



澳門金融管理局  
AUTORIDADE MONETÁRIA DE MACAU

# **Insurance Intermediaries Qualifying Examination**

## **General Insurance Examination**

### **Study Notes**

### **2022 Edition**

# **General Insurance Examination – Study Notes**

## **Information Update**

This “Information Update” aims to update the text of the "General Insurance Examination – Study Notes (2001 Edition)" in response to the development of the insurance industry and local insurance laws and regulations. The following content has been added to the study notes:

2.6	Compulsory Professional Liability Insurance for Lawyers
2.7	Professional Liability Insurance for Healthcare Providers
4.2.3	Complaint Handling Mechanism and Mediation Scheme

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# PREFACE

These Study Notes have been designed to prepare candidates for the Insurance Intermediary Qualifying Examination in the subject of “General Insurance” . They are intended to give candidates a general introduction to the subject and reference materials, where identified in these Notes, serves to provide candidates with a wider coverage of the syllabus and can be used selectively by candidates who wish to investigate a topic in particular detail. The examination, however, will be based on these Notes.

Some parts of these Study Notes are taken reference, with the kind consent of the Insurance Authority of Hong Kong, from the text prepared for the purpose of “Insurance Intermediaries Quality Assurance Scheme” . Appreciation is also due to the Macau Insurers’ Association, Macau Insurance Agents and Brokers Association, and Federation of Macau Professional Insurance Intermediaries for their valuable advice and assistance in the preparation of these Notes.

It should be noted that new editions or amendments of the Notes will be published from time to time where necessary. Although we have exercised diligence in the preparation of these Notes, errors or omissions may still be inevitable. We would appreciate your feedback on these Notes, in order that improvements can be made in the next edition or amendments of these Study Notes.

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### **NOTE**

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

# 1 UNDERWRITING AND POLICY WORDINGS

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

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

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

## 1.1 PROPOSAL AND MATERIAL FACTS

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

- (a) **Proposal Forms** may also be called **Applications**, a term more commonly used in life insurance. These are documents in the form of a **questionnaire** that the proposer completes when making an application for insurance cover. They will be considered in more detail in **1.1.3** below.
- (b) **Material Facts** are facts which would influence the judgment of a prudent insurer in deciding whether to accept a risk, or on what terms to accept it. Although lawyers may find room to argue, the practical professional underwriter would probably be happy with the description that a material fact is one that makes a difference with the **insurability** of or terms to be applied to a proposed risk. These we consider in more detail in **1.1.1** below.

It will be remembered that under the chapter on “Insurance Contract Law” of the “**Commercial Code**” , a proposer is obliged to reveal all material facts, whether the insurer asks specific questions or not. This is a duty of Utmost Good Faith that a proposer must comply with.

### 1.1.1 Material Facts and Risk Assessment

- (a) **Material Facts**

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



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

(b) **"Non-material" Facts**

Obviously, any information that do not constitute material facts need not be revealed (e.g. one's exact age when seeking fire insurance). There are certain facts, however, which might fall under the definition given in **1.1** but which do not have to be revealed, because **"Civil Code"** has, implicitly determined that they are **exempt** from the normal **duty of disclosure**. These include facts which:

- (i) improve or **decrease** the risk, e.g. the installation of a **sprinkler system** (in the case of fire insurance);
- (ii) are matters of **common knowledge**, e.g. Macau is subject to the risk of typhoons (in the case of property "all risks" insurance);
- (iii) an insurer may be **deemed to know**, e.g. the normal processes and dangers involved with various occupations (in the case of EC insurance);
- (iv) the proposer cannot **reasonably** be expected to know, e.g. that he is suffering from an undiscovered brain tumour (PA insurance);

- (v) were open to discovery but were **not** discovered in a **risk survey** carried out by or on behalf of the insurer, e.g. with public liability insurance;
- (vi) should have been the subject of **further enquiry** by the insurer, e.g. some questions on a proposal form have been left blank or answered in uncertain terms.

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

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

(c) **Risk Assessment**

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

- (i) at the **proposal** stage.
- (ii) at policy **renewal**. General insurances are normally **one-year** contracts, with no binding obligations on either party to continue for a further period. Of course, insurers normally like to retain business, but renewal gives an opportunity to review both insurability and contract terms again.
- (iii) with **claims**. Facts may emerge in a claim situation (concerning the **risk** or the **insured**) which may give rise to second thoughts. Many general insurance policies have a **cancellation clause**. This is not often used when the policy is in force, but the opportunity is there if circumstances warrant it.
- (iv) with proposed **material changes to the present terms** (e.g. naming an inexperienced driver in an existing policy).

- (v) where there is a **change in risk** that was not within the contemplation of the parties at the time the insurance was taken out. The above remark about cancellation applies.

(d) **Risk Assessment Factors**

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

- (i) *acceptance*: it is always easy to say “no” , but if we always say “no” , we will soon be out of a job, or of business;
- (ii) *standard premium?*: if the risk is insurable, do we need more than the normal premium, or does the risk warrant a discount?
- (iii) *standard wording?*: can we issue the normal policy form, or are amendments (or even a specially drafted wording) needed?
- (iv) *warranties*: do we need to insist that the insured does something, or refrains from doing something, to make the risk insurable? See **1.3.4** below;
- (v) *excess/deductible*: do we wish to eliminate small claims and/or involve the insured to bear part of his loss? See **1.3.3** below;
- (vi) *expert help*: do we need further information on technical matters, so that a **risk surveyor** or another professional (medical, engineering, etc.) needs to be engaged before we can quote final terms?

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

### 1.1.2 Physical Hazards and Moral Hazards

In assessing a particular proposal, an underwriter needs to gain a complete picture of the risk presented. Apart from the hazards involved, he will also have to take into account such factors as the state of the market (e.g. the intensity of market competition), his company’s marketing and business philosophy, the company’s premium targets, etc. Underwriters classify hazards into the following two important types:

(a) **Physical Hazards**

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

The word “*hazard*” normally suggests “danger” or some such adverse meaning. In the context insurance, the term “hazard”, when used without semantic qualification, is neutral. It is therefore perfectly correct to talk of “good” or “excellent” physical hazard, where the nature of the subject matter of insurance or other related factors suggest less likely or less serious claims (insuring an outdoor concrete swimming pool against fire, and so on).

Mostly, physical hazards concerns matters of **common sense**, and examples of physical hazards will easily come to mind with different classes of business. We may, however, mention a few representative examples, to consolidate our understanding:

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

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

(b) **Moral Hazards**

In many ways, this is an unfortunate expression, because it tends to focus upon the moral behaviour and ethics of the insured. Whilst these are important, and certainly part of the **moral hazard** picture, the term embraces wider issues, inclusive of such things as **attitudes, life styles** and

**carelessness.** A person may be an excellent person, as far as the normal understanding of morality is concerned, but still represent **poor moral hazard**.

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

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

- (i) *Dishonesty*: in extreme or serious forms, this means **fraud**;
- (ii) *Carelessness and recklessness*: which can easily produce losses or accidents;
- (iii) *Unreasonableness*: a person may be totally honest in the accepted sense of the word, but he may create big problems by opinionated views and inflexibility;
- (iv) *Anti-social behaviour*: by which is meant behaviour that is disruptive to others in society, such as vandalism and social disturbances.

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

### 1.1.3 Proposal Forms

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

Bearing in mind the attitude of the courts with **utmost good faith** (see above), it is most important that the questions on a proposal form are devised carefully. There will be many different questions arising with specific classes of business, but some common features in virtually all proposal forms include:

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

There are other features, of which we shall look at some examples in **1.2.2** below, but the above are typical areas from which **material facts** may be supplied.

#### **1.1.4 Methods of Obtaining Material Facts**

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

- (a) *Proposal form*: as considered above. In some classes of business (mostly **personal lines**, e.g. private car), the proposal form is virtually the only source of underwriting information.
- (b) *Professional help*: sometimes a proposed risk involves highly technical matters, where the assistance of qualified professionals are needed. These range from **medical** matters to **risk surveys** and **reports** from various technical experts.
- (c) *Risk surveys*: a physical site inspection of a proposed risk is often advisable (e.g. fire, theft and liability risks). This may be carried out by independent surveyors or the insurer's own staff.
- (d) *Insurance intermediaries*: especially **insurance brokers**. As agent of the **proposer**, an insurance broker is identified with the **proposer** and bound in law to disclose **material information** he has concerning the client and the proposed risk. If an insurance broker withholds or misdescribes material facts, this will constitute a breach of **utmost good faith** imputed to the proposer.

- (e) *Procedures*: the manner in which material facts are obtained varies. They may be given in the form of **answers** on a proposal form, or other documents (e.g. a feasibility report for an engineering project). They may also be **verbally** disclosed, in response to direct questions on a risk survey or during pre-contract discussions. It is usually advisable to have written confirmation of verbal representations, in correspondence or otherwise, to avoid possible misunderstandings later.
- (f) *Miscellaneous*: several other possible sources exist for obtaining material information. These include:
  - (i) enquiries with **previous insurers** (e.g. about earlier claims);
  - (ii) enquiries with professional **enquiry agents** (e.g. with fidelity guarantee proposals);
  - (iii) enquiries regarding possible **hire-purchase** commitments (e.g. with motor vehicles);
  - (iv) confidential **market information** exchange among insurers (should there be suspicions of earlier **frauds**, etc.).

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

## 1.2 UNDERWRITING PROCEDURES

### 1.2.1 Quotations

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

- (a) it may be in **writing** or **verbal**;
- (b) it may concern the envisaged **premium** only, or refer to other **contract terms** as well;
- (c) as a **quotation** may possibly be taken as an offer capable of being accepted, much care should be exercised in using the terms “quotation” and “quote” , and in writing the text of the quotation. The court, when called upon to determine whether a particular “quotation” constitutes an offer or a mere invitation to treat, will take into account all the relevant facts, including the circumstances of negotiations between the parties coupled with their intentions.

### 1.2.2 Proposal Forms

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

- (a) *only source of underwriting information*: with relatively minor risks, the proposal form is likely to be the only practical tool of enquiry, and risks may be accepted or otherwise solely on its answers;
- (b) *“trigger” for other enquiries*: answers given on proposal forms or deductions from the information supplied on proposal forms may indicate that further enquiries need to be made, in the form of additional questions to the proposer, more formal enquiries through **surveyors** or other professionals, etc.;
- (c) *basis of the contract*: information supplied on a proposal form is the main (and sometimes the only) information available for the making of underwriting decisions. Almost all general insurance proposal forms contain a **declaration** that the information supplied will form the basis of the contract to be made. Referred to as a “basis of contract clause” or “basis clause”, such a declaration will bring this fact to the proposer’s attention, and may well be in the form of an **insurance warranty**, which has considerable legal significance with the contract;
- (d) *“permanent” document*: because the completed proposal has a fundamental role with the contract, it should not be regarded as a temporary document. Because of its importance, some insurers include a photocopy of the completed proposal when sending out the policy document. This will serve as a reminder to the insured of the information he supplied, which is the basis of the insurer’s undertakings;
- (e) *supplementary information*: any experts’ reports or other documentation, perhaps arising with (b) above, must be considered part of the proposal, and this fact should be brought to the proposer’s attention.

### 1.2.3 Issue of Cover Notes, Policies and Certificates of Insurance

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

#### (a) Cover Notes

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



- (i) *Its primary purpose* is to give documentary evidence to the insured that insurance exists. Commonly, cover notes are issued with **motor** insurance, incorporating a **temporary certificate** of insurance (see (c) below), which confirms that the insurance required by law exists. A motor cover note may be used to assist with **vehicle registration**, etc.;
- (ii) *other functions*: motor is not the only class of business where cover notes are used. A bank, for example, may require evidence in the form of a cover note or policy that **fire** insurance exists, before it advances an agreed **mortgage loan**;
- (iii) *not “conditional”* : to repeat what was said above, the document does provide **“unconditional cover”** . However, cover notes frequently have **cancellation** provisions, so that the insurer may come off cover, by giving appropriate notice, if this becomes appropriate;
- (iv) *“temporary”* : again to reinforce a previous comment, a cover note is a convenient way of confirming the insurance requested, but the cover given is temporary - effective for say 30 days or another short period, during which a **policy** is to be issued to replace the cover note.

(b) **Policies**

A **policy** (or **“insurance policy”** ) is tangible evidence of an **intangible contract** of insurance, which is most formal and most commonly used. As previously mentioned, most general insurance contracts are **simple contracts**, which technically do not have to be in writing. In practice, a policy is almost invariably issued. However, issuing the policy is usually the **last** stage in the underwriting process, representing as it does the final result of all enquiries, deliberations and decisions of the underwriter. We shall look in more detail at policy structures in **1.3**, but in the underwriting context we may note the following:

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

(c) **Certificates of Insurance**

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

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

- (i) *proof of compulsory insurance*: found with **motor** or **pleasure boats** insurances, a certificate of insurance provides **proof** to people who need to know (e.g. **police**) that the insurance required by law does exist;
- (ii) *unconnected with the policy*: a certificate is a totally **separate** and **permanent** document (unlike a cover note). A **temporary** certificate is usually incorporated into a cover note, as noted above, but the final document has a totally distinct function from that of the policy;
- (iii) *contents and format*: a cover note will have an abbreviated summary of policy cover, but a certificate may or may not. The latter only confirms the existence of **compulsory** insurance. Thus, you cannot tell from a certificate of motor insurance, for example, whether the policy is **Comprehensive** or **Third Party Risks**. Its format is as required under the appropriate Ordinance;
- (iv) *why issued*: certificates of compulsory insurance are issued solely because **law** requires them. In **motor** insurance, the certificate has such a formal importance that it is essential for the insurer to recover the document once the policy is **cancelled**.

**1.2.4 Premium**

(a) **Methods of Calculation**

As to the method of premium calculation, in the context of underwriting procedures, individual comments will be made in respect of different classes of business in Chapter 2 and 3 of these Notes, but we may also note the following:

- (i) *Risk classification*: with many types of insurance, the risk is classified according to a particular category, to which pre-calculated premium rates will apply.

- (ii) *Differential Treatment of Risk*: any idea of “discrimination” is not politically correct these days, but the term is of very long standing with insurance underwriting. It has no sinister implication, but refers merely to distinguishing the features (good or bad) of individual risks falling within the same risk category, so that adjustment up or down to the broad classification premium can be made. Suppose a fire underwriter is underwriting two private warehouse risks located in the same building, the first one being in the basement and the other on the second floor. Although they belong to the same risk category, “private warehouse”, the underwriter may impose a premium loading for the first risk because it is considered to be an above average risk, while charging the average or normal premium for “private warehouse” for the second risk.
- (iii) *Different bases*: general insurance has a very wide range of different products, so it is only to be expected that the premium base will differ between various classes. Frequently, a designated rate (usually per cent or per mille) is applied to some factors such as:
  - (1) the **sum insured**;
  - (2) the **annual turnover**;
  - (3) the **annual wageroll**;

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

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

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

- (i) *“Commercial Code” position*: unless the contract terms specify to the contrary, payment of the premium should be paid punctually by the insured and directly to the insurer or to another entity explicitly designated by the insurer for that purpose. The initial premium or first installment of the initial premium should be paid on the date the contract is signed.

If it is impossible for the insurer to issue a debit note on the date stated in the preceding paragraph, payment of the initial premium or first installment of the initial premium should be made within 10 days from the date the debit note is issued by the insurer.

Insurers have the obligation to inform the insured in writing, the amount of premium to be paid and the payment date, at least 8 days before the premium payment due date; this notice is not necessary in the case of the initial premium or first installment of the initial premium and the term of the contract is dependent on the respective payment. Moreover, the consequences of non-payment of premium (i.e. termination of contract) shall also be notified to the insured as follows:

Failure to pay appropriate premium by the insured within the stipulated period constitutes delay in the payment of premium. The contract will be automatically terminated 30 days after the expiry of the stipulated payment period. However, before the expiry of the 30 days, the insurance contract shall remain effective.

- (ii) Policy provisions: practice varies with policy wording. Some policies strictly provide that cover is **conditional** upon the premium having been received. Other policies may have a wording to the effect that the insured “has paid **or agreed to pay**” the premium.

**Note:** This is a complex area, in which important legal issues may arise. Appropriate legal advice should therefore be obtained with specific cases.

### 1.2.5 Levies

#### **Motor and Marine Guarantee Fund (FGAM)**

These Notes do not examine the operations of the FGAM, but by way of reminder it exists to give substance to the intentions of compulsory motor and pleasure boats insurances, in cases where the required insurance is ineffective or does not exist. By formal agreements with Government, all motor and pleasure boats insurers in Macau must belong to the FGAM.

Funding for any payments made by the FGAM comes from the amount, to be paid by each insurer, resulting from the application of 2.5% on the gross premium from direct motor vehicle insurance contracts written in the preceding financial year net of return premiums and cancellations. In addition, the “Third Party Liability Insurance for Pleasure Boats” also has relevant legal provision that insurers shall collect additional charges from the policyholders according to a percentage of the premiums and pay to the FGAM.

The FGAM is competent to pay compensation for death or bodily injuries resulting from traffic accidents involving motor vehicles and pleasure boats subject to compulsory insurance:

- a) When the person responsible is unknown or does not benefit from valid or efficient insurance;
- b) In case of bankruptcy of the insurer.

## 1.3 POLICY WORDING, TERMS AND CONDITIONS

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

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

### 1.3.1 Policy Forms and Policy Schedules

English language general insurance policy forms utilised in Macau tend to be of two main kinds:

- (a) *“Plain English” policy forms*: which is a modern attempt to avoid the formal traditional language of a legal document. In an effort to make the document more **“user- friendly”**, the text is expressed in the first and second person, rather than the impersonal third person, so that it talks of **“we”** and **“you”**, rather than **“the company”** and **“the insured”**. The policy is also very likely to be in a smaller booklet form, perhaps with diagrams and cartoon drawings. This style of policy presentation is used with **personal lines**, rather than with **commercial risks**.
- (b) *Scheduled policy forms*: where the whole text revolves around a policy **“Schedule”**. That part of the policy contains all information relating solely to the risk concerned. The rest of the policy is a standard wording, for all policies in that class of business, presented in separately designated sections, having different functions.  
The scheduled policy form is of long-standing tradition, and will be the basis for comment and study in the Notes that follow.

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

- (i) The Schedule: as mentioned, this contains all information which applies exclusively to the specific contract concerned. It is to this section that attention must be given, for example, to ascertain:
  - (a) policy **number**;
  - (b) details of the **insured** (name, address, occupation, age etc.);
  - (c) policy **limits** (sums insured, limits of liability etc.);
  - (d) **effective dates** (commencement date, renewal/expiry date etc.);
  - (e) description of the **subject matter of insurance**;
  - (f) the **premium**;
  - (g) the identity of the **insurance intermediary** (where shown in the policy);
  - (h) any **special terms** applicable (warranties, special exclusions, etc.);
  - (i) any **extra benefits** applicable to this contract (special perils, etc.);
  - (j) all **endorsements** (i.e. modifications and amendments of any kind).
- (ii) The Recital Clause (or “Preamble” ): whilst this name, as such, does not appear in the policy document, the recital clause is effectively an **introduction** to the contract. It will make reference to the **contracting parties** (not by name, which is shown in the Schedule). It will also refer to the **proposal form** and **declaration**, recognizing them as being incorporated into and forming the basis of the contract (see **1.2.2(c)**). **Premium payment** (not by amount) may also be mentioned.
- (iii) The Operative Clause: this indicates the circumstances under which **cover** is **operative** (hence, it is sometimes called the **Insuring Clause**). Again, this title does not appear in the document, but the section usually follows the **Recital Clause**. The following features of this clause should be noted:
  - (a) it may be quite **short** (e.g. with glass insurance) or **quite long** (e.g. with **motor** insurance);

- (b) it specifies the **perils** covered or mentions that cover is on an “**all risks**” basis (with **property** insurance);
  - (c) it may comprise one, two or more **sections** (e.g. **motor** insurance);
  - (d) these sections may have their own **exceptions**, limiting the cover given under **that section** only (see (iv) below);
  - (e) any **excess/deductible** for the section concerned may be shown here or in the Schedule.
- (iv) General Exceptions: the word “**General**” in this context means that the exceptions apply to the **whole** contract (i.e. **every** section of the policy). As noted above, individual sections in the Operative Clause may have their own exceptions (e.g. cover against damage to the insured vehicle, with a **motor** policy, typically excludes damage to tyres unless another part of the vehicle is also damaged). **General** exceptions apply with every type of claim (e.g. in motor insurance, a non-permitted use of the vehicle).

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

- (v) Policy Conditions: these are the standard, written provisions **regulating** the insurance contract. We shall discuss them in more detail in **1.3.2**.
- (vi) Signature Clause: not given this title in the policy, this section is very short (often appearing in the **Schedule**), providing for the signature(s) on behalf of the insurer, to confirm the terms of his undertakings as expressed in the policy document. (The policy document is not signed by the insured.) For this section, some insurers may use the rather more elaborate term of the “**Attestation Clause**” .

### 1.3.2 Common Policy Exceptions and Conditions

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

(a) **Policy Exceptions**

These we examine specifically under the heading of “**Exclusions**” in **1.3.5** below, but just a reminder that **exceptions** may apply to the **whole** of the contract ( “**General Exceptions**” ) or merely exclude part of the cover from individual policy sections ( “**Sectional Exceptions**” ). All insurance contracts will have some exceptions. As a commercial undertaking, it is not possible to provide cover with **no** limitations. Even if no exceptions as such appear in the policy document, there will always be provisos which the law **implies** (i.e. shall be **read into** any insurance contract), e.g. the exclusion of **fraud**.

