



# 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.

**Contact us :**

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Mr Y. O. Choi

This issue ..... **January 2003**

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## PRESIDENT'S LETTER

Dear Members

At our recently held AGM we welcome a new council member, Mr Garrick Ho of American International Underwriters. Garrick is an excellent addition to the Council.

Mr Andrew Chow becomes Honourable Secretary replacing Mr Philip Chan who unfortunately leaves the Institute due to work pressures. We thank Philip for his excellent contributions to the Institute and hope to welcome him back in the future.

Our CPD programme has been extremely well supported and we are pleased members have taken advantage of the contributions made by our presenters from the legal profession.

As we now know from the Insurance Authority their requirements have been reduced - see elsewhere in this newsletter - and hopefully these more realistic requirements will be more suitable for all practicing insurance intermediaries.

The IIHK 10-pin bowling tournament took place in last November and was a great success. Our thanks go to Allianz Insurance (HK) Limited for their generous sponsorship.

Lastly, it must be noted that the insurance industry is not in particularly good shape at the moment. Although in many areas rates have hardened there are also many tales of woe with depressed share prices, reducing margins and rising unemployment.

We should all strive to improve our professional attainments and formal, technical education and training plays a key role in this. The Institute is committed to improving the industry professional standards.

Mike Haynes  
President



## REFORM OF CHINA'S INSURANCE LAW - A STEP IN THE RIGHT DIRECTION

By Simon Hui / Deacons

The National People's Congress of China (NPC) has recently approved a revision of China's Insurance Law by adopting some of the proposed amendments made by the China Insurance Regulatory Commission (CIRC). This is the first major reform of the Insurance Law since its promulgation in 1995 and represents a major effort by the Chinese government to bring the industry legal framework in line with China's WTO commitments.

The newly revised insurance law has reduced the state's intervention and control in the industry. Subject to a few exceptions, insurance companies now have more freedom and flexibility designing and setting premium rates for their policies (Art 107). Statutory reserve requirements for insurance companies are also relaxed. Instead of requiring non-life insurance companies to comply with the mandatory condition of allocating 50% of their premiums to reserve, Art 94 of the new insurance law empowers the CIRC to regulate the allocations and transfers of reserve funds by insurance companies based on the principles of protecting policyholders' interest and guaranteeing solvency.

The NPC has taken a cautious approach when it comes to the proposed amendment relaxing investment restrictions imposed on

insurance companies under the 1995 Insurance Law.

Under the old regime, an insurance company in China, which includes a foreign-invested insurance company, only has very limited channels for applying its funds. Article 104 of the old insurance law states that:

- Insurance companies must employ funds in a stable and safe manner and ensure the preservation and appreciation of asset value.
- The employment of funds of insurance companies shall be limited to bank deposits, purchase and sale of government bonds and financial bonds, and other ways stipulated by the State Council.
- Funds of insurance companies may not be used for the establishment of securities houses or investment in enterprises.
- The funds applied by an insurance company and the specific percentage of funds for its specific projects out of its total assets shall be determined by the financial supervision and control department.



These traditional investment channels only bring a meagre return on capital. For example, the 10-year return on government bonds is only slightly more than 2 per cent. The restrictions have severely hampered insurance companies in terms of their ability to generate sufficient returns to sustain long-term growth. This is particularly true with respect to those domestic PRC insurers, which unlike their foreign counterparts do not have large overseas income that can be used to compensate for the low returns of their China operations.

Major reform of this area of the Law had been put forward during the course of last year to the NPC Standing Committee for consideration, they included:

- Abolishing restrictions on insurance companies' investments in securities funds;
- Permitting insurance companies to purchase bonds issued by large State-owned enterprises;
- Differentiating and formulating different investment rules with respect to funds owned by insurance companies and premium incomes received by them. It was suggested that a more liberal set of rules should be devised and applied to the use of funds owned by insurance companies;
- Following the practice of many other jurisdictions by allowing insurance companies to invest in securities companies.

The above proposals were bold and if implemented, would have had a far-reaching effect beyond the insurance industry. However, there are also potential pitfalls with respect to the implementation of these measures. Many State-owned enterprises are in serious financial difficulties. If insurance companies are allowed to purchase their bonds, it may have the undesirable effect of jeopardising the financial well being of these insurance companies. In addition, given the volatile nature of China's equities markets and the fact that many PRC insurance companies simply lack any experience with direct investments in the equities market, it is feared that, without proper and adequate regulatory control, the stability and financial health of insurance companies could be compromised.

