroll, turnover, etc.), there is a policy condition requiring the insured to keep adequate records, so that actual premiums may be calculated for the purpose of premium adjustment upon the expiry of the policy.

2.3.3 Use of Excesses, Deductibles and Franchises

A reminder of the meaning of each term will serve as a useful basis for considering its application, as follows:

(a) **Excess**

This is a policy provision whereby up to the first stated amount, or a stated proportion (subject to a minimum amount), of the amount of a loss, is **not** recoverable. Time excesses are sometimes met. Policy excesses may be:

- (i) *standard*: applicable to all policies in that class (e.g. say HK\$2,000 for any “**Young Driver**”, as defined in a motor policy);
- (ii) *imposed*: applied **additionally** by the underwriter (with **no** premium reduction) to counteract adverse features (e.g. following a number of small claims under an “**all risks**” policy);
- (iii) *voluntary*: chosen by the **insured** in order to obtain a premium **reduction** (e.g. where someone has a high-value **NCD** in **motor** insurance).

The primary intention of an excess is to **eliminate** small claims, which the insurer regards as uneconomical to handle. It may also be intended to make the insured **participate** in his own **loss experience**.

(b) **Deductible**

The terms “deductible” and “excess” are interchangeable.

(c) **Franchise**

It is no longer common to find a monetary (or dollar) **franchise** with policies in Hong Kong. The function of the franchise is to **eliminate** small claims, whilst paying **in full** any one loss reaching or exceeding the franchise, depending on the wording used. Such a provision used to be found in some property insurances, but an **excess/deductible** is now preferred. A **time franchise** may still be found, however, with:

- (i) some general insurances: which provide compensation or a benefit related to **disability** or **incapacity**, but the benefit is only payable after the person concerned has been so disabled/incapacitated for a minimum period. For example, in **PA** insurance the weekly benefit may not be payable unless disablement is for at least **2 weeks**, such a minimum period being known as a waiting period. However, if the minimum time period is exceeded, compensation or benefits are payable for the **full** incapacity period.
- (ii) business interruption insurance: BI policies sometimes specify that any loss occurring during the indemnity period is not payable unless it is for at least, say, 48 hours.

Note: With neither of the above examples does the usual policy wording actually use the word “**franchise**”, which term is incomprehensible to the majority of the insuring public.

2.3.4 Warranties, Conditions and Representations

Again, a reminder of the meaning of the respective terms will help in their understanding:

(a) **Warranties**

A warranty in insurance (not in the law of contract) may be thought of as an **absolute undertaking** to the insurer on the part of the insured. That **undertaking** may be to:

- (i) *do something*: e.g. to have a burglar alarm fitted to the premises, to keep it in working order, and to switch it on after working hours (**theft** insurance);
- (ii) *refrain from doing something*: e.g. not to store flammable liquids on the insured premises (**fire** insurance);

(iii) *affirm certain facts*: e.g. the warranty in the declaration on a proposal form may **warrant** that answers given on the form are **complete and true**; or

(iv) *negative certain facts*: e.g. a warranty of no smoking habit.

The promise is **absolute**, in the sense that a **breach** of warranty automatically discharges policy liability as from the date of breach. This is so strict that, legally, the breach does **not** have to have a **causal relationship** to a claim situation (i.e. the breach need not have caused or in any way been relevant to a loss situation). However, insurers carrying on personal insurance business in Hong Kong have given an undertaking to the Hong Kong Federation of Insurers that in accordance with its **Code of Conduct for Insurers** only where a **causal connection** between a breach of warranty and a loss exists, or where the breach is fraudulent, will the breach be used to refuse a claim.

Note: 1 Warranties are normally **express** (actually appearing in the written/printed terms of the policy). They may be **standard** (quite normal for all policies in that class) or specially **imposed** by the underwriter for a particular risk.

2 Technically, **implied** (automatic, unwritten) warranties may exist (e.g. the warranty of seaworthiness of ship implied by the Marine Insurance Ordinance).

3 As the effect of a breach of warranty is automatic, no election by the insurer to rescind the contract is required. Besides, its operation will give rise to no right to a premium refund, total or partial.

(b) **Conditions**

The use of the term “conditions” in insurance is rather problematic and confusing. Whenever it is uttered, one may have to figure out from the context - not without difficulty - whether he is referring to a “policy condition” (an insurance term) or a “contract condition” (a legal term). The terms “policy condition” and “contract condition” are not synonyms and should be dealt with carefully in order to avoid confusion.

In the *law of contract*, a **condition** of a contract is such a fundamental term of the contract that a breach of it entitles the aggrieved party to treat the contract as repudiated, seeking some other remedies as well. For example, a reasonable standard of food hygiene is an implied contract condition to be complied with by a food retailer.

On the other hand, in *insurance terminology*, “conditions” (or “policy conditions”) are a collection of *printed* policy provisions which specify the important relationships, rights and duties of the insurer and the insured, and whose nature is so varied that some of them are fundamental and some are not. At this stage, it might be too complicated for you to learn how to tell contract terms which are fundamental from those which fall into either one of the other two categories of contract terms.

That said, it is beneficial for you to learn that the terms (whether express or implied) of an insurance contract can be classified into the following three types by the criterion of time of operation:

- (i) *Condition precedent to the contract*: a term which must be complied with in order for the contract to **commence**, e.g. misrepresentation condition.
- (ii) *Condition subsequent to the contract*: For example, in PA insurance, where the premium largely depends upon the insured’s profession, a change of profession *during the policy term* is expressly required to be notified and agreed.
- (iii) *Condition precedent to liability*: such a term, if breached, does **not** destroy the contract as a whole, but will invalidate a particular **claim**. A notification condition which *expressly and clearly* states that the insured will forfeit his rights in the event of its breach is unquestionably an example.

Note: The nature of a contract term depends on the intention of the contracting parties. The label given by the parties to a contract term is merely an indication of their intention, but is not conclusive.

(c) **Representations**

In insurance context, a representation is a **statement** of fact or belief, made by one party to another, and bearing upon a risk proposed for insurance; it may be **verbal** or in **writing**. (Thus, an incorrect statement on a proposal form, for example, is called a “**misrepresentation**”.) Disregarding any overriding effects of warranties and some other policy terms, the following common law rules apply to representations:

- (i) representations **only** need to be **true** if they are **material** to the risk (if they are not material, e.g. an incorrect age when applying for **fire** insurance, they are effectively irrelevant to the contract and the error has no legal consequence);

- (ii) if they are **material**, they need only be **substantially true** (i.e. true to the best **knowledge and belief** of the representor), i.e. they are not **warranties** in the sense of being **absolute**;
- (iii) representations **need not** appear in the policy wording and become contract terms; but they do of course have a bearing on the contract, subject to the above.

2.3.5 General, Specific and Market Exclusions

An **exclusion** is a policy provision which means that cover does **not** apply in the circumstances described. The various types of exclusion are:

(a) General Exclusions

These may be defined as exclusions which are applicable to **all** policies within the particular class. Some examples are:

- (i) *“All Risks” insurance*: the cover is intended to relate to loss or damage which may or may not happen, not those which must happen. Thus, **wear and tear**, **depreciation** and **gradually operating** causes (atmospheric conditions, etc.) are standard exclusions for any type of “all risks” insurance.
- (ii) *Motor insurance*: cover is intended for normal usage on business or pleasure, so **racing**, **speed-testing** and **motor trade** use are standard exclusions.
- (iii) *Liability insurance*: cover is intended to apply to situations involving some **fault** or **breach of statutory obligations** on the part of the insured. Thus, contractual liability (see **1.1(d)(iii)(3)** above) is a standard exclusion.
- (iv) *Personal accident insurance*: cover is intended to apply in respect of **accidents** whilst the insured is following a normal non-hazardous lifestyle. Thus, **suicide** and **extra-hazardous** activities such as **mountaineering** and **motor-cycling** are standard exclusions.

(b) Specific Exclusions

These are exclusions which the underwriter decides should be applied to **specific** policies, because of the extra hazards the particular risks present. Individual circumstances vary enormously, but a few examples may serve as illustrations:

- (i) *Personal accident insurance*: an insured may have a particular problem to his back (e.g. “slipped disc”). Apart from that problem, he may represent a standard risk, so the underwriter may delete cover for the back problem by a specially worded exclusion.
- (ii) *Motor insurance*: a particular member of the insured’s family could have a bad record of driving accidents, so policy cover may be specially limited to exclude him.
- (iii) *“All risks” insurance*: insuring an item of jewelry which is perhaps worth millions of dollars presents certain problems. The underwriters may decide to exclude cover for this item unless it is kept in a particularly secure place, or their consent is given for its use elsewhere.
- (iv) *Household insurance*: suppose, for example, that the premises are situated at a dangerous corner and the surrounding wall of the property has been knocked down quite a few times by a vehicle. The insurer may decide to exclude such losses from the policy.

(c) **Market Exclusions**

These are really another form of **General Exclusion**, but they are common to policies issued by virtually **all** insurers operating in the market. Often, they concern **fundamental risks**, and in some territories the exclusions concerned are results of discussions and agreement with the **Government** concerned. Examples include:

- (i) *nuclear risks*;
- (ii) *radioactive risks*;
- (iii) *sonic boom damage*;
- (iv) *war risks* (non-marine).

(d) **Other Exclusions**

For completeness, we should mention the following:

- (i) **Fraud**: the law in Hong Kong will never support **fraud**. Even if there is no specific reference to it in policy wording, it always constitutes legal grounds for denying policy liability.
- (ii) **Public policy**: sometimes, the courts would not allow something to be done, because that is contrary to public policy. As far as insurance is concerned, it means that there may be occasions where

society (through the decisions of judges) in effect says that the insurance contract or some of its provisions should not be enforceable, disregarding any mutual intention of the contracting parties.

An example may illustrate the point. A **public liability** (PL) insurance claim was invalidated when the insured shot his wife's lover, even though the gun allegedly went off by accident during a struggle between the two men. The judge said that the husband's behaviour in even having a loaded weapon was unjustifiable. The husband was liable, but his PL insurer was not liable to him. Making a liability insurer pay in such circumstances will be against public policy. This concept may also be exemplified by an insurance for the benefit of an enemy alien in time of war, which may be held to be void as being contrary to public policy.

- (iii) **Special situations:** sometimes local conditions are in turmoil because of social unrest. In those circumstances, insurers may agree on a temporary or permanent **market exclusion**. Examples worldwide would include the civil unrest in Somalia, Kenya, Pakistan and Burma, and the terrorist attacks in Baghdad, Pakistan and Thailand. We hope Hong Kong will be spared such happenings, but human nature is universally volatile.

2.4 RENEWALS AND CANCELLATION

2.4.1 Renewals

The following features should be noted:

- (a) *A new contract:* general insurance contracts are normally for **one year** only. A renewal therefore constitutes a **new** contract, even though the same policy is used. This gives an opportunity for an **underwriting review** of insurability and terms (which must of course be agreed by the **insured**, if the insurance is to continue).
- (b) *Utmost good faith revives:* any **material** information that has arisen since the contract was concluded (or last renewed) must be disclosed to the insurer.
- (c) *Freely negotiable:* normally, neither the insurer nor the insured is bound to renew or to accept particular terms. The precise terms of renewal are open for discussion and negotiation, and considerations of offer and acceptance apply.

- (d) *Legal obligations:* in law, the insurer does not have to remind the insured that the renewal date is approaching. Obviously, it is normally in the insurer's interest to do so, but if he does not and the insured takes no action the policy merely **lapses** at the end of the period of cover.

Note: we should not say that the policy is **cancelled** if it is not renewed. **Cancellation** always implies a premature termination of cover.

2.4.2 Operation of Cancellation Clauses

It is important to note that there is no **automatic right** to **cancel** any contract (and this includes insurance). Apart from situations where the law allows or requires the contract to end, unless contract terms specifically allow **cancellation** (premature termination), this can only happen by **mutual consent**.

In practice, most general insurance policies do have a **cancellation clause** (or **cancellation condition**). Features to be noted with such a clause are:

- (a) *The insurer may cancel:* cancellation clauses, if any, **always** allow the **insurer** to cancel. Notice must be given to the **insured** (usually seven days in advance, by registered mail, to the insured's last known address) and a **pro rata** refund of premium is payable. Suppose an annual policy is cancelled by the insurer with effect from the 66th day of cover. The refundable premium will be: annual premium x 300/365.
- (b) *The insured may cancel:* whilst not universal, cancellation clauses usually also allow the **insured** to cancel. In such cases, notice usually takes effect **immediately** and a **short-period** refund of premium is allowed (sometimes **no** refund is allowable, if a claim has been made in the current period of insurance). To understand how a short period refund of premium operates, one must first of all understand the short period rating table or scale. In general insurance, if cover for a term of less than a year is purchased, instead of charging a pro rata premium, the insurer will impose a more than pro rata premium (termed "short period premium") by reference to a short period rating table. According to such a table, where the proposed term is, say, one month, the premium will be, say, 20% of the annual premium; the premium will be 30% of the annual premium for a two-month term; and so on. Each insurer may possibly have their own short period rating tables. Coming back to short period refund of premium and by way of example, if an insured wishes to cancel an annual policy after it has been in force for, say, 35 days - deemed to be two months for the purposes of the table - the refundable premium will be (assuming the above hypothetical scale) a sum equal to: annual premium x 70%.

