



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 500 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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examinations or download useful information.



PRESIDENT'S LETTER

We welcome new members as well as those who have renewed their membership recently. You will all have noticed that we are relying more and more on electronic delivery of information and eventually we want all communication to be by email. So.....if we don't have your email address, or if you change it without telling us, we will lose contact!

CPD matters continue and I hope those of you attending the recent seminars found them interesting and of value. We very much appreciate the support provided by our friends in the legal profession without whose help the whole project would not be so well balanced and informative.

We do apologize for rescheduling our April seminar however when we conducted a telephone survey of participants over 70% preferred to delay the event because of SARS. Please note the new date of 19th June. All paid participants will automatically transfer to the new date.

Our annual dinner - held on 13th March, was a great success with 175

attendees who were kept entertained by an excellent speech from Mr Tony Miller. The Marriott Hotel once again provided a wonderful venue and great service.

During my speech I publicly thanked not only our Council Members and Secretariat for all their continued assistance, but also our secretaries who quietly support our cause. Please join me in offering our gratitude to all our volunteers.

Lastly, I would request your feedback. What extra benefits would you like from your Institute? How can we improve our service to you and give you something different? Please feel free to send in your suggestions and we will examine them all for possible implementation.

Thank you for your continued support.

Yours truly

Michael Haynes



RTHK LETTER TO HONG KONG HK's invisible economic strengths

Honourable Bernard Chan

Nearly every day, it seems we get some more bad news about our economy. Just when you think it can't get any more depressing, along comes another statistic apparently telling us that we are doomed.

In nearly every single case, the bad news is specifically about our internal, or domestic, economy. Local companies aren't investing much here. Most of all, local consumers are keeping their money in the bank and aren't spending. Or if they are spending, they're spending in Shenzhen.

Spending by families and individuals accounts for the majority of our economic activity. So it's hardly surprising that our overall economy is crawling along at the moment.

There are several reasons for this. People unfortunate enough to be out of work are obviously left with no choice but to tighten their belts. And many more people are reluctant to spend if they are afraid that they might also lose their jobs.

Then there are people whose investments have fallen in value, or whose property is worth less than they paid for it. Such people certainly feel poorer, they feel exposed, and they are also reluctant to go out and spend.

Then, finally, there is the overwhelming majority of people who are in secure jobs and have no obvious economic worries. Many of them see everyone else worrying, so they also hold back and take extra care.

In other words, much of our economic slowdown has a psychological cause. It is not simply that a weak economy is damaging our confidence – but our damaged confidence is weakening the economy.

The good news is that confidence can improve as quickly as it declines. Sooner or later, we will see some improvement in the regional and global economy. And, as people feel more confident, they will get the urge to start spending again. A fair number of them will be sitting on quite a lot of money, too.

However, while all this is going on, there is another part of the Hong Kong economy that is doing extremely well. Yet very few people, including for some reason our government, ever bother pointing this out.

Hong Kong is a small, open economy, with big interests outside its own, rather artificial, border. Forget about that border for a minute, and you can actually see a very different Hong Kong – a city that is the centre of an



extremely vibrant, successful and fast-growing economy.

This is an economy where people are consuming – but they're doing it in Shenzhen. More importantly, this is an economy that has some 70,000 companies employing around 5 million workers. All those factories are in the Mainland, but they are owned and run by Hong Kong. We make a lot of money out of this. But we don't always see the full impact in our economic statistics.

When our entrepreneurs make money in the Mainland, it's not always possible to bring the money out – so they buy real estate or other investments in the Mainland. When they make money by selling toys or clothing to the USA, they also might not bring the profit back to Hong Kong. They might buy assets overseas. They might send their children to school overseas.

All this is making Hong Kong people wealthy, but it's not showing up in our own statistics.

We can see some of it. If you read the economic news you will have seen headlines about the strength of our exports of goods. In fact, these are things made outside Hong Kong and are simply passing through our ports. Many more of these things – toys, clothing, electronics, and so on – do not even come through Chek Lap Kok or the container terminals. They bypass Hong Kong completely.

In the long run, it may well be that Hong Kong has virtually no exports of goods at all. We certainly don't manufacture things any more. With some limited exceptions, our factories have moved over the border.

And in the long run, there is no particular reason why so many goods should even pass through our ports. London and New York no longer have ports – the space is too valuable. Hong Kong might end up going the same way.

But it doesn't really matter. Hong Kong companies and people are involved with the buying, the selling, the designing, the sourcing, the marketing and the financing of all this trading.