(b) **Policy Conditions**

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

- (i) *Claims conditions*: relating to procedures and rights and obligations associated with making a claim under the policy (see **4.1.3**, etc. later);
- (ii) *Arbitration*: outlining the procedure for settling claim disputes between the insured and the insurer (see **4.2.1** later);
- (iii) *Cancellation*: the usual provisions give the **insurer** the right to cancel. Many policies also give the **insured** the right to cancel **immediately** (see **2.4.2 (a)** and **(b)** later);
- (iv) *Average*: the provision for an **under-insurance** penalty;
- (v) Subrogation and contribution: where policies provide an **indemnity**, are likely to be mentioned, as studied in “**Principles and Practice of Insurance**” ;
- (vi) *Adjustable premiums*: where premiums have to be on a provisional basis because they are based upon variable factors (e.g. payroll, turnover, etc.), there will be a policy condition requiring the insured to keep adequate records, so that actual premiums may be calculated for the purpose of premium adjustment upon the expiry of the policy.

### **1.3.3 Use of Excesses, Deductibles and Franchises**

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



(a) **Excess**

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

- (i) *standard*: applicable to all policies in that class (e.g. say 2% compulsory excess based on the value of the vehicle indicated in the Motor Policy for comprehensive cover);
- (ii) *imposed*: applied **additionally** by the underwriter (with **no** premium reduction) to counteract a proposed risk's adverse features (e.g. following a number of small claims under an **"all risks"** policy);
- (iii) *voluntary*: chosen by the **insured** in order to obtain a premium **reduction**.

The primary intention of an excess is to **eliminate** small claims.

(b) **Deductible**

This term means the same as an **excess**.

(c) **Franchise**

It is no longer common to find a monetary **franchise** with policies in Macau. The function of such a provision is to eliminate small claims, whilst paying larger losses (i.e. above the franchise amount) **in full**. Such a provision used to be found in some property insurances, but an **excess/deductible** is now preferred. A **time franchise** may still be found, however, with:

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

**Note:** With neither of the above examples do policy wordings actually use the word **"franchise"**, which term is incomprehensible to the majority of the insuring public.

### 1.3.4 Warranties, Conditions and Representations

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

#### (a) Warranties

A warranty in insurance may be thought of as an undertaking to the insurer on the part of the insured which must be exactly complied with. That undertaking may be to:

- (i) *do something*: e.g. to have a burglar alarm fitted to the insured premises, to keep it in working order, and to switch it on after working hours (in the case of theft insurance);
- (ii) *refrain from doing something*: e.g. not to store flammable liquids on the insured premises (in the case of fire insurance);
- (iii) *affirm the existence of certain facts*: e.g. the warranty in the declaration on a proposal form warrants that answers given on the form are complete and true; or
- (iv) *negative the existence of certain facts*: e.g. a warranty of no smoking habit.

A **breach** of warranty enables the insurer to avoid the contract. The breach does not have to have a **causal relationship** to a claim situation (i.e. the breach need not have caused or in any way been relevant to a loss situation).

- Note:**
- 1 Warranties are normally **express warranties**. They may be **standard** (i.e. applicable to all policies in that class) or specially **imposed** by the underwriter for a particular risk.
  - 2 Technically, **implied** (automatic, unwritten) warranties may exist. The most significant example is the warranty of seaworthiness of ship implied by some marine insurances.

#### (b) Conditions

As mentioned above, “conditions” in insurance may be a little complex. Whenever this term is come across, one may have to figure out from the context whether it is a “policy condition” (an insurance term) or a “contract condition” (a legal term) that is being referred to. The terms “policy condition” and “contract condition” are not synonyms and should be dealt with carefully in order to avoid confusion.

In other branches of law, a **condition** is such a fundamental term of the contract that a breach of it will destroy the contract or render the contract voidable. For example, a reasonable standard of food hygiene is an implied contract condition to be complied with by a food supplier.

On the other hand, in insurance terminology, “conditions” (or “policy conditions” ) are a collection of standard, written policy provisions which specify the important relationships, rights and duties of the insurer and the insured, and whose nature is so varied that some of them are fundamental and some are not.

The terms (whether express or implied) of an insurance contract can be classified into the following three types by the criterion of time of operation:

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

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

(c) **Representations**

In insurance context, a representation is a representation as to a matter of fact or of belief (e.g. “the total value of the household contents to be insured is MOP1 million - MOP1.5 million” ), made by one party to another, and bearing upon a risk proposed for insurance; it may be **verbal** or in **writing**. An untrue representation can be called a “**misrepresentation**” . Warranties and some other policy terms may have legal effect on representations, but in the “**Civil Code**” , the following circumstances apply:

- (i) representations **only** need to be **true** if they are **material** to the risk (if they are not material, e.g. an incorrect age of a fire insurance proposer, they are effectively irrelevant to the contract and the error has no consequence);
- (ii) if representations are **material**, they only need to be **substantially true** (it means, they are true based on **everything** the declarant **knows and believes**), that is to say, they are not **warranties** in an **absolute** sense;
- (iii) representations **need not** appear in the policy wording; but they do of course have a bearing on the contract, subject to the above.

### 1.3.5 General, Specific and Market Exclusions

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

#### (a) General Exclusions

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

- (i) *“All Risks” insurance*: the cover is intended to relate to unexpected loss or damage. Thus, **wear and tear**, **depreciation** and **gradually operating** causes (atmospheric conditions, etc.) are standard exclusions for any type of “all risks” insurance.
- (ii) *Motor insurance*: cover is intended for normal usage on business or pleasure, so **racing**, **speed-testing** and **motor trade** uses are standard exclusions.
- (iii) *Liability insurance*: cover is intended to apply to situations involving some **fault** or **statutory obligation** upon the insured. Thus, **voluntary** assumption of liability (liability under **agreement**, or “**contractual liability**” ) is a standard exclusion.
- (iv) *Personal accident insurance*: cover is intended to apply in respects of **accidents** whilst the insured is following a normal non-hazardous lifestyle. Thus, **suicide** and **extra-hazardous** activities, such as **mountaineering**, **winter sports**, etc. are standard exclusions.

(b) **Specific Exclusions**

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

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

(c) **Market Exclusions**

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

- (i) *nuclear and radioactive risks*;
- (ii) *terrorism*;
- (iii) *sonic boom damage*;
- (iv) *war risks* (in case of non-marine insurance).

(d) **Other Exclusions**

For completeness, we should mention the following:

- (i) **Fraud:** the law in Macau will never support **fraud**. Even if there is no specific reference to it in policy wording, it always constitutes legal grounds for denying policy liability.
- (ii) **Public policy:** this is an abstract concept, which could be described as an **unwritten condition** in all contracts. As far as insurance is concerned, it means there may be occasions where society (through the decisions of judges) in effect says that the insurance cover should not apply.

An example may illustrate the point. A **public liability** (PL) insurance claim was invalidated when the insured shot his wife's lover, even though the gun allegedly went off by accident during a struggle between the two men. The judge said that the husband's behaviour in even holding a loaded weapon was improper. The husband was liable, but his PL insurer was not liable to him. Making a liability insurer pay in such circumstances will be against public policy.

- (iii) **Special situations:** sometimes local conditions are in turmoil because of social unrest, the outbreak of an epidemic, etc. In those circumstances, insurers may agree on a temporary or permanent **market exclusion**.

## 1.4 RENEWALS AND CANCELLATIONS

### 1.4.1 Renewals

The following features should be noted:

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

- (d) *Legal obligations*: according to the “Commercial Code” , insurers have the obligation to inform the insured in writing, the amount of premium to be paid and the payment date, at least 8 days before the premium payment due date.

Failure to pay appropriate premium by the insured within the stipulated period constitutes delay in the payment of premium. The contract will be automatically terminated 30 days after the expiry of the stipulated payment period.

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

#### 1.4.2 Operation of Cancellation Clauses

It is important to note that there is no **automatic right** to cancel any contract (and this includes insurance contracts). The law may allow or require the contract to end under certain circumstances, but unless contract terms specifically allow unilateral cancellation (premature termination), this can only happen by **mutual consent**.

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

- (a) *The insurer may cancel*: cancellation clauses, if any, **always** allow the insurer to cancel. Notice must be given to the **insured** (perhaps by registered mail, to the insured’s last known address) and a **pro rata** refund of premium is payable.
- (b) The insured may cancel: whilst not universal, cancellation clauses usually also allow the **insured** to cancel. In such cases, notice must be given to the **insurer**, but only a **short-period or pro rata** refund of premium is allowed, depending on policy wording. However, some policies allow the insured to cancel only where a claim has not arisen in the current period of insurance.
- (c) Practical applications: it is rare for an **insurer** to invoke the cancellation clause. The traditional view of many **insurers** was that having underwritten the risk, they would “grin and bear it” with disappointing results until renewal. Of course, there are circumstances where the traditional view is modified. These will include:
- (i) **suspected fraud**: if the insurer feels sure that the insured is guilty of fraud, he may wish to terminate association with him immediately (of course, if fraud can be **proved**, the insurer is entitled to terminate policy with immediate effect without relying on the cancellation clause);

- (ii) **disastrous experience:** there is a limit to the extent that an insurer can be expected to “grin and bear it” . Sometimes circumstances change so rapidly that continuation of cover (perhaps for the whole **class** of business) becomes near “suicidal” (e.g. a spate of terrorists’ attacks in recent years). The cancellation clause is useful in such extreme cases.
- (d) Miscellaneous considerations: neither party is obliged to say why they wish to invoke the cancellation clause. As a contract term, it is a right, not a conditional privilege.

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## 2 COMPULSORY INSURANCE

Certain types of insurance covers are made compulsory in various countries and territories depending on the extent of the social benefit derived in terms of protecting the population in general against insurable risks.

In Macau SAR, 7 compulsory insurance products must be underwritten with uniform policy wordings and tariff rates, as stipulated by Law and Executive Order. The rate of commission is also regulated by the AMCM by way of notices published in the Official Gazette in respect of the following compulsory insurances:

- a) Motor Vehicles Insurance;
- b) Employees' Compensation Insurance;
- c) Professional Liability Insurance for Travel Agents;
- d) Public Liability Insurance relating to the Fixing of Propaganda and Publicity Material;
- e) Third Party Liability Insurance for Pleasure Boats;
- f) Professional Liability Insurance for Lawyers; and
- g) Professional Liability Insurance for Healthcare Providers.

We shall present a summary of the key points of each type of compulsory insurance product in this Chapter. Intermediaries should consult with their principals regarding actual policy wordings and other specific details which are not mentioned in the Study Notes.

### 2.1 MOTOR VEHICLE INSURANCE

The significance of a motor insurance portfolio is particularly increased by the fact that for practical purposes all motor vehicles used in Macau must be the subject of insurance. The Decree-Law No. 57/94/M, of 28<sup>th</sup> November stipulates that vehicles and their trailers shall only be authorised for use on public roads provided they are insured under a third party liability policy, issued by a legally authorised insurance company, against loss or damage to third parties. The tariff of insurance premiums and conditions for Motor Vehicle Insurance are established by the Decree-Law.

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

The types of cover available may be divided into 3 categories:

- (i) 'Third Party Risk': compensation legally due for bodily injury or property damage caused to third parties as a result of the use of the Motor Vehicle, for which the insured is liable under the laws in force (other than the specified liabilities listed in policy).
- (ii) Cover on the Motor Vehicle Risk – Risk IV (or Third Party, Fire and Theft): this includes the cover for (i) above, plus property insurance of the insured vehicle, but only for loss or damage resulting from 'Fire, Lightning or Explosion' or 'Theft or Burglary'.
- (iii) Cover on the Motor Vehicle Risk - Risk III (or Comprehensive): the widest form of cover available, this includes all that (i) and (ii) above cover, as well as loss or damage to the insured vehicle resulting from 'Impact, Collision or Overturning', 'Isolated Breakage of Glass', 'Flood', 'Typhoon', 'Tropical Storm', 'Volcanic Eruption', 'Earthquake' or 'Other Convulsions of Nature'. Obviously, the premium for comprehensive cover is the highest.

**(b) 'Third Party Risk'**

A 'Third Party Risk' insurance means the insurer is obliged to compensate the liability legally due for bodily injury or property damage caused to third parties as a result of the use of the Motor Vehicle, for which the insured is liable under the laws in force (other than the specified liabilities listed in policy). The minimum amount of sum insured legally established, is dependent on the types of vehicles to be insured. The minimum sum insured for common types of vehicles are listed in the following exhibit (please refer to Executive Order No. 250/94/M for more detail):

Types of vehicles	Minimum Sum Insured (MOP)	
	Per year	Per accident
Light motor vehicles and motor cycles	<b>30 million</b>	1.5 million
Light motor vehicles for taxi	<b>30 million</b>	3 million
Heavy motor vehicles used for public transportation of passengers	<b>30 million</b>	(i) 4 million for loss or damage to third party other than passengers; and plus (ii) 0.2 million times the capacity of passenger carrying
Heavy motor vehicles for public transportation used for carriage of goods	<b>30 million</b>	4 million

**(c) No Claim Discount (or No Claim Bonus)**

In the event of no claim being made or arising under the Motor Vehicle Policy during a period of insurance specified below immediately preceding the renewal of the Policy, insured is entitled to a progressive discount on the renewal premium. One claim-free year earns a 10% No Claim Discount (NCD), the second year 20% and so on, rising to a maximum of 50% after five claim-free years.

- (i) Originally, the system was known as a No Claim Bonus (NCB). Technically, this is an incorrect title, since a bonus implies the receipt of extra money. “No claim discount” (NCD), i.e. a reduction on next year’s premium, is more accurate. However, old customs are difficult to remove. Consequently, you may still hear reference to an “NCB” (rather than NCD) entitlement.
- (ii) The NCD system operates on what is called a ‘step-back system’ . This means that a single claim will not totally destroy a high entitlement to a discount. For four or more years entitlement (40% or 50% NCD) a single claim during the year reduces the discount on renewal to 10% or 20% respectively. Lesser entitlements, of course, mean that any claim will wipe out the discount at renewal.

**(d) Common exclusions/exceptions**

Some important limitations on the cover provided, common with the policies for all classes of vehicle, include the following:

- (i) Accidents occurring outside the specified Geographical Area of coverage.
  - (ii) Use of the insured vehicle otherwise than in accordance with the specified use, and pose a higher risk than stated in the policy schedule. The purpose of use is an important feature in determining the premium. So, for example, if a vehicle is insured as a private car and is used as a taxi, this breaches policy conditions.
  - (iii) Exclusions of certain fundamental or high risks, such as:
    - (1) War, riots and similar risks
    - (2) Nuclear and radioactive risks
    - (3) Contractual liability, that is liability of the insured which he has assumed under a contract (agreement), when liability would not otherwise have arisen.
  - (iv) Loss or damage caused to the driver of the insured motor vehicle, and the Policyholder.
  - (v) Goods carried in the insured motor vehicle either during transportation or in connection with loading and unloading of the insured motor vehicle.
  - (vi) Any applicable policy excess.
- (e) Common rating features**

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

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

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

- (1) the regular drivers of the insured vehicle, e.g. their age, driving and accident experience;
- (2) the type of vehicle, e.g. the age of the vehicle, etc.

Unless otherwise stated, the surcharges, discounts or no claim discounts indicated in the Tariff are fixed and shall be applied compulsorily.

#### **(f) Standard policy excesses**

A policy excess (sometimes called a deductible) means that up to the stated amount is not insured. For example, under a policy which covers property damage on the insured vehicle, an excess of MOP2,000 means that with damage to MOP12,000, the insured can recover under the policy the amount of MOP10,000, and so on.

An excess may be a voluntary excess (i.e. requested by the insured), in return for a premium discount. It may be an underwriting excess (i.e. imposed by the underwriter with no accompanying premium reduction), to meet an undesirable underwriting feature with the particular risk concerned. A standard policy excess, however, means that it will apply to all policies within the class. Features of standard excesses are:

- (i) They will always be additional to any voluntary or underwriting excess.
- (ii) They do not qualify for any premium reduction. They are part of the basic contract cover.
- (iii) They may be related to some particular feature (e.g. age of driver) or universally applicable to eliminate small claims and to involve the insured in the cost of his own accident experience.

**(g) Right of recovery provision (in case of absence of notification or late notification of accidents to insurer)**

This long title describes policy rights under situations where compulsory insurance requirements will not allow the insurer to deny liability for death or bodily injury claims from third parties, even though there is a breach of policy conditions. Most commonly this will arise where the insured fails to report an accident to the insurer, or admits liability to a third party, both of which breach policy conditions.

In such circumstances, if the insured is liable to the third party the claim must be met. However, under this clause the insurer has a right of recovery for such payment from the insured.

**(h) Documentary evidence of insurance cover**

The third party liability card or the provisional certificate of insurance, based on the format set out in the Decree-Law, shall act as evidence of insurance. The provisional certificate of insurance substitutes temporarily the third party liability card and shall be issued at the time of acceptance of the insurance, or if the policy is already in force, when any amendment requires the issuing of a new card.

Besides the name and the symbol (logo) of the insurer, the third party liability card and the provisional certificate of insurance shall compulsorily contain the following information:

- (i) The respective number;
- (ii) Name of the insured;
- (iii) Number of the policy, only on the card;
- (iv) The date of expiry of the insurance or, in the case of the provisional certificate of insurance, its validity period, as well as the day and the hour of commencement of insurance;
- (v) The model and the registration number of the motor vehicle;
- (vi) Limit of compensation per accident and per year;
- (vii) Reference to the fact that the insurance contract shall cease to be effective, under the terms of the legislation in force, at 24:00 hours (midnight) on the day of sale of the motor vehicle.

It should be remembered that during traffic checks conducted by the competent authorities and whenever required, the drivers of motor vehicles shall be required to produce, in addition to the legal documents necessary for driving and using a motor vehicle, the third party liability card or the provisional certificate of insurance (as applicable) of the insured motor vehicle as evidence of insurance.

In case of an accident, the failure to produce the above mentioned insurance evidence shall result in the seizure of the motor vehicle, and the vehicle shall be released on payment of indemnity due, or if a guarantee is furnished for the minimum amount of insurance, or if duly proven the existence of such guarantee on the date of the accident.

The Policy Schedule is another piece of important document in the Motor Policy which shall sets out the specific details of the insured motor vehicle, the terms and conditions of the insurance cover, and the identity of the insured and insured drivers.

The specimen of the all the above mentioned documents can be found in Appendix I, and II of this Chapter.

**(i) Other features**

- (i) Motor Vehicles Insurance Residual Scheme: Whenever the vehicle to be insured has specific characteristics, which do not fall within the categories established in the premium tariff and general conditions of motor insurance, or where the loss experience is seen to be abnormal, as defined in the tariff, the AMCM shall be competent to set out, on a case by case basis, the conditions of acceptance or renewal of the respective insurance contracts. This is the so-called “Motor Vehicles Insurance Residual Scheme” and is applicable to Compulsory Third Party Risk only.

Under this Scheme, where the acceptance of insurance is refused by at least 3 insurers, the proponent may request to enter into an insurance contract under the special conditions defined by the AMCM.

One among the authorised motor insurers, being nominated to be the co-insurer leader, would be obliged to accept the insurance under the special conditions defined by the AMCM. The operating results of such insurance contracts shall be shared by all the authorised motor insurers in Macau, in accordance with the rules and arrangements established by the insurers.

- (ii) Sale of the motor vehicle: The insurance policy expires at 24:00 hours (midnight) on the day of the sale of the motor vehicle, unless the insurance is transferred to another vehicle before that time. Moreover, the policyholder shall notify the insurer within 24 hours of the sale of the motor vehicle.

## **2.2 EMPLOYEES’ COMPENSATION INSURANCE**

Employees’ compensation insurance (EC) is a very important type of insurance business, it represents a major branch of compulsory insurance. Under the provisions of Legal Regime on Compensation for Damage Arising from Work Accidents and Occupational Diseases, Decree-Law No. 40/95/M, of 14<sup>th</sup> August, the employees of all sectors of activity, excluding the civil servants, are entitled to compensation for loss or injuries resulting from accidents due to employment or occupational diseases.

**(a) Definition of occupational accidents and diseases**

(i) “Occupational accident” or only “Accident” – means an accident occurring at the place of work and during the normal working hours from which directly or indirectly result injuries, functional disorder or disease causing the death of the employee or temporary or permanent reduction of his working or earning capacity. An accident is also considered for the purpose to arise out of the employment if (Please refer to Decree-Law No. 40/95/M for the details):

- Happening outside the place of work and working hours during the execution of works determined or authorized by the employer;
- Occurring during the execution of voluntary work resulting in some profit for the employer;
- Occurring within the place of payment where the employee is for the sole purpose of receiving his salary, wages or other earnings except when such payment is effected by crediting the bank account of an employee;
- During the transportation of the employee to and from the place where medical assistance or treatment will be provided as a consequence of a prior accident, and while he remains at the said place for such assistance or treatment;
- If it happens to the employee, during the duration when the Macao Meteorological and Geophysical Bureau hoists tropical cyclone warning signal of no. 8 or above, is travelling between his place of residence and his place of work by a direct route, within a period of 3 hours before the time of commencement of his working hours of that day or, within a period of three hours, to his place of residence, after the time of cessation of his working hours of that day.