- (c) *Practical applications*: it is rare for an **insurer** to invoke the cancellation clause. The traditional view of many insurers was that having underwritten the risk, they would “grin and bear it” with disappointing results until renewal. Of course, there are circumstances where the traditional view is modified. These will include:
- (i) **suspected fraud**: if the insurer *feels* sure that the insured is guilty of fraud, he may wish to terminate association with him immediately (of course, if fraud can be **proved**, the insurer is entitled to terminate policy with immediate effect without relying on the cancellation clause);
 - (ii) **disastrous experience**: there is a limit to the extent that an insurer can be expected to “grin and bear it”. Sometimes circumstances change so rapidly that continuation of cover (perhaps for the whole **class** of business) becomes near “suicidal” (e.g. a spate of terrorists’ attacks in recent years). The cancellation clause is useful in such extreme cases.
- (d) *Miscellaneous considerations*: generally, neither party is obliged to say **why** they wish to invoke the cancellation clause. It is a **right**, not a conditional privilege.

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Representative Examination Questions

Type “A” Questions

- 1 Another name for “proposal form” in the Hong Kong insurance market is:
- (a) application;
 - (b) insurance request note;
 - (c) insurance proposition form;
 - (d) insurance procurement form.

[Answer may be found in **2.1**]

- 2 When considering “moral hazards” and “physical hazards”:
- (a) there is no difference between the two terms;
 - (b) physical hazards relate to the human factors concerned;
 - (c) physical hazards are less subjective, relating to objective facts;
 - (d) moral hazards are easier to determine, as they relate to objective facts.

[Answer may be found in **2.1.2**]

- 3 An insurance cover note:
- (a) usually has a cancellation provision;
 - (b) is a temporary document, normally replaced by a policy;
 - (c) is not conditional; it binds the insurer to provide cover;
 - (d) conforms to all of the above statements.

[Answer may be found in **2.2.3(a)**]

- 4 The so-called “plain-English” policy wording, used in an attempt to make policy wording easier to understand, is very likely to be found with:
- (a) personal lines of insurance;
 - (b) commercial lines of insurance;
 - (c) marine insurance policy wording;
 - (d) compulsory classes of insurance only.

[Answer may be found in **2.3.1**]

- 5 Implied warranties:
- (a) do not appear in the policy wording;
 - (b) do not actually have the full force of law;
 - (c) must be written or printed in the policy;
 - (d) are exactly the same as express warranties.

[Answer may be found in 2.3.4 (a)]

- 6 Representations regarding material matters, made by the proposer in connection with an intended insurance, in the absence of specific contract provisions:
- (a) must be substantially true;
 - (b) must always be expressed in writing;
 - (c) must be absolutely true and accurate;
 - (d) can be true or untrue without affecting the contract.

[Answer may be found in 2.3.4(c)]

Type “B” Questions

- 7 Which **two** of the following statements regarding certificates of insurance are true?
- (i) Certificates in due time are replaced by the policy.
 - (ii) Certificates are quite separate documents from the policy.
 - (iii) Certificates of insurance will give full details of policy cover.
 - (iv) Certificates are often used to provide formal proof of compulsory insurance.
-
- (a) (i) and (ii);
 - (b) (ii) and (iii);
 - (c) (ii) and (iv);
 - (d) (iii) and (iv).

[Answer may be found in 2.2.3(c)]

8 Which **three** of the following statements regarding general insurance policy renewals are **true** in Hong Kong?

- (i) At renewal, the duty of utmost good faith revives.
- (ii) The renewal technically constitutes the making of a new contract.
- (iii) Terms of the renewal are freely negotiable between the parties.
- (iv) If the insurer does not intend to renew, he must inform the insured.

- (a) (i), (ii) and (iii);
- (b) (i), (ii) and (iv);
- (c) (i), (iii) and (iv);
- (d) (ii), (iii) and (iv).

[Answer may be found in **2.4.1**]

[If still required, the answers may be found at the end of the Study Notes.]

3 CLAIMS

3.1 VALID CLAIMS

For a claim to be valid, it must satisfy a number of requirements (see **3.1.1** below). The great majority of insurance claims, however, are quite valid. Indeed, public acceptance and the overall effectiveness of general insurance require this to be so. A major purpose of insurance is to provide **help** in various kinds of trouble. That purpose is frustrated if a disproportionate number of claims are **invalid**.

Given this premise, we should note the following:

- (a) *Claims are the insurer's "shop window"*: the public opinion of an insurer may easily be ruined if its claims handling is perceived to be **unjust, unfair, unreasonable** or **unduly slow**. Within reason, the payment of claims is the insurer's best form of advertising.
- (b) *Claims should not be refused lightly*: refusing a claim is a serious matter. Good insurance practice often means that a claim is never rejected, except with the confirmation of a **senior** member of the insurer's staff. In their **Code of Conduct for Insurers** issued by the Hong Kong Federation of Insurers, many insurers undertake to give a full explanation to the claimant if a claim has to be refused.
- (c) *Confidence of the customers*: an insured should never be embarrassed or afraid to make a claim. The possibility of a claim is why he paid his premium. Of course he must act **honestly** and **reasonably**. The insurer and **insurance intermediary** should therefore always be helpful and sympathetic if a claim situation arises.

3.1.1 Legal Requirements for Valid Claims

A valid claim is one which meets all **contractual** and **other** legal requirements. In practice, from the insured's perspective, what seems to happen in the great majority of cases is that a loss arises, he tells the insurer and with relatively few formalities he receives a claim payment. Sometimes, of course it is more complex, but in fact in **every** case a considerable number of **criteria** must be satisfied. We may consider these under no less than eleven different headings:

- (a) *Fraud by or on behalf of the insured*: whether the policy has any reference to this or not, **fraud** (in any form) can defeat an insurance claim, and indeed is a ground for repudiating the contract.
- (b) *Policy must be in force*: the usual requirement is that the event giving rise to the insured loss must **occur** between the policy commencement and termination dates.

- (c) *Premium considerations*: if payment of the premium before policy commencement or during **days of grace** is a pre-requisite of cover, this must be complied with.
- (d) *Peril considerations*: is the **cause** of the loss covered by the policy? It is for the **insured** to prove that a loss falls within the **Operative Clause**. This is not difficult with “**all risks**” insurance, which requires the proof of the happening of a “risk”, whether it is a fire, theft or whatever not being crucial. With “**specified perils**” cover, the insured is required to prove that a loss has happened and that it was caused by an “insured peril”.
- (e) *Policy exclusions*: the **Operative Clause** or basic cover under the policy generally may be **limited** by **exclusions**. Normally it is the **insurer’s** responsibility to prove that an exclusion applies, if it wants to deny a claim by relying on this.
- (f) *Implied and express contract terms*: is the insured in breach of an **implied contract terms**, the most important of which being the existence of **insurable interest**? Regarding **express terms**, some of them apply to claims’ procedures. These we look at in **3.1.3** below, but all must be complied with.
- (g) *Duty of utmost good faith*: information given during the claim enquiries should be compared with information supplied at the proposal stage. Sometimes there are surprising inconsistencies.
- (h) *Warranties*: if the policy is subject to an **insurance warranty**, has this been **breached**? In good insurance practice, the question really should be “was any breach of warranty **causative** or otherwise significant with the claim?”
- (i) *Quantum* (amount of the claim): it is the **insured’s** legal responsibility to prove the **amount** of the loss (see also **3.1.5**).
- (j) *Excess or franchise*: if the policy is subject to either of these, is the **amount** of the loss sufficient to involve the insurer’s liability?
- (k) *Public policy*: in addition to all the above **contractual** or other legal considerations, **public policy** could conceivably be relevant, a contravention of which may invalidate a claim (see **2.3.5(d)**).

3.1.2 Invalid Claims

Essentially, an invalid claim is one that does not satisfy all the criteria in 3.1.1 above. Those criteria represent **contractual** or **legal** provisions. Some further comments, however, are appropriate under this heading:

- (a) *Reasonable flexibility*: it must not be assumed that insurers are constantly looking for ways to “**escape**” from claims. The above points are all legally sound and the professional insurance claims person will be aware of them, but the overriding consideration will be to have a **satisfied** claimant (**especially** our own policyholder) where reasonably possible.
- (b) *Generous interpretation*: an old claims’ maxim with reputable insurers is “pay the **good** ones immediately, be as generous as possible with the **doubtful** ones, and **resist** the **bad** ones firmly”. These are good guidelines when thinking about invalid claims.
- (c) *Ex gratia considerations*: the possibility of an **ex gratia** payment (one without **legal** obligation) is always an option, in doubtful cases or where real hardship may otherwise be caused.
- (d) *Firmness with fairness*: notwithstanding the above, if a claim is definitely **not** covered, in normal circumstances it should be **politely** but **firmly** declined. Good practice should mean that a reasonable **explanation** be offered. This is not only basic **courtesy**; it may also avoid unnecessary and expensive future **legal action**.

3.1.3 Operation of Policy Provisions Affecting Claims

Different classes of General Insurance may well have specific claims’ requirements, but in broad terms the following are very likely to be among the policy conditions concerned:

- (a) *Notification to the insurer*: instructions are always given as to the **manner** (in writing, to the Head or Branch Office, etc.) in which notice of a **possible** claim should be given.

Case 15 Notification of claim is required to be made as soon as possible
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The insured dropped a luxury watch on the floor accidentally at home. He immediately brought the damaged watch to the designated service centre for repair. He collected the repaired watch two weeks later and lodged a claim to the insurer for the repair cost of the watch under his household insurance policy.
--

The insurer appointed a loss adjuster to carry out the investigation. As the watch had already been repaired when the claim was filed, the loss adjuster was unable to investigate the cause of the incident and the extent of the damage. The insurer, having no chance to evaluate or assess the reasonableness or genuineness of the claim, declined the insured's claim on the grounds that he had breached the policy condition which requires the insured to advise the insurer in writing as soon as reasonably possible in any event of any happening which may give rise to a claim.

The insured contended that the insurer's allegation of late notification of claim was not appropriate as the claim was lodged within 20 days after the watch was damaged. Moreover, the debris of the hands and dial of the damaged watch were shown to the loss adjuster during their visit.

Whilst the Complaints Panel agreed that the insured's reporting of the claim after the watch was repaired had prejudiced the insurer from investigating the claim, the Complaints Panel was convinced that this was a genuine case as the circumstances leading to the damage were simple and consistent with the statement given by the insured. Moreover, the insurer was able to verify the extent of damage from the repair slip issued by the service centre stating that the dial, hands, glass, case, bezel and band of the watch had been scratched, cracked and dented, and from an inspection of the damaged parts of the watch.

While the Complaints Panel noted that reporting a loss after repair was not desirable, it believed that a layman, in this particular instance, would expect a claim which was lodged within 20 days after a loss to be considered as "as soon as reasonably possible". In the absence of any proof that the insured had a poor claims record, the Complaints Panel resolved to give him the benefit of doubt and award him the repair cost of the watch.

Remarks: the Complaints Panel was apparently of the view that there was not a condition precedent to liability requiring the insured to report the happening of an accident to the insurer prior to sending a damaged article for repairs.

Case 16 Failure to report an accident within the prescribed time limit

The insured slipped and was injured in early January 2001. Her sick leave ended in early April 2001. In late April 2001, she submitted a claim, which was rejected by the insurer on grounds of a breach of the policy condition that required the insured to report an accident within 30 days after its happening.

The insured claimed that it was her belief that the 30-day time limit would begin to run upon her recovery from the injury. In support of her claim, she also cited that the same insurer had settled an earlier claim from her despite the fact that her reporting was done a few days after the time limit had expired.

The Complaints Panel agreed that the insured had clearly breached the policy condition by failing to report the accident to the insurer within 30 days after its happening. Moreover, it was unreasonable to argue that the settlement of the prior claim should be made a precedent for any subsequent claim. The Complaints Panel was further of the view that the delay in reporting had prejudiced the insurer's position in investigating the claim. It, therefore, endorsed the insurer's rejection of the claim on the basis that the insured was in breach of the policy condition.

Remarks: as a matter of fact, the insured had failed to report the accident within the time limit as required by the policy. In addition, the Complaints Panel was satisfied that such omission had prejudiced the insurer's position in investigating the claim. Both of these formed the basis of the Complaints Panel's ruling.

