CIB BULLETIN

香港保險顧問聯會
THE HONG KONG CONFEDERATION OF INSURANCE BROKERS

OCT ISSUE 2020

Chairman's Message

At the time of writing this message, the Lloyd's 2020 half-year results were just released. Lloyd's reported a pre-tax loss of £0.4 billion for the first six months of the year, driven by £2.4 billion in COVID-19 claims adding 18.7% to the market's combined ratio of 110.4%. Gross written premiums of £20.0 billion represent only a 1.7% increase over the same period in 2019.

It is a tough time for everybody, including the insurers, brokers and clients. Yet Lloyd's rang the Lutine Bell and re-opened on 1 September after its closure at 4pm on 19 March in response to the COVID-19 crisis, the first closure of physical trading in the 330-year history of Lloyd's.

For us brokers, it is "business as usual" under the new normal. We all have to face the reality and difficulties, then overcome the hurdles. The same at CIB, too!

The General Committee never slowed down its work. While physical meetings are not possible, we are actually having more meetings than before, but via Zoom. Our communication with the Insurance Authority continues and has focused on various subjects, some of which, such as the Hong Kong Specialty Risks Consortium, are included in this issue of the Bulletin.

I wish all of you good health and to emerge stronger in the post-COVID-19 economy. ■

Yours sincerely,

Patrick Chan
Chairman | October 2020

BUSINESS AS USUAL!

IA Unveils the Specialist Consortium

The Insurance Authority (IA), in conjunction with the Hong Kong and Mainland Governments, has established a Specialist Consortium comprising Hong Kong-based international insurance providers of sophisticated risk management and expertise in complex specialty lines.

The members of the Consortium comprise international and mainland insurers and reinsurers and international brokers all operating in Hong Kong. The original participants were selected by the IA, but recently at the request of the IA the CIB has proposed for consideration a further small number of broker members with the requisite expertise.

Conceived to make available advice on Hong Kong, international risk management and specialty insurance to mainland principals and contractors involved in major infrastructure projects under the Belt and Road initiative (B&R), CIB believes that this can be expanded to provide similar services to the many expected entrepreneurial start-up enterprises, many of a high-tech nature, as the Greater Bay Area (GBA) develops.

During discussions with the IA, to whom CIB has provided a Briefing Paper, the CIB has made it clear that most of this expertise lies with the brokers who would take the lead in advising clients and developing the appropriate insurance packages for placement with the Consortium insurer and reinsurer members to the extent of their appetite and capacity. Further, and of particular value to B&R participants, is the international network of offices maintained by these brokers enabling them to provide local legal and regulatory information in each project location and connections into the local insurance markets.

Detailed risk assessment both physical and financial will be needed by all parties to these projects, especially the mainland and foreign banks and financial institutions, as well as the insurance solutions to transfer the not inconsiderable risks. Apart from physical damage to the project works and equipment, coverage for delay in completion to protect debt servicing for the extensive project loans will be an issue, as will design and other professional liabilities. Of particular concern are trade and political risks involving cancellation and expropriation and the ever-present threat of kidnap and ransom facing expatriate project staff. These are all very real risks as many of the projects are in underdeveloped countries and some B&R projects have already faced cancellation upon a change of government in the host country.

It is to be hoped that the benefits of the Specialist Consortium will be recognised and accepted not only for the B&R but also in the GBA and other future developments, assisting in the growth of the Hong Kong insurance industry as a centre of technical excellence and as a market-leading hub for Greater China and the Asian Region as a whole. ■

IA Preparing to Issue Formal Licences to Brokers

For the past 20 years and more, agents, brokers and their staff have been registered by their respective Self-Regulatory Organisations (SROs), including the CIB. With the advent of direct regulation under the Insurance Companies (Amendment) Ordinance 2015 (Amendment Ordinance) however, there is now a requirement on the Insurance Authority (IA) to grant license to all insurance intermediaries themselves.

The Amendment Ordinance requires that the IA licensing process be completed within 3 years of commencement of direct regulation, i.e. by 23 September 2022. In the meantime, the very practical option was adopted whereby all existing registrations of intermediaries by their SROs continued to be valid as "Deemed licenses". This is the situation that continues today and provides the valid basis for intermediaries to continue to do business under the new regulatory regime.