(ii) “Occupational disease” – means any disease, as contained in the list annexed hereto Decree-Law No. 40/95/M, which is contracted by an employee due solely and exclusively to his/her exposure, during a determined period of time, to the nature of the industry, activity or environment where he/she has rendered or is rendering his/her services.

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

EC policies cover the legal liabilities of the employer towards his employees. This cover is provided under the Legal Regime on Compensation for Damage Arising from Work Accidents and Occupational Diseases, which is, the statutory liability placed upon an employer to pay compensation in stipulated amounts to employees or their dependants in respect of injury or death arising out of and in the course of employment.

The liability transferred to the insurer is in respect of the following:

(i) Compensation in case of death, including funeral expenses, and compensation for

permanent or temporary incapacity;

- (ii) Medical expenses which are of medical, surgical, and hospital nature, necessary and adequate to restore the victim's health, and his working capacity.

In order to continuously enhance employee protection, the Macau SAR government has included the review of the "Compensation Limits for occupational accidents and diseases" in the annual work plan of the Standing Committee for the Coordination of Social Affairs since 2019. The working group, formed by the representatives of the Labor Affairs Bureau (DSAL) and the AMCM in October 2018, with taking factors of both economic development and claim settlement of occupational accidents into consideration, has conducted an analysis on the compensation limits.

As a consent from the discussion of the Standing Committee for the Coordination of Social Affairs, starting from 11<sup>th</sup> September 2020, the relevant compensation limits have been raised by an increase of 5% to 8%, while the premiums have been increased by 2% accordingly. The maximum liability of the insurer in respect of death and funeral expenses of each employee is MOP1,080,000 and MOP17,800 respectively. In relation of permanent and temporary incapacity, the maximum liability is:

- (i) For permanent absolute and partial incapacity: MOP1,350,000;
- (ii) For temporary absolute incapacity: indemnity equal to two-thirds of the basic pay;
- (iii) For temporary partial incapacity: indemnity equal to two-thirds of the reduction suffered in the general earning capacity.

The medical expenses shall be subject to the following maximum limits:

- (i) Up to MOP 3,150,000 for each employee who is a victim of a work accident or occupational disease; and
- (ii) Up to MOP300 per day per consultation (including diagnosis and treatment) for out-patient cases. Medical expenses shall be paid every 15 days to the victim by the responsible party, provided that the responsible party has received the necessary documents for such medical expenses from the victim.

The policy wording of EC insurance is uniform and a specimen of the policy schedule can be found in Appendix III of this Chapter. The policy together with the schedule must be presented to the competent authorities as and when required to prove the existence of insurance cover.

### **(c) Limitations and exclusions**

As EC is a compulsory class of insurance, there are not many exclusions. Typically, however, the policy will exclude:

- (i) Accidents or disease sustained by the Insured;



- (ii) Insured's spouse and children, including adopted children, or any other immediate relations or relatives, or up to 3rd degree of collateral kinship, so too the administrators or managers of any insured company (unless otherwise specifically mentioned in the Policy);
- (iii) The preceding paragraph shall equally apply to partners or shareholders who work for the Insured (unless otherwise specifically mentioned in the Policy);
- (iv) The definition of "occupational accident/disease" does not include hernia, occupational respiratory disease, and costs incurred with the call at a port for evacuation of the victim;
- (v) Expenses incurred outside the Macau SAR (unless otherwise specifically mentioned in the Policy);
- (vi) 'Standard' exclusions, such as war and nuclear risks.

**(d) Premium basis**

This is usually a rate percent (according to the nature of each employees' main occupation) applied to the annual payroll of the employee. As such, the initial premium must be provisional, subject to adjustment when the final figures for the year are known.

The tariff (i.e. rate percent) of EC policies is fixed, and shall be applied compulsorily. Please refer to your Principal if you wish to have further details of the tariff.

**(e) Other features**

- (i) Right of recovery: This provision is identical in intent to that in motor policies. It gives a right of recovery from the insured if compulsory insurance legislation compels an insurer to pay a claim when a breach of policy provisions would otherwise allow the insurer to avoid liability. With EC claims, this right may be of more value, since the other employees or third parties who caused the accident is perhaps more likely to be able to reimburse the insurer.
- (ii) Premium adjustments: Most employers understate their payroll when the provisional premium is being calculated, so following up adjustment is quite important.
- (iii) No Claim Discount: A feature of EC policies which grants a progressive discount on the renewal premium if the previous year has been claim-free. The first claim free year earns 10% No Claim Discount (NCD), the second, 15% and the maximum is for the third year, which is 20%.

The NCD system operates on a 'step-back system'. This means that a single claim will not totally destroy an NCD entitlement. For two or more years entitlement (15% or 20%), a single claim during the year reduces the discount on renewal to 10% or 15% respectively.

- (iv) Employers or their representatives shall notify the Labour Affairs Bureau (DSAL) in the following terms:
- of work accidents occurring at place of work resulting in death or hospitalization of the victim, within 24 hours from the occurrence of the accident or from the moment when they became aware of it;
  - of work accidents outside the situations provided for in the preceding subparagraph, within five working days from the occurrence of the accident or from the moment when they became aware of it;
  - of all cases of occupational diseases occurring at place of work, within 24 hours from the date of the diagnosis of the occupational disease or from the moment when they became aware of it, irrespective of the consequences resulting from the disease.
- (v) EC Insurance Residual Scheme: Procedures are similar to Motor Vehicles Insurance Residual Scheme.

## **2.3 PROFESSIONAL LIABILITY INSURANCE FOR TRAVEL AGENTS**

This insurance satisfies what is legally required of travel agents in respect of its obligation to effect an insurance policy which covers its inherent professional liability. The Executive Order No. 263/99/M of 14<sup>th</sup> June defines the General Conditions and Schedule of the Uniform Policy. The minimum limit of indemnity to be insured is MOP700,000 per claim.

### **(a) Basic intention and scope of cover**

The policy shall indemnify, subject to the limits of indemnity stated in the schedule, only the compensation which the Insured may be civilly liable in respect of loss or damage, both bodily injury and property damage, caused, fraudulently or not, to its clients or to third parties, and which resulted exclusively from its own and/or complementary activities.

In addition to the limits of indemnity, the Insurer shall only be liable for the costs and expenses of litigation incurred by the Insured after having acted according to the instructions of the Insured, including any other expenses incurred by the Insured with the written consent of the Insurer.

### **(b) Limitations and exclusions**

Among the list of exclusions, the most important ones are as follows:

- (i) Liabilities which result from agreement or contract, and not associated with insured's own and/or complementary activities;
- (ii) Loss or damage to the property that is owned by, held in trust by or under the custody or control of the insured, its employees or representatives.
- (iii) Damage or loss caused by the client or third parties or failure to act upon the instructions of the insured;
- (iv) Liabilities of the user for the loss or damage caused to third parties as a result of the use of the insured's vehicle, or liabilities of the insured for the loss or damage caused to third parties as a result of the use of vehicle, which according to the laws in force should be subject to compulsory third party liability insurance;
- (v) Client's refusal to accept any increase in the price agreed upon, provided such increase was stipulated in the respective programme, and such increase result from changes in exchange rates or changes in prices by the service provider;
- (vi) Due to cancellation of service, with at least 15 days' advance notice, for not having attained the minimum number of passengers originally fixed, provided such condition is clearly stated in the programme.
- (vii) 'Standard' exclusions of war, and nuclear risks, etc.

**(c) Premium basis**

The basic annual premium is 1% on the annual turnover of the insured. For higher limit of indemnity (i.e. exceeding MOP700,000 per claim), a surcharge of at least 15% of the basic will be applied.

A specimen of the Policy Schedule can be found in Appendix IV of this Chapter. The tariff rate is fixed and established by Executive Order No. 265/99/M, 14<sup>th</sup> June.

**(d) Other features**

- (i) Excess: An amount corresponding to 10% claim amount shall be borne by the Insured for each claim. If the Insured is willing to bear a higher level of excess, the corresponding premium to be payable will be reduced;
- (ii) Subrogation rights of the Insurer: After paying the claim, the insurer shall be subrogated, up to the amount of the compensation, to all the rights, proceedings and appeals of the Insured against the person ultimately responsible for the claim and for all the costs and expenses involved under this policy. The insured is obliged to take all steps necessary to carry out the subrogation right of the insurer.

## **2.4 PUBLIC LIABILITY INSURANCE RELATING TO THE FIXING OF PROPAGANDA AND PUBLICITY MATERIAL**

Decree-Law No. 38/96/M, 15<sup>th</sup> July, establishes the minimum limits for compulsory public liability insurance relating to the fixing of propaganda and publicity material in the territory of Macau (also known as ‘signboards’).

### **(i) Basic intention and scope of cover**

The insurance corresponds to the requirement of the municipal order concerning the obligation to effect an insurance policy to guarantee the public liability arising from the propaganda and publicity material.

The policy indemnifies third parties in relation to compensation which the insured may be legally liable for any personal loss or damage, be it bodily injury, property damage or otherwise caused to third parties by the propaganda and publicity material as specified in the schedule and within the limit of indemnity stated in the policy.

The insurer shall equally be liable for the costs and expenses of litigation incurred by the insured after having acted according to the instructions of the insurer, including any other expenses incurred by the insured with the written consent of the insurer.

Policy wordings are uniform. The specimen of the schedule can be found in Appendix V.

### **(j) Limitations and exclusions**

The cover granted by this insurance shall not apply to or include the compensation which the insured may be liable for personal loss, property damage or other damage:

- (i) For bodily injury caused to partners, employees, temporary staff and executives of mandates of the insured, or to his spouse, ascendants, descendants or adopted children, including other relatives or relations up to 3rd degree of collateral kinship, but in the latter case only when they cohabit with or depend on the Insured for their livelihood;
- (ii) For material damage caused to property belonging to or held in trust by or in the custody or control of the insured or of any of the persons mentioned in the preceding paragraph;
- (iii) As a result of liability assumed by the Insured under agreement/contract unless such liability would have attached in the absence of such agreement/contract;
- (iv) For bodily injury or material damage caused by vibrations or due to removal or weakening of the foundation or support;
- (v) For property or other damage due, directly or indirectly, mainly or remotely, to force majeure, tumults, riots, alterations to public order and other acts of similar nature, acts of terrorism or sabotage, insurrection, revolution, civil war, invasion, war (declared or not), hostilities as well as military operations resulting thereof or where such property

or other damage is a consequence, directly or indirectly, of telluric movements or from subterranean fire; and

- (vi) In respect of claims arising directly or indirectly from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this exception only combustion shall include any self-sustaining process of nuclear fusion.

#### **(k) Premium basis**

The annual premiums are dependent on the selected limit of indemnity per accident (i.e. from MOP100,000 to unlimited indemnity) and the amount of excess per accident (i.e. from MOP1,000 to MOP4,000). The annual premium ranges from MOP210 per signboard (with a limit of indemnity of MOP100,000 and an excess of MOP4,000), to MOP1,200 per signboard (with unlimited indemnity and MOP1,000 excess).

The tariff for this insurance is defined and fixed by Executive Order No. 168/96/M, 15<sup>th</sup> July.

#### **(l) Other features**

- (i) Excess: The insurance cover is subject to the application of an excess per accident which shall be borne by the policyholder. The excess is voluntary (subject to a minimum of MOP1,000 per accident) and higher level of excess can be selected by the policyholder in return for a lower premium.
- (ii) Subrogation of the insurer: The insurer shall be subrogated, up to the amount of the compensation paid, in all the rights, actions and proceedings of the policyholder against the persons held responsible for the accident insofar as all the costs and expenses incurred under this policy. The policyholder is obliged to do whatever necessary for the insurer to exercise its subrogation rights.

## **2.5 THIRD PARTY LIABILITY INSURANCE FOR PLEASURE BOAT**

#### **(a) Basic intention and scope of cover**

Third party liability insurance for pleasure boat covers the compensation legally due for bodily injury or property damage caused to third parties as a result of the use of the Pleasure Boat, for which the insured is liable under the laws in force (other than the specified liabilities listed in policy). Under the terms of the Establishment of Legal Regime for Compulsory Third Party Liability Insurance for Pleasure Boat, Decree-Law No. 104/99/M, of 13<sup>th</sup> December, vessels classified as pleasure boats shall only be authorised to navigate provided they are insured for damages under a third party liability insurance policy, issued by an authorised insurer. Vessels utilised in nautical sports, fishing or for recreation, including water-scooters, shall be considered as "Pleasure Boats" .

The cover provided under the third party liability insurance for pleasure boat is limited to the maritime areas under the jurisdiction of the Macau SAR, unless otherwise agreed. The insurance covers the third party liability of the owners of the pleasure boats, masters, and their lawful holders or drivers for loss or damage caused to third parties as a result of the use of the pleasure boat, and the minimum sum insured for the third party liability insurance is MOP 1 million.

The policy wording of third party liability insurance for pleasure boat is uniform, and the specimen of the schedule can be found in Appendix VI.

**(b) Limitations and exclusions**

The insurance also does not provide cover for any loss or damage:

- (i) Loss or damages to the Owner (and his/her spouse, and family relatives) of the pleasure boat;
- (ii) Loss or damages to the insured pleasure boat;
- (iii) To the goods carried in the insured pleasure boat either during transportation or in connection with loading and unloading of the pleasure boat;
- (iv) To the third parties as a result of loading and unloading of the pleasure boat;
- (v) To the passengers when they are being carried in breach of any provisions relating to the respective transportation;
- (vi) “Standard” exclusions (e.g. accidents caused directly or indirectly by radiation, explosion, heat diffusion, etc);
- (vi) Accidents occurring during motor sport events as well as during any official training sessions unless otherwise stated in the policy.

**(c) Premium basis**

The premium rate of the insurance is determined by the type of pleasure boat, which is divided into two categories: pleasure boats classified as yachts and other pleasure boats. Irrespective of the period of insurance, the premiums shall be subject to a minimum amount of MOP2,500 (if the pleasure boat is a yacht) or MOP1,000 (for other pleasure boats), be it in relation to the initial insurance or renewal thereof.

**(d) Other features**

- (i) Pleasure Boat Co-Insurance Pooling Arrangement: same as in compulsory motor third party liability insurance.

- (ii) Excess: An amount corresponding to 10% claim amount shall be borne by the Insured for each claim. If the Insured is willing to bear a higher level of excess, the corresponding premium to be payable will be reduced.
- (iii) No Claim Discount: A feature of the policies which grants a progressive discount on the renewal premium if the previous year has been claim-free. The first claim free year earns 5% No Claim Discount (NCD), the second, 10% and the maximum is for the third year, which is 20%.

## **2.6 COMPULSORY PROFESSIONAL LIABILITY INSURANCE FOR LAWYERS**

### **(a) Basic intention and scope of cover**

The compulsoriness of the professional liability insurance for lawyers is established to guarantee the indemnities that may be legally required to be paid for patrimonial loss or damage caused to third parties, resulting exclusively from acts, omissions or non-fulfilment of obligations on the part of the lawyers in the course of their professional activity.

The insurance equally covers the legal liability in respect of third parties for which the lawyer may be held responsible for acts or omissions on the part of his non-lawyer staff and of the trainee lawyers, so too for accidents caused to third parties within the office premises of the lawyer.

In order to apply the provisions of the preceding paragraph, the insured shall notify the insurer of the list of non-lawyer partners and trainee lawyers protected by the insurance contract by registered letter or other written records, otherwise, they will not be covered by the insurance contract.

Administrative Regulation No. 40/2003 stipulates a uniform policy for compulsory professional liability insurance for lawyers.

### **(b) Limitations and exclusions**

Only part of the restrictions and exclusions are listed below. For details, please refer to Administrative Regulation No. 40/2003.

- (i) Unless otherwise expressly agreed, the present contract shall only be effective in relation to the events occurring in the Macao Special Administrative Region (MSAR) or relating directly to it;
- (ii) The guarantee provided by this contract shall be limited to the consequences of the acts, omissions or non-compliance with the obligations, which give rise to the liability occurring during the effective period of the Policy and whose compensation may be claimed up to 3 years after the respective contract ceases to be effective;

- (iii) For loss or damage resulting from the lack of capacity or legitimacy to enter into a contract on the part of the persons who intervene in business dealings with the Insured, when such facts are fraudulently concealed from the Insured, and in the cases where it is impossible for the Insured to fulfil his/her legal obligation in terms of certifying the capacity and the legitimacy of the persons in whose business dealings they intervene;
- (iv) Resulting from acts performed by the Insured with the agreement of the client, for the purpose of obtaining benefits or reductions of a fiscal nature;
- (v) For loss or damage resulting from inability to fulfil contractual obligations or from any other legal obligations due to “force majeure” not attributable to the Insured;
- (vi) For the payment of taxes, penalties and fines of any nature;
- (vii) For loss or damage that can be defined as the scope of compensation that should be covered by other compulsory insurance;
- (viii) For loss or damage caused to partners, managers and legal representatives of the entity whose liability is covered;
- (ix) For loss or damage caused to any persons whose liability is covered by this contract, as well as to the spouse, ascendants and descendants or to persons who cohabit with such persons or depend on such persons for their livelihood;
- (x) Relating to claims, based on the liability of the Insured, which result from private agreement or contract, where such claims exceed the legal liability of the Insured covered by this contract;
- (xi) Which arises out of any error, omission or negligence committed or alleged to have been committed prior to the Retroactive Date specified in the Policy Schedule;
- (xii) Arising out of an alleged or actual infringement of copyright, trademark, registered design or patent;
- (xiii) Directly or indirectly based upon, attributable to or in consequence of any trading debt incurred by the Insured or any guarantee given by the Insured for a debt or any disputes involving the Insured’s fees or charges or any principal amount and interest arising from the advancement of a loan or transaction in the nature of a loan or extension of credit made by or obtained from the Insured;
- (xiv) Arising out of or relating directly or indirectly from the insolvency or bankruptcy of the Insured;
- (xv) Relating to libel or slander;



- (xvi) For loss or damage due to other reasons, such as war, terrorism, sabotage or labor-related disturbances (including occupation, strikes, riots and closure of factories), asbestos, nuclear radiation, economic losses caused by pollution, etc.

**(c) Premium basis**

- (i) The contract shall be for a fixed and determined period for up to one year;
- (ii) The premium rate for lawyers shall be:  
Without application of any excess: 5% on the sum insured;  
With application of excess for each claim:

Excess	Premium Discount	Premium rate
10 %	5 %	4.75‰
15 %	10 %	4.50‰
20 %	15 %	4.25‰
25 %	20 %	4.00‰

- (iii) In relation to each trainee lawyer, the additional premium for the lawyer responsible shall be 25% of the premium, calculated according to the terms of subparagraphs 1) and 2) of the preceding paragraph 1.
- (iv) In relation to the staff of the lawyer, the additional premium for the lawyer(s) responsible shall be 10% of the premium, calculated according to the terms of subparagraphs 1) and 2) of the preceding paragraph 1.

**(d) Other features**

Only some of the main features are listed below. For details, please refer to Administrative Regulation No. 40/2003.

- (i) Minimum amount insured: The minimum amount insured for the compulsory professional liability insurance for lawyers is MOP 2 million (per year and per case).
- (ii) Special conditions for the acceptance of insurance: Where the acceptance of insurance is refused by at least three insurers, the lawyer may turn to the Monetary Authority of Macao for definition of the special conditions of acceptance.
- (iii) Aggravation of risk:
- The Insured promises to inform the Company, by registered letter or by other means of written communication and within 8 days from the date he has knowledge of the facts, of all the changes of the risk that may aggravate the liability assumed by the Company.

- It shall be considered as aggravating the risk all the circumstances that make it more probable for the occurrence of a fact or omission susceptible to give rise to the liability of the Insured or widen the extent of damages to be repaired by the latter, namely:
    - The number of non-lawyer assistants;
    - The absence from or inability to appear at the office address for a period of over 2 months;
    - The carrying on of professional activity in conjunction with other lawyers.
- (iv) Sum insured:
- Regardless of the number of victims per claim, the liability of the Company, as referred to in Article 3, shall be limited to an annual maximum amount stated in the Policy Schedule, which in no case can be less than the minimum limit fixed by law.
  - Where the Company refuses to restore the sum insured, the Insured shall effect an additional insurance cover with another insurance company for the remaining period of the first insurance;
  - Unless otherwise expressly agreed:
    - The Company shall not be liable for the judicial expenses where the indemnity paid to the victims equals or exceeds the sum insured;
    - Where the indemnity payable is lower than the sum insured, the Company shall be liable for the indemnity and for the corresponding judicial expenses up to the sum insured;
    - The Insured promises to reimburse the judicial expenses to the Company in case the judicial expenses incurred by the Company together with the indemnity paid exceed the maximum amount fixed in the Policy schedule.
  - The Company shall be liable for the fees charged by the lawyers and solicitors chosen by the Company.
- (v) Excess: By means of an express agreement, a part of the indemnity payable to third parties may be borne by the Insured. However, in no case can this limitation on the payment of indemnity be applicable to the claimants or their heirs;
- (vi) Subrogation: Upon settlement of the claim, the Company shall subrogate, up to the amount of the indemnity paid, in all the rights of the Insured against the third party responsible for the losses, while the Insured shall be obliged to do whatever is deemed necessary to make such rights effective.