- (b) *“Possible” claim notification:* it is worth stressing that a **possible** claim incident should be reported. With **property** insurances, this is seldom a problem. But with **liability** insurance, the insured sometimes waits for a third party to make a definite claim before telling his insurer; this appears to be a breach of the notification condition.
- (c) *Time for claims notification:* policies usually require notice to be given **immediately**, or as soon as **practicable** (in some cases a specific **time limit** may be mentioned). The reason for this is obvious. Delay in investigating losses (especially **liability** claims) may be very detrimental to the insurer's interests.

A vital issue that will come up when such a notice is given late is whether such a “breach” will have the effect of nullifying the insured's right to claim for the loss altogether regardless of whether or not that has caused prejudice or is expected to cause prejudice to the insurer, and of the extent of the prejudice, if any. Legally, what matters is the contractual intention of the parties in inserting this provision as to the effect of its breach.

Note: With **compulsory** classes of business, delay in reporting accidents may not enable the insurer to refuse to satisfy valid third party claims. It could, however, give rise to the possible application of the **Avoidance of Certain Terms and Right of Recovery Clause** (see 1.1(g)).

- (d) *Duties upon the Insured*: see **3.1.4** below.
- (e) *Resolution of disputes*: see **3.2.1** below.
- (f) *Policy modifications of legal positions*: these may affect a number of issues, e.g.:
 - (i) **Average**: unless otherwise agreed, an insurance policy must pay a valid claim **in full**, subject to the sum insured or limit of indemnity (a term customarily used in liability insurance). The **pro rata** condition of average in most **property** insurances reduces the amount payable in proportion to the degree of **under-insurance** present at the time of the loss.
 - (ii) **Contribution**: in the absence of contractual restrictions, an insured may claim the **whole** insured loss from any one insurer who covers it. However, under the **contribution condition** (or **rateable proportion clause**) discussed above, the insurer restricts his liability to a **rateable share**.
 - (iii) **Subrogation**: in the common law, **subrogation** rights are only acquired **after** an indemnity has been provided. However, the relevant subrogation condition gives the insurer subrogation rights **immediately**.

3.1.4 Duties of Insured after a Loss

These may be considered under the **common law**, or in accordance with **contractual** (policy) provisions. Those which are imposed by common law are implied terms, in the sense that they are applicable not because of an agreement between the contracting parties. Sometimes, insurers insert provisions into policies to govern those duties which are apparently implied terms. They do so for reasons. Perhaps these terms are so important that it is advisable to make them known to the insured by written means. Secondly the insurers might intend to modify the legal position in favour of either themselves or the insured. Thirdly, it may be beneficial to both parties to make explicit provision for something the relevant law on which is too uncertain.

In the **common law**, the insured's duties will include:

- (a) reasonable **cooperation** with the insurer;
- (b) a duty to **minimize loss** as far as is reasonably possible;
- (c) not to jeopardize the **insurer's rights** (e.g. **salvage** or **subrogation**);

- (d) absence of **fraud** (in any form).

Policy requirements relating to the duties of an insured after a loss will include:

- (a) *Reasonable proof of a valid claim*: this heading will embrace:
 - (i) **liability** of the insurer, i.e. proof that the loss falls within the cover outlined in the **Operative Clause**.
 - (ii) **quantum** (i.e. the **amount** of the claim).
- (b) *Preservation of damaged property*: specifically, the insured must **not** dispose of damaged property without the insurer's permission. He must also take **reasonable** care of damaged property to avoid further loss or exacerbation (protection against **theft**, cleaning and lubricating wet machinery after a fire, etc.).
- (c) *Cooperation with the insurer*: this includes the basic **response** to reasonable requests for information, allowing **access** to staff and insured premises for enquiries to be made, and actively assisting with **subrogation** efforts, as necessary.
- (d) *Not to compromise the insurer*: by admitting **liability** to third parties, or by prejudicing **subrogation** rights in any way.
- (e) *Disclosure of any other insurances*: to assist with **contribution** or other interests of the insurer. Explanations for "double-insurance" situations may be required.
- (f) *Absence of fraud* (again).

3.1.5 Documentary Evidence

This may take various forms, and could be the responsibility (with the **cost**) of either the **insured** or **insurer**. Specifically, the following should be noted:

- (a) *Receipts and other proof of quantum*: these will invariably be the responsibility of the **insured** and at his expense. Theoretically, receipts will always be required, but insurers should adopt a **realistic** and **reasonable** approach. Receipts may reasonably be expected to substantiate a **commercial** loss, but may well be the exception for relatively minor **personal** insurance claims.

- (b) *Contractually required documents*: commercial insurances (e.g. **fire, theft and consequential loss**) will invariably require adequate records to be maintained, so that a loss may be verified. Insurers are very likely to **insist** upon these.
- (c) *Marine insurance claims*: documentation with such claims is very important. It will include such items as a **survey report**, the **original policy**, the **bill of lading** and perhaps other documents of title.
- (d) *Medical evidence*: to support claims for **incapacity (PA)**, medical reports will be needed. These will be at the **insured's** expense. Expenses of medical examination of injured employees instigated by the employer are payable by the employer under the EC Ordinance, and in turn by the insurer.
- (e) *Witness and Police Reports, etc.*: normally the **insurer** attends to these.

3.1.6 Functions of Various Related Professionals

During the course of claims enquiries, technical issues may arise where **special expertise** may be required. Additionally, insurers sometimes do not have sufficient staff available to investigate all claims. In these cases, the services of one or more of the following professionals may be engaged:

(a) **Surveyors**

Surveys are an important part of **underwriting**, of course. In the context of claims, **surveyors** will mostly be concerned with marine losses. Nearly all marine claims will require a surveyor's **report**. This will take the form of an independent investigation into the cause and extent of a reported loss.

Marine cargo policies normally indicate that a surveyor's report will be needed. The surveyor, naturally, charges a fee, which will be recoverable from the insurer with valid claims.

(b) **Loss Adjusters**

These are specialists in insurance claims investigations and negotiations. Points to note with loss adjusters include:

- (i) *commonest engagement*: they may be engaged with virtually any kind of claim, but they are especially employed with **property (fire or theft)** losses and **liability** claims. Their expertise is particularly valued with **large** or **complex** claims, although some insurers may "outsource" nearly all of their claims to loss adjusters;

- (ii) *independent experts*: although normally engaged and paid by the **insurer**, loss adjusters profess to be **independent** experts, offering **impartial** advice and services;
- (iii) *fees and remuneration*: these may be based on a **scale** according to the amount of the claim **settlement** agreed, or separately negotiated;
- (iv) *settlement recommendations*: their reports will include comments on the circumstances of the loss, the liability or otherwise of the insurer, and eventually upon the negotiated settlement. However, the settlement is subject to the **insurer's** agreement.

One main difference between the appointment of **marine surveyors** and the appointment of **non-marine loss adjusters** is that the **insurer** normally appoints the latter, but marine surveyors are appointed and at least initially paid for by the **insured** (more often referred to as “**assured**” in marine insurance).

(c) **Engineers**

Sometimes highly technical issues are involved, with **Engineering, Contractors' "All Risks"** or indeed **Liability** insurances, where the expertise of qualified engineers is essential. The advice they give may be related to **causes** of losses, or other issues requiring their specialist knowledge.

They are invariably engaged on a **consultancy** basis, paid by the **insurer** at an agreed fee or rate.

(d) **Settling Agents**

These are firms named on **marine cargo** policies or certificates of insurance, which have the underwriter's authority to settle claims on the underwriter's behalf in areas where the underwriter does not have an office of its own. They can be Lloyd's Agents, firms appointed by Lloyd's of London and found in the major ports and areas of the world, including Hong Kong.

(e) **Survey Agents**

It is common for marine cargo underwriters to specify in their policies or certificates of insurance the name and address of their survey agent appointed in respect of the destination concerned, to whom the consignees are required to apply for marine damage survey. Where a particular survey agent does not employ surveyors, it will have to arrange for them when

required. Lloyd's Agents often act as survey agents for marine underwriters and an underwriter often appoints the same firm as both its survey and settling agents.

Surveys with marine claims are very important. Except for very minor claims, it is almost certain that marine claims will not be completed without an independent survey. This is a particular feature which is not found to anything like the same extent with other classes of General Insurance. With other classes, the insurer's own staff frequently deal with claims direct, but where outside help is needed **Loss Adjusters** are more commonly used (see (b) above).

(f) **Average Adjusters**

These experts are found with **Marine** insurance claims. More specifically, they specialize in **General Average** (GA) claims (see 1.7(a)). This is an extremely complex area of claims' work, requiring considerable experience and expertise. Bearing in mind the usual circumstances under which GA claims may arise, adjusting them must take into account a number of important factors, including:

- (i) *Detailed legal knowledge*: the international law of the sea and the law of various individual countries may be critical.
- (ii) *Large number interested parties*: sometimes the number of GA collections necessary will run into many **hundreds** (imagine the vast number of cargo owners who may be called upon for GA contributions if a large container ship incurs GA sacrifice or expenditure).
- (iii) *Long term investigations*: the completion of GA claims collections and apportionments usually take **years**, rather than weeks or months, to settle. This requires patient and methodical work, where experience is essential.

Because of their special expertise, **average adjusters** may also be used with **hull** and with especially complicated **cargo** losses.

3.2 CLAIMS HANDLING

3.2.1 Operation of Arbitration Clauses

Sometimes a claim proves difficult to handle and a dispute arises between the **insured** and the **insurer**. Of course, disputes may also arise between the insurer and **third party** claimants, but the latter are not parties to the insurance contract and cannot be bound by **arbitration clauses**.

These clauses are there to provide an alternative to **litigation** (formal court action) in resolving disputes. The following features of **arbitration** and its relevant policy condition should be noted:

- (a) *Less formal than litigation*: whilst arbitration is conducted in a formal manner, cases are not heard in court and it is not even essential that **legally qualified** persons represent the parties or decide the issues.
- (b) *Not binding upon third parties*: as stated above, third parties cannot be bound by insurance contract terms.
- (c) *Usually applies to quantum only*: the two elements which could be involved with a claim dispute are **liability** (is the insurer responsible under the policy?) and **quantum** (how much is payable under the policy?). Arbitration clauses normally restrict their operation to disputes that do **not** relate to the question of liability, but only to the **amount** payable by the insurer.

Note : 1 Because of the above two points ((b) and (c)), arbitration clauses may not appear in **liability** policies (where the claimant is usually a **third party**), and PA policies.

2 Occasionally, arbitration clauses that apply to both types of disputes are found.

- (d) *Customary basic procedure*: the condition usually requires that the disputing parties appoint **one** independent arbitrator. If they cannot agree on a single arbitrator, **each** party appoints an arbitrator. These arbitrators in turn appoint an **umpire**, the person who supersedes the arbitrators in the event of disagreement between them. Costs normally are payable by the unsuccessful party, but are at the discretion of the arbitrators and/or umpire.
- (e) *Litigation may still be possible*: if a party to the dispute is unhappy with an arbitration award, **litigation** may still be possible. **However**, and this is very important, courts will **not** overrule a properly conducted arbitration, unless there was a clear **mistake** in law or there is proof of **bias** against the claimant.

3.2.2 Methods of Settlement

A valid claim may be settled in a number of ways, by mutual agreement or in accordance with policy provisions. The actual method used may well depend on whether an **indemnity** or a **policy benefit** is being provided. The different methods and comments thereon are as follows:

(a) **Payment of Money**

Payment with cash (almost invariably by cheque) is by far the commonest method of claims settlement. Indeed, in some cases it is the **only** way (e.g. **PA** benefits to the insured, and third party claims). In many ways, it is the most satisfactory from everybody's point of view, forming a neat and final conclusion to the claim process, leaving the payee with the choice of how to use the money.

In the absence of specific policy terms, there would have to be **mutual** consent for a settlement based on anything but money. Policy wording with **property** insurances (invariably **indemnity insurances**), however, does allow alternatives to cash settlement, at the **insurer's** option. These we consider in (b) - (d) below.

(b) **Paying for Repairs Direct**

With non-total loss claims in some classes of business (especially **motor**), the customary way of providing indemnity is for the insurer to pay the **repairer**. Care has to be taken that the repairer is reputable, or suggested by the insured/third party personally, so that embarrassment over the quality of the repairs is avoided as far as possible.

An additional factor with **motor** claims involving damage to the insured vehicle is that payment of repairs to a reputable garage avoids two problems, i.e. cash being paid against an "inflated" repair estimate, and payment by cash where the insured does not have the vehicle repaired (perhaps leaving it in a dangerous condition) or he has it done badly by a much cheaper and less reputable repairer, pocketing the difference.

