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PricewaterhouseCoopers

**The Institute**

The Insurance Institute of Hong Kong was founded in 1967 and is an independent professional body. It has more than 400 individuals and a growing number of corporate 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.

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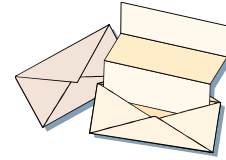
This issue ..... May 2008

**Contents**

- President's Message
- 2008 Council Members
- Crystal clear - When has valid notification of a potential claim been given? *Kidsons v Lloyd's Underwriters*
- Future of Hong Kong Healthcare System
- IIHK Diploma of Insurance – 1<sup>st</sup> Series Examination Table
- Forthcoming Event
- IIHK Legal Series CPD Seminar
- Face-to-Face Technical Insurance Training-Risk Management
- Membership Application Form



## PRESIDENT'S LETTER



In this our first newsletter of the year of the Rat, we update you with the latest happenings in the Institute as well as including some useful articles on a variety of topics that we hope you find informative.

I was truly delighted, and very honoured, to be elected President of the Institute once again and I look forward to the next two years with great enthusiasm. The market in which we work is changing continuously and it is only by staying totally involved with it that we can maintain our knowledge and professionalism.

The Institute Council has also had some changes in roles internally and for the first time we have included some pictures of these involved so you can "put faces to the names".

The activities of the IIHK continue as before with our examinations and C.P.D. programmes proving popular with members and non-members alike. In 2008 we will run at least 10 seminars, largely using English as the medium of delivery, plus 2 of our special "face-to face" seminars conducted jointly by the IIHK and the CII. The face-to-face training is of a very high quality and whilst the two-day time period and higher fees are a large commitment they are extremely worthwhile (and worth plenty of CPD points!)

We shall also continue our relationship with the CIB to assist that organisation with the provision of its CPD programme.

Our IIHK Diploma examinations provide an excellent stepping stone to full Associateship qualifications with the global

bodies of CII and ANZIF, (cross exemptions given for the Diploma) and we actively encourage Human Resource Managers to enroll their new staff for the examinations as a solid grounding for our profession ([www.iihk.org.hk](http://www.iihk.org.hk)).

Our relationships overseas continue to strengthen. The Insurance School of Japan has, once again, invited the Institute to send HK practitioners to their non-life advance course in May and we are delighted a suitable candidate has accepted the opportunity.

The Institute for Global Insurance Education will be holding its annual meeting in Asia this year alongside the ISS seminars ([www.iisonline.com](http://www.iisonline.com)) and as a member we shall attend and report back to you, our members.

The Annual dinner of the Institute in Hong Kong has been fixed for the 16<sup>th</sup> October 2008 – please mark your diaries. The format this year will be a little different but we will have an excellent speaker and an enjoyable evening.

Please do utilise the Institute services. Our Secretariat (Tania and Y.O.) are always there to respond to queries and will be pleased to assist you.

May I wish you prosperity and professionalism in 2008 and beyond.

Mike Haynes  
President ◆◆◆



## 2008 Council Members

During the AGM held on 27<sup>th</sup> December 2007, the following council members were elected and formed the 2008 Council:

<p><b>President</b> Michael Haynes ACII</p>	<p><b>Director (CPD)</b> Kelvin Cheung B.Sc, ACII, MCIM, MBA, FLMI</p>
<p><b>Immediate Past President</b> <b>Andrew Chow</b> MBA, FCII, ANZIIF(Fellow), CPCU, FLMI</p>	<p><b>Director (Social &amp; PR)</b> Michael Wellsted GDE, BSc, CEng, ALLSA, AILA</p>
<p><b>Hon. Secretary</b> Carol Yuen ANZIIF (Snr Assoc)</p>	<p><b>Hon. Advisor</b> Clement Cheung</p>
<p><b>Hon. Treasurer</b> Alex Chu FCII, FLMI, Chartered Insurer</p>	<p><b>Hon. Legal Advisor</b> Christine Koo LL.B (Hons), MCI Arb</p>
<p><b>Director (Examination)</b> Irene Wong FCII, MBA, FLMI, ARe, MSc.(ITE), FChFP</p>	<p><b>Hon. Auditor</b> Pricewaterhouse Coopers</p>
<p><b>Director (Examination)</b> William Fong BSSc, ACII</p>	<p><b>Secretariat</b> Tania Lee</p>



From left to right – Front: Tania Lee, Irene Wong, Christine Koo, Carol Yuen, Y O Choi  
Back: William Fong, Kelvin Cheung, Mike Wellsted, Mike Haynes, Andrew Chow, Alex Chu



## Crystal clear

### When has valid notification of a potential claim been given? *Kidsons v Lloyd's Underwriters*

Rebecca Hartley – Edwards Angell Palmer & Dodge

The recent judgment of Mrs Justice Gloster, DBE in the case of *Kidsons v Lloyd's Underwriters* [2007] EWHC 1951 highlights the importance of providing clear and full notification of a potential claim. The claimants were HLB Kidsons (Kidsons), a firm of chartered accountants and the defendants were a mixture of Lloyd's underwriters and insurance companies (the Underwriters). The Underwriters had provided Kidsons with professional indemnity insurance, on a claims made basis, under a policy incepting on 1 May 2001 for a twelve month period terminating on 30 April 2002 (the Policy).