## **2.7 COMPULSORY PROFESSIONAL LIABILITY INSURANCE FOR HEALTHCARE PROVIDERS**

In order to implement Law No. 5/2016 "Legal Regime of Medical Error", Administrative Regulation No. 5/2017, in the form of supplementary administrative regulations, stipulates the terms, conditions, and limitations of compulsory professional liability insurance for healthcare providers and the amount of sum insured. Healthcare providers (including natural persons and legal persons) have the obligation to insure, and legal person healthcare providers insure their premises and natural person healthcare providers in their premises.

### **(a) Basic intention and scope of cover**

The insurance will indemnify the Insured in respect of:

- (i) Loss resulting from any claim or claims made against the healthcare providers, resulting exclusively from violation of medical and health regulations, guidelines, professional code of ethics, professional knowledge or normal conduct of healthcare services provisions, from acts or omissions resulting in bodily injury or mental injury of any patient;
- (ii) Claim arising from the rendering of emergency first aid assistance to people whose life or physical condition is in serious danger;
- (iii) The litigation fees, attorney's fees and other emerging expenses associated with the claim incurred with the written consent of the Company.

For the purpose of the preceding paragraph, should the Policyholder or Insured initially become aware of any claims or suspected claims, he/she shall give initial written notice to the Company of such claims during the Period of Insurance, provided that such claims or suspected claims occur during the period from the Retroactive Date until the expiry date shown on the Policy Schedule.

Executive Order No. 46/2017 stipulated the uniform policy format for the compulsory professional liability insurance for healthcare providers. In addition, the insurance premiums and conditions of the above-mentioned insurance are determined by Executive Order No. 45/2017.

### **(b) Limitations and exclusions**

The insurance shall not cover the liability:

- (i) For loss or damage resulting from intentional acts or omissions;
- (ii) For loss or damage arising from services rendered by healthcare provider while under the influence of alcohol, intoxicants or drugs ;
- (iii) For loss or damage arising in any way out of the unlawful sale, supply, use or application of a prohibited substance;
- (iv) For fines or penalties of a criminal, disciplinary or any other nature;

- (v) For the loss or damage caused by property under the custody or control of the insured or its representative;
- (vi) Any claim made against the healthcare provider by any person who are:
  - Partners, shareholders, members of administrative bodies or legal representatives of the healthcare establishment in which the healthcare provider renders services;
  - Spouse, ascendants, descendants or adoptees of the healthcare provider, as well as any other relatives up to the third degree of consanguinity, or those that cohabit with or depend on the healthcare provider for their livelihood or related up to the third degree of consanguinity;
- (vii) Arising out of any legal liability of whatsoever nature directly or indirectly caused by or contributed to, by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (viii) For loss or damage due to acts of war, civil war, invasion, hostilities, rebellion, insurrection, usurped military force or attempted usurped force, terrorism, sabotage and labour disturbances such as assaults, strikes, tumults and “lock-outs” ;
- (ix) For loss or damage resulting from any type of clinical trial;
- (x) Arising out of any loss directly or indirectly caused by, or in consequence of seepage, pollution of air, water or soil or contamination of any kind;
- (xi) Relating to claims which result from private agreement or contract, where such claims exceed the legal liability of the healthcare provider covered by the insurance contract;
- (xii) For loss or damage resulting from act committed outside the Macao Special Administrative Region or liability for damages brought against the healthcare provider in a court of law outside the Macao Special Administrative Region.

**(c) Premium basis**

The law has different regulations on the insurance premiums and deductibles of natural person and legal person healthcare providers:

Healthcare providers	Sum insured	Annual premium	Excess per claim
Natural person	According to the type of medical profession, the lower limit is from MOP500,000 to MOP2,000,000	According to the medical profession and the corresponding lower limit of the insurance amount, the upper limit is from MOP3,200 to MOP56,000	According to the medical profession and the corresponding lower limit of the insurance amount, the upper limit is from MOP10,000 to MOP50,000
Legal person	According to the type of medical establishment, the lower limit is from MOP1,000,000 to MOP20,000,000	It is agreed by the policyholder and the insurer according to the risk characteristics	It is agreed by the policyholder and the insurer according to the risk characteristics

**(d) Other features**

Premium and excess: If the Policyholder is a natural person healthcare provider, the insurer may increase the upper limit of the premiums and excess referred to in the paragraph (c) by up to a maximum of 50%, based on the past claim history of the healthcare provider, the number of healthcare establishments in which the healthcare provider renders medical services, professional experience and professional risk.

Refund of premium: If the Policy is terminated by the Policyholder, the insurer will refund the premium according to the short period scale.

The insurer and the insured may extend the insurance coverage or increase the amount of insurance by entering into voluntary insurance terms.

Where the acceptance of insurance is refused by at least three insurers, the healthcare provider may turn to Monetary Authority of Macao for the definition of the special conditions of acceptance.

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**APPENDIX I – SPECIMEN OF MOTOR INSURANCE THIRD PARTY  
LIABILITY CARD AND PROVISIONAL CERTIFICATE OF INSURANCE**

<b>THIRD PARTY LIABILITY CARD</b>				Nº _____	
INSURED _____					
Policy Number	Expiry	Motor vehicle		Limit of compensation	
		Model	Registration nº	Per accident	Per Year
_____	___/___/___			MOP	Unlimited
<p align="center">Name of the Company Signature</p>					

<b>PROVISIONAL CERTIFICATE OF INSURANCE</b>				Nº _____	
INSURED _____					
Commencement of insurance		Motor vehicle		Limit of compensation	
Day	Hour	Model	Registration Nº	Per accident	Per year
___/___/___				MOP	Unlimited
It is stated that this provisional certificate of insurance replaces temporarily the third party liability card and it is valid until ____/____/____.				<p align="center">Name of the Company Signature</p>	

In the above two documents, reference may be made to the fact that the insurance policy shall cease, under the legislation in force, at 24:00 hours (midnight) on the day of sale of the motor vehicle.

## APPENDIX II – SPECIMEN OF MOTOR INSURANCE POLICY SCHEDULE

MOTOR VEHICLE		POLICY SCHEDULE				POLICY N°	
INSURED				ADDRESS			
Date of commencement of insurance (from hours)		Period of insurance		Expiry date (up to 24:00 hours)			
INSURED VEHICLE							
Registration N°	Make-model	Engine n°	Year of manufacture	Cubic capacity	Seating capacity/ gross weight	Type of body	Use
INSURED RISKS AND LIMITS OF LIABILITY							
THIRD PARTY RISKS				LOSS OR DAMAGE TO THE INSURED VEHICLE			
COVERS		Limits of liability		COVERS		Insured Value	
		Per accident	Per year				
I- Bodily injury and material damage caused to third parties		\$	Unlimited	III- Impact, Collision or Overturning, Fire, Lightning, or Explosion, Theft or Burglary, Breakage of Glass, Flood, Typhoon, Volcanic Eruption, Earthquake and Other Convulsions of Nature IV- Fire, Lightning or Explosion and Theft or Burglary		\$	
II- Bodily injury and material damage caused to passengers in vehicles of public transportation		\$	Unlimited				
SPECIAL CLAUSES Applied to this Policy		EXCESS Referred to in Article 12	TOTAL PREMIUM Including the legal additional		“EXTRAS” OF THE VEHICLE INSURED BY THE POLICY		
				Description	Make	Value	
N°S		\$	\$				\$
SPECIAL TERMS							
Macau, at				INSURANCE COMPANY Signature			

### APPENDIX III – SPECIMEN OF UNIFORM POLICY OF EMPLOYEES’ COMPENSATION INSURANCE SCHEDULE

EMPLOYEES’ COMPENSATION INSURANCE			POLICY SCHEDULE		POLICY N <sup>o</sup> : _____	
Insured			Address		Business activity	
Date of commencement of insurance (at hrs)			Period of insurance		Maturity (at 24:00 hrs)	
Premium			Applicable legislation	Special Clauses Applicable to this Policy	Geographical area	
Amount	Stamp duty	Total				
\$	\$	\$	Decree-Law n <sup>o</sup> 40/95/M, of 14 <sup>th</sup> August	N <sup>o</sup> s	Macau	
Occupations of employees			Estimated number of employees		Estimated total salaries, wages or other earnings on which the premium is calculated	
SPECIFIC DECLARATIONS						
Issued at Macau on COMPANY				NAME OF THE INSURANCE		
				Stamp & Signature		



**APPENDIX IV - SPECIMEN OF POLICY SCHEDULE OF UNIFORM POLICY OF THE PROFESSIONAL LIABILITY  
INSURANCE FOR TRAVEL AGENCIES**

PROFESSIONAL LIABILITY INSURANCE POLICY FOR TRAVEL AGENCIES		Policy Schedule		Policy N° _____	
Insured			Address		
Date of commencement of insurance (at 0:00 hrs)		Period of insurance		Maturity (at 24:00 hrs)	
Limits of indemnity			Premium		
Per accident	For each insurance period	Amount	Stamp duty	Total	
\$	\$	\$	\$	\$	
Excess (pursuant to Article 12 paragraph 1 of General Conditions)			\$		
Special Clauses					
Dated in Macau, on			NAME OF THE COMPANY Stamp & signature		

**APPENDIX V – SPECIMEN OF POLICY SCHEDULE OF UNIFORM POLICY OF PUBLIC LIABILITY INSURANCE POLICY  
RELATING  
TO THE FIXING OF PROPAGANDA AND PUBLICITY MATERIAL**

PUBLIC LIABILITY POLICY RELATING TO THE FIXING OF PROPAGANDA AND PUBLICITY MATERIAL			Policy Schedule		Policy N <sup>o</sup>	
Insured			Address		Activity	
Date of commencement of insurance (at 0:00 hrs)			Period of insurance		Maturity (at 24:00 hrs)	
Applicable Legislation				Excess		
Municipal orders in force				\$1,000.00 or other amount indicated below according to Article 12		
Premium				Limits of indemnity		
Amount	Stamp duty	Total	Per accident		For each insurance period	
\$	\$	\$			Unlimited	
Particulars of the propaganda and publicity material						
Description			Position of the material and its location after it is installed			
Special clauses						
Dated in Macau, on			NAME OF THE COMPANY Stamp & Signature			

# APPENDIX VI – SPECIMEN OF POLICY SCHEDULE OF Uniform Policy for Third Party Liability Insurance for Pleasure Boats

THIRD PARTY LIABILITY INSURANCE FOR PLEASURE BOATS		POLICY SCHEDULE		POLICY N°	
POLICYHOLDER			INSURED		
Name			Name		
Address			Address		

## PLEASURE BOATS

Name	Registration N°	Carrying capacity	Year of manufacture	ENGINE		
				Make-model	Registration N°	Year of manufacture

## INSURED RISKS

THIRD PARTY RISKS		OTHERS	
Compensation limit	MOP _____	Type	
		Insured amount	MOP _____
Special provisions applicable to this insurance policy (Except the original text for “Institute Yacht Clauses”)		Total amount including the legal additions	
No. _____		MOP _____	
Date of commencement of insurance	Period of insurance	Expiry date	Total premium (including legal additions)

Macau, at

INSURANCE COMPANY

Stamp and Signature

**APPENDIX VII – SPECIMEN OF POLICY SCHEDULE OF UNIFORM POLICY FOR PROFESSIONAL LIABILITY  
INSURANCE FOR LAWYERS**

<i>UNIFORM POLICY FOR COMPULSORY PROFESSIONAL LIABILITY INSURANCE FOR LAWYERS</i>		<i>POLICY SCHEDULE</i>		<i>POLICY N° _____</i>	
<i>Policyholder</i>			<i>Insured</i>		
<i>Name</i>			<i>Name</i>		
<i>Address</i>			<i>Address</i>		
<i>Date of commencement of insurance</i>	<i>Period of insurance</i>	<i>Expiry date</i>		<i>Retroactive date</i>	
<i>Sum insured</i>		<i>Excess (Per claim)</i>		<i>Total premium (Including legal additional)</i>	
<p align="center"><b><i>SPECIAL CLAUSES</i></b></p> <p align="right"><i>Issued in Macao, INSURANCE COMPANY</i></p> <p align="right">_____</p> <p align="right"><i>Seal and signature</i></p>					

**APPENDIX VIII – SPECIMEN OF POLICY SCHEDULE OF UNIFORM POLICY FOR COMPULSORY PROFESSIONAL  
LIABILITY INSURANCE FOR HEALTHCARE PROVIDERS**

COMPULSORY PROFESSIONAL LIABILITY INSURANCE FOR HEALTHCARE PROVIDERS			POLICY SCHEDULE		POLICY N° _____	
Policyholder				Insured		
Name				Professional qualification and license number registered with the Health Bureau		
Address				Name		
				Address		
Policy effective date		Period of Insurance		Policy expiry date		Retroactive date
Limit of Indemnity			Excess		Total Premium	
Per Claim	Per Year					
(Special Terms)						
<p align="center">Issued in Macao, on (INSURANCE COMPANY)</p> <p align="center">_____</p> <p align="center">Seal and signature</p>						

### 3 INSURANCE PRODUCTS

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

It must be remembered that as far as policy wordings and terms are concerned, Macau is a free market. In these notes, therefore, we shall present what may be considered a representative summary of the particular types of business. Insurance intermediaries should check specifically with their principals regarding actual policy wordings and available covers.

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

Before we look at individual classes, from the Core Subject with this Quality Assurance Programme "**Principles and Practice of Insurance**" we have three reminders, which concern topics that will be referred to later in these Study Notes:

#### (a) **Classification of Insurance**

One method of classifying insurance, sometimes called the *functional method*, is to look at insurances according to the basic subject matter of the insurance. There are four categories under this classification and General Insurance includes covers of all types. The categories are:

- (i) *Insurances of the Person*: where the subject matter is a human being's life, limbs or health, or medical expenses. In General Insurance, this includes **Personal Accident** insurance.
- (ii) *Insurances of Property*: where the subject matter of insurance consists of physical things, such as **buildings, ships, motor vehicles** etc.
- (iii) *Insurances of Pecuniary Interests*: these cover financial interests in connection with potential loss of wealth or future income, including such classes as **Fidelity Guarantee**, and **Business Interruption** (or "**Consequential Loss**").
- (iv) *Insurances of Liabilities*: these cover liabilities arising at law for the death, bodily injury or disease of **third parties**, or for loss of or damage to property.

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

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

- (i) *Specified Perils*: meaning that the loss or damage must be proximately caused by a peril (cause of loss) specifically mentioned (specified) in the policy, e.g. lightning under a fire policy etc. It will be for the **claimant** to prove that a loss has been caused by a specified peril.
- (ii) *"All Risks"*: this form of cover means that any loss or damage, however arising, is covered by the policy **unless** a specific **exclusion** applies. The **claimant** merely has to show that a loss has occurred without having to point out the specific reasons. It will be for the **insurer** to prove that the loss is **not** covered.

**Note:** Technically the description of "all risks" is inaccurate, since there must be some risks are **excluded** (that is why this term is sometimes expressed in inverted commas).

(c) **Fundamental Risks**

A fundamental risk is one which offers such enormous potential of loss that it is usually considered to be uninsurable by conventional insurance funds. Here are some examples that generally appear as standard exclusions in General Insurance policies:

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

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

### 3.1 HEALTH INSURANCE

These insurance products are "insurances of the person", in the sense that the subject matter of the insurance is the life, limbs and health of a human being. Some insurers now offer this kind of cover through their life insurance departments, but originally it was general insurance business, and still is for the purposes of this study.

#### 3.1.1 Personal Accident (PA), and Sickness Insurance

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

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

Policy cover may be described under three main headings:

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

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

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

(b) **Limitations and exclusions**

- (i) *Accidental bodily injury*: This is defined in the policy and frequently includes such words as "physical injury from accidental, external, violent and visible means". Some policies have more modern wordings, but each is likely to insist that the injury/disablement only arises from the accident. Customary wordings include a phrase such as "solely and independently of any other cause result in .....".
- (ii) *Injury definitions*: These will vary between insurers, but typically the following will apply:
  - (1) **Permanent** means lasting at least 12 months, at which time there is no reasonable hope of improvement.



- (2) **Loss of limb** means physical separation at or above the wrist or ankle. (Many insurers, however, would accept permanent loss of use of the limb as being equal to the loss of the limb.)
  - (3) **Loss of sight** means total and irrecoverable loss of all sight in the eye(s) concerned.
- (iii) Time limits: The strict policy requirements require death or disablement to take place within 12 months (or some other specified period) of the injury concerned. Of course, special circumstances (e.g. a long-lasting coma and then death) would merit sympathetic consideration.
- (iv) Insurance benefit limitations:
  - (1) A PA policy will typically provide for the reduction of the sum insured (meaning maximum policy liability), in response to a paid claim, for the period between the date of the accident to which the claim relates and the policy expiry date by the amount paid, with termination of the policy without premium refund when the sum insured is exhausted. The policy may go on to stipulate that in calculating individual benefits (e.g. with loss of one hand: 50% of the sum insured), the original sum insured will still be used.
  - (2) Where more than one insured event results from the same accident, payment will only be made for that event which carries the greatest amount of benefit payable, except for circumstances in which payments of weekly benefits are followed by the death of the insured person.
- (v) Specific exclusions: There are a number of these and they may be considered under various headings:
  - (1) **Fundamental risks**, such as war, nuclear and AIDS etc.
  - (2) **Hazardous activities**, such as dangerous sports (mountaineering, winter sports etc.) and aviation, other than as a fare-paying passenger.
  - (3) **Anti-social activities**, such as suicide, deliberately self-inflicted injury, alcohol or substance abuse.
  - (4) **Miscellaneous exclusions**, for example, childbirth, pregnancy and abortion.
- (c) **Premium basis**

Individual features may have underwriting consequences, but the standard premium calculation is based upon the insured's occupation. All occupations

will be classified according to their potential accident risk. Insurers may have as few as two, or more different occupational risk classifications. Normally rates will be the same for male and female risks.

**(d) Sum Insured**

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

**(e) Other features**

- (i) **Group policies:** Increasingly, PA cover may be provided as a "fringe benefit" by employers. Cover under such policies may be restricted to **working-hours** only, but is more likely to be on a **24 hours** basis.
- (ii) **Sickness cover:** The above comments refer almost exclusively to **Accidents Only** covers. Sickness benefits may be included within the policy, but these will only be for Temporary Disablement benefits. Death from sickness, for example, is never covered under a PA policy, it being deemed a life insurance risk. Because of a perceived higher morbidity (sickness) rate, sickness policy premiums for female risks may be higher.

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

- (iii) **Other policies:** Frequently, **PA** benefits are given under a combined policy or as part of package policy cover with other classes of insurance. These benefits frequently added to life insurance policies. For example, in general insurance, also, **PA** benefits may be part of the cover for a number of policies, e.g. travel insurance, money policies and household insurances etc.
- (iv) **Cancellable:** PA policies normally represent **annual** contracts, which may or may not be renewed. In addition, policies normally allow the insurer to **cancel** the policy during its currency. In practice, cancellation of a policy would rarely occur.
- (v) **Age limits:** Premiums are not based on the age of the insured and rates will be the same within the insurable band of ages (e.g. 16 to 65 years).

### 3.1.2 Medical Insurance

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

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

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

#### (b) Limitations and exclusions

- (i) *PA exclusions*: As the cover includes circumstances covered by PA policies, nearly all the usual PA exclusions apply (see above).
- (ii) Special exclusions, these include:
  - (1) Congenital conditions;
  - (2) Pre-existing (i.e. prior to insurance) conditions and disabilities ;
  - (3) Birth control/infertility treatment;
  - (4) Cosmetic surgery;
  - (5) Routine medical examinations and check-ups;
  - (6) Dental treatment (unless arising from an accident during policy cover).

#### (c) Premium basis

Clearly, again remembering the PA content of this cover, the insured's profession is important. Remembering also the sickness element of cover, the age and health of the insured may also play an important part with these insurances.

#### (d) Other features

- (i) **Group policies**: These policies are often on a group or family basis.

- (ii) **Variations:** Some insurers may well offer insurance protection in the form of standard or available extra benefits, such cover as childbirth and dental related expenses.
- (iii) **Hospitalization cover:** This insurance provides a stated benefit per day spent in hospital as an in-patient. Alternatively, an indemnity cover may be given.

## 3.2 COMBINED POLICY AND PACKAGE POLICY

Either the combined policy or the package policy is a single policy document that provides more than one type of insurance, e.g. fire insurance, business interruption insurance, theft insurance, employees' compensation insurance and public liability insurance. When large-scale policyholders begin to adopt more advanced method in their risk management and emphasis on insurance, this trend becomes more obvious. The form of such policies may be relatively simple, involving little more than a series of policy sections for the respective covers traditionally provided by separate policies. Alternatively, the policies may be very innovative in design, quite unlike traditional forms of cover.