This is reflected in another part of our trade, and that is our exports of services, which have been growing even faster than our trade in goods.

So far as I can see, this is Hong Kong's true economic future. The government is pushing for Hong Kong to be a hub – for tourism, high technology and logistics. Maybe these things will happen, maybe not. But we are already a unique hub in terms of skills and expertise for people doing business.

More than ever, we have an unbeatable concentration of high-value skills. Nowhere else in Asia will you find the depth or breadth of our international financial, legal, managerial, and other services.



It is hard to see Hong Kong ever becoming a silicon valley, with people doing the latest scientific research and development. But it is easy to see us building on our services.

This is especially the case where that big, offshore economy is concerned. We have a lot to offer the rest of the world.

Hong Kong can organize cheaper manufacturing. It can deliver faster and simpler sourcing. It can arrange very fast delivery of prototypes. It can get the products onto the market faster than anyone else. If you want the goods in a different colour, a different shape, a different size, Hong Kong can fix it.

It seems obvious to me that our advantage in many types of expertise is actually growing.

We will never again be competitive, within our own borders, as a manufacturer. And as I say, in the long run it might not even make sense for us to play such a big role in the hands-on transportation of goods through ports. But when it comes to getting things done outside our borders, we are getting better and better.

I am particularly struck by this whenever I meet members of the business community in Southeast Asia. I am always interested to see just how much these people envy Hong Kong's proximity to Mainland China, and how much they would like to invest in China. These are overseas

Chinese people with medium-sized investments in Thailand, or maybe Malaysia, Indonesia or elsewhere.

They have expertise in many areas. They have access to a wide range of resources, including many raw materials that China doesn't have. They see China becoming the world's most cost-effective manufacturing powerhouse. And they see China becoming a significant domestic market in its own right. They want to set up factories there.

However, they are also afraid of doing business in China. They have heard stories of corrupt officials, partners who cheat, bad debts and piracy. These people are not in the big league, and they cannot afford to make mistakes. Their knowledge of the business environment in the Mainland is very limited. They don't know their way around the bureaucracy, they don't have contacts, they don't know who to trust.

In some cases, they suffer from misunderstandings about the Mainland. But they are right to be cautious, just as Hong Kong businessmen were when they first started investing on the Mainland 15 or more years ago. So who can give them a helping hand?

Step forward the thousands of Hong Kong men and women who have gone to the Mainland; done research; negotiated with partners; handled the bureaucracy; found managers, staff and suppliers; installed the plant; done



deals with customers, and shipped the goods.

Lots of Hong Kong people have been there, done that. They have a track record of solving problems on the Mainland. They know ways of reducing risk, speeding things up and increasing returns.

In fact, along with Taiwan, we probably have the world's richest store of knowledge and experience of small and medium-scale investing in the Mainland. Hong Kong people are the perfect advisors or minority partners for those Southeast Asian businessmen looking for a helping hand as they enter the Mainland.

With the Mainland now in the WTO, Hong Kong must accept that it will never again be the sole gateway to China. Our government is right to say that our economy needs to find new roles. But new roles don't have to involve large-scale public spending or visionary government assistance for technology or other sectors.

The development of the Mainland as a manufacturing site, and increasingly as a market, will spur overseas investment there and increase demand for many of the skills and expertise we have to offer. And it is probably not just Southeast Asians

who need that help. Smaller businesses elsewhere in the world almost certainly feel the same way.

Unlike some other places, Hong Kong does not have a tradition of people waiting for the government to tell them what to do. People go out there and find their own opportunities. All those companies in Thailand and other countries looking for a helping hand in China represent hundreds and hundreds of new opportunities.

It is true that much of the value added by Hong Kong in this way doesn't appear in our economic statistics. Our statistics measure only what happens inside our border. To you or me, furniture is furniture whether we buy it in Shenzhen or in Causeway Bay. To economists, a chair has no value if you buy it in the wrong place. This is where the phrase "thinking outside the box" becomes especially appropriate. Hong Kong is a box. Our people, with their skills and expertise, are thinking and acting outside it. If people realized the importance of our invisible, offshore economy, and the amount of wealth created by our services sector beyond our borders, I believe they would be a lot more confident about Hong Kong's future.

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Financial Reinsurance

Gavin Coates / KPMG

Financial Reinsurance, or FinRe has been under the spotlight recently. What is all the fuss about, and why is this important? This article introduces in a moderately lighthearted way the serious business of FinRe. This article is not meant to be too technical, and so if you want more detail on the accounting double entries for FinRe or actuarial liability requirements, look elsewhere.

