



Newsletter Newsletter

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The Institute

The Insurance Institute of Hong Kong was founded in 1967 and is an independent professional body. It has more than 600 members.

The Institute's principle aim is to promote and advance the professionalism of the insurance industry and a well-recognised local qualification for the industry.

Contact us :

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GPO, Hong Kong
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Mr Y. O. Choi

This issue**November 2003**

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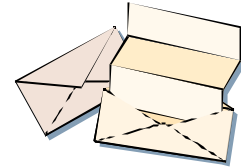
Moved? Change of correspondence details?

Don't forget to notify us with your latest details.

Contact us by email, fax or telephone to keep your record updated.



PRESIDENT'S LETTER



Dear Members

Welcome to this newsletter which I hope you find of interest. We are always happy to receive articles, advertisements or interesting notices therefore please send any of these directly to our Secretariat for inclusion in the future issues.

The annual bowling tournament takes place on 21st November (see article inside) so please put your team into the competition. Allianz is sponsoring the event for which we are grateful.

Our Annual General Meeting is scheduled for Tuesday 9th December – notice has already been sent and members are welcome to attend or send your proxy.

The CPD programme continues and I would remind you that by the end of 2004 all intermediaries should be qualified with the required number of certified hours. We have two more seminars this year (see inside) if you are short of qualified hours.

The IIHK Diploma examinations held this month have the highest entry numbers for some years which accurately reflects the global move back towards examinations and professional qualification. For a few years business was so good everywhere that practitioners thought it unnecessary to study however times have changed and qualified personnel are highly sought after by employers everywhere. Details of the Diploma are available on the IIHK website.

I am delighted to announce that we have just released two new text books for students and any one who is interested in insurance. These have been commissioned by the Institute and written by Stanley Hansell. They are excellent reading and can be purchased individually from our Secretariat (details inside).

Mike Haynes
President
Nov 2003



DIRECTORS LIABLE FOR HONG KONG MARKET MISCONDUCT

Rosie Ng
Denton Wilde Sapte

Recent legislation enacted in Hong Kong imposes tougher sanctions for market misconduct. The Securities & Futures Ordinance Cap.571 creates new civil liability as well as new criminal offences which will increase the liabilities of directors and officers. Rosie Ng, a Hong Kong-based partner in the insurance and reinsurance group of Denton Wilde Sapte, discusses the impact of these changes.

Securities & Futures Ordinance

The Ordinance was enacted on 13 March 2002. It is a consolidation of ten Ordinances aimed at modernising the legislation governing the securities and futures market. The Ordinance came into force on 1 April 2003. A Market Misconduct Tribunal has now been set up. Parallel civil and criminal regimes operate to combat market misconduct.

A new Market Misconduct Tribunal

The role of the Market Misconduct Tribunal is to determine:

- whether market misconduct has taken place
- the identity of the persons engaged in market misconduct
- the profit gained or the loss avoided as a result of the market misconduct

The Tribunal consists of one judge and two lay members. It replaces the Insider Dealings Tribunal. All hearings are held in public save in the "interests of justice". The Financial Secretary may institute proceedings following referrals from the Securities & Futures Commission (SFC) or

Secretary of Justice. A presenting officer conducts the proceedings. The Tribunal decides cases on a civil standard of proof (that is, there must be cogent evidence to suggest a high probability that market misconduct has taken place)

The Tribunal's powers are broad. It has the power to impose the following sanctions:

- *cease and desist order* – prohibition on the market misconduct alleged against a named person
- *"cold shoulder" order* – ban from acquiring, disposing or dealing in securities or futures contracts for up to 5 years
- *disqualification order* - ban from directorship/management of a company for up to 5 years
- *disgorgement order* - order to pay to the Government any profit gained or loss avoided as a result of the market misconduct
- *government costs and/or SFC costs order* – order to pay the Government's and/or SFC's reasonable costs



- *disciplinary referral order* – recommendation for disciplinary proceedings to be taken

The Tribunal also has extensive procedural powers such as the following:

- to call oral or written evidence and compel witnesses to attend
- to order the production of documents and statements
- to order oral or written evidence to be given on oath
- to prohibit the publication or disclosure of materials received by the Market Misconduct Tribunal

Breach of any order is an offence if there is no reasonable cause.