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

### 3.2.1 Household Insurances

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

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

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

- (i) *Buildings only cover*
- (ii) *Contents only cover*
- (iii) *Buildings and contents cover*

Cover may be on a **specified perils** or on an "**all risks**" basis. Buildings cover

tends to be on a specified perils basis whereas contents cover on an "all risks" basis. Policies are detailed and complex, requiring careful study, but an outline of the cover provided includes:

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

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

- (3) *Contents temporarily removed* but contained in premises within the specified geographical area.
- (4) *Contents in transit* to a new home.
- (5) *Other "property" cover* including such miscellaneous items as replacing locks if keys are lost or stolen, and replacing frozen food which spoils owing to breakdown of refrigerators etc.
- (6) *Architects and Surveyors Fees* in respect of reinstatement of damaged buildings.
- (7) *Accommodation/Rent* if premises are uninhabitable because of an insured peril, the policy may provide for the additional costs involved with alternative accommodation or (in the case of a landlord) the loss of rent. (These, of course, are **pecuniary** insurances.)
- (8) *Public liability* towards third parties as a consequence of the insured's ownership or occupancy of the insured premises.
- (9) *Personal accident* a lump sum PA benefit is payable if the insured should die in a fire or at the hands of thieves.

(b) **Limitations and exclusions**

- (i) *War, riot* and similar risks;
- (ii) *Nuclear* risks;

- (iii) *Consequential loss* (other than (a) (7) above);
- (iv) *Unoccupancy*: Policies usually suspend cover (sometimes still covering fire and natural perils) if the premises are unoccupied for more than **60 days**;
- (v) *Policy excesses*: Some perils (e.g. windstorm etc.) are likely to be subject to a specified excess, partly to eliminate trivial losses and partly to involve the insured in his own loss experience;
- (vi) *Subject to average*: Property is expected to be insured for its full value. If underinsurance exists at the time of a loss, the insured is not fully covered. To the extent that underinsurance exists, the insurer is relieved of liability for a loss (always subject to the sum insured). For example, if at the time of the loss the sum insured represented only 80% of the value at risk, the claim payment would be limited to 80% of the loss (limited to the sum insured).

(c) **Premium basis**

Although a number of different types of risk are covered, the premium is usually based upon a rate percent (per \$100) or per mille (per \$1,000) applied to the buildings (exclusive of foundation and land value) and/or contents insured. Most insurers now offer household contents cover with standard limits of liability and with premiums based on the gross floor area of the insured flat, and are ready to increase the limits for specified items in return for additional premiums. This is a contrast to the traditional rating method, by which a premium rate is applied to the sum insured granted.

### 3.2.2 Travel Insurance

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

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

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

- (i) *Medical expenses and hospital benefit*: Private medical treatment in some countries, notably the United States and Canada, is very expensive. High limits of cover for necessary medical treatment incurred whilst on holiday

are therefore given, sometimes amounting to several millions of dollars. The policy may also offer a daily hospital cash allowance in the event of the insured person's hospital confinement necessitated by an illness or accidental bodily injury.

- (ii) *PA benefits*: On a similar basis to PA covers already discussed.
- (iii) *Luggage loss/damage*: On an "**all risks**" basis, this cover may cover the ultimate loss with an additional sum for emergency purchases as required.
- (iv) *Loss of deposits or cancellation of trip*: Where the insured trip has been cancelled because of the happening of any of the specified perils, all or part of money payable for a holiday may be lost. The policy covers such losses.
- (v) *Curtailment of trip*: Where the insured trip has commenced outside the place of origin but, because of the happening of any of the specified perils, has to be curtailed unavoidably, the policy will pay for any loss of pre-paid travel fare or accommodation expenses, and any additional cost of returning to the place of origin.
- (vi) *Loss of money*: A limited amount of cover is available for money lost or stolen whilst on holiday.
- (vii) *Travel delays and baggage delays*: A specified sum is payable in the event of inordinate delays of aircraft for time in excess of a stated period. Where the insured person has been temporarily deprived of his baggage for exceeding a stated period after arriving at the destination because of delay or misdirection in delivery, the policy will reimburse him for any cost of recovering the baggage or purchasing essential items of toiletries or clothing.
- (viii) *Emergency services*: Returning an injured insured or the remains or ashes in the event of death during holiday, returning minor children and deposit guarantee for hospital admission.
- (ix) *Public liability cover*: The legal responsibility of the insured towards third parties in respect of death, injury or property damage.
- (x) *Loss of travel documents*: This is cover for the costs of replacing passports, travel tickets or other travel documents lost as a result of theft, robbery or burglary (or any other insured peril), and the costs of travel or accommodation incurred in arranging such replacement documents.
- (xi) *Miscellaneous coverages*: A wide variety of cover and services may be found in this competitive class of business, including a benefit for **Hijack, consultation and advice** on an international "helpline", etc.

(b) **Limitations and exclusions**

- (i) *Generally*: These will be in line with the various types of insurance offered, e.g. PA cover will be subject to the customary PA exclusions. Liability cover may not include liability arising from the use of motor vehicles etc.
- (ii) *Excesses*: Most sections of the policy are likely to be subject to an excess, perhaps of \$100 or more, mainly to eliminate trivial claims.

(c) **Premium basis**

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

- (i) *Geographical area*: Many insurers offer either World-Wide cover, or two bands of cover, which are Asia and World-Wide, obviously with increasing rates.
- (ii) *Time element*: Premiums are usually quoted according to the number of days involved with the trip. Most companies quote on a band of days, e.g. not exceeding 3 days, 7 days, 14 days, 28 days etc.
- (iii) *Persons covered*: Travel insurance is obviously related to family holidays. The insured's spouse and family or friends travelling with him may be offered advantageous overall rates.
- (iv) *Annual policies*: For frequent travellers (business and/or holiday) an annual contract may be arranged at an attractive single premium.

(d) **Other features**

- (i) *Underwriting*: A feature of this type of business is that everything is made as simple as possible, because cover is usually obtained at the last minute and a product which is not "user friendly" with this mass market is not likely to succeed. As a consequence, there is little individual underwriting of individual risks.
- (ii) *"Master policies"*: It is quite common for "master policies" to be issued to travel agents, who arrange many "package" holidays. Individual customers merely receive a certificate outlining the basic provisions of the cover.

### 3.2.3 Commercial Combined Policies

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



covers and certain features may usefully be mentioned.

- (a) *Combined Property and Pecuniary Policies*  
These policies tend to offer cover on an "**all risks**" basis, covering both direct **property damage** and **business interruption** under the same policy.
- (b) *Combined Liability Policies*  
Typically, such policies include within a single document cover for **Public Liability, Products Liability and Employee's Compensation Liability**. Individual clients may also require **Directors and Officers** and/or **Professional Liability** covers.
- (c) *Combined "Umbrella" type covers*  
These could include all types of covers, including **property, pecuniary** and **liability** risks. They are likely to be individually designed to the requirements of specific (large company) insureds.

It is not feasible in these Notes to identify specific limitations or other features with such covers, as they are so individual. One common intention, however, is that the insured would look not only to the convenience of single-document cover, but would also expect aggregate savings in premiums.

CAUTION: The insured, or his agent, should take great care to ensure that each of the policy sections or types of insurance is the subject of a separate contract as reflected by completely clear policy wording, despite a possible argument that that is implicitly intended. Otherwise, the breach of a contract term which at first glance is solely applicable to a particular section or type of insurance may, when a claim arises, possibly be found to be construed as affecting all other sections or insurances as well on the basis that the policy represents a single contract, rather than concurrent, separate contracts. In this regard, particular attention should be paid to the use of warranties, the nature of which is such that their operation does not turn on materiality or causation (see 1.3.4(a) above).

### 3.3 PROPERTY AND PECUNIARY INSURANCE

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

#### 3.3.1 Fire and Special Perils Insurance

Although combined and package policies are becoming more widely used, as discussed above, it remains true for Macau that the majority of commercial

buildings and their contents are likely to be insured under a traditional fire insurance policy, with special (extra) perils almost certainly added.

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

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

- (i) *Fire* loss or damage: This may seem totally obvious, but some features need to be noted:
  - (1) **"Fire"** means actual ignition of something that should not be on fire (whether or not it be an insured property), not deliberately caused or arranged by the insured (i.e. not fraudulent).
  - (2) "Fire" damage will include caused by smoke, heating and extinguishing water, if the proximate cause is fire as understood above. Damage reasonably caused by the fire brigade or others in the course of fighting a fire is also covered.
  - (3) The fire does not have to burn on the **insured's** premises. Thus, a fire as defined above burning in a neighbouring property could create a valid fire claim from heat, smoke or water damage etc. to the insured property.
- (ii) *Lightning*: whether followed by fire or not.
- (iii) *Explosion*: is actually an **excluded** peril under the basic fire policy, but the exclusion does not apply to damage arising from the explosion of gas (or boiler) being used for **domestic** (not commercial) purposes.
- (iv) *Special perils*: also known as **extra perils**, **extraneous perils** or **extended perils**. These are perils can hardly be said to be similar to the basic perils of fire, lightning and "limited" explosion, but traditionally available with fire insurance for an extra premium.

(b) **Limitations and exclusions**

- (i) *Average*: The customary property insurance requirement for full insurance, with a penalty for under-insurance in the event of a claim, applies.
- (ii) *Excesses*: It is not usual to have an excess in respect of the basic cover (i.e. fire, lightning, and "limited" explosion), but one may apply with certain of the **extra perils**.

- (iii) *Policy exceptions:* The "standard" exclusions relating to war, nuclear events and terrorism appear, with a number of others, often relating to perils which may be added as extras. It is not necessary for us to make a complete list of the policy limitations, but it should be noted that **Theft** during or after the occurrence of a fire is specifically excluded.

(c) **Premium basis**

As with most property insurances, the premium is a rate (per cent or per mille) applied to the sum insured. Properties are classified according to relative risk for rating purposes, with loading or discounting of premium as appropriate according to individual features.

(d) **Other features**

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

### **3.3.1a Business Interruption Insurance**

This is a pecuniary insurance, separate from but very closely connected with fire insurance. Whereas fire insurance seeks to indemnify the insured for loss of or damage to physical property, business interruption insurance seeks to compensate for the after-effects of fire etc. (e.g. loss of profit, extra expenses etc.).

(a) **Scope of cover**

- (i) Loss of **Gross Profit** (as defined in the policy) caused by an

insured peril.

- (ii) **Additional expenses** necessarily and reasonably incurred as a result of an insured peril (e.g. hiring alternative premises).
- (iii) **Wages** (sometimes included with (i) above) paid during an interruption period.

(b) **Limitations and exclusions**

Basically the policy is the same as a fire policy wording, i.e. it covers the same kind of perils (fire, lightning, etc.), but two important features should be noted:

- (i) **Property damage warranty:** If no valid property insurance claim covers the damage, no claim can be made under the business interruption (BI) policy. Otherwise, it can easily be seen that the interruption period is likely to be greatly extended.

Technically there is no need to purchase BI insurance and fire insurance from the same insurer. However, no Macau insurer is likely to give BI cover without covering the fire risk.

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

(c) **Premium basis**

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

(d) **Other features**

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

- (i) *Alternative names:* "Business Interruption Insurance" is the most modern term for this class of business, but it may also be called "**Consequential Loss Insurance**" or "**Loss of Profits Insurance**".
- (ii) *Time element:* With material damage, the most important time is the date of the accident (e.g., fire) since the amount of claim will be related to that. With BI insurance the loss is spread over a period after an insured accident e etc. Clearly there must be a

limit to this "**Interruption Period**" (or "**Indemnity Period**"). The policy specifies the time limit during which losses may be covered. This may be as short as three months or much longer (even two or more years). The features of individual risks and their ability to return to normal business levels is vital in this area.

- (iii) *Loss calculation*: This is a very complex matter, usually requiring the help of professional accountants. In essence, however, an attempt is made to measure the loss sustained during the **interruption period** by comparing income etc. during that period with the comparable period last year (when business was not interrupted), making any necessary **trend** adjustments for such factors as increased market competition and the outbreak of an epidemic during the interruption period which in no way are imputed to the insured accident

### 3.3.2 Property "All Risks" Insurance

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

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

The nature of the cover is described above. It will immediately be seen that the scope of cover is very wide. Originally, "all risks" cover was offered only in respect of individually specified articles of significant value, such as jewelry, furs etc. (in the early days, also limited to well-known and trusted clients). Competition and the development of the market led to the cover being provided much more freely on virtually any kind of property.

#### (b) **Limitations and exclusions**

The name "all risks" is usually expressed in inverted commas, to signify that not **all** risks are insured. There are exclusions, which are likely to include:

- (i) *Inevitable loss*: Losses arising from **wear and tear, depreciation**, etc. will certainly happen and are therefore uninsurable.
- (ii) *Lack of routine care*: Losses from the effects of light, vermin and atmospheric conditions are foreseeable and are either inevitable or should be prevented by reasonable precautions.

- (iii) "Standard" exclusions: War, nuclear risks and terrorism .
- (iv) Unreasonable causes: It is not considered proper to insure losses deliberately caused by the insured or during illegal activities (including confiscation by customs or other authorities).

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

(c) **Premium basis**

This will invariably be based upon a rate applicable to the sum insured, with different rates according to the geographical area in which cover applies (world-wide cover naturally being the most expensive).

(d) **Other features**

- (i) *Application*: "All risks" cover applies in many types of insurance. As a separate class of business, it is mainly concerned with **personal** property owned by individuals. However, commercial "all risks" cover on office contents and other property is becoming more common.
- (ii) *Agreed values*: The original intention for "all risks" cover to insure valuable items is still important. With high-value items insured on this basis, **agreed value** cover is common (it means the sum insured payable for total losses, without proof of value). The sum insured or agreed value is likely to be result of an independent professional valuation.

### 3.3.3 Theft Insurance

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

The intentions are virtually self-explanatory, to cover losses attributable to theft or attempts thereat. For domestic and personal risks such cover is likely to be provided by a household or "all risks" or travel policy. **Theft** insurance is therefore largely confined to the insurance of **commercial** risks.

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

(b) **Limitations and exclusions**

- (i) *"Theft"*: The legal definition of theft is much wider than insurers are prepared to cover under their policies. Under policy terms, therefore, there must be some breaking down of the security defenses of the insured premises. A customary limitation is that theft is only covered if accompanied by **"forcible and violent"** entry to or exit from the insured premises. Sometimes, a thief may enter, say, a department store as a customer, hide somewhere until it is close for business, and escape with stolen goods by force and violence to the doors or windows of the premises. (Note: insurers do not construe the phrase to include force and violence to people.)
- (ii) *Theft by staff*: Actual theft by staff is really a **fidelity guarantee** risk (see later 3.3.6) and is excluded. Theft with the **collusion** of staff members is also not insured.
- (iii) *Fire damage*: It is not unknown for thieves to start a fire to destroy evidence of their theft. This can be seen to create complications both for the fire and theft insurer concerned, so damage by fire is excluded under the theft policy.
- (iv) *Average condition and first loss insurance*: Full value insurance is normally expected, so average will apply in any underinsurance situation. However, where a risk situation is such that a total loss or very large loss is assessed to be rare, a theft policy may be issued on a "first loss basis", that means a sum insured lower than the value declared to the insurer is allowed so as to achieve savings in premiums. The first loss policy, though not subject to the normal average condition, will still penalise the insured in a somewhat similar manner for any undervaluation situation where at the time of loss the declared value is found to be below the actual value at risk.
- (v) *Floating policy*: Where stocks are kept at different locations and at any point of time the insured will have difficulty giving separate, precise values in those locations, a floating policy may be issued with a single sum insured for all those locations combined.
- (vi) *Warranties*: It is quite common for these policies to be subject to warranties relating to valuable property. Examples include requirements for specific security devices (types of lock, iron bars etc.) and/or security measures (systems regarding keys, stock left in public view overnight etc.). Breach of such warranties invalidates cover.

(c) **Premium basis**

This will invariably be a rate applicable to the sum insured, varying with the attractiveness of the property to thieves.

(d) **Other features**

- (i) *Extensions of cover:* Various extensions are available, including **Hold-up cover**, which insures against theft accompanied by actual violence or the threat of violence against the insured or his employees, but not by violation of the security defenses of the insured premises. Also, PA covers for staff may be included.
- (ii) *Risk surveys:* Frequently necessary because of premises-specific hazards, substantial values or attractive stock at risk, or proposal from a new client.
- (iii) *"Target risks":* Some goods are particularly attractive to thieves. Some are obviously in this category, such as gold and jewelry, furs and other high value/low bulk items. Target risks are likely to face more severe policy terms and premiums.
- (iv) *Alternative title:* Originally, this class of business was known as **Burglary** insurance. Some insurers in Macau may still be using this title.

### 3.3.4 Glass Insurance

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

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

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

(b) **Limitations and exclusions**

- (i) *Fire risks:* Risks more traditionally covered under a fire policy, such as fire itself, storm and various extra perils associated with fire insurance, are excluded.
- (ii) *Wear and tear etc.:* As is customary with "all risks" cover, losses attributable to the effect of time (in this case dilapidation of frames or framework) is excluded, as is scratching without actual breakage of the glass.



- (iii) *Standard property insurance exclusion:* War, nuclear risks, terrorism, etc.
- (iv) *Consequential loss:* Loss of business or other expense resulting from the breakage of insured glass is excluded.

(c) **Premium basis**

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

(d) **Other features**

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

### 3.3.5 Money Insurance

Thought to be too hazardous to contemplate in earlier days, experience has proved otherwise and money insurance is now commonly provided for a wide range of commercial organizations.

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

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

- (i) *Cover:* is on an "**all risks**" basis. In addition to the loss of money, damage to safes and strongrooms etc. caused by thieves is usually covered.
- (ii) *"Money":* means much more than legal tender, extending to include cheques, bank drafts and other forms of financial documents.
- (iii) *Location:* the original intention of covering **cash in transit** remains a major element of cover, but cover at other locations (including the homes of specified staff, as well as the insured's business premises) is also

likely.

(b) **Limitations and exclusions**

- (i) *Sums insured*: may have different limits, according to the location.
- (ii) *Security*: it may be specified that money has to be kept in a safe or similar secure place, except for limited amounts and limited times. Money is required to be deposited with the bank as soon as possible.
- (iii) *In transit*: still on the question of security, the policy may specify that money be transported only by male escorts (at least two with sums exceeding a specified amount) and the manner or route of transit may have to be agreed.
- (iv) *Theft by staff*: or with the collusion of staff is a **fidelity guarantee** risk and is excluded.

(c) **Premium basis**

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

(d) **Other features**

- (i) *Proof of loss*: The policy is "all risks", but the **amount** of loss is important and adequate records must be kept to establish loss figures (also in connection with the premium adjustment).
- (ii) *Extensions*: It is quite common to provide a PA extension to these policies, covering injuries sustained by staff when assaulted by thieves.

### 3.3.6 Fidelity Guarantee Insurance

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

Perhaps the earliest form of **accident** insurance, fidelity guarantee insurance is a **pecuniary** insurance which insures an employer against loss of money or property as a result of any act of fraud, theft or dishonesty by any person in the course of employment by him. Features to note with the general scope of this class of insurance are::

- (i) *Causes of loss*: The policy covers dishonest acts by staff. It will therefore not apply to general errors and omissions.

(ii) *Staff covered*: Various forms of policy covers are available, the most common being:

- (1) **Individual cover**: where the guaranteed staff are individually named and subject to a specified amount.
- (2) **Combined cover**: where a schedule of names (or positions) is given, either with separate sums insured, or with a floating sum insured (i.e. a sum insured not divided among the insured individuals or positions) or a combination of the two.
- (3) **Blanket cover**: where the policy covers all the insured's staff, usually with separate categories (inside/outside, handling/not handling cash, etc.) and separate sums insured.

(b) **Limitations and exclusions**

- (i) *System of check and supervision*: these are very important underwriting consideration. The approved system must not be varied without the consent of the insurer.
- (ii) *Second chance*: employers are often very forgiving and sometimes allow persons who have defrauded them to continue in their employ. Any knowledge or reasonable suspicion about an employee must be reported to the insurer, who will suspend cover in respect of that employee until he is satisfied otherwise. The policy may also make provision for immediate, automatic cessation of guarantee in respect of that employee after such discovery.

(c) **Premium basis**

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

(d) **Other features**

- (i) A "*guarantee*": As far as the **employee** is concerned, the policy is a **guarantee**. As far as the **employer** is concerned, the policy is an insurance. The main difference is that the dishonest employee is liable in law to reimburse the **guarantor** (in this case the insurer) for payments the latter makes to his employer on account of his default. In practice, this may not be worth much.
- (ii) *Default items*: Originally, these policies only covered defaults relating to **money**. It is now quite normal for the policy to respond in respect of defaults concerning **stock** as well.

### 3.3.7 Surety Bonds

Most insurance contracts are **simple contracts**. This does not mean that they are necessarily uncomplicated, but they are easy to form and technically they do not normally have to be evidenced in writing (although they almost invariably are). **Surety Bonds**, on the other hand, are very formal types of contract, not frequently met in insurance.

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

A surety bond is an agreement in writing involving three parties, namely the principal, the obligee and the surety (or “guarantor” ), under which the surety, in consideration of a fee paid by the principal, provides a financial guarantee to the obligee that the principal will fulfil his obligations – statutory obligations, contractual obligations, etc.

Issued by insurers, sometimes by banks. Bonds are a form of **guarantee** or **surety**. However, unlike fidelity guarantee policies, they are not also an insurance. Unlike insurance, which protects the party obtaining the insurance, a surety bond protects the party requiring the bond rather than the party paying for the bond. If the principal, for whatever reason, fails to meet his obligations to the obligee, the obligee may seek compensation from the surety up to the bond amount. Under the terms of the bond, the surety will then have the right to be repaid by the principal.

The usual form of bond met in Macau is where the insurer acts as surety or **guarantor** to a construction company or some other commercial organization in respect of obligations towards the Macau Government (who becomes known as the **Employer**).