#### The dispute

Kidsons sought a declaration from the court that the Underwriters were bound under the terms of the Policy to indemnify them for claims made against Kidsons by clients in relation to the activities of Solutions at Fiscal Innovation Ltd (S@FI), a company wholly owned and operated by Kidsons which sold and marketed tax avoidance schemes. Kidsons argued that they had notified the Underwriters of the circumstances giving rise to the claims in accordance with General Condition 4 (GC4) of the Policy. The Underwriters denied cover on the basis that such claims against Kidsons were outside the terms of the Policy.

#### The meaning of GC4

GC4 of the Policy stated: *"The Assured shall give to the Underwriters notice in writing as soon as practicable of any circumstance of which they shall become aware during the period specified in the Schedule which may*

*give rise to a loss or claim against them. Such notice having been given any loss or claim to which that circumstances has given rise which is subsequently made after the expiration of the period specified in the Schedule shall be deemed for the purposes of this Insurance to have been during the subsistence hereof."*

Mrs Justice Gloster found that this clause allowed for cover under the Policy to be extended when the Assured had given the appropriate notification within the Policy period.

In this case, she found that GC4 meant that Kidsons must notify the Underwriters of any fact, event, happening or state of affairs *"which, objectively evaluated, creates a reasonable and appreciable possibility that it will give rise to a loss or claim against the assured."* At the time of notification, the Assured need not be certain that such circumstances will result in a loss or a claim, but there must be a real prospect of such a claim arising rather than a *"false, fanciful or imaginary"* prospect.

Once such a circumstance had arisen, such notice must be *"sufficiently clear and unambiguous that it leaves the reasonable recipient in no reasonable doubt that the assured is by the communication purporting to give notice of a circumstance under GC4 for the purposes of triggering coverage under the Policy."* She found that, under the terms of GC4, such notice must be *"given by or on behalf of the assured as soon as reasonably possible after he has become aware ... of the relevant circumstance."*

Finally, Mrs Justice Gloster found that any loss or claim later made must be *"sufficiently*



*causally related to the fact, event, happening, or condition which comprises the notified circumstances, that it can be fairly said to have arisen out of it.”*

### **Kidsons’ Notification**

In the Spring of 2000, Mr Torrance, a tax manager at Kidsons’ Edinburgh office, began to voice concerns over the legality of some of S@FI’s products. Specifically, Mr Torrance was concerned that the implementation of S@FI’s Discount Option Schemes (DOS) was not being carried out properly by Kidsons and could lead to the Inland Revenue bringing criminal proceedings.

As a result of Mr Torrance’s criticism, Kidsons’ management eventually sought the advice of two leading tax counsel, one English and one Scottish. The English counsel advised that Kidsons was acting within the boundaries of the law. However, the Scottish counsel’s advice was broadly in agreement with Mr Torrance’s criticism. Upon receiving such advice, on 29 August 2001, Kidsons’ National Executive Council (NEC) decided to set up an Independent Review Body (IRB) to review the implementation of DOS and to notify the Underwriters of Kidsons’ current position. On 31 August 2001, Kidsons wrote the following to the Underwriters (the 31 August letter):

*“The products marketed by [S@FI] have all been validated by virtue of Counsel’s opinion (in some cases two opinions) but a tax manager in Edinburgh, Iain Torrance, has expressed the view that the Inland Revenue, if minded, could be critical of some procedures followed in certain cases.*

*The Board of S@FI and the [NEC] intend to investigate this view fully...*

*The Board has taken the view that this might be regarded as material information for insurers. There is no sign of a claim arising at the present time, but the Board feels that it is appropriate in the circumstances to advise*

*what is happening and to take your instructions.”*

Mrs Justice Gloster found that this letter was too vague and nebulous to constitute valid notification of a circumstance.

On 14 September 2001, the IRB gave its draft report to the NEC. Although, the NEC decided to carry out a review of the DOSs implemented so far, they treated the draft report as a final one and effectively disbanded the IRB.

In October 2001, the broker showed the S@FI claims file, including the 31 August letter, along with the bordereau file and slip to some of the Underwriters.