(c) **Replacement**

This is another option allowed by most **property** insurance policies. (It would have to be agreed with any third party claim, as the third party is not bound by policy terms). It is not always appropriate to consider replacement, as the accumulated **depreciation**, and thus the **betterment contribution** by the claimant, are not easy to agree on. However, there are instances where this method is suitable, including:

- (i) *items not subject to depreciation*: the value of some items does not go down, at least not rapidly, and these may well be replaced to the satisfaction of both parties, e.g. jewelry, expensive watches, etc.;
- (ii) *new or virtually new items*: theoretically the value of most items depreciates as soon as they are purchased, but it is difficult to persuade an insured on this point when loss or destruction is almost immediate. Within a reasonable period after purchase, therefore, replacement of such items (cameras, cars, etc.) is relatively commonplace.

(d) **Reinstatement**

This is a word that has a number of meanings in insurance. In the context of claims settlement methods, it means the restoration of the insured property to the condition in which it was immediately before its destruction or damage. As with replacement and repair, reinstatement is not without potential problems, where complaints arise as to the quality of the replacement or work done. However, this form of settlement is quite common with **damaged buildings**.

It may also be appropriate where the insured has a totally unrealistic opinion of the value of his damaged building and the insurer is quite positive that rebuilding will be much cheaper.

Note: 1 The term “reinstatement” overlaps in meaning with “repair” and with “replacement”.

2 The **option** as to the method of providing an indemnity to the insured is with the **insurer**. But, remembering the desire to have a **satisfied** customer, it will be rare to force a method of settlement upon the insured which he does not prefer.

3.2.3 Insurance Claims Complaints Bureau

The structure and functions of the Insurance Claims Complaints Bureau (ICCB) were discussed in detail in “**Principles and Practice of Insurance**” (Chapter **6.1.4**), but by way of summary, several of its important features are repeated below:

- (a) *only personal insurance claim-related complaints*: the facility is not available with disputes arising from **industrial, commercial** or **third party** insurance;
- (b) *claim limited to HK\$800,000* (jurisdiction limit): complaints concerning larger sums must be resolved by other methods (litigation, arbitration, etc.);
- (c) *the complainant pays no fee*: win or lose, the service is designed to remove from the insured the fear and threat of expensive legal action;
- (d) *legal action still possible*: the insured is not bound by the decision of the Insurance Claims Complaints Panel (Panel under the ICCB);
- (e) *Panel’s award is final*: the Panel’s decision is binding upon the insurer; and
- (f) *limitations on the insured*: the insurer concerned must have intimated its **final position**, the complaint must be made within **6 months** of that final position being notified to the insured, and the case must **not** already be the subject of litigation or arbitration proceedings.

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Representative Examination Questions

Type “A” Questions

1 Which of the following is/are legal requirement(s) to be satisfied before a valid claim arises under a general insurance policy?

- (a) the absence of fraud;
- (b) the cause of the loss must be covered;
- (c) the loss occurrence must normally arise within the policy dates;
- (d) all of the above.

[Answer may be found in **3.1.1**]

2 An “ex gratia” claim payment is one which:

- (a) is not legally required;
- (b) is legally required under the policy;
- (c) relates to a benefit rather than an indemnity;
- (d) concerns liability under compulsory insurance requirements.

[Answer may be found in **3.1.2(c)**]

3 Producing a receipt for property lost or destroyed is:

- (a) never insisted upon by insurers;
- (b) always insisted upon with every type of claim;
- (c) a legal requirement that the insurer has no right to waive;
- (d) a requirement sometimes waived with minor personal insurance claims.....

[Answer may be found in **3.1.5(a)**]

Type “B” Questions

- 4 Which of the following statements regarding the Insurance Claims Complaints Bureau are **true**?
- (i) The scheme only applies to personal insurance claims.
 - (ii) The complainant is never charged a fee for this service.
 - (iii) Either the insured or the insurer may appeal against an award.
 - (iv) The maximum amount of a claim under dispute is limited to HK\$800,000.
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- (a) (i) and (ii) only.
 - (b) (i), (ii) and (iv) only;
 - (c) (ii), (iii) and (iv) only;
 - (d) (i), (ii), (iii) and (iv).

[Answer may be found in **3.2.3**]

[If still required, the answers may be found at the end of the Study Notes.]

4 CUSTOMER SERVICE

Insurance is part of **financial services**. With increased competitiveness and growing **consumer awareness**, the concept of “**service**” is gaining an ever-increasing significance. The realization that service is not only related to good business practice, but is also the legitimate expectation of customers, may be seen from three perspectives:

- (a) *In-house (individual companies)*: more and more companies are producing guidelines and policy statements on this important issue, for the instruction of their **staff** and information of their **customers**.
- (b) *The insurance industry*: central associations of insurers and/or insurance intermediaries have appreciated the importance of public declarations and codes of practice in this area, to raise public confidence in the industry.
- (c) *Government*: all governments are under a duty to protect the welfare of their citizens. Seeing that they get fairly treated in such an important matter as insurance is an issue of high profile. Cooperation with, and as necessary the regulation of, the insurance industry in various aspects of customer service, is important.

Specific considerations for this very high-profile subject were studied in detail in “**Principles and Practice of Insurance**”. The following Notes are therefore by way of revision and reminder.

4.1 CUSTOMER SERVICE AND ITS IMPORTANCE

The bad insurer and staff may adopt a “take it or leave it” approach to customers. This short-sighted approach will create a bad image for the industry as a whole. Customer service is no longer an **option** (i.e. only a matter of opinion and personal preference). If the insurer does not address this issue and ever seek to improve the service provided, the results will almost certainly include:

- (a) *Loss of business*: the public are increasingly aware of their perceived rights. These include courteous and efficient service.
- (b) *Loss of insurance intermediaries’ support*: insurance agents must have confidence in their principals and insurance brokers in the insurers recommended. It is not reasonable to expect the insurance intermediaries to be able to produce the business if their efforts are not backed up by quality service. Those insurers who are seen to be providing quality service will be in a better position than others to attract and retain insurance intermediaries.

- (c) *Loss of market prestige*: confidence in the integrity and efficiency of an insurance company is extremely important. This goes far beyond any question of not “losing face”, important as this is in our culture. Bad service is one of the qualities that peer group associations and market colleagues will be very concerned about.
- (d) *Government involvement*: insurers are authorized to do business in Hong Kong not only to make insurance products available, but to enhance the standing and reputation of the territory. The last thing Hong Kong wants, as an important financial services centre, is for that service to be indifferent or suspect. Bad service will sooner or later, quite rightly, be the subject of Government concern and, if necessary, action.

4.1.1 The Importance of Customer Service

Much of this will be evident from the above comments. However, the importance of this issue must not only be seen in the need to avoid **negative** results. There are extremely important **positive** issues to be recognized as well. These include:

- (a) *Customer loyalty*: general insurance business usually involves policy renewals. People do not stay with companies who do not treat them well. It is true that intensive marketing may produce short-term increases of business, but **continuity** (or the **retention** of business) is extremely important. Renewals are much less labour-intensive (costly) than underwriting new risks, and keeping good customers makes obvious sense.
- (b) *Customer “productivity”*: customers who are happy and comfortable with their insurers not only remain loyal with their own business, but also are a most productive source of extra business, by recommendations and word of mouth advertising to family and friends.
- (c) *Increased profitability*: good service means few complaints. Complaints are “bad news” in every respect. Not only are they bad publicity, they are often very time-consuming and expensive to handle. Avoiding complaints by an efficient and fair treatment of customers leaves more time for productive work and therefore must impact upon profitability.

Customer service relates to **efficiency**, **courtesy** and, in considerable measure, **business ethics**. The following Notes touch upon each of these aspects.

4.2 POLICIES AND CODES OF CONDUCT OF ORGANIZATIONS

By “policies”, of course, the heading refers to declared principles, not contract documents given to the insured. Increasingly, individual companies are realizing the practical importance of stating their corporate principles and business practice in writing. Whilst such documents are **not** legal, in the sense of contractual obligations, they have an

extremely important **persuasive** influence on the company, both as a **standard** of declared intentions and as a **measure** of performance.

Many companies in Hong Kong have already produced such published declarations. It is almost certain that this practice will grow. Each company will of course have its own style of presentation and content with such documents, but typically the documents will be produced for **insurance intermediaries** and **policyholders** and are very likely to include:

- (a) a commitment to *quality and service*;
- (b) a dedication to high *professional standards*;
- (c) a promise of *efficiency* and high *business ethics*;
- (d) an undertaking to deal with claims *fairly* and *promptly*;
- (e) specific information on *business conduct* and certain *practices*.

Some examples of (e) will be considered in **4.3** below. Those and subsequent Notes will outline the fact that declared criteria and business intentions are not only self-imposed commitments, but will at times be required by central associations or even by statute.

4.3 CUSTOMER SERVICE STANDARD AND ITS IMPLEMENTATION

Specific details of the declared standards for customer service will vary with different insurers, but a representative set of declared standards is very likely to include the following:

- (a) *identification of customer needs*: rather than promoting insurance products for the benefit of the insurer only;
- (b) *confidentiality and compliance*: with regards to information supplied and strict compliance with the customer's wishes;
- (c) *provision of desired cover*: any inability to meet the customer's requirements will be honestly brought to the customer's attention;
- (d) *insurance documentation*: all documents (**cover note, insurance certificate, policy, endorsement**, etc.) will be supplied promptly and as required by the customer;

- (e) *claims commitments*: claims will be handled promptly and fairly, with a promise to keep the insured informed, as appropriate.

The above, in one form or another, represent **promises** on behalf of the insurer. Additionally, policy declarations are very likely to remind the **insured** and **insurance intermediaries** of certain obligations that are required of them, including:

- (f) *disclosure requirements*: the duty of **utmost good faith**;
- (g) *premium payments*: the obligation to pay premiums when due, and (for **insurance intermediaries**) any **credit** facilities allowed;
- (h) *Code of Practice*: insurance agents will be bound by a Code of Practice (see **4.4(e)** below). A reminder of this is usually given.

4.3.1 Implementation of Customer Service Standard

As far as the individual company is concerned, the commitments expressed in the policy statement will be **monitored** by **internal audit personnel**. Companies will take this responsibility very seriously, because any lapse of declared standards is important. Also, discovery and correction “in-house” is always preferable to the embarrassment and other consequences of public examination.

This is not to say that the company has total control over such matters. That would be too subjective and open to criticism. The fulfilment of company promises (or obligations imposed by industry associations or the Government) is under actual or potential monitoring by:

- (a) *policyholders and the general public*;
- (b) *industry associations*; and
- (c) *the Government*.

It must not be assumed from this that insurers are in a constant state of fear from oppressive scrutiny. That is going too far. But an important word in our society today is “**transparency**”, by which is meant an openness to conduct and practice, which must at all times be legally and ethically justifiable.

4.4 LEGAL AND REGULATORY OBLIGATIONS OF ORGANIZATIONS

This area was dealt with in some depth in “**Principles and Practice of Insurance**”, so we will not repeat the details here. However, by way of reminder, the following important aspects of customer service obligations in connection with General Insurance should be noted:

(a) **Contract and Common Law**

All relevant aspects of the **contract law** apply to the obligations of insurers towards the insured (their contract partners and **customers**) . As far as the **common law** is concerned, it should be remembered that the duty of **utmost good faith**, which is applicable to insurance contracts, applies to the **insurer** as well as the **insured**.

(b) **Insurance Companies Ordinance (ICO)**

The details we need not repeat here, but it will be recalled that the ICO has certain strict requirements regarding insurance companies, which include reference to:

- (i) *authorization of insurers;*
- (ii) *capital requirements;*
- (iii) *solvency margin requirements;*
- (iv) *“fit and proper” directors and controllers;*
- (v) *“adequate” reinsurance.*

These are all requirements to try to ensure the economic and social viability of insurers, which in the broader sense must be related to customer service. Some other important aspects of the ICO will be considered in the Notes below.

(c) **The Code of Conduct for Insurers**

This Code was introduced by The Hong Kong Federation of Insurers (HKFI) and applies to **personal** insurances effected by **individual** policyholders resident in Hong Kong. Again without providing specific details, we should recall that this Code deals with such matters as:

- (i) the expected standards of *good insurance practice* in such areas as:
 - (1) **underwriting and claims;**
 - (2) product **understanding;**
 - (3) customers’ **rights and obligations** under insurance contracts;
 - (4) customers’ **rights and interests** generally;
 - (5) the industry’s **public image** as a good **corporate citizen**.

- (ii) *advising and selling* practices.
- (iii) *claims*, particularly relating to such issues as:
 - (1) general **handling** (fair, efficient, prompt);
 - (2) criteria with the **denial** of claims;
 - (3) **miscellaneous** matters (claim forms, communication, etc.).
- (iv) *management of insurance agents*: specifically dealt with in the **Code of Practice for the Administration of Insurance Agents** (see (e) below).
- (v) *inquiries, complaints and disputes*: specifically covered by the **Code of Practice for the Administration of Insurance Agents** (see (e) below), the HKFI's Guidelines on Complaint Handling, and the ICCB (see **3.2.3**).