The IA recently approached the CIB, advising that it intends to commence the new licensing process for insurance brokers during the third quarter of 2020 and that it is now drawing up the procedures and templates needed to undertake this substantial exercise, which will largely be performed online. They are keen to see that the processes and information requirements to be imposed on insurance brokers are as practical and accessible as reasonably possible. To this end, senior executives of the IA recently made a presentation to CIB officials on the workflow and templates proposed. Apart from discussion and comments during the interactive presentation, CIB has since issued an Advisory Paper to the IA detailing improvements that could be made to avoid misunderstandings and to make the applications with supporting documents by brokers as straightforward as possible.

The IA will take the proactive role in this process. Brokers should wait until they receive an invitation from the IA to apply and will be provided with the necessary instructions at that time. The IA will issue the invitations in batches over a period of time and complete one batch before issuing the next to avoid a backlog and delays in processing.

The applications will apply to Licensed Insurance Broker Companies, Responsible Officers (ROs), formerly Chief Executives (CEs) and Technical Representatives (TRs). Basic information will be preloaded by the IA into the application templates from the previous CIB records and applicants will be asked to verify and confirm that this is still up to date and correct.

Current thinking with regard to TRs is that a bulk upload process will be available for companies with larger numbers of staff, but for small firms, an individual application process by TRs will apply. The final basis for this particular issue is still under consideration by the IA.

In putting requests and recommendations for amendment or clarification of the instructions or requirements to the IA, the CIB has been mindful of the separate issues facing both small companies and the larger corporate groups. Suggestions ranged from simple clarification of instructions and, in particular, avoidance of terminology more applicable to agencies or life insurance companies on the one hand to standardisation of the format of names under licence, identity and immigration documentation on the other, all to be clearer and to avoid misunderstandings as to what is being asked for.

For companies that are part of local groups or international conglomerates, we have recommended a simplification of requirements for group charts and shareholdings to only those in direct relationship between the broker and its group holding company.

The ultimate format of the instructions and requirements that are now undergoing final editing by the IA is being awaited with interest, but CIB has been very pleased with the positive response from the IA to the Advisory Paper and suggestions put forward. ■

"We want to hear your thoughts and opinions, so please get in touch!"

CIB e-Learning Platform

The Insurance Authority (IA) recently announced that, in accordance with GL24 (Guideline on Continuing Professional Development for Licensed Insurance Intermediaries), individual licensees may earn up to a maximum of 7 CPD hours through e-learning for a given assessment period.

The current COVID-19 pandemic situation has had a fundamental impact on our daily activities, shopping habits and modes of schooling, ushering dramatic changes not only in Hong Kong but all over the world. We frequently receive enquiries from brokers regarding how CIB can help their members with continuing professional development in an uninterrupted manner. The CIB e-learning platform is one of our key development undertakings to support our members' need to earn CPD hours.

Our vision is to maintain professional qualified insurance advisors in our insurance and brokerage industry; this is built on the three cornerstones of professionalism, representation and communication. CIB is currently undergoing a revamp of its website in anticipation of a launch date in the fourth quarter of 2020. This will include new features such as a help desk, online enrolment for CPD courses and most notably our new e-learning platform introduced by the CIB.

With approval from the IA, our e-learning platform will be launched in the first quarter of 2021 and will provide our members with the flexibility of earning their CPD hours any time, any date over the year. ■

New Regulations Require Client Agreement

The new Code of Conduct for Licensed Insurance Brokers issued by the Insurance Authority (IA) under Standard and Practice 5.4 provides that:

(a) A licensed insurance broker company should enter into an agreement with a client, setting out in writing the terms and conditions of business on which the licensed insurance broker will carry on regulated activities for the client.

(b) The client agreement may be entered into:

   (i) by the client **signing the agreement** which sets out the written terms and conditions;

   (ii) by the client providing **written consent** to the broker's written terms and conditions of business (including by e-mail or other electronic mechanism); or

   (iii) **by conduct** (with the broker company providing the client with its written terms and conditions of business for the client's review, and the client proceeding or continuing with the instruction, or otherwise indicating acceptance of such written terms and conditions of business, for example, by paying the premium for the insurance product arranged by the broker company).

The third option of "implied consent" is the easiest and most commonly adopted means of obtaining the client's agreement.

Whilst broker companies have the option to choose one of the above three means, the common thread is that each broker company needs to have standard written terms and conditions of business, generally referred to as a **TOBA**. In the past, save for linked long-term business where CIB Membership Regulations required a client agreement in writing, there was no similar obligation for non-linked or general insurance business, although the larger brokers have operated with standard TOBAs for many years. As the Code of Conduct does not differentiate lines of business, from the commencement date of 23 September 2019, for all classes of business, all brokers need to provide a cohesive TOBA document to each client.