In view of the above, the NPC has decided to gradually open this area of the Law. The new Article 105 provides that apart from bank deposits, sale and purchase of government bonds, financial bonds, other types of investment need to be approved by the State Council, thus laying the foundation of further relaxing the currently restrictive investment regime. In addition, the new Article 105 also recognises the right of insurance companies in investing in other insurance companies as many PRC insurance companies had already done so by forming joint-venture insurance companies with foreign insurers with the permission of CIRC.



With the gradual opening of China insurance market, pressure on the Chinese authorities to relax the investment regime will further increase. This is particularly true with respect to the PRC domestic insurance companies as they will face direct competition from foreign insurers in many areas of their business. Foreign insurers enjoy a distinctive advantage over PRC insurance companies as their parent companies have easy access to the international capital markets, which allow them to achieve a better return on their capital by participating in the international capital markets. This

income can be used to compensate the low return on capital of their China operations.

The CIRC is acutely aware of the challenges facing the domestic insurance industry and the need to strike a balance between giving more investment freedom to insurance companies while at the same time ensuring a stable and healthy development of the industry. In the circumstances, it will not be surprising to see further relaxation of the investment regime by the Chinese authorities in the near future.

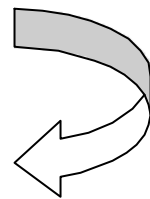
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## New CPD Requirements

Insurance intermediaries are now required to earn 5 core credits and 10 non-core credits every year.

A transitional arrangement is made for those insurance intermediaries who were practising in the insurance intermediary profession in Hong Kong on 31 December 2001. Non-compliance with the credits requirements during the first 3 assessment years (transitional period) after the implementing of the CPD Programme (i.e. ending 2005) will not usually trigger off a de-registration/de-authorisation. However, deficiency of credits gained in a year should be made up during the transitional period.

For more details please visit the Insurance Authority's web site at :  
[www.info.gov.hk/oci](http://www.info.gov.hk/oci).





## DIRECTORS AND OFFICERS' LIABILITY INSURANCE – NEVER SO NECESSARY

By Peter Mann / Deacons

A PRESSING GLOBAL ISSUE

Never has the conduct of directors and officers been in the news as much as in the last year. Mostly the news has involved the conduct of directors being placed under the microscope following corporate collapse. With increased corporate regulation and more volatile economic times the need has never been greater for directors and officers to seek whatever protection they can in relation to potential claims. It is therefore perhaps not surprising that directors and officers liability insurance has never been more popular.

That the need for directors and officers liability insurance has never been greater can be illustrated by looking at the potential for liability. Recently variations in directors and officers' liability covers have become more marked. With variations in cover the role of specialist insurance brokers advising in this area has become very important.

### **The Nature of Directors' and Officers' Liability**

There are many directors' duties which directors can potentially breach. Apart from everyday duties, directors duties

can be classified both according to statute and common law. A full description of directors' duties is beyond the scope of present discussion. Many of the duties are broadly based and are very wide. For instance, the duty to act honestly and in good faith and in the interests of the company. A recent illustration of the width of directors' duties in Australia is the case of Mr Nick Whitlam who, as the President and Chairman of NRMA and the Chairman an Annual General Meeting in 1998, breached his directors' duties by not voting member proxies entrusted to him. The Supreme Court of New South Wales found that he failed to act honestly, made improper use of his position and failed in his duty as a proxy holder. The matter is subject to an appeal.

Another way of illustrating the width of directors and officers duties and the potential liabilities of directors and officers is to look at the list of potential claimants. The list includes the company itself, shareholders, creditors, employees, liquidators, fellow directors, competitors,



regulatory authorities and members of the public.

The need for directors' and officers' liability insurance can be clearly demonstrated by looking at examples of where directors and officers have been found personally liable. Again, an exhaustive list is well beyond the scope of this discussion. However, it is perhaps worthwhile mentioning a few examples.