Market Misconduct offences

The Ordinance defines "market misconduct" as:

- (1) insider dealing
- (2) false trading
- (3) price rigging
- (4) disclosure of information about prohibited transactions
- (5) disclosure of false or misleading information inducing transactions
- (6) stock market manipulation

It is market misconduct to attempt any of these offences or to help or incite another person to commit any of them.

(1) Insider dealing

To commit the offence of insider dealing, a person must make use of relevant information. "Relevant information" includes information regarding the company, the company officers, shareholders, securities and derivatives which is not generally known but if known would materially affect the price of securities. That person commits the offence if, with that knowledge, he either:

- deals in listed securities or derivatives of that company; or
- helps or incites someone to deal or discloses relevant information knowing that that person will make use of that information to trade in securities or derivatives of a company.

The rules against insider dealing apply to circumstances where a takeover offer is made and to securities which have been or will be listed.

(2) False trading

The offence of false trading is aimed at catching "wash" transactions (where securities are traded but there is no change in their ownership) and where attempts are made to "churn" the market in order to push the price of securities up or down.

False trading occurs when a person intentionally or recklessly:

- creates a false or misleading appearance of active trading in securities or futures contracts



- creates an artificial price for securities or futures contracts
- makes "wash" sales
- makes "matched orders"

The transactions in question must be traded on a recognised market or by authorised automated trading services.

(3) Price rigging

Price rigging occurs when a person directly or indirectly

- sells or purchases securities where there is no change in their ownership and where it affects the price of those securities; or
- intentionally or recklessly engages in fictitious or artificial transactions or devices which affect the price of securities or futures.

(4) Disclosure of prohibited transactions

The offence of disclosing prohibited transactions is aimed at intermediaries who are involved in market manipulation. This arises when a person discloses, circulates, disseminates or authorises information regarding a prohibited transaction which affects the price of securities where he is either a party to the transaction or will benefit.

(5) Disclosure of false/misleading information inducing transactions

The offence of disclosing false or misleading information to induce transactions occurs when a person, whether intentionally, recklessly or

negligently, discloses misleading or false information which is likely to:

- induce subscription for securities or dealing in futures in Hong Kong
- induce the sale or purchase of securities in Hong Kong
- maintain, increase, reduce or stabilize the price of securities/futures in Hong Kong

(6) Stock market manipulation

The offence of stock market manipulation applies to conduct in Hong Kong which affects overseas markets or vice versa and where the offence is punishable in both markets. A person will be guilty of stock market manipulation where he engages in two or more transactions which are likely to maintain, stabilize, reduce or increase the price of securities with the intention of inducing persons to sell, purchase or refrain from buying those securities.

Criminal penalties

On indictment: a fine of up to HK\$10 million (approximately US\$1.3 million) and up to 10 years' imprisonment.

On summary conviction: HK\$1 million fine and up to 3 years' imprisonment.

No double jeopardy

A person cannot be tried in both the Market Misconduct Tribunal and the criminal courts for the same conduct.



Directors' and officers' liability

The Ordinance creates new statutory civil liability which results in greater exposure for senior management. A third party may sue in the civil courts if he suffers financial loss due to market misconduct or as a result of false or misleading information. Damages will be only payable if it is "fair, just and reasonable".

The Ordinance imposes a duty on every officer of the company to take reasonable steps to ensure that safeguards are in place to prevent the company from perpetrating market misconduct. For these purposes, an officer is defined as "a director, manager or secretary of or any other person involved in the management of the company".

Where a company has been found guilty of market misconduct, the Tribunal has power to make an officer of the company liable as a result of any breach which is directly or indirectly attributable to him.

The Ordinance also imposes civil liability on an officer of the company if the market

misconduct occurred with his consent or connivance. Compensatory damages are only payable if fair, just and reasonable.