(d) **The ICO and Insurance Intermediaries**

The ICO (in Part X) gives statutory weight to the requirements on insurance intermediaries, with specific reference to such matters as:

- (i) *roles and responsibilities* of insurance agents and insurance brokers;
- (ii) *definitions* of insurance agents and insurance brokers, with prescribed **penalties** for anyone illegally claiming to be one or the other.

(e) **The Code of Practice for the Administration of Insurance Agents**

This Code was issued in accordance with provisions of the ICO and is approved by the **Insurance Authority** (IA). Once more not giving full details, we may note that this Code consists of six Parts, dealing with such matters as:

- (i) *interpretation*;
- (ii) *general principles*;
- (iii) *rules*;
- (iv) *procedures*;
- (v) *fit and proper criteria*;
- (vi) minimum requirements of *Model Agency Agreement* in the following areas:

- (1) general *business conduct* and *procedures*;
- (2) *cooperation with principals*; and
- (3) expected conduct in connection with *completion of proposal form*.

(f) **Guidance Notes**

These are issued by the **Insurance Agents Registration Board** and especially provide Guidelines for insurance agents' compliance on, say:

- (i) **Misconduct**;
- (ii) **Handling of Premiums**; and
- (iii) **Effective Date of Registration of Insurance Agents, Responsible Officers and Technical Representatives**

(g) **“Minimum Requirements” Specified for Insurance Brokers**

These were specified in accordance with the provisions of the ICO which introduced a framework for the supervision of **self-regulation** by the insurance broking industry. The **“minimum requirements”** specified for insurance **brokers** cover such matters as:

- (i) *qualifications and experience*;
- (ii) *capital and net assets*;
- (iii) *professional indemnity insurance*;
- (iv) *keeping of separate client accounts*;
- (v) *keeping proper books and accounts*.

The above are the minimum requirements specified by the **Insurance Authority**. In addition to these requirements:

- (vi) insurance **brokers** must be *fit and proper* for that role;
- (vii) **bodies** of insurance brokers must have rules and regulations to ensure that constituent members are *fit and proper*.

(h) **Codes of Conduct for Insurance Brokers**

Each of the two approved bodies of insurance brokers, namely the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association, requires their members to observe their Rules and Regulations, which include guidelines contained in a Code of Conduct on how their members should in the course of business safeguard the interests of clients.

(i) **Other Legislation and Related Ethical Issues**

Reference can be made to the Study Notes for the Core Subject “**Principles and Practice of Insurance**” for specific details, but for completeness in this review we may mention:

- (i) **Personal Data (Privacy) Ordinance;**
- (ii) **Sex Discrimination Ordinance;**
- (iii) **Disability Discrimination Ordinance;**
- (iv) **Family Status Discrimination Ordinance;**
- (v) Two Ordinances connected with **money laundering: Drug Trafficking (Recovery of Proceeds) Ordinance** and **Organized and Serious Crimes Ordinance;**
- (vi) **United Nations (Anti-Terrorism Measures) Ordinance** and **Guideline on the Combat of Terrorist Financing;**
- (vii) **Prevention of Bribery Ordinance;**
- (viii) **Prevention of insurance fraud.**

Each of the above could have a direct or indirect application to the broader meaning of customer service.

4.5 LEGAL IMPLICATIONS OF REBATING OF COMMISSION

Rebating of commission means that the insurance intermediary gives part of his commission to his client, thus producing a “cheaper” premium for the latter. In most cases, this is a harmless and understandable gesture. However, if the practice occurs as an improper **inducement** for securing business, it is a grave matter.

Rebating may in certain circumstances constitute **bribery** and **corruption**. Certainly, it undermines the basis of **rating** and honest establishment of due **reward** (commissions) for insurance intermediaries. For these reasons, **rebating commission** in respect of general insurance business to the employees, etc. of the insured without the insured's prior written consent is **prohibited** under the minimum requirements of the Model Agency Agreement. This also forms a provision of the **Code of Practice for the Administration of Insurance Agents**.

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Representative Examination Questions

Type “A” Questions

1 Customer service is an issue which is the concern of:

- (a) individual companies;
- (b) central insurance associations;
- (c) the Hong Kong Government;
- (d) all of the above.

[Answer may be found in **4**]

2 Customer service relates to:

- (a) courtesy;
- (b) business ethics;
- (c) efficiency of business operations;
- (d) all of the above.

[Answer may be found in **4.1.1**]

3 Which of the following is **not** one of the areas with specific requirements for insurance companies in Hong Kong, under the Insurance Companies Ordinance?

- (a) authorization;
- (b) capital requirements;
- (c) existing reinsurance arrangements;
- (d) profitability each year of operation.

[Answer may be found in **4.4(b)**]

Type “B” Questions

4 The Code of Conduct for Insurers outlines the expected standards of good insurance practice in certain areas. Which of the following areas are covered by the Code?

- (i) Underwriting and claims
- (ii) Customers’ rights and obligations
- (iii) Customers’ rights and interests generally
- (iv) The industry’s public image as a good corporate citizen

- (a) (i) and (ii) only;
- (b) (ii) and (iii) only;
- (c) (ii), (iii) and (iv) only;
- (d) (i), (ii), (iii) and (iv).

[Answer may be found in **4.4(c)**]

[If still required, the answers may be found at the end of the Study Notes.]

GLOSSARY

Accidental Bodily Injury (意外身體受傷) A requirement for personal accident claims, and subject to a precise definition (usually requiring external, visible and violent means). **1.2.1(b)(i)**

Accidental Loss or Damage (意外損失或損害) A material loss or damage caused by an undesigned, sudden and unexpected event, usually of an afflictive or unfortunate character, and often accompanied by a manifestation of force. **1.4.2**

Accidents Only Cover (純意外保障) Personal accident cover which does not include benefits for sickness incapacity. **1.2.1(e)(ii)**

Accumulation (積累) A potential danger in some classes of business (e.g. travel insurance and fire insurance) where many claims could arise from a single event, producing aggregate losses of catastrophic proportions. Appropriate reinsurance needs to be arranged to meet this possibility. **1.3.3(d)(iii)**

“Act” Insurance (「法令」保險) Deriving its name from the UK Road Traffic Act 1930, this relates to compulsory third party insurance for use of motor vehicles on a road. The extent of such cover is limited, consisting only of liability in respect of death of or injury to third parties. **1.1(b)**

Actual Total Loss (ATL) (實際全損) There is an ATL in marine insurance where the subject matter insured is destroyed, where it is so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived of the subject matter insured. **1.7(d)**

Additional Expenses (附加費用) As an item normally covered under a business interruption policy, they are expenses necessarily and reasonably incurred so as to reduce the extent of an insured loss. **1.4.1a(a)(ii)**

Adjustment (of Premiums) (調整 (保費)) Where the premium is based upon a factor that is very likely to vary during the policy year, a provisional premium may be paid at policy inception/renewal, and then adjusted with additional/return premium when full information is to hand. Found, for example, with liability insurances (where the premium may be based upon annual wages or turnover.) **1.6.1(c)**

Agreed Values (約定價值) “All risks” cover on valuable items such as jewelry and antiques is sometimes effected on an agreed value basis so that the sum insured (or the agreed value) is payable for a total loss (but strict indemnity for partial losses) regardless of the actual value of the subject matter of insurance at the time of loss.

1.4.2(d)(ii)

“All Risks” (「全險」) Property insurance cover where every possible accidental cause of loss or damage is insured, unless excluded by the policy. 1(b)(ii), 1.4.2

Arbitration (仲裁) A legally recognized method of resolving a dispute in a less formal, more private, manner than litigation. Often a subject covered by policy conditions. 3.2.1

Attestation Clause (見證條款) See **Signature Clause** (簽署條款) . 2.3.1(b)(vi)

Average (Marine) Non-total (i.e. partial) loss. It may either be **Particular Average** (單獨海損) affecting particular interests (cargo interest, hull interest, etc.), or **General Average** (共同海損), being a loss voluntarily sustained to prevent a total loss of a common marine adventure and shared by all interests represented in the adventure. 1.7(a)

Average (Non-marine) (海損(水險)) A claim-related penalty for under-insurance, inserted into most property insurances in Hong Kong. 2.3.2(b)(iv)

Average Adjusters (海損理算師) Experts in adjustment of losses in marine insurance, notably general average claims. 3.1.6(f)

“Avoidance of Certain Terms and Right of Recovery” Clause (「有權追回款項」條款) The insurer must meet compulsory insurance claims even where there has been a breach of a contract term that would otherwise allow such claims to be refused. In such circumstances, the Clause gives the insurer a right of recovery from the insured for direct payments of such claims to the third parties. 1.1(g)

Betterment Contribution (改善分擔) Where an improvement in property insured results from its repair, replacement or reinstatement necessitated by a loss of or damage to it, the insurer may ask the insured to contribute accordingly to the cost of such repair, etc. on the grounds that such improvement is outside the scope of the insurance. The payment made by the insured in such circumstances is termed “betterment contribution”. 3.2.2(c)

Blanket Cover (不記名／總括保障) Fidelity guarantee insurance covering the whole of the insured's staff, sub-divided into various categories. **1.4.6(a)(ii)(3)**

Boiler Explosion (鍋爐爆炸) An engineering insurance cover against damage to the insured boiler and/or liability for third party property and/or liability for death of or injury to third parties. **1.5.1**

Bond (保證) An undertaking made by a surety (e.g. an insurer) to a specified person to make upon demand compensation or penalty on behalf of the person guaranteed, in the event of the person guaranteed failing to fulfil a prescribed obligation. **1.4.7**

Buildings and Contents Cover (建築物及家居物件保障) Household insurance designed for owner-occupiers, covering buildings, contents, and all sorts of subject matter. **1.3.1(a)(iii)**

Buildings Only Cover (純建築物保障) Household insurance not covering the contents, very likely to be effected by a non-resident landlord **1.3.1(a)(i)**

Burglary Insurance (入屋盜竊保險) See **Theft Insurance** (盜竊保險) . **1.4.3(d)(iv)**

Business Interruption Insurance (營業中斷保險) See **Consequential Loss** (後果損失) . **1.4.1a**

Cancellation (取消) Most general insurance policies allow cancellation mid-term. This may be a right of the insurer and/or the insured. If the insurer cancels, he must return a pro rata premium. If the insured cancels, he may be entitled to a short-period refund. **2.4.2**

Cargo Insurance (貨物保險) Basically property insurance, on an "all risks" or specified perils basis, for goods transported by air or by sea. **1.7.1**

Cash in Transit Insurance (現金運送保險) An early name for **Money Insurance** (金錢保險) . **1.4.5(a)**

Certificate of Insurance (保險憑證) 1 Formal confirmation of the existence of compulsory insurance. A permanent document separate from the policy, found in motor insurance and pleasure vessel insurance. 2.2.3(c)(i)

2 A document confirming the cover granted under a master policy (e.g. in travel or marine cargo insurance). 2.2.3(c)

Claims (索償) The “end product” of insurance, consisting of requests for indemnity or benefit payments in respect of loss situations, or demands from third parties against liability insurance policyholders for compensation. 3.1

“Claims-Made” Basis (「索償申報」方式) A liability insurance policy written on a “claims-made” basis pays claims only if they are *made* during the actual currency of the policy. 1.6(b)

“Claims-Occurring” Basis (「索償發生」方式) A liability insurance policy written on a “claims-occurring” basis pays claims only if they *occur* during the currency of the policy, even though an actual claim develops a long time later. 1.6(b)

Classification of Insurance (保險分類) Grouping insurance business under a series of categories for identification and perhaps statistical purposes. There are a number of ways in which classification may occur, e.g. under the Insurance Companies Ordinance (by statute), by the traditional departmental method, etc. 1(a)

Code of Conduct for Insurers (承保商專業守則) Introduced by The Hong Kong Federation of Insurers, this applies to personal insurances arranged by individual policyholders resident in Hong Kong only. Concerns a range of activities, including good insurance practice and advising and selling practices, etc. 4.4(c)

Code of Practice for the Administration of Insurance Agents (保險代理管理守則) Issued in accordance with the provisions of the Insurance Companies Ordinance and approved by the Insurance Authority, this covers a number of issues affecting the management of insurance agents. 4.4(e)

Collision Liability (碰撞責任) In marine insurance, liability incurred as a result of the insured vessel’s collision with another vessel is traditionally insured three fourths by the marine hull policy and the remaining fourth by a P&I Club. 1.7.2(a)(iv)