### **Creditors**

There are many examples of creditors successfully suing directors and officers. One spectacular case in Australia that occurred approximately ten years ago is worthy of mention. A fraudulent director of the National Safety Council, Mr Freidrich, fled and went into hiding for a while after it collapsed under the weight of its debt burden. He and other directors including Mr Eise, a non executive director who was apparently not a man for detail, were found to be personally liable for over AUD\$80 million in debts. These debts were incurred when there were no reasonable grounds to expect that the National Safety Council would be able to meet them as and when they fell due. Mr Eise was found liable for his failure to apprehend that there were matters in the auditors' reports (signed by him) which should have alerted him to the improprieties. This

case clearly illustrates the danger of being a "silent" or "inactive" director.

### **Employees**

Employee claims against directors have become one of the most numerous types of claim. Whilst such claims are usually handled on behalf of an employer under a stand alone Employment Practice Liability Policy it has become commonplace for Directors and Officers Liability Policies to contain an EPL endorsement. However, employee claims are by no means limited to claims involving the individual treatment of employees. It is perhaps likely that in the future employee claims may result from corporate collapse in circumstances where directors have not made sufficient or any provision for the payment of the entitlements of retrenched employees.

### **Members of the Public**

There are many examples of where the activities of a company may work to the detriment of the public so as to give rise to an action by members of the public against the directors of the company. One example of this is pollution claims. It is worthwhile noting that whilst many directors' and officers' liability policies contain a pollution exclusion some policies specifically cover the legal costs in defending



directors allegedly liable for the release of pollutants.

### **Shareholders and Members**

Again, there are many examples of claims being made by shareholders against directors and former directors. One of the more spectacular claims in Australia is a claim by the former shareholders of the insurer GIO who have brought a claim against the former directors of GIO following the takeover of GIO by another insurer, AMP, in 1999. During the takeover the directors of GIO issued statements to the shareholders of GIO recommending the rejection of the offer by AMP for the purchase of shares at a particular price. It was said that the price was inadequate due to the strong financial position of GIO. Subsequently, massive reinsurance losses came to light with the result that AMP managed to complete its takeover on the basis of a lower share price. Those shareholders who had accepted the recommendation of the rejection of the offer at a much higher price felt aggrieved. Shareholders have now joined in a class action against, inter alia, the former directors of GIO to recover the difference between the higher price of the rejected offer and the subsequent lower price.

### **Government Authorities and Regulators**

There have been numerous examples recently in Australia of the Regulator ASIC taking an active stance against directors. The Supreme Court action against Mr Nick Whitlam referred to above was brought by ASIC. Another two examples are worthy of mention.

The collapse of HIH, which was Australia's second largest general insurer, has been very topical. As a side issue ASIC launched proceedings against three of the former HIH directors in relation to a \$10 million investment fund set up with HIH moneys which was used to purchase HIH shares. There are proscriptions against a company purchasing its own shares. The three directors were found by the Supreme Court of New South Wales to have breached their responsibilities as directors, which required them to exercise reasonable "care and diligence". The penalties meted out to the three directors varied according to the seriousness of their breaches. One of the former directors, Mr Rodney Adler, was both fined and banned from holding any directorship for a period of 20 years.

The third example involves an action brought again by ASIC against four former directors of One.Tel. ASIC is suing the four men claiming \$90



million damages. They are likely to be sued for millions more by One.Tel's liquidators. Legal costs are considerable and would normally be covered under the Directors' and Officers' Liability Policy. However, the insurer concerned has, for various reasons, declined to indemnify the former directors. This case will be closely watched. First, the case will throw light upon the care that must be taken in underwriting directors' and officers' liability policies. The insurer alleges misrepresentations and non-disclosures entitling it to avoid the policy. Secondly, without insurance it may be difficult for the claimants to recover any verdict obtained.

### **Brokers Beware**

Whilst directors' and officers' liability insurance policies contain reasonably standard clauses there are now many variations in cover from insurer to insurer. Variations in cover from one insurer to another make an insurance broker's task a lot more difficult. It may be necessary for the broker to advise directors and officers on the range of covers available and the possibility of the removal or alteration

of exclusions together with the cost of doing so. Two examples that spring to mind are the "Insured v Insured" exclusion where some directors' and officers' liability insurers now provide cover in situations formerly excluded. Another example is in the area of entity cover where there can be quite striking differences between policies. These numerous differences in cover and the necessity to make full disclosure to an insurer in a climate of economic volatility make the insurance broker's task an important one indeed.

### **Summary**

It can be seen that claims against directors are becoming far more common. Given the nature of directors' duties and the range of prospective liabilities, directors' and officers' liability insurance should be treated as an imperative for all directors. Given the range of insurance covers available, and the fact that it is an ever changing area in terms of corporate legislation, prospective liabilities and product development there is certainly a need for specialist insurance broking skills.