An officer of a company is guilty of a criminal offence if he is proved to have committed or assisted in or incited another person to commit market misconduct. It must be shown that this took place with the officer's agreement or collaboration or that he "turned a blind eye" to the events taking place. In these circumstances, the relevant company will also be deemed to have committed market misconduct.

Conclusion

The Ordinance reflects the increasing demand by Government for greater accountability by senior management. Directors and officers should review their business practices and take reasonable steps to ensure that a proper system is in place to prevent market misconduct. The SFC announced that one of its major priorities for 2003 was to "toughen enforcement activities". The Ordinance provides the necessary framework to meet this objective. ◆◆◆

This article summarises certain recent developments in insurance law. It is not necessarily comprehensive statements of the law and readers should not act upon them without taking relevant professional advice.

©2003 Denton Wilde Sapte, unless otherwise indicated. All information correct as at time of printing. Consistent with our policy when giving advice on non-specific basis, we cannot assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, it is recommended that professional advice be sought.



THE IIHK 2003 BOWLING TOURNAMENT

Come to join us in the IIHK Bowling Tournament. If you missed it last year, please register now – it's a fun event!

Date :	Friday, 21st November 2003
Time :	Registration 18:45 Warm-up 19:00 to 19:10 Games 19:10 to 21:00
Venue :	Kai Tak Bowling Club Co., Ltd. Zone C of Departures Hall of the Passenger Terminal Bldg., 2 Concorde Road, Ex- Kai Tak Airport, Kowloon
Total no. of Teams :	18
Participants per Team :	Four (4) -can be all male, female or mixed

Rules:

- 1) Three (3) games per participant,
Twelve (12) games per team
- 2) Standard Tournament Rules
- 3) Each team must have one leader

Fees:

HK\$620 per team (including rental charge for shoes). Fees are non-refundable for whatever reason.

Team Prizes:

Trophies sponsored by Allianz Insurance (HK) Ltd for all members of the Champion, First and Second Runners-up teams

Individual Prizes:

- a) Female Highest Score in Series
- b) Male Highest Score in Series

To join, please complete and return the Registration Form, together with a cheque payable to "The Insurance Institute of Hong Kong Ltd" on or before 15th Nov 2003. Registration will be accepted on a first-come-first-served basis according to postmark. Successful applicants will be notified.

**** All participants must be current IIHK member.**

Yours sincerely

Joseph Chan
Social Event Director



To: The Insurance Institute of Hong Kong Ltd.
G.P.O. Box 6747
Fax: 2295 3939

The Insurance Institute of Hong Kong Ltd - Bowling Tournament

Registration From

Please reserve us a place: -

Team Name : _____

Team Members :

	Name	IIHK PI No.	Company
1	_____	_____	_____
	Team Leader		
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____

Contact No. of Team Leader : Tel _____ Fax _____

Cheque Enclosed : No. _____ Amount HK\$620

We understand that we will be abide by the rules and conditions of the tournament and the bowling centre; and will be responsible for any damages caused to the bowling centre.

Remarks:

All participants must be current IIHK members (if you are not a member, please visit our web site at <http://www.iihk.org.hk> or contact Mr. Y O Choi at 2520 0098 for membership application).

Date _____ Signature of Team Leader _____



Available Now!



Are you studying insurance?

The two books (1) **Introduction to Insurance** and (2) **Principles and Practices of Insurance** are available now!

An ideal reference for the Institute's examination, these two books are prepared for students studying the Hong Kong Diploma in Insurance Studies for the subjects of Introduction to Insurance and the Principles and Practice of Insurance examinations, but are also valuable reference books in their own right.

Each book costs \$120.00 – to purchase please contact our Secretariat at 25200098 or email : enquiry@iihk.org.hk.

If you enrol for the Diploma examinations the relevant book will be included as part of the examination fee.

To : Secretariat, GPO Box 6747, Hong Kong.



ORDER FORM

*** Order confirmed only upon receipt of payment.*

I would like to order the following :

_____	book(s) of Introduction to Insurance @120.00	= HK\$_____
_____	book(s) of Principal and Practices @ \$120.00	= HK\$_____

I enclose my cheque of _____.

