

HKSA PII MASTER POLICY BULLETIN

This Bulletin is prepared by Aon Hong Kong Limited (formerly known as Aon Risk Services Hong Kong Limited) and Windsor Professional Indemnity Insurance Limited, the appointed brokers of the HKSA Professional Indemnity Insurance (PII) Master Policy (“The Brokers”).

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A. RECEIVERS OWE NO DUTY OF CARE

The Court in Hong Kong has confirmed that Court Appointed Receivers do not owe a duty of care in tort to those interested in the property over which they have been appointed.

[Chim Pui Chung v. Lam Siu Yue Philip \(HCCT No. 2312 of 2001, Decision of Hon. Kwan J. dated 26th October, 2001\)](#)

The claim arose out of a dispute between three companies over the ownership of a commercial building known as “Dotcom House” at 128 Wellington Street, Hong Kong. The Defendant was appointed by the Court as a receiver of the property. His duties included the duty to sell Dotcom House by public auction and to pay the net proceeds of the sale, after the deduction of proper expenses and remuneration, into the Court. The Court would then decide which of the parties was entitled to the proceeds.

Subsequent to the appointment, the Plaintiff who was not a party to the dispute but was a major shareholder in one of the companies claiming the property (Grand Million), claimed to be the beneficial owner in respect of 61% of Dotcom House.

The property was sold by the receiver at public auction and the net proceeds of the sale paid into Court. About two weeks after completion of the sale, the Plaintiff obtained an order from the Court in a separate proceeding ordering Grand Million to transfer 61% of the sale proceeds of Dotcom House to him. The Plaintiff then wrote to the receiver claiming that he had a duty to account to the Plaintiff for his share of the beneficial interest in the income from the property. The receiver suggested that the Plaintiff seek legal advice and make an appropriate application to the Court. The Plaintiff alleged that the receiver was in breach of duty as a receiver by failing to account for his interest in Dotcom House.

The Court’s Findings

The Court held (following a number of English and Commonwealth authorities) that a Court appointed receiver is an officer of the Court whose duties lie in equity rather than in tort and thus he does not owe any general duty of care in negligence. His primary duty is to act in good faith and such duty varies depending on the facts and circumstances of a particular case. On that basis, the Court held the action in

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negligence was bound to fail, as there was no duty owed in tort by a receiver. A receiver's duties were limited and only extended to those stated in his appointment order. Note that this judgement only applies to Court appointed receivers. Different considerations and duties apply to receivers appointed out of Court.

Source: Allen & Overy, Hong Kong

B. MASTER POLICY UPDATE

The Master Policy continues to exclusively offer members very competitive prices for a wide range of covers. The Master Policy is due for renewal on 1 December 2002.

Renewal proposal forms have been sent out to the insured members at the end of September 2002. Insured members are required to return the completed forms to Aon Hong Kong Limited by the end of October 2002 for necessary renewal arrangements.

The Brokers are currently finalizing the renewal terms with the insurance companies with an aim to minimizing the changes in terms of premiums and policy conditions.

Members who are not currently insured under the Master Policy are welcomed to submit their enquiries to Aon Hong Kong Limited.

Details of the renewal terms will be announced once they are finalized.

C. MEMBERS' QUESTIONS ANSWERED

- 1. My firm has commenced practice a few years ago, and the practice has not taken out any insurance in the past. We are now considering to arrange professional indemnity insurance for the practice. Can the insurance policy protect our liabilities incurred by the past activities?*

By including a retroactive cover in the policy, the insurance can provide cover to liabilities incurred by your past activities, provided that such liabilities are not discovered at the time when the insurance is arranged. However, if there is already a claim against you, or if you are aware that there are circumstances which could give rise to a claim, then such claims or potential claims will be excluded.

The retroactive cover is an optional cover, a one-off additional premium will be charged in the first policy year. You will continue to enjoy the benefits of the retroactive cover in the forthcoming policy years.

- 2. My practice is currently insured under another professional indemnity policy. If we switch to the HKSA Master Policy upon expiry of the existing policy, will the liabilities incurred by the past activities be covered under our existing policy or covered under the Master Policy?*

If you have had already a professional indemnity policy in force, you may join the Master Policy with the retroactive cover included free of charge.

Claims or potential claims which are known or discovered prior to joining the Master Policy would still be covered by your existing policy. However, the Scheme will only pick up liabilities incurred by your past activities provided that you are not aware of such liabilities or potential liabilities when joining the Master Policy.

IF YOU HAVE ANY DOUBTS OR QUESTIONS, YOU SHOULD CONSULT YOUR INSURANCE BROKER.

The contents of this Bulletin are for general guidance only. Any Members who feel that any of the points raised may be relevant to them should contact the PII Hotline for specific advice. Comments regarding coverage in this Bulletin refer to the HKSA PII Master Policy only.

Please call Aon Hong Kong's (HKSA) PII Hotline if you have any doubt.

TEL : 2862 4242 / 2862 4243

If you are insuring PI elsewhere, it is recommended that you review your existing policy to ensure that it provides sufficient coverage for your needs. Should you need any professional advice, Aon Hong Kong Limited would be able to provide any assistance required.

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I would like to know more about :- Signed

the topics in this issue Name

the HKSA PII Master Policy Position.....

Practice.....

Tel No.

Please return this form to: **Raymond Chiu / Anita Lee**
Aon Hong Kong Limited
21/F Aon China Building
29 Queen's Road, Central, Hong Kong
or Fax: 2243 8664 (Raymond Chiu)
2243 8696 (Anita Lee)