## UPWARD TREND IN DAMAGES CONTINUES UNABATED

By Karen Dicks / Michael Turnbull, Deacons

As the recent cases below illustrate, there appears to be a further significant upward movement in the level of damages awarded in personal injury cases in Hong Kong.

In *Chan Yuet Lui Rebecca v. The Ritz Carlton Ltd. and others* (HOPI 658/2000), 7<sup>th</sup> January 2002, the Plaintiff, an accounts clerk, became a paraplegic and confined to a wheelchair for life at the age of 28, as a result of an accident. A total sum of HK\$19,243,576 was awarded. PLSA was assessed at HK\$1,700,000. A significant award (approximately HK\$4,200,000) was made in respect of alternative accommodation and related expenses. It was determined by the application of a monthly rental of HK\$17,300 with a multiplier of 20. From that sum the Court deducted the sum of HK\$480,000, to reflect an amount which the Plaintiff would have contributed to the costs of the accommodation had the accident not occurred. A further sum of approximately HK\$4,200,000 was awarded in respect of future loss of earnings, (which included the sum of HK\$250,000 in respect of loss of future advancement in career). HK\$3,965,520 was awarded in respect

of future nursing and medical care.

In *Lee Suk Yin & others v. National Insurance Co. Ltd.* (HCPI 439/2000), 28<sup>th</sup> September 2001, the Plaintiff became an incomplete quadriplegic at the age of 24 as a result of an accident. The Court awarded damages in the total sum of HK\$21,730,982. PLSA was assessed at HK\$1,800,000. The cost of alternative accommodation was awarded at HK\$3,330,000, loss of future earnings at HK\$4,450,000, with costs of future nursing and care awarded at HK\$5,396,000. This award is the second highest ever in personal injuries actions in Hong Kong, the highest being that awarded in the case of *Ta Xuong v. Incorporated Owners of Sun Hing Building*, which topped HK\$25,700,000. In that case, the Plaintiff was said to be in a 'disastrous state of quadriplegia' with injuries much more serious than those of the Plaintiff in the Lee Suk Yin case.

In *Lily Tse Lai Yin & others v. The Incorporated Owners of Albert House & others* (HCPI 828/1997), 17<sup>th</sup> September 2001, there were 9 Plaintiffs, 3 of whom, minors at the time of accident, were aged 12, 7 and 10 1/2 years respectively. In respect of





## The 1<sup>st</sup> AGM of The IIHK Ltd

Since incorporation, the IIHK has held its 1<sup>st</sup> AGM on 3rd December 2002. The new office bearers were selected.



President	Michael Haynes
Vice President	Kelvin Cheung
Hon. Secretary	Andrew Chow
Hon. Treasurer	William Ng
Examination Directors	Robert Stead, Irene Wong
Local Qualification Director	Kelvin Cheung
CPD Director	Nick Donne
Social Event Director	Joseph Chan
Director	Garrick Ho
I.P.P.	Stephen Law
Hon. Advisors	Benjamin Tang, Anthony Kan
Hon. Legal Advisor	Christine Koo
Hon. Auditor	PriceWaterhouse

Welcome

### New honourable legal advisor

Mrs Christine M K Cheung Koo

Ms Koo has over 20 years of post-qualification experience, gained from government and private sectors in Hong Kong and overseas. She now specializes in insurance, pension and trust matters. She is one of the few legal practitioners who has hands-on experience in various aspects of insurance business including China Insurance.

Mrs Koo is admitted to practice in Hong Kong, England and Australia (Victoria).



### Improved Cooling-off rights for life insurance buyers

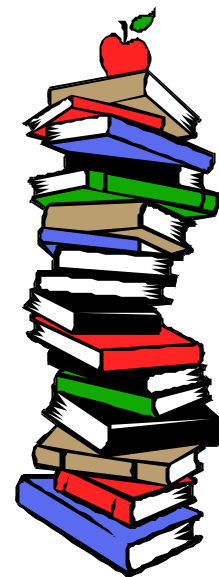
The Life Insurance Council of the Hong Kong Federation of Insurers has recently announced a further improvement to their cooling-off initiative. The cooling-off provision was first introduced in 1996 as an initiative under one of several self-regulatory measures undertaken by the local life insurance industry. The latest announcement is an improvement on the provision.