A typical example is where the Government contracts work for building roads or a school, but they will only grant the contract subject to a **Performance Bond**. This guarantees that if the work is not completed as per contract the bond is **forfeit** and the insurer pays the stated sum (known as the **penalty**) to the Government.

The insurer has rights of recovery against the contractor (for what that may be worth).

#### (b) Limitations and exclusions

With bond claims, almost none of the usual exclusions and limitations surrounding insurance contracts will apply. The surety may, of course, decide to pay or deny a claim. Apart from these, the surety is likely to have options to

remedy a performance default, e.g. advancing funds to finance completion of the job by the principal, or assuming the responsibility for completing the remaining work with the help of appointed construction professionals (i.e. the takeover option).

(c) **Premium basis**

The payment to the surety is not a premium, and is more properly called a “fee” or a “charge” . It is usually a single payment.

(d) **Other features**

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

### 3.4 ENGINEERING INSURANCE

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

#### 3.4.1 Boiler Explosion Insurance

(a) **Cover**

The name virtually tells us the basic intention of the cover, which is to insure against the results of an **explosion** or **collapse** of a boiler or pressure vessel "*whilst in the course of ordinary working*". It can be in the form of a separate policy or an extension to a machinery breakdown policy or fire policy. The cover usually consists of the following:

- (i) Damage to the boilers or pressure vessels of the insured.
  - (ii) Damage to other property of the insured.
  - (iii) Liability for damage to third party property or the death of or bodily injury to third parties, plus costs and expenses.
- (b) **Exclusions/limitations**
- (i) Risks normally insurable by other policies, such as fire and extra perils.
  - (ii) “Standard” exclusions, such as war, nuclear risks and terrorism.
  - (iii) Inappropriate cover, such as wilful act and wilful neglect of the insured, and wear and tear.
  - (iv) Extraneous cause: own damage resulting from any extraneous cause.
- (c) **Some other terms**
- (i) The policy usually specifies a sum insured for each boiler or pressure vessel and a limit of indemnity for damage to other property of the insured and third party liability.
  - (ii) Each item of boiler or pressure vessel insured is separately subject to the typical average condition.

### 3.4.2 Machinery Breakdown Insurance

(a) **Cover**

While a typical commercial property policy does not cover loss or damage caused by electrical arcing, mechanical breakdown, and Machinery Breakdown (MB) Insurance gives “all risks” cover for “unforeseen and sudden” physical loss of or damage to the insured plant, machinery, equipment, computer, etc. It is thus a **property** insurance. Some MB policies combine inspection service by qualified people with cover for material damage (or material damage plus business interruption).

(b) **Exclusions/limitations**

- (i) *Policy deductible*, which may be of a fairly significant amount.
- (ii) *Perils insurable by a standard fire and extra perils policy –MB insurance is meant to supplement such a policy.*
- (iii) *Standard exclusions, such as war, nuclear risks, terrorism, etc.*

- (iv) Deterioration of machines resulting from normal use.
- (v) Pre-existing defects.
- (vi) Overload experiments and abnormal operating conditions.

### 3.4.3 Contractors' All Risks Insurance

With enormous amounts of construction work of all kinds constantly going on in Macau, this is a very important class of business, involving a huge premium volume. All parties involved in any way in a construction project may be insured, namely, the owner, the contractors, etc. In order to avoid gaps in insurance cover and to achieve overall savings in premiums, it is advisable to put in place a single policy for the whole project, with all the project participants as the insured parties – named or unnamed.

#### (a) Cover

The usual form of policy is in two Sections:

- (i) **Section I:** provides **property** insurance on an "**all risks**" basis in respect of specified property, which is likely to include the **contract work**, any **materials** supplied by the Principal, construction **plant and equipment** and construction **machinery** (as an alternative to a separate plant and machinery policy). **Clearing of debris** costs may also be included.
- (ii) **Section II:** provides **liability** insurance for third party injury or property damage arising out of the construction work.

#### (b) Exclusions/limitations

- (i) **Section I:** has the usual "all risks" exclusions. Other specific exclusions include **faulty design, defective material, bad workmanship** and losses only discovered on taking an inventory.
- (ii) **Section II** excludes liability in respect of loss of or damage to property belonging to the insured (e.g. work covered under Section I of the policy) and various perils, including weakening or removal of support (which can be covered under an endorsement to the policy for an extra premium).
- (iv) **Deductibles:** are normal with Section I, varying in amount according to the peril and property concerned. It is also the custom to have a deductible under Section II for third party property damage.

#### **3.4.4 Erection All Risks Insurance**

This form of policy very closely follows the format and wording of Contractors' All Risks Insurance (see above). With the latter, the insured work involves the actual construction of buildings, etc. With erection all risks insurance, it is "all" loss of or damage to the insured machinery, plant or steel structures resulting during the course of erection, installation, storage, testing or commissioning that is covered. Add-on cover for third party liability is available.

### **3.5 LIABILITY INSURANCE**

Several of the products we have already considered contain policy divisions giving third party, or liability, cover. Those in this section, however, are exclusively third party covers. The liability for respective covers may arise from Statute (the provisions of a Government Ordinance) and in Civil Code (usually negligence). Liability at law can also arise under Contract, but this effectively the voluntary assumption of liability, or liability assumed under an agreement. This is usually specifically excluded from liability covers. Such an exclusion is necessary because the nature and scope of potential contractual liability vary a lot from one insured to another, and an extension to cover contractual liability will be inappropriate without a meticulous risk assessment.

It is important to understand that liability insurance is an agreement intended to protect the insured instead of third parties, and to cover "liability for third party injury or property damage" instead of "third party injury or property damage". That means a third party generally has not the right to claim against the insurer that has insured the person alleged to have caused the third party injury or damage. And the liability insurer is not obliged to pay under the policy unless and until the third party has succeeded in establishing liability on the part of the insured in addition to proof of injury or damage.

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

(a) "Long-tail" business: All liability insurances are long-tail in nature, i.e. claims may arise and develop over a long period of time (possibly years after policy expiry), so it is necessary to keep the relevant files and claims reserves open for much longer than with "short-tail" business, such as property insurance generally. Underwriters should, of course, handle long-tail risks with more caution than short-tail risks.

(b) "Claims-made" and "Claims-occurring" (or "Occurrence") bases: A policy issued on a "claims-made" basis (i.e. a "claims-made" policy) is one which stipulates that any third party claim in respect of injury or property damage must be made when the policy is in force or within any extended reporting period, a limited period that immediately follows non-renewal or cancellation, regardless of when the



injury or damage occurs. To further limit the range of claims covered, a claims-made policy may include a Retroactive Date (or “Retro Date” ), the date before which the injury or damage must not occur. A claims-made policy is likely to take to be the Retroactive Date the date from which the insured has had non-interrupted claims-made cover, or the inception date of the first policy issued by the insurer to the insured. Another usual limitation of a claims-made policy, known as the “Known Circumstances Exclusion” or “Known Prior Acts Exclusion” , excludes any incidents of which the insured has knowledge when the policy commences.

Restricting claims to the policy period or shortly thereafter will “shorten the tail” considerably and is therefore attractive to the insurer from the risk management perspective. Whether the insured will be happy with the possibility of being uninsured for third party claims made after policy expiry is another matter.

Some policies, called “occurrence policies” , are written on a “claims occurring” (or “losses-occurring” ) basis, meaning that they will only respond to a third party claim in respect of injury or property damage that occurs during the period of insurance, regardless of when the claim is made.

**Warning:** As different liability insurers may provide cover on different bases or adopt different wording, clients (and the insurance intermediaries) should be beware of potential gaps in scope of cover should they change from one insurer to another.

### 3.5.1 Public Liability (PL) Insurance

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

#### (a) Basic intention and scope of cover

This is to cover the insured’s **legal liability** (sometimes expressed as "liability at law") to third parties in respect of accidents occurring **during** the policy year. Claims may arise later (sometimes years later), but they are still covered, provided the insured satisfies notification requirements in the policy.

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

(b) **Limitations and exclusions**

- (i) *Geographical Area:* Accidents occurring outside a specific geographical area are not covered. Also, claims are restricted to those subject to the legal jurisdiction of Macau SAR.
- (ii) *Other policies:* Other policies may cover liability risks. To avoid overlap and confusion, such risks (e.g. motor and EC.) are excluded.
- (iii) Contractual liability (see 1.1(d) (iii) (4) above) is excluded.
- (iv) "Standard" exclusions of war and nuclear risks.

(c) **Premium basis**

The premium is almost certainly **adjustable**, i.e. based upon a variable factor, such as **wages** or **turnover**. Thus, a provisional premium is paid initially, adjusted to the correct amount when final figures are available. Obviously, the rate charged will reflect the potential risk from third party claimants, according to the occupation or business of the insured.

(d) **Basis of cover**

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

### 3.5.2 **Products Liability Insurance**

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

The basic cover and wordings follows the PL policy very closely. Here are the special features that should be noted:

- (a) *Defendants:* Those who may incur product liability include manufacturers, assemblers, repairers, and suppliers.
- (b) *Claimants:* The range of claimants has been extended from consumers with or without contractual relationships with the defendants to those who are not strictly "consumers" (e.g. bystanders of a motor repairing process who are injured by flying fragments).

(c) Exclusion:

(i) Common liability exclusions: employers' liability, property in the insured's custody, contractual liability (see 2.1(d) (iii) (3) above), etc.

(ii) Liability arising from the design, plan, formula or specification of the goods. (Suppose a TV cabinet which was designed to carry an unusually light maximum weight of 50 kg cannot bear the weight of a 55 kg TV and collapses. Liability so arising, if any, is not normally insurable by a products liability policy.)

(iii) Liability arising from instruction, advice or information given on the characteristics, use, storage or application of the goods.

(iv) Liability in respect of the repair, alteration or replacement of any goods. (Suppose an insured is a supplier of CD players, and a consumer has had one of these properly installed in his car. Owing to some manufacturing defect in this CD player, it catches fire when being in use, destroying itself and the whole car. In such circumstances, only the liability in respect of the destruction of the car will be covered, but not the responsibility for replacing the CD player.)

(d) *Policy limit*: The limit of indemnity may be on an **aggregate** limit (or "limit per period" ), so that early claims reduce the amount of cover available for the rest of policy year accordingly unless cover is reinstated in time.

(e) *Dangerous" markets*: Some parts of the world are notoriously claims-conscious, especially the U.S. and North America generally. Supplying products to these markets is fraught with risk and cover may be expensive or difficult to obtain.

(f) "Claims-made" policies: These are described above and are slightly more likely with products policies

### 3.5.3 Professional Indemnity (PI) Insurance

PI policies are intended for "**professional**" people, such as lawyers, doctors, accountants, architects and the like. The cover is therefore intended to protect against mistakes in professional acts and omissions, including the giving of incompetent advice.

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

Numerous policy forms are available in the professional indemnity insurance market, which will vary depending on the activities or professions involved, and from one insurer to another. It may also be appeared by other names, such as D&O ( "Director and Officers" ) or Engineering Profession liability Insurance. Typically the

professional indemnity insurance policy covers the insured's legal liability in respect of third party claims first made against the insured during the policy period for third party injury, third party death, third party property loss or damage, or third party financial loss (depending on the activities or professions being covered), caused by a "wrongful" act or omission on the part of the insured.

In addition to liability in respect of injury, property loss or damage, or financial loss (as the case may be), the policy also covers legal expenses, of both the insured in defending or resisting third party claims and the successful third party. The policy is usually subject to an aggregate limit of liability (or "limit any one period" ), which limit may or may not be applicable to the insured costs and expenses. These policies are the ones most likely to be issued on a **Claims-made** basis.

**Note:** It will be remembered that **insurance brokers** who wish to practice in Macau are required to carry PI cover, to protect their clients, before they can be registered and do business here. Moreover, as mentioned above, Macau currently has three types of compulsory professional liability insurances, they are "Compulsory Professional Liability Insurance for Travel Agents" , "Compulsory Professional Liability Insurance for Lawyers" and "Compulsory Professional Liability Insurance for Healthcare Providers" .

### 3.6 MARINE INSURANCE

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

- (a) **Average:** This has a completely different meaning in marine insurance. When we have referred to a policy being "subject to average", in earlier notes, this means that full insurance is required and that there is a claims penalty according to the degree of any under-insurance. In marine insurance "average" means **partial** (i.e. non-total) **loss**. The word "average" is not used alone, however, and there are two kinds of average in marine insurance:
  - (i) *Particular Average:* This is "average" (partial, not total, loss) affecting a particular type of insurance, e.g. **hull** (the ship) or **cargo**.
  - (ii) *General Average:* A General Average Loss is a loss caused by a General Average Act (the word "average" here means that the loss is a partial loss of a whole marine adventure (i.e. the combined interests represented with a ship's voyage, especially including the vessel itself and any cargo being carried on the vessel)). There is a General Average Act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common

adventure. GA Sacrifice, as opposed to GA Expenditure, is physical loss or damage. For example, throwing heavy cargo overboard in the event of stranding and the like is a GA Act leading to a GA Loss known as GA Sacrifice. GA Expenditure may be incurred, say, in circumstances where a disabled ship and its cargo have to be towed to a port of distress.

The term is very ancient, in fact it is thousands of years old. It has a special meaning which we may summarize as follows:

- (1) The loss must be **deliberate**, in the nature of a **sacrifice** by one for the good of the remainder (e.g. throwing heavy cargo overboard in dangerous situations to save the ship and everyone on board).
- (2) The sacrifice must achieve its purpose, i.e. the adventure as a whole must, as a result of the act, be free from a total loss. Such a condition will be satisfied if, for instance, the total loss of a cargo has saved the ship and all other cargoes from a total loss.
- (3) All interests involved in the venture (including that of the owner of goods sacrificed) **share** in the loss, so that the "**average**" sustained by the individual owner is shared "**generally**" (amongst all).

- Note:**
- 1 General average may also involve **expenses** incurred with the same object as with goods which are sacrificed.
  - 2 It is customary for "general average" contributions to be covered by marine insurance policies. "Particular average" is also usually insured, although "**total loss only**" (TLO) policies are possible.

- (b) **Liability Insurance:** By custom, liability insurance is not normally included within marine insurance policies on commercial risks. There is an exception which we shall mention later, but in most cases the liability risk is insured with **Protection and Indemnity Associations** (known as **P & I Clubs**). These are effectively self-insurance schemes run on behalf of shipowners on a **mutual** basis (another name for such organizations is **Mutual Indemnity Associations**), and to provide their member shipowners with certain insurances not readily made available by commercial insurers (or profit-making insurers).
- (c) **Institute Clauses:** Commercial marine insurances in Macau mostly use these Clauses with their policy wordings. **Institute** (the Institute of London Underwriters, or **ILU**) **Clauses** are renowned throughout the international marine insurance world and form a recognized and well-tested contract wording, in the form of numbered **clauses**. These forms of cover are accepted almost universally by insurers, banks and interested organizations.

- (d) **Salvage:** With non-marine insurances, the word "**salvage**" refers to any residual value in what is left of the subject matter of insurance (e.g. scrap value of a badly damaged vehicle). In marine insurance the term refers to a **fee** or **reward** payable to a person or organization which rescues a vessel or other property in danger. It is the custom for such **salvage** to be insured with marine policies.
- (e) **Sue and Labour Charges:** This curious expression refers to expenses reasonably incurred by the assured in preserving the insured property from an insured loss or in minimizing an insured loss. Such expenses are covered in insurance. (NB: although such charges are invariably insured by marine cargo policies, the term "sue and labour charges" is not used in their wording.)
- (f) **Actual Total Loss (ATL):** Total loss (TL), in marine insurance, may either be an "actual total loss" (ATL) or a "constructive total loss" (CTL). There are ATL:
  - (i) where the subject matter insured is destroyed,
  - (ii) where it is so damaged as to cease to be a thing of the kind insured (e.g. where a cargo of cement has irreversibly turned into solid masses due to raining), or
  - (iii) where the assured is irretrievably deprived of the subject matter insured (e.g. where a cargo of gold bullion has sunk into the deep sea).

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

- (g) **Constructive Total Loss (CTL):** In marine insurance, it is quite common for property to report presumed total loss. It means that the loss is handled and paid according to the actual total loss. This is because even if the loss is technically repairable, the cost will make this approach very uneconomical. Regardless of whether it is the actual total loss or the presumed total loss, the financial difficulties faced by unfortunate property owners are almost the same. (This term is not unheard of in other insurance categories, such as car insurance.)
- (h) **Valued Policies:** For the sake of commercial convenience, insurance on ships or cargo is normally made on an agreed value basis by specifying an agreed value, as well as an amount insured, in the policy. For the purposes of both total and partial losses, the agreed value (instead of the actual value of the property insured) is taken as the property value that prevails at the time of loss.
- (i) **Marine Risks and War Risks:** Of the various classes of property insurance, marine and aviation insurances are the only ones that cover war risk. In marine insurance markets, specialised Institute Clauses are often used to cover the perils of war and strikes, and those that exclude these perils are said to cover marine risk. Yet the war cover given is subject to a "waterborne" limitation,

so that cover will not be available when the insured property is out of the water.

### 3.6.1 Marine Hull Insurances

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

- (i) *"Hull"*: The **hull** of a vessel is the main body, or shell. "Marine Hull" insurance, however, covers more than that. The insurance is almost exclusively a **property** insurance and the term includes the whole of the ship and everything on it belonging to the owners (e.g. including equipment, stores, fuel for propelling the vessel, safety boats etc.).
- (ii) *Type of cover*:
  - (1) **Loss/damage**: Institute Hull Clauses normally provide cover on a **specified perils** basis (**perils of the sea, fire** and a number of other causes). Claims are payable on a new for old basis, i.e. without deduction for wear and tear, and depreciation.
  - (2) **General Average and Salvage Charges**: (see 3.6 (a) and (d) above) are covered, as defined above.
  - (3) **Collision Liability**: the cover only applies to liability arising from the insured vessel's **collision** with another vessel and only **75%** (always expressed as **3/4ths**) of such liability is covered by the policy. The other **25%** of such liability, together with certain types of shipowner's liabilities, are covered with a **P & I Club**. It is important to note that such collision liability cover, whether provided by a commercial insurer or by a P&I Club, excludes loss of life, personal injury and illness.
  - (4) **Sue and Labour Charges**: based on 3.6 (e) above, such expenses are covered.

#### (b) Limitations and exclusions

- (i) *"Standard" exclusions* of war, nuclear and similar risks apply but with marine insurance, it is interesting to note that separate **War and Strikes Risks** insurance can be purchased (either separately, or added to the hull policy). This is very much an exception to normal practice with other classes of business.
- (ii) *Deductible* Policies are usually subject to a deductible for **partial loss** claims. However, with all types of **total losses** (see below) the deductible does not apply. Again, this is quite different from the practice with other classes of insurance.

(c) **Premium basis**

With marine insurance, the premium is a matter which heavily depends upon the claims experience of the individual insured (or **assured** as he is known in marine business). Very different premiums could be payable in respect of the same vessel, under different ownerships and or management.

### 3.6.2 Marine Cargo Insurances

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

Marine Cargo being goods carried for reward on a vessel, the insurance of them is clearly a **property** insurance, usually in the form of a set of Institute Cargo Clauses (**ICC**). Such cargo clauses are:

- (i) *ICC (A)*: The cover under **(A) Clauses** is on an "**All Risks**" basis and is sometimes the only form acceptable to banks who are advancing money or giving guarantees in respect of cargo shipments.
- (ii) *ICC (B)*: **(B) Clauses** are on a **specified risks** basis (see **(d)** below).
- (iii) *ICC (C)*: **(C) Clauses** also cover **specified risks**, but fewer risks are specified (see **(d)** below).

Major comments concern **ICC(A)** cover, which is the most common form issued. Cover under (A) Clauses is "all risks", as mentioned. Thus, any form of loss or damage is covered unless specifically **excluded**. Cover is sometimes described as being on a "**Warehouse to Warehouse**" basis, meaning that the cargo is covered from the time it leaves the sender's premises until it reaches final storage destination. This almost always will involve **land and sea** transit.

**General average** and **salvage charges** are insured, as well as loss of or damage to the specified cargo.

(b) **Limitations and exclusions**

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

- (i) Loss due to *wilful misconduct* of the assured.
- (ii) *Inevitable* losses, such as wear and tear, ordinary loss in weight (say, of liquid cargoes), etc.
- (iii) Loss due to *inadequate packing*, bearing in mind the journey and nature of the cargo.



- (iv) Loss due to *Inherent vice*, that is, damage arising from the insured cargo itself (e.g. meat or fish which goes bad, wine which turns sour etc.).
- (v) Loss due to *unseaworthiness* (meaning not being reasonably fit in all respects to encounter the ordinary perils of the seas of the insured adventure) of the carrying vessel, of which the assured is aware at the time of loading.
- (vi) Loss due to *war, strikes, etc.*, which are, nevertheless, insurable under Institute War and Strikes Clauses for an extra premium.

(c) **Premium basis**

As with hull policies, the identity and record of the assured has an important bearing upon the premium charged, which is normally as a rate per cent on the value insured.