Name _____

Tel : _____

Email _____

Signature _____

Date : _____

Book(s) to be delivered to (delivery included within HK and Kowloon area) :

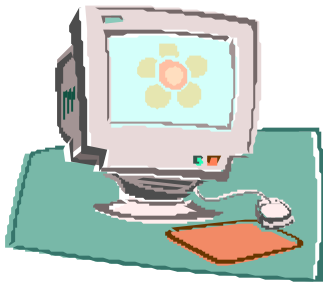


2004 MEMBERSHIP RENEWAL

Membership for 2004 is due for renewal. If you have not received a Renewal Form, please contact the Secretariat at telephone 25200098 or email : enquiry@iihk.org.hk

You may also download the Renewal Form from our web site : www.iihk.org.hk.

Membership fee remains at HK\$120 for 2004.◆◆◆



We've moved to electronic communications!

Please provide/update with us your latest email address to ensure efficient communications – all circulars and newsletters will be sent via email only.

Become a member and enjoy :

- ◆ reduced seminar costs;
- ◆ receive circulars and newsletter;
- ◆ participation in IIHK activities e.g. the Bowling Tournament; Annual dinner etc.

Please visit our web site www.iihk.org.hk to download the membership application form.

Annual membership fee currently stands at HK\$120.





THE PETER CORRIGAN INTERNATIONAL EXCHANGE AWARD

If you are a member of the Australian & New Zealand Institute of Insurance & Finance (ANZIIF) then you are eligible for this Award. Peter Corrigan, a well respected industry figure in Australia, left this award as a legacy to benefit young professionals in Asia.

The annual award sponsors two young insurance practitioners on an exchange visit to Australia/Asia.

To obtain information please visit www.trowbridge.com or www.theinstitute.com.au

If you decided to enter for the award please hurry, the entry closes on 30th November each year.

Don't forget to mention that you heard about it via the IIHK! ◆◆◆



FORTHCOMING EVENT :

Annual General Meeting

The AGM will be held on
Tuesday, 9th December 2003;
6:00 pm

Notice and details have been sent to members.

32nd Session of the General Course on "Personal Lines of Insurance"

16 – 27 February 2004

The Insurance School (Non-Life) of Japan

Invitation is now opened to applicants to attend the above Non-Life Course to be held in Tokyo from February 16 through 27, 2004. The course is organized by The Insurance School (Non-Life) of Japan on the theme of "Personal Lines of Insurance".

For details visit the <NEWS> section of our web site.



CONTINUING PROFESSIONAL DEVELOPMENT

CORE CREDITS SEMINAR FOR IIQAS

Our seminars are presented by quality speakers of legal practitioner. TWO CORE CREDITS will be awarded on each of the seminar.

Please ✓	Topics	Seminar Dates / Time	Language
	Recent developments in Insurance and Reinsurance Law - Case Studies	Thursday Nov 13 th 2003 16:00 – 18:00	English
	E & O Awareness - A Broker's Professional Liability	Thursday Dec 11 th 2003 16:00 – 18:00	English

Venue for all the above seminars :
 City University of Hong Kong, School of Continuing and Professional Education,
 8/F United Centre, 95 Queensway, Hong Kong.

Reply Slip

To : Mr. Y O Choi
 Secretariat
 The Insurance Institute of Hong Kong Ltd
 G.P.O. Box No. 6747, Hong Kong

"Yes" I wish to attend the above Seminar(s) and I attach my cheque payable to
The Insurance Institute of Hong Kong Ltd.

Name _____ I.D. Card/Passport No. _____

(Please fill in the name to be used in the attendance certificate)

IIHK Member Yes No Member PIN _____

Company _____

Address _____

Tel No. _____ Email _____

Fax No. _____

Payment Details :

Cost for each seminar :

- HK\$160 for non-member
- HK\$130 for Member of the Institute

Cheque No. _____

Bank _____

Do you want to join the IIHK membership?
 (New member qualifies for the reduced seminar cost of HK\$130.)

Yes, I enclose a cheque of HK\$120

No