In addition to the rights given in the old provision, individual life insurance buyers are now given 5 days before the expiry of the cooling-off period to reconsider their purchase decision on the new policy. Life insurance is a long term commitment. The provision gives buyers a longer time to think over their decision on such an important commitment more carefully. Indeed, the provision is more generous than the common Free-Look Provision found in the American market. If you want to know the full details of the Provision, please visit the HKFI website. [www.hkfi.org.hk](http://www.hkfi.org.hk).

### Revision classes at the Financial Services Development Centre

New revision classes held by the Financial Services Development Centre of the Vocational Training Council will start soon. The earliest class will start in the third week in March. Although you would still have some time before the classes start, it is advisable to enrol into their classes now because the viability of these revision classes will depend on the enrolment numbers.

Anyone who is interested, please contact the Centre at 2836 1862 for details.





## THE IIHK DIPLOMA IN INSURANCE STUDIES 2003 ~ 1<sup>st</sup> Series Examination

Examination candidates can now mark their calendar. The next diet of examinations will be held on Thursday and Friday evenings of the last week of May and first week of June. Registration for examination etc. will be announced through circulars in March/April 2003. You may also visit our web site [www.iihk.org.hk](http://www.iihk.org.hk) to download the enrolment form.

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.



## 2002 ~ 2<sup>nd</sup> Series Examination Results

Examination candidates who participated in the last examination will have received their examination results by the time they read this.

A total number of 48 candidates submitted 80 papers in four subjects, and 54 passes were achieved. This represents a Pass Rate of 68.25% which is higher than the Pass Rate of 61.75% in the 2002 1<sup>st</sup> series examinations.

Twelve candidates have completed their Diploma in this Series. Our whole-hearted congratulations to all of them! They are:

<u>Name</u>	<u>Name of Company</u>
Cheng Man Yip	Hang Seng Insurance Co. Ltd.
Wan Siu Wai	QBE HKSI Ltd.
Chan Yin Ling, Winnie	Aon Insurance Agencies (HK) Ltd.
Chan Man Kuen	Asia Insurance Co. Ltd.
Wong Man Tat, Jack	Mitsui Sumitomo Insurance Co. (HK) Ltd.
Kwong Suk Ying	Zurich Insurance Holdings (HK) Ltd.
Ho Chui Ping, Helen	Government of HKSAR
Kwok Wai Sum, Carrina	Cosmic Insurance Corp. Ltd.
Lam Kin Yee	The Ming An Insurance Co. (HK) Ltd.
Cheng Chi Ho	The Ming An Insurance Co. (HK) Ltd.
Wong Pui Ha, Rachel	The West of England Shipowners Insurance Services Ltd.
Ng Ka Chuen	Royal & Sun Alliance Insurance (HK) Ltd



## Acknowledgement

The Institute would like to thank the following law practices for contributing their efforts in running the IIHK Legal Series CPD Seminars

- Johnston Stokes & Master
- Baker & Mc Kenzie
- CMS Cameron McKenna
- Clyde & Co
- Deacons
- Denton Wilde Sapte
- Herbert Smith
- Masons
- Simmons & Simmons



### Update of Membership details

Please keep the Institute informed of any changes of your membership details e.g. change of address, telephone no. and fax .....etc. You can notify us by :

Tel : 2520 0098  
Fax : 2295 3939  
Email : [enquiry@iihk.org.hk](mailto:enquiry@iihk.org.hk)



# Activities :

**IIHK Annual Dinner**

Keynote Speaker :  
Mr Tony Miller  
Permanent Secretary for Financial Services

March 13<sup>th</sup> 2003

J.W. Marriott Hotel,  
Pacific Place,  
Hong Kong

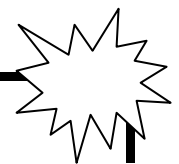
Please reserve a corporate table by contacting

Joseph Chan  
Tel : 2864 5509  
Email : joseph\_chan@aviva-asia.com



## IIHK Annual Bowling Tournament

22nd November 2002



### Results

Champion	JLT	1877 pts
1 <sup>st</sup> Runners Up	Aviva - B Team	1848 pts
2 <sup>nd</sup> Runners Up	Aviva - A Team	1606 pts
Male Highest Series	Steve Chan	
Female Highest Series	Anne Wong	