Mrs Justice Gloster found that the October communications between the broker and the Underwriter did not constitute valid notification. She held that, in October 2001, Kidsons were aware of the wide ranging concerns of Mr Torrance but that the October communications did not:

- identify any error, act or omission or potentially negligent or wrongful conduct on the part of the assured
- identify any possible victim or claimant
- mention any possible loss
- mention that they were trying to notify the Underwriters of a circumstance.

On 28 March 2002 Kidsons again wrote to the Underwriters. This time informing the Underwriters that they had received further advice from tax counsel regarding DOSs and that there was “a general view that the technical efficiency of the products was accepted but in some instances there might be procedural difficulties involving the Trustees for each scheme affecting the implementation of the scheme and this might lead to the possibility of criticism in the future.” The letter concluded by saying that a Kidsons’ tax



partner would be producing a report on the situation.

The brokers added this letter to the S@FI claims file and then showed this file to the Underwriters on 19 April 2002. Mrs Justice Gloster found that the 28 March 2002 letter along with the bordereau was valid notification under GC4 as the Underwriters were being informed that:

- counsel had produced an additional advice
- such advice was regarding the DOSs
- counsel had highlighted that there may be procedural difficulties with DOSs
- such procedural difficulties might lead to a claim in the future.

Mrs Justice Gloster found that a reasonable recipient of this information, at this stage, would have appreciated that Kidsons was notifying it of a circumstance. However, such notification was only given in respect of the DOSs.

## Conclusions

Whether an assured has given valid notification of a claim under a contract will depend on the terms of such a contract. However, this judgment offers some useful guidance. Notification must clearly set out the facts or events that have arisen and must be clear that it is seeking to notify a claim. Finally, such a notice must be given promptly.

Rebecca Hartley  
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*This article first appeared in Kendall Freeman Insurance Review (Issue 66 – December 2007). It is for guidance only and is not intended to be a substitute for specific legal advice. Effective 1 January 2008 Kendall Freeman merged with US law firm Edwards Angell Palmer & Dodge LLP.*

*[Martin Lister is the contact partner for Hong Kong for Edwards Angell Palmer & Dodge.](#)*





## Future of Hong Kong Healthcare System

Agnes Ho  
HSBC Insurance (Asia-Pacific) Holdings Limited

Given its narrow tax base, Hong Kong has been providing one of the best healthcare systems in the world with high quality and efficient platform supported by dedicated medical professionals.

However, like the rest of the world, Hong Kong is facing ageing population. Even worse, we are also one of the places with lower birth rate to support the inverted pyramid population. According to the recent release by the HKSAR Government, by 2033, there will be one in four aged 65 from one in eight now. The working population falling into the tax bracket will also shrink with those supporting the elderly group down from 12:2 to 5:2. Unless taxes are substantially increased or new revenue is forthcoming from a broader tax base, we will need to have less tax payers to bear a higher tax in order to maintain the same healthcare system.

With the introduction of newly advanced medical technology, those diseases previously diagnosed as incurable can now be treated by less traumatic surgery or less expensive medication. Patients can now be treated by less invasive surgery, laser, laparoscopic or even cyber surgery instead of traditional open cut surgery while cancer diseases by chemotherapy or radiotherapy with fewer side effects. These can be effective but expensive.

However, transparency on costs is one of concerns in the private sector under a demand and supply driven free market in the *laisses faire* system operating in Hong Kong. Consumers might not know how much the medical bill they will finally bear until they are discharged. This has driven those suffering chronic illness patients or those unaffordable to huge expenses to go for public hospitals. Since then, the Hospital Authority has taken up more than 90% of total hospitalization and the capacity can no longer support but lead to a long waiting time for non-urgent surgeries. It thus deteriorates the service quality of public medical services and more resources are needed to enhance primary healthcare for every member of our society.

Being one of the industry players and responsible citizens of our community, we are supportive in providing constructive feedback and support to the long-awaited healthcare reform, always keep an open mind to public debates and share responsibility for the future of Hong Kong healthcare system.





## The IIHK Diploma in Insurance Study 2008 1<sup>st</sup> series examination

The 2008 first series examination for the IIHK Diploma is now open for registration. Please visit our web site [www.iihk.org.hk](http://www.iihk.org.hk) for application form and syllabus.

<u>Subjects</u>	<u>Date of Exam.</u>	<u>Time</u>
i) Introduction to Insurance (100)	May 29, 2008	6:30 pm – 9:30 pm
ii) Legal Principles (120)	May 30, 2008	6:30 pm – 9:30 pm
iii) Principles & Practice of Insurance (110)	June 5, 2008	6:30 pm – 9:30 pm
iv) Insurances of the Person (130)	June 6, 2008	6:30 pm – 9:30 pm

## Forthcoming Event

The 2008 Annual Dinner will be held on Thursday, 16<sup>th</sup> October, 2008 at the Bankers Club. Mark your diary for this enjoyable evening to meet with friends and associates.