What needs to be covered under the TOBA? We make reference to the Practice Note issued by the IA in June 2020 supplementing Standard & Practice 5.4 for Linked Long Term Business (Practice Note). The Practice Note sets out the minimum contents of a client agreement in linked long-term business. Although it is stated to apply only to linked long-term business, it provides useful guidance and a starting point for what the TOBA should look like, including:

- **Full name and address of the licensed insurance broker company**

  This is a convenient place to make disclosure in relation to the identity and capacity of the broker company in accordance with the Code of Conduct S&P 5.1(a) in respect of name, including the registered name as well as the trade name, IA licence number, type of licence and the fact that the broker acts as the agent of the client in dealing with insurers on matters relating to insurance policies being procured by the client.

- **Description of nature of business and services to be provided by the licensed insurance broker company**

  The broker company may set out its licensed lines of business and the regulated activities it carries on, which are set out in the Insurance Ordinance Schedule 1A. Complexity or brevity differs among companies.

  For linked long-term insurance, the TOBA should contain matters stated in the Practice Note including whether any investment advice and regular reviews will be provided.

- **Remuneration**

  There should be a statement as to whether the broker company is being remunerated by payment from the client or payment from the insurer. If the remuneration is from the client, details should be stated. If the remuneration is from the insurer, companies may place the standard-form remuneration statement in the TOBA, as well as on debit notes for clarity.

  If the broker company receives volume or profit commissions, service fees or marketing allowances paid by insurers or other third parties, the broker company may consider including them in the TOBA, but express consent from the client is needed.

- **Client servicing representative**

  For linked long-term insurance, the TOBA should state the full name and licence number of the client servicing representative and his duties and authorities. The TOBA should include provisions to cater for future change of servicing representatives without the need to execute a new TOBA.

- **Notification**

  The TOBA governs a long-term relationship and is subject to changes over time in relation to the company's or the client's circumstances. The TOBA should include mechanisms for either party to give notice to the other, having contemplated the form of notice, mode of giving notice, whether electronic means are acceptable and the timing of the change taking effect.

- **Amendment and termination**

  The broker company needs to consider how the TOBA may be amended, having struck a balance between fair treatment of the client and unnecessary administrative burden, such as amending the TOBA by the broker company giving 14 to 30 days' notice in advance and the client's deemed consent to the amendment. Similarly, for termination, the broker company needs to contemplate whether the TOBA is terminable by either side, what is the notice requirement and the consequences of termination.

- **Governing law**

  The governing law should be the laws of the Hong Kong SAR. An agreement usually contains the choice of jurisdiction for settling disputes, usually the non-exclusive or exclusive jurisdiction of Hong Kong courts.

The above illustrates the minimum contents required by the IA's Practice Note to be included in the TOBA. Companies are at liberty to put in any additional terms in the TOBA to cater for their business, such as the company's policies regarding assistance in relation to claims, handling of client's money, policy review and renewal, handling of personal data and complaints handling.

Broker companies could also make use of the TOBA to comply with the regulatory rules and advise clients about the client's disclosure obligations, conflicts of interest issues, cooling-off rights, referral business issues, etc. In most cases though, spelling out the terms in the TOBA is just one of the ways to inform the client about certain issues and will not displace the broker's general obligations to advise the client.

In professionally drafted agreements, there are clauses drafted to protect brokers such as disclaiming liability for loss except for loss arising from wilful misconduct, negligence or bad faith; not guaranteeing the insurer's solvency; requiring the client to give warranties as to its power and authority to act and that the information provided is true and correct; or even going so far as requiring the client to indemnify the broker for all liabilities. This article is not prepared to comment on the enforceability of these clauses, but if these are matters that concern the company, these should be discussed with the company's lawyer when drafting the TOBA.

Last but not least, there are boilerplate clauses to complete the TOBA. Companies may add in clauses governing commencement and termination of the agreement, assignment of the agreement in a merger and acquisition situation, putting in standard clauses regarding entire agreement, severance and no waiver, etc.

Drafting the TOBA seems like a colossal task, but the good news is companies do not need to start from scratch. Companies should review the pre-existing terms and conditions, put them together in an all-in-one TOBA and bring them up to date to align with the rules of the IA. This article attempts to give some examples, but at the end of the day, each company should come up with its own TOBA, taking advice from appropriately qualified professionals.