Combined Liability Policy (責任保險組合保單) A combined policy usually covering public liability, employees' compensation and perhaps other liability exposures. **1.3.4(b)**

Combined Policy (組合保單) 1 A single policy document representing more than one type of insurance, each section or type of insurance being underwritten and rated separately. **1.3**

2 Fidelity guarantee insurances covering a number of named employees, specified on a schedule with individual sums insured and/or a floating amount of cover. **1.4.6(a)(ii)(2)**

Combined Property and Pecuniary Policy (財產及經濟權益保險組合保單) A combined policy offering a mix of property insurance and pecuniary insurance (e.g. business interruption insurance) offered. **1.3.4(a)**

Combined "Umbrella" Type Cover (「傘括」類型組合保障) Individually tailored cover for very large risks (e.g. Hong Kong International Airport) providing a wide range of insurance. **1.3.4(c)**

Commercial Vehicle (商用車輛) A major section of motor insurance business, relating to a wide range of vehicles used for business, rather than domestic and private, purposes. **1.1.3**

Common Law (普通法) Put simply, the Common Law is some sort of unwritten (non-statute) law, developed over centuries and consisting of prolific judicial decisions. This term is often used in a sense distinct from Equity, which is law made by judges to supplement the rules and procedures of the Common Law. **1.6**

"Common Law" Liability (「普通法」責任) In the context of EC insurance, the meaning of this term goes beyond "liability incurred in the common law". It is used to represent the liability of an employer towards his employees which arises otherwise than under the Employees' Compensation Ordinance. **1.6.1(a)(ii)**

Comprehensive Cover (綜合保障) The widest form of motor insurance, including both third party and "all risks" "own damage" cover. The comprehensive private car policy may also give other benefits, such as personal accident and medical expenses insurances. **1.1(a)(iii)**

Condition Precedent to Liability (責任出現前的先決條件) In *insurance*, this is a contract term a breach of which will invalidate a particular **claim**. **2.3.4(b)(iii)**

Condition Precedent to the Contract (合約生效前的先決條件) In *insurance*, this is a contract term which must be complied with in order for the contract to commence. **2.3.4(b)(i)**

Condition Subsequent to the Contract (合約生效後的條件) In *insurance*, this is a contract term which is to be complied with during the currency of the insurance contract (e.g. notifying a change of occupation under a personal accident insurance) other than a condition precedent to liability. **2.3.4(b)(ii)**

Consequential Loss (後果損失) 1 Exclusion: as property insurance is chiefly meant for material damage, any consequent expense (e.g. renting an alternative vehicle) is excluded specifically. **1.1.1(a)(i)(1)**

2 Cover: a pecuniary insurance, also known as **Loss of Profits** (利潤損失) or **Business Interruption Insurance** (營業中斷保險), covering loss of income, additional expenses, etc. consequent upon a fire or any other insured peril. **1.4.1a(d)(i)**

Constructive Total Loss (推定全損) Put simply, this is a term used in marine and some other classes of business (e.g. motor) to describe the situation where the subject matter of insurance is beyond economic repair or restoration and is therefore treated as an actual total loss. **1.7(e)**

Contents Only Cover (純家居物件保障) Household insurance not covering the buildings, very likely to be effected by a tenant. **1.3.1(a)(ii)**

Contract Law (合約法) The law governing agreements (including insurance agreements). **4.4(a)**

Contractors' "All Risks" Insurance (建築「全險」) An important class of business in Hong Kong, covering construction risks usually under two sections. Section I provides "all risks" cover on specified property. Section II provides liability insurance for third party injury and property damage arising out of the construction work. **1.5.3**

Contractual Liability (合約附加的責任) In insurance, this means legal liability assumed by an insured under an agreement, which would not attach to him but for this agreement. As its nature and scope vary a lot, it is invariably excluded by standard liability policies. **1.1(d)(iii)(3)**

Contribution (分擔) This is a claims-related doctrine of equity which applies as between insurers in the event of a double insurance. Apart from any policy provisions, any one of the insurers is liable to pay to the insured the full amount for which he would be liable had other policies not existed. After making an indemnity in this manner, the insurer is entitled to call upon other insurers similarly liable to the same insured to contribute to the cost of the payment. **3.1.3(f)(ii)**

Counter Guarantee (反擔保) A requirement invariably imposed with performance and similar bonds, as a form of collateral security in the event of default on the part of the person guaranteed. **1.4.7(d)(ii)**

Cover Note (暫保單) Written confirmation of (perhaps temporary) cover. It may be regarded as a temporary policy, although it has only a summary of contract terms. When used with motor insurance, it incorporates a temporary certificate of insurance. **2.2.3(a)**

Customer Service (客戶服務) A public relations exercise, particularly aimed at existing policyholders, to ensure the highest standards of practice and service **4**

Days of Grace (寬限期) A period after normal expiry where the renewal premium may be tendered and cover thereby kept continuous. Not available in all types of business, but found (for example) with medical insurances. **1.2.2(a)**

Deductible (免賠額)

1 Has the same meaning as a policy excess, but the term is more often used by U.S. insurers, and is used in connection with certain classes of business. **1.1(f), 2.3.3(b)**

2 Every marine hull policy is subject to a deductible, which is not applicable with total loss claims. **1.7.2(b)(ii)**

Directors' and Officers' Liability Insurance (董事及主管人員責任保險) A liability insurance particularly intended to cover senior company personnel and officers who might be sued personally in respect of company business. It is usual to insure the company as well under the same policy. **1.6.4**

Employees Compensation Assistance Scheme (僱員補償援助計劃) The central fund, funded partly by a levy on premiums, intended to implement the intentions of compulsory employees' compensation insurance when for some reason it does not exist or is ineffective. **2.2.5(b)**

Employees' Compensation (Insurance) (僱員補償 (保險)) Compulsory insurance for employers potentially liable for death, injury or disease to their employees arising out of and in the course of their employment. **1.6.1**

Employers' Liability (僱主責任) The liability at law of an employer in respect of death, injury or disease of his employees. This may arise under the Employees' Compensation Ordinance or otherwise. **1.6.1**

Engineering Insurance (工程保險) This includes contractors' all risks insurance, erection all risks insurance, machinery breakdown insurance, boilers explosion insurance, etc. **1.5**

Engineers (工程師) Independent experts consulted on highly technical risks (and sometimes claims) for their professional advice. **3.1.6(c)**

Erection "All Risks" Insurance (安裝工程「全險」) Cover very similar to contractors' "all risks" insurance, but in respect of the assembly and installation of property, rather than its construction. **1.5.4**

Estoppel (不容反悔) A rule of evidence whereby someone is prevented from denying or asserting a fact in legal proceedings. **2.2.4(b)(iii)(2)**

Ex Gratia Payment (通融賠付) A payment (usually with a claim) made on the understanding that there is no legal liability to make it. **3.1.2(c)**

Excess (or Policy Excess) (自負額 (或保單自負額)) A contractual provision requiring the insured to be responsible for up to the stated figure or proportion in respect of each and every claim. These may either be standard, underwriting or voluntary in nature. **1.1(f), 2.3.3(a)**

Explosion (爆炸) A peril excluded by the commercial fire policy (unless concerning explosion of gas or boiler used for domestic purposes). It is covered by standard household insurances and may be added to the commercial fire policy for extra premium. **1.4.1(a)(iii)**

Express (Warranty) (明示 (保證)) An insurance warranty that specifically appears in the policy (unlike an implied warranty). **2.3.4(a) Note 1**

Extra Benefits (額外利益) An addition to the standard policy cover, which is normally requested by the insured and subject to an additional premium. **1.1.1(b)(i)**

Extra Perils (附加危險) Perils which traditionally are able to be added to fire policies for extra premium. Also known as **Special Perils (特殊危險)**, **Allied Perils (類似危險)**, or **Extended Perils (擴展危險)**, they include a wide range of risks, including explosion, typhoon, malicious damage, vehicle impact, etc. **1.4.1(a)(iv)**

Faulty Design (錯誤設計) A standard exclusion in contractor's "all risks" insurance. **1.5.3(b)(i)**

Fee (費用) The price payable to the surety of a bond for its issuance. **1.4.7(c)**

Fidelity Guarantee Insurance (忠實保證保險) An insurance guarantee to a person against the dishonesty of another person (perhaps, an employee of the first person). **1.4.6**

"Fire" (「火災」) Fire, within the meaning of a fire policy, is a fire meeting the three criteria of actual ignition, something on fire which should not be on fire, and fire which is not deliberately caused or arranged by the insured. **1.4.1(a)(i)**

Fire and Extra Perils (Policy) (火災及附加危險 (保單)) A commercial fire insurance policy with extended cover for typhoon, explosion, etc. (collectively known as "extra (or special) perils"). **1.4.1**

Fleet Rating (車隊保險定價) Special rating in motor insurance for a "fleet" (a number of vehicles under a common ownership or management), very much related to the experience of the fleet itself. **1.1.3(b)(iii)**

Forcible and Violent Entry or Exit (以強行及暴力方式進入或離開) A standard requirement for valid claims under a commercial theft insurance. **1.4.3(b)(i)**

Franchise (起賠額) A policy provision which eliminates small claims (amounts within the franchise) but pays larger claims (attaining or higher than the franchise figure, depending on wording) in full. **2.3.3(c)**

Fraud (欺詐) Dishonestly and knowingly attempting to cheat, such as supplying information known to be false when arranging the insurance, or various forms of dishonesty in connection with claims. According to the typical fraud condition used in general insurance policies, proved fraud entitles the insurer to terminate the policy with forfeiture of benefits otherwise available to the insured. **2.3.5(d)(i), 3.1.1(a)**

Fundamental Risks (基本風險) Risks with enormous, probably catastrophic, potential for loss, e.g. war and nuclear risks, which are frequently standard policy exclusions. **1(c)**

General Average (共同海損) Put simply, this is a loss which is voluntarily incurred to save an endangered marine adventure from a total loss. If that is successful, all interests represented in the adventure must contribute towards the loss. **1.7(a)(ii)**

General Exceptions (General Exclusions) (通用除外責任) Policy limitations which apply to every part of the policy. **2.3.1(b)(iv)**

Geographical Area (地理區域) Losses occurring otherwise than within this area as defined in the policy are outside the scope of the cover. Applicable to a number of classes, e.g. “all risks”, motor and travel insurances. **1.1(d)(i)**

Glass Insurance (玻璃保險) Also known as **Plate Glass Insurance** (平板玻璃保險), this is an “all risks” type cover on fixed glass. **1.4.4**

Gross Profit (毛利潤) A primary item of subject matter insured by a business interruption policy. It is specifically defined in the policy, not identical with an accountant’s definition. **1.4.1a(a)(i)**

Health Insurance (健康保險) It covers accidental injury, sickness or disability of the insured person. **1.2**

“Hold-Up” (Cover) (「搶劫」(保障)) An extension to a theft policy, providing cover for theft accompanied by violence or threat of violence. **1.4.3(d)(i)**

Household Insurance (or **Home Insurance**) (家居保險) A package of personal insurances on domestic property (covering buildings only, contents only, or combined buildings and contents), liability and all other types of subject matter of insurance. **1.3.1**

Hull Insurance (船體保險) Marine insurance on a vessel, and its equipment, stores, etc. **1.7.2**

Implied (Warranty) (隱含(保證)) An insurance warranty that is applicable, but does not appear in the policy, e.g. “fitness to carry” warranty in marine cargo insurance. **2.3.4(a)Note 2**

Indemnity Period (彌償期間) In business interruption insurance, it is a period, starting from the date of an insured occurrence (e.g. a fire) and ending not later than the maximum indemnity period commencing as defined on the same date, during which the results of the business insured shall be affected as a result (e.g. loss of gross profit). The date of the insured occurrence must be within the period of insurance; otherwise no losses will be recoverable. **1.4.1a(d)(ii)**

Inevitable Loss (不可避免的損失) A standard exclusion under “all risks” insurance, since such losses, being losses which must happen, cannot be described as “risks”. **1.4.2(b)(i)**

Inexperienced Driver (缺乏經驗的司機(或稱新牌司機)) One who has not held a full driving licence longer than the specified minimum period (often 2 years) and therefore subject to a specific excess. **1.1.1(a)(i)(4)(C)**

Inherent Vice (固有缺點) A standard exclusion in marine cargo insurance, relating to loss or damage arising from the nature of the cargo itself (e.g. meat, fish, etc. going bad without the intervention of an external cause). **1.7.1(b)(iv)**

Institute Cargo Clauses (A), (B) and (C) (協會貨物 (A)、(B) 和 (C) 條款) The three most well-known and most commonly used sets of Institute Clauses designed for marine cargo insurance cover. Institute Cargo Clauses (A) is on an “all risks” basis, (B) and (C) are on a specified risks basis, the former having wider cover. **1.7.1(a)**