*Details will be published later.*





## IIHK - Legal Series Continuing Professional Development (CPD) Seminar

### A Practical Introduction to Captive Insurance

Speaker : Mr. Geroge Meghie from Jardine Lloyd Thompson  
Thursday, 15<sup>th</sup> May, 2008 • 16:00 – 18:00

2 CPD hours

Language	English
Venue	City University of HK, School of Continuing Professional Education 8/F United Centre, 95 Queensway, Hong Kong
Registration Date	For IIHK members : immediately For Non-members : on or after April 28, 2008
Fee	<b>HK\$250</b> per person for IIHK members <b>HK\$300</b> per person for Non-member (New member eligible for the reduced seminar cost of HK\$250 upon joining.)
Registration procedure	Complete the <u>reply slip</u> and return together with your payment to our Secretariat at Room 1705 Beverly House, 93-107 Lockhart Road, Wanchai, Hong Kong.

***Reservation on first come first served basis and will only be confirmed upon receipt of payment. Fax registration is not accepted. A notice of confirmation will be sent to you upon successful registration.***

- The seminar is presented by experienced Insurance practitioner.
- Two CPD credits points will be awarded upon completion of the two hours seminar, and a Certificate of Attendance will be issued which should be retained as evidence of the two (2) CPD hours being earned.
- All reservations must be paid in advance and there will be no refund for any fee paid.
- Please arrive early at the seminar (Registration commences from 3:45 p.m.). ***One CPD hour will be deducted for late arrival of 15 minutes, no CPD hour will be awarded for late arrival of 30 minutes***, participants must attend the entire two hours seminar to earn the 2 CPD hours.

For further information, please call :  
Tel : 2520-0098 Fax : 2295-3939 Email : [enquiry@iihk.org.hk](mailto:enquiry@iihk.org.hk)



## *Face-to-Face Technical Insurance Training*

### Risk Management

Duration: 2 days

Venue: To be advised

Course fee: HK\$3,300 (for 1 day)  
HK\$6,100 (for 2 days)

Dates: 19 – 20 May 2008

12 CPD  
hours

accredited  
(HKCPD)

**Tutor: Mr. Stephen Mason, MBTI, FCIPD, FBIBA, FCII, Chartered Insurance Practitioner**

#### **Course aims**

The aim of this course is to provide a thorough understanding of the dynamic world of risk management, the course outlines the important issues and the many factors that might increase an organisation's exposure to risks. This course will explain the main techniques in identifying, analyzing and controlling risks. On completion of the course, delegates will be aware of the growing concept of risk management, and be able to use the techniques in assessment and implementation of risk controls on a day-to-day or strategic basis.

#### **Course structure**

The course is held over two days.

**Delegate wishing to attend only one day may do so, however, we strongly recommend that delegates should attend both days (2 days) in order to gain a comprehensive understanding of the subject, as the contents of the two days course are interrelated.**

#### **Who should attend?**

The course is suitable for delegates who work in :

- insurance enterprises (insurance companies, broking firms and the like);
- risk management departments of commercial organisations;
- accountancy firms, banks and other organisations in the financial sectors;
- any one whose work related to risk management.

#### **Course materials**

The course material includes comprehensive and detailed notes, copies of slides and a wide variety of exercises and cases studies.



**MEMBERSHIP APPLICATION**

IIHK Membership No.

(for office use only)

(Please complete in BLOCK letters)

<b>Surname</b>	_____	<b>Given Name</b>	_____
<b>Chinese Name</b>	_____	<b>ID/Passport No.</b>	_____
<b>Sex</b>	Male <input type="checkbox"/>	Female <input type="checkbox"/>	
<b>Name of Employer (if any)</b>	_____		
<b>Position Held</b>	_____		
<b>Office Address</b>	_____		
<b>Home Address (Optional)</b>	_____		
<b>Tel. No.</b>	Home _____	Office _____	
<b>Fax No.</b>	_____	<b>E-mail Address</b>	_____

Insurance Qualification : (Please tick whichever is applicable)

FCII <input type="checkbox"/>	ANZIIF <input type="checkbox"/>	Others : _____
ACII <input type="checkbox"/>	Mem. ANZIIF <input type="checkbox"/>	(Please specify in details)
Dip. IIHK <input type="checkbox"/>		

I hereby apply to join as:- (Please tick as appropriate)

Ordinary membership     
 Non-Voting Membership     
 Student membership  
[For full time student]

of the Insurance Institute of Hong Kong Ltd and, if I am elected, I agree to abide by the Constitution.

I enclose my cheque HK\$150.00 payable to "The Insurance Institute of Hong Kong Ltd." being my subscription for current year.

Date : \_\_\_\_\_

Signature : \_\_\_\_\_