For any questions on this article, please feel free to contact the CIB Help Desk. The CIB Help Desk can be accessed by e-mail at helpdesk@hkcib.org or by telephone on 2526 3951, or a message may be left at any time for response when the Help Desk is next open during business hours. ■

Upcoming CPD seminars

At present, we are arranging the below FIS CPD courses to be offered in the coming months.

Proposed courses in Q4 2020:

- Broking Client Relationship and Performance Management - Environment analysis and roles of brokers
- Broking Client Relationship and Performance Management - Customer Relationship Management (CRM) models
- Managing Distribution and Customers (General Insurance) - Overview of current insurance intermediary management
- Managing Distribution and Customers (General Insurance) - Monitoring intermediary performance
- Insurance Products in General Insurance - The importance of product knowledge
- Insurance Products in General Insurance - New development for the products
- Insurance and Risk Based Capital - RBC and solvency
- Insurance and Risk Based Capital - MCR capital charges and approaches of Australia and Hong Kong

Proposed courses in Q1 2021:

- Infrastructure Construction and Liability - Overview of infrastructure construction and liability
- Infrastructure Construction and Liability - Contracts and Relationships
- Management of Environmental Risks - Various environmental risks and their impact on business
- Management of Environmental Risks - Environmental risk management plan
- Natural Catastrophic Insurance - Trends and developments of catastrophic Insurance
- Natural Catastrophic Insurance - Underwriting considerations and Claims management
- Life Insurance Sales and Distribution - Overview of life insurance products
- Life Insurance Sales and Distribution - Implementing the plan and providing advice

Please watch for CIB Circulars for final details.

Continuing Effects of COVID-19 on the Global Insurance Industry

This is a follow-up to the article in our July edition and highlights the continuing problems which COVID-19 is causing to the global insurance industry.

Contributed by BS Rath, Immediate Past Chairman of CIB

In a landmark judgment, approximately 370,000 small firms in the UK will be receiving insurance claim pay-outs after the High Court ruled in their favour in the Financial Conduct Authority (FCA) test case. The insurers included HISCOX, RSA, QBE, Zurich, MS Amlin, Argenta, Arch Insurance, Ecclesiastical and some others. Following the lockdown, many companies have had to close their businesses, triggering a possible recovery from their business interruption policies. The FCA took action due to the high volume of blanket denials. It is interesting to note that the Court examined 21 insurance policies from 8 insurers.

The insurance companies fought back, asserting that if the Court ruled in favour of the policyholders, it would be unlawful. The insurers stood by their legal conditions.

Interesting to note; the High Court ruled that the disease clauses in some of the business interruption insurance policies should have covered the policyholders during the coronavirus pandemic, according to the BBC. However, while the FCA test case was one of the most compelling in years, the FCA warned that all of the insurance policies might not offer a pay-out. The insurance companies will have the option to appeal the Court's ruling. This will trigger a cascading effect as the initial estimation of pay-out is over £5 billion.

The Organisation for Economic Co-operation and Developement (OECD) on insurance sector response to COVID-19 in their 2 July release:

"The spread of COVID-19 and the measures implemented to reduce its transmission are having (and will continue to have) significant impacts on the (re)insurance sector, as investors, as providers of insurance coverage and as businesses that will need to adapt their approaches to service delivery." OECD has focused on the measures that governments, insurance regulators and supervisors, insurance associations and individual companies are undertaking to respond to COVID-19 across three main areas:

(i) ensuring continuity of operations;
(ii) managing solvency and liquidity risks; and
(iii) providing support to policyholders that have been adversely affected by the COVID-19 public health emergency.

Lloyd's of London reopened its underwriting room for the first time since March, making it the latest City firm to inch towards normality amid the coronavirus pandemic. Underwriters and brokers were back into the building on Tuesday morning, 1 September 2020, as part of a phased reopening that will mean running at 45% capacity until further notice to ensure social distancing rules are followed.

In Hong Kong, the Insurance Authority has rolled out a set of temporary facilitative measures which will last until 31 December 2020. For details, please visit their website www.ia.org.hk.

Some thoughts:

Some things have changed and among them are the way we do our business. Working from home, paperless transactions, video conferencing and use of technology are a few things which will stay with us for quite some time. Whilst we feel caged with no travel, less dining out and less social interaction, the sky is clearer, the water in the rivers is much cleaner, the animals are roaming freely and, most importantly, we are breathing fresher air. On the brighter side, it's not all doom and gloom. We wait in hope for a vaccine! ■

Diversified Development of the Insurance Sector

Further developments on the proposed preferential tax measures discussed in our July edition.