How Does FinRe Work?

Governments want happy policyholders; hence regulators tend to ensure that insurance companies remain solvent, usually by ensuring that insurance companies have more capital than might otherwise be necessary. Regulators do this by forcing companies to hold prudent liabilities. Insurance companies do not really like this, as it forces them to have more capital sitting around which generally reduces their return on equity.

There are lots of clever people in the insurance industry, and hence one method by which they have attempted to keep everyone happy is FinRe.

FinRe is effectively a loan, but it is structured as reinsurance. FinRe is a loan for which repayment is contingent on future profits emerging for the insurance company. If no future profits emerge, the 'loan' is not repayable. Under the accruals principle for accounts, as future profits are not recognized, neither are liabilities that are contingent on future profits. This means that actuaries are happy not to set up any liabilities for these 'loans'.

In practice, there are almost as many FinRe structures as there are contracts, but in general they are structured such that no cash actually changes hands between the insurer and the reinsurer. Usually certain insurance liabilities are not recognized as a result of the FinRe. Also, in any FinRe agreement there are elements of risk transfer as well as loans. This varies significantly from almost no risk transfer, to a significant amount of risk transfer. The amount of risk transfer in a reinsurance treaty is something that regulators (and hence everyone else) take very seriously indeed, as is covered later on in this article.



Why is FinRe Used?

Insurance companies really like FinRe – lower capital requirements means less capital borrowed, or less equity raised. Reinsurance companies really like FinRe, as they can make money on these contracts for comparatively little risk. There are many good reasons why any reasonable CEO of an insurance company may want to set up a FinRe contact:

- lower capital requirements, as liabilities can be reduced;
- accelerate profit emergence: if liabilities are reduced, all else being equal, profits are brought forward;
- can enhance 'apparent' solvency, as free assets increase, often used for appearance purposes;
- allow tax losses carried forward to be used before they expire, as profits are brought forward; and
- facilitate growth: new business growth is capital intensive, FinRe can alleviate these capital requirements.

Why are regulators uncomfortable?

The same reasons why FinRe can help CEO's (and their Appointed Actuaries) to sleep peacefully at night means that more regulators have been coming into their offices with tired eyes. Regulators are not happy at the

moment, and they do have a number of good reasons why they are not:

- In the UK, Equitable Life, the 'troubled' life insurer, significantly enhanced its apparent solvency using a significant FinRe contract. While Equitable Life remains solvent, policyholders have suffered enormously. The UK regulator, the Financial Services Authority, was concerned that just when the FinRe was required, it effectively had little value, i.e. there was not true risk transfer;
- HIH Group, Australia's second largest insurer, was placed into provisional liquidation in 2001. One major focus of the Royal Commission investigation into HIH's failure has been HIH's use of...FinRe contracts.
- FinRe contracts can be complex, in particular understanding the level of risk transfer regulators are getting up to speed on FinRe very quickly indeed, but currently the true impact of FinRe cannot always be understood from insurance company accounts. Regulators are now studying proposals to improve existing regulations.

Future of FinRe

More companies are considering the potential of FinRe, at the same time as



regulators and accounting professions are trying to crack down on the worst potential abuses of FinRe. FinRe is here to stay as it does serve a useful purpose, and there are many willing participants on either side of the contract.

Regulators have many justifiable concerns, and a key area is keeping them happy and helping them to understand the true underlying position. Regulators can have the power to stop individual FinRe treaties, which does occur in practice.

Although there are lots of clever people in the insurance industry, there are also lots of clever people in the banking industry, and if the insurance industry do not get their act together in terms of understanding and regulating FinRe properly, then no doubt bankers with their 'Alternative Risk Transfer' (i.e. transfer or financing of risk other than by traditional insurance or reinsurance) will come up with their own set of complicated alternatives.

KPMG has extensive experience of working together with insurance companies on FinRe, in both the accounting and actuarial aspects, and this has clearly become more important in light of the current accounting climate.

Gavin Coates is a senior manager in KPMG Hong Kong's Actuarial Services. If you wish to discuss any issues in respect of Financial Reinsurance, or any other actuarial matters, please contact Gavin on (852) 2143 8822 or by e-mail at gavin.coates@kpmg.com.hk.





LEGAL CASE STUDY

By Ricky Tse / Vivien Chan & Co.