(d) **Clauses "B" and "C"**

These (see (a) above) are not on an "**all risks**" basis. Neither set covers the **theft** risk. In addition to total loss of any package, etc. whilst loading or unloading and **General Average sacrifice**, the ICC (B) Clauses include the following perils:

- (i) **major casualties** (e.g. fire, stranding, sinking, collision etc.);
- (ii) **earthquake, volcanic eruption and lightning;**
- (iii) **discharge** of cargo at a **port of distress;**
- (iv) **jettison and washing overboard;**
- (v) entry of sea, lake or river **water;**

"C" Clauses are more limited, covering GA sacrifice, jettison, and (i) and (iii) above.

The exclusions with both sets of clauses are the same, being very similar to those in the ICC (A), except that whereas the ICC (B) and (C) expressly exclude the deliberate or wrongful act of any person, the ICC (A) impliedly does not cover such an act on the part of the insured or the 1/67 claimant. Thus fire damage deliberately caused by anyone other than the insured and the claimant is recoverable under the ICC (A) but not under the ICC (B) and (C).

### 3.6.3 **Pleasure Craft Insurance**

Many such craft are insured under a policy not unlike the motor policy in format (covering both **property** and **liability** risks). The commonly used Institute **Yacht Clauses** will include the following features:

- (a) *Specified perils cover*: The perils specified begin with **perils of the seas** and lists a whole series of common mishaps affecting such craft. The list, however, is not long enough to constitute "**all risks**" cover.
- (b) *Exclusions*: are fairly numerous and detailed. We may note just a few, by way of example:
  - (i) **Outboard motors** dropping off or falling overboard.
  - (ii) **Personal effects**.
  - (iii) **Consumable stores**, fishing gear and moorings.
  - (iv) **Ship's boat** if it is not marked with the parent boat's name.
- (c) *Warranties*: There is a warranty that the maximum designed speed of the vessel does not exceed 17 knots (note: craft capable of greater speeds than that are speedboats, requiring quite different contract terms), and that it is used solely for private pleasure purposes and not for hire charter or reward.
- (d) *Liability cover*: unlike commercial hull policies, the pleasure craft policy provides full (i.e. 100% rather than 75%) third party insurance, covering liability for **personal injury** or **property damage** and **legal costs**.
- (e) *Deductible*: the provisions are similar to those with commercial vessels, the deductible not applying to **total loss** claims.
- (f) *New for old*: claim settlements are usually made on a **new for old** basis, except that up to **one third** deduction may be made for depreciation etc. on certain items (e.g. sails and outboard motors).

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## 4 CLAIMS

### 4.1 VALID CLAIMS

For a claim to be valid, it must satisfy a number of requirements (see **4.1.1** below). The great majority of claims made under general insurance policies, however, are quite valid. Indeed, public acceptance and the overall effectiveness of general insurance require this to be so. A major purpose of insurance is to provide **help** in various kinds of trouble. That purpose is frustrated if a disproportionate number of claims are **invalid**.

Given this premise, we should note the following:

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

#### 4.1.1 Legal Requirements for Valid Claims

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

- (a) Fraud by or on behalf of the insured: whether the policy has any reference to this or not, **fraud** (in any form) can defeat a claim, and indeed is a ground for repudiating the whole contract.
- (b) Policy must be in force: the usual requirement is that the event giving rise to the claim must **occur** between the policy commencement and termination dates.
- (c) Premium considerations: if payment of the premium before policy commencement or during **days of grace** is a pre-requisite of cover, this must be complied with.

- (d) Peril considerations: is the **cause** of the loss covered by the policy? It is for the **insured** to prove that a loss falls within the **Operative Clause**. This is not difficult with “**all risks**” insurance, which requires the proof of the happening of a “risk” , whether it is a fire, theft or whatever not being crucial. With “**specified perils**” cover, the insured is required to prove that a loss has happened and that it was caused by an “insured peril” .
- (e) Policy exclusions: the **Operative Clause** or cover under the policy generally may be **limited** by specific or general **exclusions**. Normally it is the **insurer’s** responsibility to prove that an exclusion applies if it wants to deny a claim by relying on this, except where a reverse onus provision applies.
- (f) Implied and express terms: is the insured in breach of an **implied** term, the most important of which being the existence of an **insurable interest**? In connection with the latter, especially, information given during the claim enquiries should be compared with information supplied with the proposal. Sometimes there are surprising inconsistencies. Regarding **express** terms, policies have some which apply to claims’ procedures. These we look at in **4.1.3** below, but all must be complied with.
- (g) Duty of utmost good faith: claims handlers should compare information given during the claim enquiries with that supplied on the **proposal form**. Sometimes there are surprising inconsistencies.
- (h) Applicable warranties: if the policy is subject to a **warranty**, has this been **breached**? In good insurance practice, the question really should be “was any breach of warranty **causative** or otherwise significant with the present claim?”
- (i) Excess or franchise: if the policy is subject to either of these, is the **amount** of the loss sufficient to involve the insurer’s liability?
- (j) Quantum (amount of the claim): it is the **insured’s** legal responsibility to prove the **amount** of the loss (see also **4.1.5**).
- (k) Public policy: in addition to all the above **contractual** or other legal considerations, the “**unwritten condition**” of **public policy** could conceivably be relevant, invalidating a claim (see **1.3.5(d)**).
- (l) Change in risk: According to the “Commercial Code” , if, in bad faith, the policyholder omits or misrepresents the risk increase, in the case of accident the insurer shall be released from its performance. If the omission or misrepresentation of the risk increase is without bad faith, and if the accident occurs before a new premium has been agreed, or before rescission of the contract, the performance of the insurer shall be proportionally reduced to the difference between the premium paid and the premium that should have been paid after the increase.

#### 4.1.2 Invalid Claims

Essentially, an invalid claim is one that does not satisfy all the criteria in **4.1.1** above. Those criteria represent **contractual** or **legal** provisions. Some further comments, however, are appropriate under this heading:

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

#### 4.1.3 Operation of Policy Conditions Affecting Claims

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

- (a) Notification to the insurer: instructions are always given as to the **manner** (in writing, to the Head or Branch Office etc.) in which notification of a **possible** claim should be given.
- (b) Notification of “Possible” claim: it is worth stressing that a **possible** claim incident should be reported. With **property** insurance, this is seldom a problem. But with **liability** insurance, the insured sometimes waits for a third party to make a definite claim before telling his insurer; this is a breach of the policy condition.
- (c) Time for claims notification: policies usually require notice to be given **immediately**, or as soon as **practicable** (in some cases a specific **time limit** may be mentioned). The reasons for this are obvious. Delay in investigating losses or in appointing professionals such as solicitors (especially with **liability** claims)

may be very detrimental to the insurer's interests.

- (d) Duties upon the Insured: see **4.1.4** below.
- (e) Resolution of disputes: see **4.2.1** below.
- (f) Policy modifications of legal positions: these may affect a number of issues, e.g.:
  - (i) **Average**: unless otherwise agreed, an insurance policy must pay a valid claim **in full**, subject to the sum insured or limit of indemnity (a term customarily used in liability insurance). The **pro rata** condition of average in most **property** insurances reduces the amount payable in proportion to the degree of **under- insurance** present at the time of loss.
  - (ii) **Contribution**: in the absence of contractual restrictions, an insured may claim the **whole** insured loss from any one insurer who covers it. However, under the typical **contribution condition** (or “**rateable proportion clause**” ), the insurer restricts his liability to a **rateable share**.
  - (iii) **Subrogation**: under this doctrine of equity, **subrogation** rights are only acquired **after** an indemnity has been provided. However, under the typical subrogation condition, the insured should, at the request of the insurer, permit the insurer to exercise subrogation rights upon the happening of an event which may give rise to a claim under the policy.

#### **4.1.4 Duties of Insured after a Loss**

These may be considered under the “**Commercial Code**” , or in accordance with **contractual** (policy) provisions. The insured's duties will include:

- (a) reasonable **cooperation** with the insurer;
- (b) a duty to **minimize loss** as far as is reasonably possible;
- (c) not to jeopardize the **insurer's rights** (e.g. **right of subrogation**);
- (d) absence of **fraud** (in any form).

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

- (a) *Reasonable proof of a valid claim*: this heading will embrace:

- (i) **liability** of the insurer, i.e. reasonable proof that the loss falls within the cover outlined in the **Operative Clause**. In **theft** insurance, for example, reasonable evidence of **forcible and violent** entry/exit will be required etc.;
- (ii) **quantum** (i.e. the **amount** of the claim). This again is the insured's responsibility (see also **4.1.5** below).
- (b) *Preservation of damaged property*: specifically, the insured must **not** dispose of damaged property without the insurer's permission. He must also take **reasonable** care of damaged property to avoid further loss or exacerbation (protection against theft, cleaning and lubricating wet machinery after a fire, etc.).
- (c) Cooperation with the insurer: this includes the basic **response** to reasonable requests for information, allowing **access** to staff and insured premises for enquiries to be made, and actively assisting with **subrogation** efforts, as necessary.
- (d) Not to compromise the insurer: by admitting **liability** to third parties, or by prejudicing **subrogation** rights in any way.
- (e) Disclosure of any other insurances: to assist with **contribution** or other interests of the insurer. Explanations for "double-insurance" situations may be required.
- (f) Absence of fraud (again).

#### **4.1.5 Documentary Evidence**

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

- (a) Receipts and other proof of quantum: these will invariably be the responsibility of the **insured** and at his expense. Theoretically, receipts will always be required, but insurers should adopt a **realistic** and **reasonable** approach. Receipts may reasonably be expected to substantiate a **commercial** loss, but may well be the exception for relatively minor **personal** claims.
- (b) Contractually required documents: commercial insurances (e.g. **fire**, **theft** and **consequential loss**) will invariably require adequate records to be maintained, so that a loss may be verified. Insurers are very likely to insist upon these.
- (c) Marine insurance claims: documentation with such claims is very important. It will include such items as a **survey report**, the **original policy**, the **bill of lading** and perhaps other documents of title.

- (d) Medical evidence: to support claims for **incapacity (PA)**, medical reports will be needed. These will be at the **insured's** expense. Reports with **EC** business will be paid for by the **insurer**, as will any post **mortem** examination reports (establishing the cause of death).
- (e) Witness and police reports, etc.: normally the **insurer** attends to these.

#### 4.1.6 Functions of Various Related Professionals

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

##### (a) Surveyors

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

Marine policies normally indicate that a surveyor report will be needed, especially for **cargo** claims. The surveyor, naturally, charges a fee, for which the claimant will be reimbursed by the insurer with valid claims.

##### (b) Loss Adjusters

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

- (i) commonest engagement: they may be engaged with virtually any kind of claim, but they are especially employed with **property** and **liability** claims. Their expertise is particularly valued with **large** or **complex** claims, although some insurers may "outsource" nearly all of their claims to loss adjusters;
- (ii) independent experts: although normally engaged and paid by the **insurer**, technically loss adjusters are **independent** experts, offering **impartial** advice and services;
- (iii) fees and remuneration: these may be based on a scale according to the amount of the claim **settlement** agreed, or separately negotiated;



- (iv) settlement recommendations: their reports will include comments on the circumstances of the loss, the liability or otherwise of the insurer, and eventually upon the negotiated settlement. However, the settlement is subject to the **insurer's** agreement.

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

(c) **Engineers**

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

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

(d) **Settling Agents**

These are individuals or companies named on **marine cargo** policies (especially), who have the underwriters authority to investigate and settle claims. The insured (assured in marine insurance) may then notify the settling agent concerned, when a loss has been discovered.

Sometimes the policy will not name a particular agent, but will specify (or add as an alternative) that the claim be referred to the "**nearest Lloyd's agent**".

(e) **Survey Agents**

Another professional involved especially with **marine** claims. The survey agent may be named in the policy, as an individual or company who can assist in arranging surveys, or be independently appointed. It is common for insurers to require the consignees to apply for marine damage survey to their survey agent appointed. Where a particular survey agent does not employ surveyors, it will have to arrange for them when required. Lloyd's Agents often act as survey agents for marine insurers and an insurer often appoints the same person or firm as both its survey and settling agents.

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

(f) **Average Adjusters**

These experts are found with **Marine** insurance claims. More specifically, they specialize in **General Average** (GA) claims (see **3.6(a)**). This is an extremely complex area of claims' work, requiring considerable experience and expertise. Bearing in mind the usual circumstances under which GA claims may arise, adjusting them must take into account a number of important factors, including:

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

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

## 4.2 CLAIMS SETTLEMENT

### 4.2.1 Operation of Arbitration Clauses

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

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

- (a) *Less formal than litigation*: whilst arbitration is conducted in a formal manner, cases are not heard in court and it is not even essential that **legally qualified** persons represent the parties or decide the issues.
- (b) *Not binding upon third parties*: as stated above, third parties are not parties to the insurance contract, so they cannot be bound by contractual provisions.
- (c) *Usually applies to quantum only*: the two elements which could be involved with

a claim dispute are **liability** (is the insurer responsible under the policy?) and **quantum** (how much is payable under the policy?). Arbitration clauses normally contain words such as “liability otherwise being admitted” . In other words, the dispute does **not** relate to the question of liability, but only the **amount** payable by the insurer.

**Note:** Because of the above two points, arbitration clauses may not appear in **liability** policies (where the claimant is usually a **third party**), nor in PA policies, where the claim **amount** is usually pre-determined in the policy.

- (d) *Customary basic procedure:* please refer to 4.2.3 (b) for details.
- (e) *Litigation may still be possible:* if a person is unhappy with an arbitration award, **litigation** may still be possible. **However**, and this is very important, courts will **not** overrule a properly conducted arbitrations, unless there was a clear **mistake** in law or there is proof of **bias** against the plaintiff.

#### 4.2.2 Methods of Claim Settlement

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

##### (a) **Payment of Money**

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

In the absence of specific policy conditions, there would have to be **mutual** consent for a settlement based on anything but money. Policy wordings with **property** insurances (it must be indemnity insurance) promising an **indemnity**, however, do allow various options for providing the indemnity, at the **insurer’s** option. These we consider in **(b)** - **(d)** below.

##### (b) **Paying for Repairs Direct**

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

An additional factor with **the** claims of motor policy involving damage to the

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

(c) Replacement

This is another option allowed by most **property** insurance policy wordings (it would have to be agreed with any third party claim, as the third party is not bound by policy terms). It is not always appropriate to consider replacement, as the questions of the accumulated **depreciation of lost or damaged property and the improvement the insured has to share** cannot be reached in a few words. However, there are instances where this method is suitable, including:

- (i) *items not subject to depreciation*: the value of some items does not go down, at least not rapidly, and these may well be replaced to the satisfaction of both parties, e.g. jewelry, expensive watches etc.;
- (ii) *new or virtually new items*: theoretically the value of most items depreciate as soon as they are purchased, but it is difficult to persuade an insured on this point after loss or destruction of the items. Therefore, if the item is replaced shortly after the purchase, the problem will be lessened.
- (iii) *glass insurance claims*: replacement is the **norm** for this type of claim. The speed and convenience of an efficient broken glass replacement is satisfactory to all concerned.

(d) Reinstatement

This is a word that has a number of meanings in insurance. In the context of claims settlement methods, it effectively means **rebuilding** (or repairing/restoring) damaged buildings, especially in **fire** insurance. There are some legal circumstances where the insurer may be compelled to provide **reinstatement**. In order to restate the damaged building, in addition to rebuilding expenses, it will also involve demolition expenses. As with replacement and repair, reinstatement is not without potential problems, where real or imagined complaints arise as to the quality of the replacement or work done. However, this form of claim settlement is quite common with **damaged buildings**.

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

- Note:**
- 1 the word **reinstatement** may be used to include repairment and **replacement**.
  - 2 The **option** as to the method of providing an indemnity to the

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

- 3 One further aspect, with the **replacement** option, is that insurer's may often obtain a discount from the supplier of such item. This could represent a good saving in the claim settlement.

### **4.2.3 Complaint Handling Mechanism and Mediation Scheme**

#### **4.2.3a Complaint Handling Service**

The word “complaint” refers to denunciations of any unlawful behaviors of certain insurance institutions, including allegations of irregularities or deficiencies in their operations, and the purpose of allegations is to correct the irregularities or deficiencies. Complainants can make complaints against insurance institutions, insurance intermediaries or private pension fund management companies can be made through letters, faxes, emails and/or in person to the Insurance Supervision Department of the AMCM.

The “Policy Statement on the Handling of Complaints against Insurance Companies, Reinsurance Companies, Insurance Intermediaries and Private Pension Fund Management Companies” issued by the AMCM in July 2021 give general guidance to complainants with regard to the AMCM's handling of complaints, and provide an overview of the AMCM's role and the actions that can be taken. The relevant content will not be elaborated here.

#### **4.2.3b Mediation Scheme for Financial Consumption Disputes**

The AMCM, the Macao Consumer Council and the World Trade Center Macau Arbitration Center jointly established the “Mediation Scheme for Financial Consumption Disputes” in May 2019, which provides a simple and convenient way to resolve Macau's financial consumption disputes.

The Scheme covers financial consumption disputes which fulfil **all** of the following conditions:

- (a) The claimed amount does not exceed MOP1 million.
- (b) The dispute must involve an eligible claimant and a financial institution authorised by the AMCM.
- (c) The dispute must be of a monetary nature and does not involve any non-

disposable right of the parties concerned or any problem arisen from unlawful legal behavior.

- (d) The dispute must be related to a contract between the eligible claimant and the financial institution signed in Macao, or any act or omission of the financial institution in the course of providing financial services to the eligible claimant in cases where the financial institution acted as the agent of the eligible claimant.
- (e) The claim must be filed within 24 months from the date on which the eligible claimant realises his/her loss for the first time.

Under the Scheme, mediation services are provided by the World Trade Center Macau Arbitration Center, while the AMCM and the Macao Consumer Council handle complaints of financial consumers according to the designated functions and procedures. If a complaint is not resolved, the AMCM and the Macao Consumer Council will provide the mediation application form and contact of the World Trade Center Macau Arbitration Center to the complainant who wishes to mediate. Meanwhile, all financial institutions authorised by the AMCM are members of the Scheme. When the mediation application falls within the scope of the Scheme, the relevant financial institution will participate in the mediation procedure.

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## 5 CUSTOMER SERVICE

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

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

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

### 5.1 CUSTOMER SERVICE AND ITS IMPORTANCE

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

- (a) *Loss of business*: the public are increasingly aware of their perceived rights. These include courteous and efficient service.
- (b) *Loss of insurance intermediaries’ support*: insurance intermediaries must have confidence in their principals (in the case of agents) or in the insurer recommended (in the case of brokers). It is not reasonable to expect the insurance intermediaries to be able to produce the business if their efforts are not backed up by quality service. Those insurers who are seen to be providing quality service will be in a better position than others to attract and retain insurance intermediaries.
- (c) *Loss of market prestige*: confidence in the integrity and efficiency of an insurance company is extremely important. This goes far beyond any question of not “losing face” , important as this is in our culture. Bad service is one of the qualities that peer

group associations and market colleagues will be very concerned about.

- (d) *Regulator's involvement*: insurers are licensed to do business in Macau not only to make a certain product available, but to enhance the standing and reputation of the SAR. The last thing Macau needs, as a region that provides financial services, is for that service to be indifferent or suspect. Bad service will quite rightly be the subject of the insurance regulator's concern and, if necessary, action.

### 5.1.1 The Importance of Customer Service

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

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

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

## 5.2 POLICIES AND CODES OF CONDUCT OF ORGANIZATIONS

By “policies” , of course, the heading refers to declared principles, not policy documents given to the insured. Increasingly, individual companies are realizing the practical importance of stating their corporate principles and business practice in writing. Whilst such documents are **not** legal agreements, in the sense of contractual obligations, they have an extremely important **persuasive** influence on the company, both as a **standard** of declared intentions and as a **measure** of performance.



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

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

Some examples of (e) will be considered in 5.3 below. Those and subsequent Notes will outline the fact that declared criteria and business intentions are not only self-imposed commitments, but will at times be required by central associations or even by statute.

### 5.3 CUSTOMER SERVICE STANDARD AND ITS IMPLEMENTATION

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

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

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

- (a) *disclosure requirements*: the need to comply with the duty of **utmost good faith** with regard to **material facts**;

- (b) *premium payments*: the need to pay premiums when due, and (for **insurance intermediaries**) any **credit** facilities allowed;

### 5.3.1 Implementation of Customer Service Standard

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

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

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

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

## 5.4 LEGAL AND REGULATORY OBLIGATIONS OF ORGANIZATIONS

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

### (a) “**Commercial Code**” and **Compulsory Insurance Ordinances**

All relevant aspects of the “**Commercial Code**” apply to the obligations of insurers towards the insured (their contract partners and **customers**). It should be remembered that the duty of **utmost good faith**, which is applicable to insurance contracts, applies to the **insurer** as well as the insured.

### (b) “**Macau Insurance Ordinance**” (MIO)

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

- (i) *licensing requirements;*
- (ii) *capital requirements;*
- (iii) *solvency margin requirements;*
- (iv) *setting up of technical reserves;*

These are all requirements to try to ensure the economic and social viability of insurers, which in the broader sense must be related to customer service. Other applications of the MIO will be considered in later Notes.

(c) **“Legal framework for the carrying on of insurance intermediary business”**

The Ordinance gives statutory weight to the question of customer service requirements, with specific reference to such matters as:

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

## **5.5 LEGAL IMPLICATIONS OF REBATING OF COMMISSION**

Rebating of commission means that the insurance intermediary gives part of his commission to his client, thus producing a “cheaper” premium for the latter. It is likely to be a common practice when insurance intermediaries are placing business for close friends or family members. However, if the practice occurs as an **inducement** for securing business, it is a grave matter.