Contributed by Winnie Wong, Board Member of the Financial Services Development Council

The insurance industry has welcomed the passage of the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019 (Bill) by the Legislative Council on 15 July, which provides 50% profits tax relief (i.e. 8.25%) for all general reinsurance business of direct insurers, selected general insurance business of direct insurers and selected insurance brokerage business. The Financial Services Development Council (FSDC) also believes that the passage of the Bill is a manifestation of the community's general consensus to further advance the development of the insurance industry.

In March 2017, the FSDC released a policy paper highlighting the importance of strategically growing our reinsurance, marine and captive businesses. The passage of the Bill is undoubtedly a promising step forward, which will not only enable Hong Kong to consolidate the strengths of our existing business, but also provide further momentum, thereby achieving balanced development in areas including reinsurance, marine insurance and specialty insurance. A solid foundation is thus laid for bringing the diversity of Hong Kong's insurance ecosystem to greater heights. ■

Diminishing Product Selection

The life insurance industry in Hong Kong has traditionally operated two distinct product segments serving two distinct markets: traditional life and endowment products sold through agents in the mass market, and financial planning products offered by brokers in the investment and retirement planning field.

The former has thrived off the back of extensive sales to mainlanders, growing into a significant economic factor that has caught the attention and enthusiasm of the Hong Kong SAR Government. Spearheaded by major Hong Kong international players such as AIA, Manulife and Prudential together with the Chinese market, this segment continues to develop despite the temporary setback of the COVID-19 pandemic and appears to have the support of the government and the Insurance Authority (IA).

On the other hand, brokers operating as independent financial advisors in the personal insurance, investment and retirement planning fields have been expressing concern at diminishing product selection, which they see as detrimental to the interests of the consuming public both in Hong Kong and in regional countries that relied on Hong Kong to be a central source in this specialist discipline.

There are several reasons for this recent narrowing of the product pool. Firstly, a number of international companies, the most recent being Friends Provident, have withdrawn from Hong Kong while others have experienced delays or resistance to new or amended license applications. Secondly, since the regulatory elimination of ILAS products, it is apparent that the IA has favoured a limiting approach to product approval so that there are now few products remaining outside of basic Endowment Coupon policies.

It is unfortunate that this reduction in the scope of product choice has occurred just at the time when a new marketing opportunity is presenting itself in the Greater Bay Area, which will draw in large numbers of well-to-do entrepreneurs who constitute the ideal market for individual investment and retirement services. These services are not widely available in the Greater Bay Area, so this is a field in which the IA could support the development of Hong Kong as an insurance centre by encouraging international companies to establish regional bases here with broad product ranges, which could be marketed by Hong Kong specialist brokers throughout the Greater Bay Area and the region. At the same time, this would benefit Hong Kong consumers with a broader selection of products than are now available.

Unless the government and the IA reverse their restrictive licensing and product approval with the positive intent to widen the financial planning product pool and to expand the ability of Hong Kong brokers to service clients in need of these products in Hong Kong, the Greater Bay Area and throughout the region, a Hong Kong insurance business opportunity will be lost. Needy clients in these areas will have to look to Singapore, which is rapidly growing and becoming a regional insurance hub, or the Middle East, Australia and Europe, where such products continue to be readily available. ■

Annual Conference 2020

Despite the restrictions imposed due to COVID-19, your General Committee has determined that the 17th Annual Conference will be held in 2020 as usual. Owing to uncertainties, a Virtual Event will proceed on Monday 2 November with the theme of "Our New Opportunity – the Greater Bay Area". A specialist production management team has been appointed and detailed arrangements are being developed. It is hoped that members will give this important annual event their full support, and attendance will as usual confer 3 CPD points. ■

Appointment at the Insurance Authority

The Insurance Authority (IA) has announced the reappointment of Mr. Clement Cheung as Chief Executive for a further term of three years until 14 August 2023. The CIB congratulates Mr. Cheung on his further appointment.

Meanwhile, the IA has advertised the position of Executive Director, Market Conduct and we await an announcement in due course. ■

Talk to us today – CIB is your voice within the industry!
Phone: 2882 9943 **Fax:** 2890 2137 **Email:** info@hkcib.org

Address: Room 1504,Tai Tung Building, 8 Fleming Road, Wanchai, Hong Kong
Tel.: 2882 9943 | Fax.: 2890 2137 | Email: info@hkcib.org
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