Institute Clauses (協會條款) Institute of London Underwriters (ILU) policy wording used with marine insurances. **1.7(h)**

Insurance Authority (保險業監督) A public officer appointed and endowed with appropriate powers under the provisions of the Insurance Companies Ordinance for the purpose of regulating the Hong Kong insurance industry. **4.4(e)**

Insurance Claims Complaints Bureau (ICCB) (保險索償投訴局) A facility for dealing with personal insurance policyholder’s complaints about a claim-related matter. The facility is free to the policyholder and the insurer is bound by the decision of the Insurance Claims Complaints Panel under the ICCB. **3.2.3**

Insurance Companies Ordinance (《保險公司條例》) The primary legislation in Hong Kong for regulating the insurance industry. Despite its title, the ICO also contains provisions relating to the regulation of insurance intermediaries in Hong Kong. **4.4(b)**

Insurance Intermediaries (保險中介人) In Hong Kong these consist of insurance agents (usually representing the insurer) and insurance brokers (usually representing the insured). Separate regulatory rules and provisions apply to each group. **4.4(d)**

Insurances of Liabilities (責任保險) Insurances where the subject matter consists of the insured’s liability at law towards third parties (e.g. public liability insurance). **1(a)(iv)**

Insurances of Pecuniary Interests (經濟權益保險) Insurance where the subject matter is some legal right or financial interest (e.g. fidelity guarantee and business interruption insurance). **1(a)(iii)**

Insurances of Property (財產保險) Insurances where the subject matter consists of physical things (e.g. fire insurance and marine hull insurance). **1(a)(ii)**

Insurances of the Person (人身保險) Insurances where the subject matter is a human being's life, limb, health, or medical expenses (e.g. personal accident insurance). **1(a)(i)**

Jurisdiction Clause (司法管轄權條款) A liability insurance clause which excludes liability of the insured established by judgements made by courts outside of the territory specified (e.g. Hong Kong). **1.6.3(b)(iv)**

Levies (徵款) Charges against insurance premiums, primarily to assist in the implementation of compulsory insurance systems. Particularly involving motor and employees' compensation policies, the levies are fully or in part paid to the Motor Insurers' Bureau, the Employees Compensation Assistance Scheme, and the Employees Compensation Insurer Insolvency Bureau. **2.2.5**

Liability Insurance (責任保險) Involves a range of different insurances, but with the common denominator of indemnifying the insured against liability at law towards third parties. **1.6**

Licensed (Driver) (持有執照的 (駕駛者)) A requirement of motor insurances is that the insured driver possesses a valid driving licence for the vehicle concerned, or did possess such a licence and is not barred or disqualified from holding one. **1.1(d)(iv)(2)**

Lightning (閃電) A peril traditionally associated with fire insurance, the damage from which is covered whether fire results or not. **1.4.1(a)(ii)**

Limitations as to the Use of the Vehicle (汽車使用限制) The use of a motor vehicle is so important a rating factor that, the policy and certificate of insurance always make reference to this provision whereby cover does not apply if the vehicle is used for purposes outside those defined. **1.1(d)(ii)**

Litigation (訴訟) The formal process of having a dispute resolved through the courts. **3.2.1**

Local Vessel (本地船隻)

(a) any vessel used solely within the waters of Hong Kong, whether registered under the Merchant Shipping (Registration) Ordinance (Cap 415) or in a place outside Hong Kong;

- (b) any vessel regularly employed in trading to or from Hong Kong unless registered in a place outside Hong Kong;
- (c) any vessel possessed or used for pleasure purposes in the waters of Hong Kong;
- (d) any vessel employed in sea fishing plying regularly in the waters of Hong Kong, or using the waters of Hong Kong as a base; or
- (e) any vessel –
 - (i) registered in the Mainland of China or Macau;
 - (ii) employed in trading to or from Hong Kong; and
 - (iii) issued with any certificate by a government authority of the Mainland of China or Macau permitting its trading to Hong Kong other than any accepted convention certificate. **1.7.4**

“Long-Tail” Business (「長期責任」業務) Types of insurance where claims may develop slowly over a number of years and take a long time to settle (especially liability classes). **1.6(a)**

Loss Adjusters (理賠師) Claims investigators and negotiators, usually engaged and remunerated by the insurer, although they are independent advisors. May be used in any class of business, but particularly with (large) fire and theft claims. **3.1.6(b)**

Loss of Profits Insurance (利潤損失保險) See **Consequential Loss** (後果損失) . **1.4.1a(d)(i)**

Loss of Use (使用損失) In motor insurance, this relates to the extra expense of hiring an alternative vehicle whilst one’s own is unusable because of an accident. It is possibly available as an extra benefit. **1.1.1(b)(i)(2)**

Lump Sum Benefits (整筆支付的利益) Specified amounts payable (especially with personal accident insurances) in respect of death or other permanent injuries (loss of limbs, etc.). **1.2.1(a)(i)**

Machinery Breakdown Insurance (機器損壞保險) It is an “all risks” cover against loss of or damage to plant and machinery, other than those insurable under a standard fire and extra perils insurance policy. **1.5.2**

Market Exclusions (業界除外責任) Recognised by the majority of, if not all, insurers to be necessary policy limitations, and forming standard policy exclusions, e.g. nuclear, radioactive and war risks. **2.3.5(c)**

Master Policy (總保險單) A policy found with travel insurance, marine cargo insurance, etc whereby numerous persons or voyages are covered by the issue of certificates of insurance, cover notes or even separate policies. **1.3.3(d)(ii)**

Material Damage Proviso (實物損害附帶條件) A requirement under a business interruption policy that a valid claim exists under a property insurance before an interruption claim can be considered. **1.4.1a(b)(i)**

Material Fact (重要事實) Legally defined to mean every circumstance which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will accept the risk. **2.1(b)**

Maximum Indemnity Period (最長彌償期間) In business interruption insurance, where the period of interruption following an insured occurrence (e.g. a fire) is longer than the Maximum Indemnity Period (specified in the policy in terms of months), those losses which occur subsequent to the expiry of the Maximum Indemnity Period will not be recoverable. **1.4.1a(d)(ii)**

Medical Expenses (醫療費用) (As a separate insurance, see **Medical Insurance**.) When part of the comprehensive cover for private car insurance, this is a section offering very low limits of indemnity for medical expenses for the treatment of occupants of the insured car. **1.1.1(a)(iii)**

Medical Insurance (醫療保險) Insurance related to the cost of medical expenses and medical treatment arising from accident or sickness. **1.2.2**

Medical Malpractice Insurance (醫療事故責任保險) A form of professional indemnity insurance insuring against medical practitioners' liability for professional negligence. **1.6.3**

Minimum Requirements Specified for Insurance Brokers (對保險經紀的「最低限度要求」) "Minimum Requirements" are specified under Part X of the Insurance Companies Ordinance for compliance by persons applying to become authorized insurance brokers and by existing authorized insurance brokers. In addition to the requirements that insurance brokers be "fit and proper" and the approved bodies of insurance brokers must have rules and regulations to ensure that its members are "fit and proper", the Insurance Authority has stipulated five requirements, including qualifications and experience, capital, net assets, etc. **4.4(g)**

Model Agency Agreement (標準代理合約) Forming part of the Code of Practice for the Administration of Insurance Agents, this indicates the minimum provisions applicable to insurance agency agreements. **4.4(e)(vi)**

Money Insurance (金錢保險) Originally known as **Cash in Transit Insurance (現金運送保險)**, this cover is on an “all risks” basis covering various types of “money” in various situations/locations. **1.4.5**

Moral Hazard (道德危險) The human factor associated with a risk, bearing upon the likelihood and extent of claims. **2.1.2(b)**

Motor Cycle Insurance (電單車保險) A division of motor insurance, to insure motorised two-wheeled (sometimes three-wheeled) vehicles. **1.1.2**

Motor Insurance (汽車保險) The insurance of motor vehicles and third party or other associated risks. Primarily private vehicles, motor cycles and commercial vehicles insurances. **1.1**

Motor Insurers’ Bureau of Hong Kong (MIB) (香港汽車保險局) A central body, funded by a levy on motor insurance premiums, whose function is to fulfil the intentions of compulsory motor insurance, where such insurance is not available or effective. All authorized motor insurers in Hong Kong must be a member of the MIB. **2.2.5(a)**

Motor Trade (Insurance) (汽車行業 (保險)) Insurance specially designed to meet the needs of garages and similar enterprises engaging in the motor trade. **1.1.3(b)(iv)**

Motor Vehicles Insurance (Third Party Risks) Ordinance (汽車保險 (第三者風險) 條例) The statute embodying the requirement for compulsory motor insurance in Hong Kong. **1.1(b)**

“New for Old” Cover (「以新代舊」保障) A term used in marine hull insurance and perhaps in household contents insurance to signify that the basis of claim settlement does not take into account wear and tear, depreciation, etc., which are normally uninsurable. **1.7.2(a)(i)**

No Claim Bonus (無索償獎金) An inaccurate historic term for a no claim discount, in motor insurance. **1.1(c)(i)**

No Claim Discount (無索償折扣) A system of rewarding the insured for one or more claim-free years in motor insurance (possibly occurring with other classes), by allowing a discount on the renewal premium for the coming year. Usually on an increasing scale, the highest scale applying to private cars. **1.1(c)**

Non-Material Facts (非重要事實) Information which although possibly falling within the definition of “material facts” is not required to be disclosed under the duty of utmost good faith. These include facts which improve the risk, facts which the insurer may be deemed to know, etc. **2.1.1(b)**

“One Third” (Deductions) (「三分之一」(扣減)) Provisions within a pleasure craft policy allowing up to one third of the cost of repair or replacement to be deducted from the settlement of claims for certain items (e.g. sails and outboard motors), cover otherwise being on a “new for old” basis. **1.7.3(e)**

Operative Clause (履行條款) That section of a scheduled policy form which outlines the circumstances in which cover operates. Also known as the **Insuring Clause** (承保條款). **2.3.1(b)(iii)**

Package Policy (一籃子保單) Put simply, it is a single policy containing different types of cover (e.g. different kinds of liability insurance). **1.3**

Particular Average (單獨海損) Put simply, this is “Average” (海損) (i.e. partial loss) affecting the subject matter insured, other than a **General Average Loss** (共同海損). **1.7(a)(i)**

Penalty (罰款) The amount payable in respect of a claim under an insurance bond. **1.4.7(a)**

Performance Bond (履約保證) A bond, rather than a policy, guaranteeing the completion of construction work within a specified time period. **1.4.7(a)**

Permanent Disablement (永久殘疾) A heading under which lump sum personal accident insurance benefits may be paid. May be total permanent disablement (e.g. two or more limbs lost) or partial permanent disablement (e.g. one limb lost). **1.2.1(a)(1)**

Personal Accident and Sickness Insurance (人身意外及疾病保險) A traditional form of cover, providing stated benefits for accidental death and various specified injuries, with weekly benefits for temporary disability. Only the weekly benefit item applies to sickness claims (not many PA policies in Hong Kong are very likely to include sickness cover.) **1.2.1**

Personal Lines Insurance (個人險種) Non-commercial insurances provided to private individuals, including private motor insurance, household insurance, etc. **2.3.1(a)**

Physical Hazards (實質危險) The more concrete physical features and characteristics of a proposed risk, bearing upon the likelihood or extent of claims. **2.1.2(a)**

“Plain English” Policy (Wording) (「淺白英語」保單 (措詞)) Policy wording that is more “user friendly” and comprehensible to the general public than traditional wording. Mostly used with personal lines insurances (e.g. motor and household). **2.3.1(a)**

Pleasure Craft Insurance (遊艇保險) Insurance of pleasure craft, covering property and liability risks. **1.7.3**

Policy (保單) The most commonly used documentary evidence of the existence and terms of a particular insurance contract. **2.2.3(b)**

Policy Conditions (保單條件) Put simply, these are various printed provisions **regulating** the insurance contract. **2.3.1(b)(v), 2.3.2(b)**

Policy Specification (保單說明書) See **Specification** (說明書) . 1.4.1a(b)(ii)

Premium (保費) The insured's consideration in the contract. The payment for the cover provided. 2.2.4

Private Car Insurance (私家車保險) A significant division of motor insurance, consisting of vehicles used predominantly for social, domestic and pleasure purposes (although the insured's own business use may be included). 1.1.1

Pro Rata Average (Non-Marine) (比例分攤 (非水險)) A contractual penalty for under-insurance, whereby the amount of loss payable by the insurer is reduced in proportion to the degree of under-insurance. 1.3.1(b)(vi)

Products Liability Insurance (產品責任保險) It covers liability in respect of injury or damage caused by goods sold, supplied or repaired, services rendered, etc. and happening elsewhere than at premises owned or occupied by the insured. 1.6.2