Rebating may in certain circumstances constitute bribery and corruption. Certainly, it undermines the basis of **rating** and honest establishment of due **reward** (commissions) for insurance intermediaries. For these reasons, **rebating commission** is invariably **prohibited** by **agency agreements** and will be regarded as a serious breach of contract terms.

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## **General Insurance Glossary**

**(Based on the Study Notes)**

Accidental Bodily Injury	意外身體受傷
Accidental Loss or Damage	意外損失或毀壞
Accidents Only Cover	純意外的保險保障
Accumulation	積累
Actual Total Loss (ATL)	實際全損
Additional Expenses	附加費用
Adjustable Premiums	可調整保費
Agreed Values	約定價值
“All Risks”	「全險」
Arbitration	仲裁
Attestation Clause	見證條款
Average (Marine)	海損(水險)
Average (Non-Marine)	比例分攤(非水險)
Average Adjusters	海損理算師(或海損理算人)
Basis of Contract Clause	合約基礎條款
Betterment Contribution	改善分攤
Blanket Cover	統保保障
Boiler Explosion Insurance	鍋爐爆炸保險
Bolt-on	上螺栓式
Bonds	保證
Buildings and Contents Cover	建築物及家居物件保障
Buildings Only Cover	建築物而已保障
Burglary Insurance	入屋犯法保險
Business Interruption Insurance	營業中斷保險
Cancellation	取消
Cash in Transit Insurance	現金運送保險
Certificate of Insurance	保險憑證
“Civil Code”	《民法典》
Claims	理賠/索償
“Claims-Made” Basis	「索償申報」方式
“Claims-Occurring” Basis	「索償發生」方式
Classification of Insurance	保險類別
Clearing of Debris	清理殘損物
Collision Liability	碰撞責任
Collusion	串謀
Combined Liability Policy	責任保險組合保單
Combined Policy	組合保單
Combined Property and Pecuniary Policy	財產及經濟權益保險組合保單
Combined “Umbrella” Type Cover	「傘括」類型保障組合

“Commercial Code”	《商法典》
Comprehensive Cover	綜合保障
Compulsory Motor Vehicle Third Party Liability Insurance	汽車民事責任強制性保險條例
Compulsory Professional Liability Insurance for Healthcare Providers	醫療服務提供者職業民事責任強制保險
Compulsory Professional Liability Insurance for Lawyers	律師職業民事責任強制保險
Condition Precedent to Liability	責任出現前的先決條件
Condition Precedent to the Contract	合約生效前的先決條件
Condition Subsequent to the Contract	合約生效後的條件
Consequential Loss	後果損失
Constructive Total Loss (CTL)	推定全損
Contents Only Cover	家居物件而已保障
Contractors’ “All Risks” Insurance	建築工程「全險」保險
Contractual Liability	合約上的責任
Contribution	賠償分擔
Counter Guarantee	反擔保
Cover Note	暫保單
Days of Grace	寬限期
Deductible	免賠額
Directors’ and Officers’ Liability Insurance	董事及主管人員責任保險
Employees’ Compensation Insurance Ordinance	工作意外及職業病保險法例
Employers’ Liability	僱主責任
Engineering Insurance	工程保險
Engineers	工程師
Erection “All Risks” Insurance	安裝工程「全險」保險
Ex Gratia Payment	通融賠款
Excess (or Policy Excess)	自負額或免賠額(或保單自負額、保單免賠額)
Executed Consideration	已執行代價
Executory Consideration	未來有效的代價
Express Conditions	明訂條件(款)
Express (Warranty)	明訂(保證)
Extended Perils	擴展危險
Extra Benefits	額外權益
Extra Perils	額外／附加危險
Fee	費用
Fidelity Guarantee Insurance	忠實保證保險
“Fire”	「火災」
Fire and Special Perils	火災及特殊危險
Forcible and Violent Entry or Exit	以強行及暴力的方式進入或離開
Franchise	起賠額

Fraud	欺詐
Fundamental Risks	基本風險
General Average	共同海損
General Exceptions (Exclusions)	一般不受保項目(除外責任)
Glass Insurance	玻璃保險
Gross Profit	毛利
Guarantee	擔保/保證
Guarantor	擔保/保證人
Hazard	危險
Health Insurance	健康保險
Hold-Up Cover	搶劫保障
Household or Home Insurance	家居保險
Implied Conditions	隱含條件(款)
Implied (Warranty)	隱含(保證)
Indemnity Period	賠償期間
Inevitable Loss	不可避免的損失
Inherent Vice	潛在的毛病
Institute Cargo Clauses (A), (B) and (C)	協會貨物條款(A), (B)及(C)
Institute Clauses	協會條款
Institute Yacht Clauses	協會遊艇條款
Insurance Agent	保險代理人
Insurance Agents and Brokers Ordinance	保險代理人及經紀人法例
Insurance Broker	保險經紀
Insurance Intermediary	保險中介人
Insurance of Liability	責任保險
Insurance of Pecuniary Interests	經濟權益保險
Insurance of Property	財產保險
Insurance of the Person	人身保險
Interruption Period	中斷期間
Levies	徵款
Liability Insurance	責任保險
Litigation	訴訟
“Long-Tail” Business	「長期責任」業務
Long Term Agreements (LTAs)	長期協議(LTAs)
Loss Adjusters	理賠師
Loss of Profits Insurance	利潤損失保險
Lump Sum Benefits	整筆支付的利益
Macau Insurance Ordinance (MIO)	保險活動管制法例
Machinery Breakdown Insurance	機器損壞保險
Marine Cargo Insurance	海上貨物保險
Marine Hull Insurance	船體保險
Market Exclusions	業界除外責任
Master Policies	總保險單

Material Fact	重要事實
Mediation	調解
Medical Expenses	醫療開支
Medical Insurance	醫療保險
Monetary Authority of Macao (AMCM)	澳門金融管理局
Money Insurance	金錢保險
Moral Hazard	道德危險
Motor and Marine Guarantee Fund (FGAM)	澳門汽車及航海保障基金
Motor Insurance	汽車保險
“New For Old” Cover	「不折舊」保障
No Claim Discount	無索償折扣
Non-Material Facts	非重要事實
“One third” (Deductions)	「三分之一」(扣減)
Operative Clause	履行條款
Packaged Policy	一籃子保單
Particular Average	單獨海損
Penalty	罰款
Performance Bond	履約保證
Peril	危險
Permanent Incapacity	長期無能力
Personal Accident and Sickness Insurance	個人意外及疾病保險
Personal Lines Insurance	個人險種
Physical Hazard	實質危險
“Plain English”	「淺白英語」
Plate glass insurance	平板玻璃保險
Pleasure Craft Insurance	遊艇保險
Policy	保險單/保單
Policy Conditions	保單條件(款)
Policy Specification	保單說明
Premium	保費
Principal Sum Insured	主要保額
Pro Rata Average (Non-Marine)	比例分攤(非水險)
Products Liability Insurance	產品責任保險
Professional Indemnity Insurance	專業賠償保險
Professional Liability Insurance for Travel Agencies	旅行社職業民事責任保險
Property and Pecuniary Insurances	財產及經濟權益保險
Property Damage Warranty	財產損毀保證
Proposal Form	投保書/投保單
Protection and Indemnity Associations (P&I Clubs)	船東保賠組織
Provisional Premium	暫繳保費
Public Liability Insurance	公眾責任保險

Public Liability Insurance relation to the fixing of Propaganda & Publicity Material	裝置宣傳物及廣告物之民事責任保險法例
Public Policy	公眾利益
Quantum	數額
Quotation	報價
Rebating of Commission	回佣
Recital Clause	敘文條款
Reinstatement	恢復原狀
Renewals	續保
Repatriation Expenses	送返開支
Replacement	重置
Representation	陳述
Risk Assessment Factors	風險評估因素
Risk Classification	風險類別
Risk Discrimination	風險差別對待
Salvage (Marine)	救援(水險)
Salvage (Non-Marine)	損餘(非水險)
Schedule	附表
Scheduled Policy Form	附表式的保單
Second Chance	改過機會
Settling Agents	理賠代理人
Short-Period Premium	短期保費
Short-Period Refund of Premium	短期的保費退款
“Short-Tail” Business	「短期責任」業務
Signature Clause	簽署條款
“Signed, Sealed and Delivered”	「簽署、蓋印及送遞」
Simple Contract	簡單合約
Special Perils	特殊危險
Specific Exclusions	特定除外責任
Specification	說明
Specified Perils	特定危險
Standard Policy Excess	標準保單自負額
Step-Back System	折扣回減機制
Subject to Average	視乎比例分攤
Subrogation	代位權
Sue and Labour Charges	損害防止費用
Surety	擔保人/保證人
Surety Bond	保證書
Survey Agents	檢驗代理人
Survey Report	檢驗報告(書)
Surveyors	檢驗人(或查勘人、勘探人)
Surveys	檢驗(或查勘、勘探)
System of Check	核査制度



“Target Risks”	「目標風險」
Temporary Disablement Benefits	暫時喪失能力的權益
Temporary Incapacity	暫時無能力
Theft Insurance	盜竊保險
Third Party	第三者
Third Party Insurance	第三者保險
Third Party Liability	第三者責任
Third Party Liability Insurance for Pleasure Boats	遊艇民事責任保險法例
Third Party, Fire and Theft	第三者責任、火災及盜竊
Total Loss Only	僅全部損失
Travel Insurance	旅遊保險
Trend Adjustment	趨勢調整
“Umbrella Coverage”	「傘括」保障
Underwriting	核保
Underwriting Excess	承保自負額(免賠額)
“Unforeseen and Sudden”	「不可預見及突如其來的」
Unoccupancy	物業空置
Unseaworthiness	不適航
Unspecified Items	未有指明的物件
Use of the Vehicle	車輛的用途
Utmost Good Faith	最高誠信原則
Valued Policies	定值保單
Voluntary Excess	自願性自負額
Wages	工資
Warehouse to Warehouse	倉至倉
Warranty	保證
Weakening of Support	減弱支撐
Wear and Tear, Depreciation	損耗、折舊
Weekly Benefits	每週計算的利益

## 一般保險字彙

(根據研習資料手冊)

一般不受保項目(除外責任)	General Exceptions (Exclusions)
一籃子保單	Packaged Policy
人身保險	Insurance of the Person
入屋犯法保險	Burglary Insurance
「三分之一」(扣減)	“One third” (Deductions)
上螺栓式	Bolt-on
工作意外及職業病保險法例	Employees’ Compensation Insurance Ordinance
工程保險	Engineering Insurance
工程師	Engineers
工資	Wages
已執行代價	Executed Consideration
「不可預見及突如其來的」	“Unforeseen and Sudden”
不可避免的損失	Inevitable Loss
「不折舊」保障	“New For Old” Cover
不適航	Unseaworthiness
中斷期間	Interruption Period
公眾利益	Public Policy
公眾責任保險	Public Liability Insurance
賠償分擔	Contribution
反擔保	Counter Guarantee
比例分攤(非水險)	Average (Non-Marine)
比例分攤(非水險)	Pro Rata Average (Non-Marine)
毛利	Gross Profit
「火災」	“Fire”
火災及特殊危險	Fire and Special Perils
主要保額	Principal Sum Insured
代位權	Subrogation
以強行及暴力的方式進入或離開	Forcible and Violent Entry or Exit
可調整保費	Adjustable Premiums
平板玻璃保險	Plate glass insurance
未有指明的物件	Unspecified Items
未來有效的代價	Executory Consideration
《民法典》	“Civil Code”
「目標風險」	“Target Risks”
仲裁	Arbitration
「全險」	“All Risks”
共同海損	General Average
危險	Hazard
危險	Peril

合約上的責任	Contractual Liability
合約生效前的先決條件	Condition Precedent to the Contract
合約生效後的條件	Condition Subsequent to the Contract
合約基礎條款	Basis of Contract Clause
回佣	Rebating of Commission
安裝工程「全險」保險	Erection “All Risks” Insurance
自負額或免賠額(或保單 自負額、保單免賠額)	Excess (or Policy Excess)
自願性自負額	Voluntary Excess
串謀	Collusion
免賠額	Deductible
利潤損失保險	Loss of Profits Insurance
投保書/投保單	Proposal Form
折扣回減機制	Step-Back System
改善分攤	Betterment Contribution
改過機會	Second Chance
每週計算的利益	Weekly Benefits
汽車民事責任強制性保險條例	Compulsory Motor Vehicle Third Party Liability Insurance
汽車保險	Motor Insurance
見證條款	Attestation Clause
車輛的用途	Use of the Vehicle
協會條款	Institute Clauses
協會貨物條款(A), (B)及(C)	Institute Cargo Clauses (A), (B) and (C)
協會遊艇條款	Institute Yacht Clauses
取消	Cancellation
定值保單	Valued Policies
忠實保證保險	Fidelity Guarantee Insurance
承保自負額(免賠額)	Underwriting Excess
明訂(保證)	Express (Warranty)
明訂條件(款)	Express Conditions
物業空置	Unoccupancy
金錢保險	Money Insurance
長期協議(LTAs)	Long Term Agreements (LTAs)
「長期責任」業務	“Long-Tail” Business
長期無能力	Permanent Incapacity
附加費用	Additional Expenses
附表	Schedule
附表式的保單	Scheduled Policy Form
非重要事實	Non-Material Facts
保單條件(款)	Policy Conditions
保單說明	Policy Specification
保費	Premium
保險中介人	Insurance Intermediary
保險代理人	Insurance Agent
保險代理人及經紀人法例	Insurance Agents and Brokers Ordinance

保險活動管制法例	Macau Insurance Ordinance (MIO)
保險單/保單	Policy
保險經紀	Insurance Broker
保險憑證	Certificate of Insurance
保險類別	Classification of Insurance
保證	Bonds
保證	Warranty
保證書	Surety Bond
建築工程「全險」保險	Contractors' "All Risks" Insurance
建築物及家居物件保障	Buildings and Contents Cover
建築物而已保障	Buildings Only Cover
律師職業民事責任強制保險	Compulsory Professional Liability Insurance for Lawyers
後果損失	Consequential Loss
恢復原狀	Reinstatement
玻璃保險	Glass Insurance
約定價值	Agreed Values
重要事實	Material Fact
重置	Replacement
風險評估因素	Risk Assessment Factors
風險差別對待	Risk Discrimination
風險類別	Risk Classification
倉至倉	Warehouse to Warehouse
個人意外及疾病保險	Personal Accident and Sickness Insurance
個人險種	Personal Lines Insurance
家居物件而已保障	Contents Only Cover
家居保險	Household or Home Insurance
旅行社職業民事責任保險	Professional Liability Insurance for Travel Agencies
旅遊保險	Travel Insurance
核保	Underwriting
核查制度	System of Check
海上貨物保險	Marine Cargo Insurance
海損(水險)	Average (Marine)
海損理算師(或海損理算人)	Average Adjusters
特定危險	Specified Perils
特定除外責任	Specific Exclusions
特殊危險	Special Perils
純意外的保險保障	Accidents Only Cover
「索償申報」方式	"Claims-Made" Basis
「索償發生」方式	"Claims-Occurring" Basis
財產及經濟權益保險	Property and Pecuniary Insurances
財產及經濟權益保險組合保單	Combined Property and Pecuniary Policy
財產保險	Insurance of Property
財產損毀保證	Property Damage Warranty
起賠額	Franchise

送返開支	Repatriation Expenses
健康保險	Health Insurance
《商法典》	“Commercial Code”
基本風險	Fundamental Risks
專業賠償保險	Professional Indemnity Insurance
推定全損	Constructive Total Loss (CTL)
救援 (水險)	Salvage (Marine)
敘文條款	Recital Clause
「淺白英語」	“Plain English”
清理殘損物	Clearing of Debris
現金運送保險	Cash in Transit Insurance
理賠/索償	Claims
理賠代理人	Settling Agents
理賠師	Loss Adjusters
產品責任保險	Products Liability Insurance
第三者	Third Party
第三者保險	Third Party Insurance
第三者責任	Third Party Liability
第三者責任、火災及盜竊	Third Party, Fire and Theft
組合保單	Combined Policy
統保保障	Blanket Cover
船東保賠組織	Protection and Indemnity Associations (P&I Clubs)
船體保險	Marine Hull Insurance
責任出現前的先決條件	Condition Precedent to Liability
責任保險	Insurance of Liability
責任保險	Liability Insurance
責任保險組合保單	Combined Liability Policy
通融賠款	Ex Gratia Payment
陳述	Representation
「傘括」保障	“Umbrella Coverage”
「傘括」類型保障組合	Combined “Umbrella” Type Cover
單獨海損	Particular Average
報價	Quotation
最高誠信原則	Utmost Good Faith
欺詐	Fraud
減弱支撐	Weakening of Support
無索償折扣	No Claim Discount
盜竊保險	Theft Insurance
短期的保費退款	Short-Period Refund of Premium
短期保費	Short-Period Premium
「短期責任」業務	“Short-Tail” Business
視乎比例分攤	Subject to Average
訴訟	Litigation
費用	Fee
僅全部損失	Total Loss Only

意外身體受傷	Accidental Bodily Injury
意外損失或毀壞	Accidental Loss or Damage
損害防止費用	Sue and Labour Charges
損耗、折舊	Wear and Tear, Depreciation
損餘 (非水險)	Salvage (Non-Marine)
搶劫保障	Hold-Up Cover
業界除外責任	Market Exclusions
碰撞責任	Collision Liability
經濟權益保險	Insurance of Pecuniary Interests
董事及主管人員責任保險	Directors' and Officers' Liability Insurance
裝置宣傳物及廣告物之民事責任保險 法例	Public Liability Insurance relation to the fixing of Propaganda & Publicity Material
遊艇民事責任保險法例	Third Party Liability Insurance for Pleasure Boats
遊艇保險	Pleasure Craft Insurance
道德危險	Moral Hazard
僱主責任	Employers' Liability
實際全損	Actual Total Loss (ATL)
實質危險	Physical Hazard
綜合保障	Comprehensive Cover
罰款	Penalty
說明	Specification
寬限期	Days of Grace
履行條款	Operative Clause
履約保證	Performance Bond
徵款	Levies
數額	Quantum
暫保單	Cover Note
暫時喪失能力的權益	Temporary Disablement Benefits
暫時無能力	Temporary Incapacity
暫繳保費	Provisional Premium
標準保單自負額	Standard Policy Excess
潛在的毛病	Inherent Vice
調解	Mediation
賠償期間	Indemnity Period
擔保/保證	Guarantee
擔保/保證人	Guarantor
擔保人/保證人	Surety
整筆支付的利益	Lump Sum Benefits
機器損壞保險	Machinery Breakdown Insurance
澳門汽車及航海保障基金	Motor and Marine Guarantee Fund (FGAM)
澳門金融管理局	Monetary Authority of Macao (AMCM)
積累	Accumulation
檢驗(或查勘、勘探)	Surveys

檢驗人(或查勘人、勘探人)	Surveyors
檢驗代理人	Survey Agents
檢驗報告(書)	Survey Report
營業中斷保險	Business Interruption Insurance
總保險單	Master Policies
趨勢調整	Trend Adjustment
鍋爐爆炸保險	Boiler Explosion Insurance
隱含(保證)	Implied (Warranty)
隱含條件(款)	Implied Conditions
擴展危險	Extended Perils
簡單合約	Simple Contract
醫療服務提供者職業民事責任強制保險	Compulsory Professional Liability Insurance for Healthcare Providers
醫療保險	Medical Insurance
醫療開支	Medical Expenses
額外／附加危險	Extra Perils
額外權益	Extra Benefits
「簽署、蓋印及送遞」	“Signed, Sealed and Delivered”
簽署條款	Signature Clause
續保	Renewals

## **REFERENCE MATERIALS**

- ③ “Motor Vehicles Insurance (Third Party Risks) Ordinance”  
(Decree-Law No. 57/94/M, of 28<sup>th</sup> November, amended by Law No. 3/2007, Administrative Regulation No. 15/2007 and Administrative Regulation No. 8/2011), Macau SAR Government
- ③ “Employees’ Compensation Insurance Ordinance”  
(Decree-Law No. 40/95/M, of 14<sup>th</sup> August, amended by Law No. 12/2001, Law No. 6/2007, Executive Order No. 20/2015, Executive Order No. 27/2020 and Law No. 6/2015), Macau SAR Government
- ③ “Professional Liability Insurance for Travel Agents”  
(Executive Order No. 263/99/M, of 14<sup>th</sup> June, amended by Executive Order No. 25/2007), Macau SAR Government
- ③ “Public Liability Insurance relating to the Fixing of Propaganda and Publicity Material”  
(Decree-Law No. 38/96/M, of 15<sup>th</sup> July), Macau SAR Government
- ③ “Third Party Liability Insurance for Pleasure Boats”  
(Decree-Law No. 104/99/M, of 13<sup>th</sup> December), Macau SAR Government
- ③ “Compulsory Professional Liability Insurance for Lawyers”  
(Administrative Regulation No. 39/2003), Macau SAR Government
- ③ “Compulsory Professional Liability Insurance for Healthcare Providers”  
(Administrative Regulation No. 5/2017), Macau SAR Government
- ③ “Commercial Code” Chapter 18  
- Insurance Contract Law, Macau SAR Government

Note: The list of references provides details of various publications which may assist with your studies. They will provide a wider coverage of syllabus topics.



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