Case 1

“Proof of Accident” is the key to employees’ compensation

In Tang Siu Chun for herself and other dependents of Chan Pong Fat, Deceased v. Yan Chung Yee trading as Phase Electrical Engineers & Others (DCEC 702 of 1999, dated of judgement: 22nd January 2002), the Applicant claimed employees’ compensation against the employer under Sections 5 & 6 of the Employees’ Compensation Ordinance.

The Facts

The Deceased was an electrician working in a construction site. On the morning of a day, a co-worker found the Deceased sitting down on the staircase of a building under construction. The Deceased alleged that he was working earlier and felt unwell. He was taken to hospital and subsequently died on the same day.

A post-mortem conducted on the Deceased indicated that the cause of the death was *coronary atherosclerosis also known as myocardial infarction* - a condition where a person’s heart vessel became

very narrow because of deposits of fats blocking the flow of blood.

Legal Issues

Section 5(1) of the Employees’ Compensation Ordinance provides that “... if in any employment, *personal injury* by *accident* arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation ...”

The Applicant must thus prove by evidence, on balance of probabilities, the following three elements in order for the employer to be liable:-

- (a) there was personal injury by accident;
- (b) it occurred in the course of his employment; and
- (c) it arose out of his employment.

For satisfying such a claim there must be an injury, an accident and nexus between the two. In other words, there must be a distinct event which caused the injury. The issue in the case was, therefore, whether there



was any evidence of an accident which caused the death.

In the present case, the post-mortem shows that the Deceased had pre-existing poor heart condition. The defence concentrated on the fact that there was neither evidence of what the Deceased was doing just prior to the meeting with his co-worker nor as to what he was engaged in that morning to enable the court to draw any inference from the same. Therefore, the Judge concluded that the Applicant failed to show that there was an

accident and accordingly dismissed the Applicant's claim.

It can be seen from the above case that an "accident" is an essential element in an ECC claim. There must have an identifiable accident relating to the injury or death for an ECC claim to be successfully established. On a practical note, witness statements from co-workers should be taken immediately after an accident to minimise assistance through sympathy.

Case 2

"Employers' duties are not absolute"

A recent High Court case reviewed the duties of employers on employees' working environment

In HCPI 772 of 1997 (date of judgement: 6th February 2002, now pending appeal), the Plaintiff was a ballet dancer. She alleged that she sustained injuries to her knee and anterior cruciate ligament while performing a movement because of slippery floor during a practice session. She could not return to the ballet dancing profession as a ballerina as a result of the accident. Therefore, she claimed damages for pain, suffering and loss of amenities,

pre-trial and future loss of earnings and special damages.

Liability of the employer

The Plaintiff's case against her employer, an operator of a ballet group in Hong Kong, was on the basis of breach of implied terms of the employment contract to take all necessary precautions for her safety at work, and to provide her with a safe system of work.



The issue is whether the Plaintiff fell because the movement was not executed by her correctly, or from a momentary inattention, or whether she did land on a slippery part of the floor which caused her to lose her balance.

The Judge accepted the evidence of the Defendants' witnesses and was not satisfied that there had been any complaints about the floor or that there had been any accidents caused by slipperiness. The Judge concluded that although there was a degree of slipperiness in the flooring, the crucial question is the extent of the slipperiness: whether it was within the limits which professional dancers accepted or whether it was such as to create a danger which the employees should have known.

The Judge concluded from the evidence that there was nothing about the flooring which made it dangerous to the dancers at that time. The slipperiness, if any, was within acceptable limits for the purpose to which it was put, and which the dancers themselves accepted and allowed for in their dancing. The employer was thus held not to be liable.

Liability of the landlord

The Plaintiff's case against the landlord was on the basis of failure to discharge the common duty of care owed to her under Section 4(2) of the Occupier's Liability Ordinance, Cap. 314. The duty of the landlord as a manager and an occupier of the premises included arranging the cleaning and regular inspection of the conditions of the rooms. The Judge also ruled that the landlord had discharged such responsibilities.

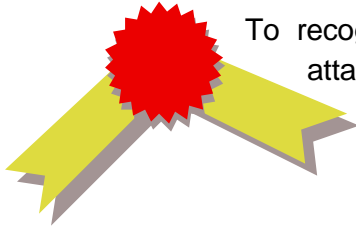
This case shows that the employer's duties to provide a safe system of work and safe place of work are not absolute. It is only required to provide such system and place of work as reasonably expected of the same in the industry or profession. Collating relevant evidence to show this is decisive for the defence to succeed.