Professional Indemnity Insurance (專業彌償保險) A liability insurance covering professional people (doctors, lawyers, insurance brokers, etc.) for legal liability in respect of injury, loss or damage caused through their negligence. 1.6.3

Proposal Form (投保書) An important document, often constituting the basis of the proposed contract, in the form of a questionnaire obtaining information from a prospective insured on the risk he wishes to insure. Also known as an **Application** (申請表) . 2.1(a)

Protection and Indemnity Associations (P&I Clubs) (船東保賠組織) Self-insurance organizations formed by shipowners mainly to cover the members against marine liability risks, not covered by conventional marine insurance policies. 1.7(g)

Provisional (Premium) (臨時 (保費)) An initial premium with an insurance where the final premium can only be calculated when information is available later (e.g. size of payroll or turnover). An adjustment with extra or refund premium should be made at the end of the policy year. 1.6.1(c)

Public Liability Insurance (公眾責任保險) It covers liability in respect of death, injury or property damage that is not insurable by specialized liability insurances such as motor insurance, EC insurance, products liability insurance and professional indemnity insurance. 1.6.5

Public Policy (公共政策) At least to the layman, this legal term is rather flabby and amorphous. Sometimes, the courts would not allow something to be done, because that is contrary to public policy. For example, agreements which will have the effect of restricting an individual's freedom of marriage and contract terms which purport to oust the jurisdiction of the courts are both void. Further, a person who falls from scaffolding when trying to break into a flat is unlikely to have a valid tortious claim for the resultant injury against the building owners because his claim would have to be based on his illegal conduct. **2.3.5(d)(ii)**

Quantum (金額) The amount of a loss (rather than the question of the insurer's liability). **3.1.1(i)**

Quotation (報價) An indication from an insurer as to the premium and terms to be offered with a given risk. Unless appropriately qualified ("illustration purposes only", etc.), it may constitute an offer to the prospective insured. **2.2.1**

Rating Features (釐定保費的因素) The factors on which premiums are calculated. These vary with different classes of business. With motor insurance, for example, they will include scope of cover, engine capacity of the insured vehicle, use of the vehicle and value of the vehicle. **1.1(e)**

Recital Clause (敘文條款) The introductory paragraph in a scheduled policy form, which introduces the parties (not by name) and usually makes reference to the premium (not by amount), and to the proposal form and declaration as the basis of the contract. **2.3.1(b)(ii)**

Reinstatement (恢復原狀) As a method of providing an indemnity, it means the restoration of the insured property to the condition in which it was immediately before its destruction or damage. **3.2.2(d)**

Renewals (續保) The continuation of an existing policy for a further period. In general insurance, these are not automatic and they provide an opportunity for reconsidering the terms of the contract. **2.4.1**

Repatriation Expenses (送返開支) The cost of returning the insured's body or ashes to his home. Very likely to be part of the cover of a travel insurance. **1.3.3(a)(vii)**

Replacement (更換) A method of providing indemnity by giving the insured a replacement item, usually when the claim involves new or non-depreciating subject matters. **3.2.2(c)**

Representation (陳述) In insurance context, a representation is a statement of fact or belief, made by one party to another, and bearing upon a risk proposed for insurance; it may be verbal or in writing. **2.3.4(c)**

Risk Assessment Factors (風險估定因素) Those elements associated with a risk which help to determine its insurability and the terms under which it may be insured. **2.1.1(d)**

Risk Classification (風險分類) The practice of placing risks within homogenous groups for rating purposes. **2.2.4(a)(i)**

Risk Discrimination (風險差別對待) Distinguishing individual risks within a risk category, for the purpose of considering the application of improved or stricter terms according to those features of the individual risks which are not possessed by the average risks belonging to the same category. **2.2.4(a)(ii)**

Road Traffic Act 1930 (1930年的《道路交通法令》) The original piece of UK legislation introducing compulsory motor insurance, and giving its name to “Act” insurance. **1.1(b)**

Salvage (Marine) (救助 (水險)) The term “salvage” in maritime law usually refers to saving a vessel or other maritime property from perils of the sea, pirates or enemies, for which a sum of money called “salvage award” (or just “salvage”) is payable by the property owners to the salvor provided that the operation has been successful. It is sometimes also used to describe property which has been salvaged. **1.7(b)**

Salvage (Non-Marine) (損餘 (非水險)) It refers to any residual value in what is left of the subject matter of insurance (e.g. scrap value of a destroyed vehicle). **1.7(b)**

Schedule (承保表) A section of a policy form which contains all the information exclusive to that particular policy, e.g. insured’s name, subject matter of insurance, premium, policy dates, etc. **2.3.1(b)**

Scheduled Policy Form (承保表式保單) A common type of policy structure which contains a policy schedule. **2.3.1(b)**

Second Chance (改過機會) In fidelity guarantee insurance, it relates to the employer who discovers dishonesty on the part of an employee, but allows him to continue in his duties and employment. Grounds for refusal of a claim in respect of a subsequent default, unless the insurer has been informed and signified acceptance. **1.4.6(b)(ii)**

Settling Agents (理賠代理人) Agents named on marine cargo policies, to be contacted in the event of a claim, having authority to investigate and in some cases settle claims on behalf of the insurer. **3.1.6(d)**

Short-Period Premium (短期保費) A premium for a period of less than one year, with policies which are normally on an annual basis. Such premium will be higher than the pro rata sum. **2.4.2(b)**

Short-Period Refund (短期退保費) A return of premium for an annual policy terminated mid-term by the insured. Such premium will be less than the pro rata amount. **2.4.2(b)**

Signature Clause (簽署條款) A part of a scheduled policy form where the insurer signs to confirm his undertakings under the contract. Also known as the **Attestation Clause**. **2.3.1(b)(vi)**

Simple Contract (簡單合約) It is a contract created verbally, or by writing not under seal. It can also be inferred from conduct. **1.4.7**

Specific Exclusions (特定除外責任) These are exclusions which the underwriter decides should be applied to particular policies, because of the extra hazards the particular risks present. **2.3.5(b)**

Specification (說明書) An important part of the business interruption policy, containing contractual definitions of various terms applicable to the insurance, e.g. Gross Profit, Indemnity Period, etc. **1.4.1a(b)(ii)**

Specified Perils (指明危險) Causes of loss which are specifically mentioned as being covered by the policy (unlike “all risks” type cover). **1(b)(i)**

Standard (Policy Excess) (標準 (保單自負額)) An excess imposed by the insurer, without premium reduction, to a class of policy rather than for individual risks, and applicable to all claims or in certain specified circumstances, e.g. “young” or “inexperienced” drivers. **2.3.3(a)(i)**

Step-Back System (折扣回減機制) A feature of modern no claim discount (NCD) schemes, whereby a single claim does not wipe out an NCD for the ensuing year, where a high entitlement is being enjoyed. Put simply, for every claim in a year, the NCD for the ensuing year will be dragged backwards along the NCD scale for three steps (or years). **1.1(c)(ii)**

Subrogation (代位) The common law right of an indemnifying insurer to take over and benefit from recovery rights possessed by the insured against third parties. **2.3.2(b)(v)**

Sue and Labour Charges (損害防止費用) They are expenses reasonably incurred by the assured under a marine policy in preserving the insured property from an insured loss or in minimizing an insured loss. Such expenses are covered in addition to the sum insured. **1.7(c)**

Survey Agents (檢驗代理人) Marine claims investigators, especially concerned with marine cargo claims. **3.1.6(e)**

Survey Report (檢驗報告(書)) The document prepared by the surveyor to report on the findings of a survey and of great value to the underwriter (or claims official). **3.1.5(c)**

Surveyors (檢驗人) Specialised staff, or independent experts, engaged by the insurer to carry out an inspection of a proposed risk and report on its insurability or otherwise. Surveyors may also be employed to carry out inspection in connection with marine insurance claims or maritime claims. **3.1.6(a)**

Surveys (檢驗) The operation carried out by surveyors. In marine insurance, this may be connected with a proposed risk or related to a claim. **2.1.4(c), 3.1.6(a)**

System of Check (核査制度) An important element in the underwriting of fidelity guarantee insurances, relating to the internal discipline and control the employer exercises over guaranteed staff. **1.4.6(b)(i)**

“Target Risks” (「目標風險」) In general insurance, this term may be used to refer to large, hazardous risks. **1.4.3(d)(iii)**

Temporary Disablement (Benefits) (暫時殘疾(利益)) A heading of benefits under personal accident insurances. May be total temporary disablement or partial temporary disablement, for different weekly benefits and subject to a maximum number of weeks. **1.2.1(a)(2)**

Theft Insurance (盜竊保險) Also known as **Burglary Insurance**, this insures loss/damage caused by actual or attempted theft. With theft claims, however, commercial and household insurances require evidence of forcible and violent entry to or exit from the insured premises. (This limitation can sometimes be removed by the payment of extra premium.) **1.4.3**

Third Party, Fire and Theft (第三者責任、火災和盜竊) A form of motor insurance cover, covering third party liabilities (including compulsory insurance), loss of and damage to the insured’s vehicle caused by fire or theft. **1.1(a)(ii)**

Third Party (Insurance) (第三者(保險))

1 Insurance to indemnify the insured and other specified persons against their legal liability towards third parties for death, injury or property damage. **1.1(a)**

2 (Motor Insurance) It has a wider scope of cover than the “Act” cover, and includes liability to third parties for property damage.

1.1(b)

“Transparency” (「透明度」) An important concept in insurance practice and regulatory matters, whereby the public may be aware of important matters affecting them and justice may be seen to be done. **4.3.1**

Travel Insurance (旅遊保險) A package insurance, offering a wide range of cover, including personal accident, loss/damage to luggage and a range of miscellaneous headings such as loss of deposits, money, medical expenses, etc. **1.3.3**

Trend Adjustment (趨勢調整) In adjusting business interruption claims, an attempt is made to measure the loss sustained during the indemnity period by comparing income, etc. during that period with the comparable period last year (when business was not interrupted), making any necessary “**trend adjustments**” for such factors as increased market competition and an outbreak of the SARS epidemic happening during the indemnity period which in no way are imputed to the accident that has occurred.

1.4.1a(d)(iii)

Underwriting (核保) The process of determining the insurability and terms of a proposed insurance.

2

Underwriting Excess (承保自負額) A policy excess imposed by the insurer on an individual policy, without premium reduction and additional to any other excess, to deal with an adverse feature of the proposed risk.

1.1(f)

Unnamed Driver (不指名的司機) An insured driver not named in the policy, often being subject to an “unnamed driver excess” in respect of claims whilst he/she is driving.

1.1.1(a)(i)(4)(A)

Unoccupancy (物業空置) A policy provision in household insurances whereby cover is suspended if the property is left unoccupied for longer than a specified period (e.g. 60 consecutive days).

1.3.1(b)(iv)

Unseaworthiness (不適航) A ship’s state of not being reasonably fit, in any respect, to encounter the ordinary perils of a particular voyage.

1.7.1(b)(v)

Unspecified Items (不指明的物件) Items insured but not individually specified in a property insurance policy.

1.4.2(b)

Utmost Good Faith (最高誠信) The common law duty upon parties to an insurance contract to reveal all material information to each other, even without specific enquiry.

2.1(b)

Valued Policies (定值保單) Insurance policies on ships or cargo are normally valued policies. For the purposes of total or partial loss claims, the agreed value (instead of the actual value of the property insured) is taken as the value that prevails at the time of loss.

1.7(f)

Voluntary (Excess) (自願性 (自負額)) An excess requested by the insured (usually in motor insurance), in order to obtain a premium discount. This is additional to any other excess on the policy. **2.3.3(a)(iii)**

Wages (工資) A subject matter of business interruption insurance (if not included within the Gross Profit item). **1.4.1a(a)(iii)**

Warehouse to Warehouse (倉至倉) A description of the transit insured under a marine cargo policy, meaning that the cargo is covered from the time it leaves the sender's premises until it reaches the final storage place. **1.7.1(a)**

Warranty (保證) An absolute promise that the insured will do, or will refrain from doing, a specified thing, or whereby he affirms or negatives certain information. Breach of a warranty immediately relieves the insurer from liability under the policy. **2.3.4(a)**

Weakening of Support (減弱支撐) A standard exclusion in the liability section of a contractors' all risks policy, but which may be insurable as an extra benefit. It relates to the undermining or weakening of the support to third party property. **1.5.3(b)(ii)**

Wear and Tear, Depreciation, etc. (損耗、折舊等) Standard exclusions under all forms of "all risks" insurance. **1.4.2(b)(i)**

Weekly Benefits (每周利益) Payments for temporary incapacity under personal accident insurances. **1.2.1(a)(ii)**

Young Driver (年輕司機) A term in motor insurance denoting a person below the stated age (often 25 years), rendering claims subject to a "young driver" excess. **1.1.1(a)(i)(4)(B)**

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