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THE 2003 IIHK ANNUAL DINNER

The IIHK Annual Dinner was held on 13th March 2003 at the J W Marriott Hotel. There were altogether 175 attendants including Mr Benjamin Tang, Commissioner of Insurance; Mr H Y Mok, Assistant Commissioner of Insurance and Mr Ros Lam, Assistant Commissioner of Insurance from the Insurance Authority. Other guests included representatives from The Hong Kong Confederation of Insurance Brokers, Hong Kong Federation of Insurers, Chinese Underwriters Club, Hong Kong Insurers Club, Vocational Training Council, Professional Insurance Brokers Association and Life Underwriters Association. The keynote speaker, Mr Tony Miller - Permanent Secretary for Financial Services and the Treasury (Financial Services), delivered an excellent speech very much appreciated by the attendees. The dinner provided a great opportunity for insurance people as well as other professionals to get together.



To recognise their achievement, the Institute selects students who have attained the best results from various examinations and/or studies each year. During the dinner there were seven awards presented to the following students :

Mr Lim Ching Lim

HK Diploma in Insurance Studies, The Insurance Institute of HK Ltd

Ms Ho Chui Ping

HK Diploma in Insurance Studies, The Insurance Institute of HK Ltd

Mr Lee Chi Kwan

HK Diploma in Insurance Studies, The Insurance Institute of HK Ltd

Mr K W Wong

Chartered Insurance Institute Examination

Ms Cheung Yiu Fong

The Australian and New Zealand Institute of Insurance and Finance Examination

Mr Davy Ng

Higher Diploma in Insurance Studies, HK Institute of Vocational Education (Chaiwan)

Mr Zuo Zhi

Risk and Insurance Management, Lingnan University

The Institute would like to thank the following for their kind support of the above scholarships:

Chinese Underwriters Club

Everbest Insurance Holdings

The Hong Kong Confederation of Insurance Brokers

The Hong Kong Insurers Club

The Hong Kong Federation of Insurers

The LUA Foundation Scholarship



The Insurance School (Non-Life) of Japan

ISJ has accepted 2 nominees to attend the 13th Session of the ISJ Advanced Course : one from the Office of the Commissioner of Insurance and the other from an insurance company. However, we have just learned that the course, scheduled in May 2003, has been postponed until the outbreak of SARS subsides.

Outsourcing CPD programmes?

Recently a major insurer outsourced part of its CPD programme to the Institute. We provided speakers for 200 inhouse participants each of whom gained 2 x core hours accredited CPD points.

If you are interested in this approach please contact:

Mr Y O Choi
Tel : 2520 0098
Email : enquiry@iihk.org.hk



2003 Series One Examination

Subjects	Dates	Weekdays	Commencement and finishing time
Introduction to Insurance	May 29, 2003	Thursday	6:30 p.m. – 9:30 p.m.
Legal Principles	May 30, 2003	Friday	6:30 p.m. – 9:30 p.m.
Principles & Practice of Insurance	June 5, 2003	Thursday	6:30 p.m. – 9:30 p.m.
Insurances of the Person	June 6, 2003	Friday	6:30 p.m. – 9:30 p.m.

For enrollment details, please visit our web site.



Activities :

The "Legal Series" – our Continuing Professional Development Programme comprises the following 9 topics each carrying 2 Core Credits (Accreditation HKCAA Ref : 80/38/02).

Topics	Languages	Seminar Dates
1. Investment-linked Assurance Schemes in Focus	English	September 12 th , 2002
2. MPF Overview and Update	Chinese	October 3 rd , 2002
3. Motor Insurance - motorist's duty and rights under a motor policy	English	November 14 th , 2002
4. Employees' Compensation Insurance - Practical Issues from Insurer's Perspective	Chinese	December 12 th , 2002
5. Director's & Officer's liability insurance	English	January 16 th 2003
6. Construction Insurance and Contractor's Legal Liabilities	English	February 13 th 2003
7. E & O Awareness - A Broker's Professional Liability	English	March 6 th 2003
8. Defending Personal Injuries Claims	Chinese	May 15 th 2003
9. The Duties of Insurance Brokers and the Duty of Utmost Good Faith	English	June 19 th 2003
10. Investment-linked scheme / SFC new regulations		Scheduled July 2003

The cost for each seminar is :

HK\$130 for IIBHK members.
HK\$160 for non-members.



Become a member and enjoy reduced seminar costs.

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

Annual membership fee currently stands at HK\$120.