

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. MASTER POLICY TERMS OF RENEWAL

We are Renewing!!!

Great news to all the members. The Brokers have just renewed the Master Policy on behalf of the HKSA for a further year starting from 1 December 2002.

Insurance Market Condition

The expiring Master Policy was renewed in December 2000 for 2 years. It was a time where some professions had caused concerns to the insurance industry due to loss history or other issues but the general atmosphere was still quite relax. In the following year (2001) the market had experienced turmoil :

- 1) The collapse of HIH Group of companies and Independent Insurance have substantially reduced the world’s underwriting capacity in writing professional indemnity insurance.
- 2) All insurers have been hit by the September 11 event, if not by way of losses, then by way

of reduced capacity because their reinsurers were affected. 3) The recent US corporate scandals have also caused tremendous concerns on the potential exposure in respect of auditors’ liability and directors’ liability.

Renewal Exercise

The Brokers started negotiating renewal terms in August 2002 and have recently finalized the renewal terms with the insurers. The Master Policy will still be 100% placed in London. The Brokers have approached local insurers in Hong Kong but responses received are not positive – 1) wordings too broad to follow and 2) individual premiums not attractive.

The renewal insurers are 100% Lloyds, a well known insurance market in London. Lloyds is rated an “A” by Standard and Poor’s as at 11 November, 2002.

General Renewal Terms

Because of the satisfactory claims record throughout the past 6 years, there will be ***no premium rate increase for the renewal by existing members*** for standard risks.

For **new members** joining the Master Policy, the standard risk premium rate increase is 25% when compared to the Master Policy expiring rates. The Brokers opined such a 25% increase is reasonable considering the comprehensiveness of the Master Policy covers and the current state of the insurance market.

Individual members' renewal terms may vary as insurers are reserving their rights on non standard risks.

The Master Policy will still be renewed at "Any One Claim Policy Limit" in contrary to the "Aggregate Policy Limit" where the other insurers are offering in the market. There is also no change to the calculation of policy excess despite the minimum market excess level is HK\$50,000 each and every claim.

The Small Firm Scheme will continue to offer protection to non corporate members whose firm size is small but wish to maintain some minimum coverage at a lower cost.

There are a few changes upon renewal where members' attention is drawn to:

1. 2 year policy option is no longer available. This is a general market trend since mid 2001.
2. War and Terrorism Exclusion Endorsement will be imposed. This is a common exclusion after the 911 event.
3. Premium Warranty Endorsement will be imposed to ensure the premium arrives the insurers' accounts before a specified date.

The Brokers are now issuing renewal quotes to the members. Corporate Practices are reminded to renew their insurance policies before expiry as this is a mandatory requirement from the HKSA.

Members are welcomed to contact Aon for any enquiries about the Master Policy. Aon contacts can be found in the last page of this Bulletin.

B. ZELINO PTY LTD V BUDAI, 2001 NSWSC 601

An Australian Case – whether an action for breach of contractual duty of care will lie in respect of the performance of an illegal act by the accountant in furtherance of an illegal purpose of the plaintiffs and at the request of the plaintiffs.

An accountant participated in a fraudulent breach by his clients of the income tax laws such that the clients substantially reduced their income tax and stamp duty liabilities. The clients, unhappy that they had paid any tax at all, engaged a tax specialist who made unknowingly false submissions to the Australian Tax Office which resulted in notices of amended assessment being issued which reduced the clients' taxable income to nil.

The clients commenced proceedings against the accountant to recover the costs which they had paid to the tax specialist.

The Australian Court was not prepared to find the accountant liable for breach of contract or in negligence, in circumstances where he had followed his instructions to the letter. Further, the Australian Court noted that it would not assist the clients in enforcing any duties arising from a contract whereby the clients retained the accountant for the express purpose of breaching the law. The Australian Court also ordered the judgement be sent to the relevant accountants' and solicitors' regulatory bodies.

Hong Kong courts may note and follow the reasoning in Australian cases as both countries share a Commonwealth heritage in the legal system.

Extracted and/or sourced from Herbert Geer & Rundle's Liability Law Update Newsletter dated 24 October 2001.

C. CAVE V ROBINSON JARVIS & ROLF (HOUSE OF LORDS' DECISION)

An UK Case – Whether an act of negligence could of itself amount to deliberate concealment under section 32 of the Limitation Act 1980, thereby extending, potentially indefinitely, the period of time in which a claim could be made in respect of it.

In this case, the House of Lords considered the meaning of “deliberate concealment” in section 32 of the Limitation Act 1980 and rejected the construction of section 32 put forward in the Court of Appeal decision in *Brocklesby v Armitage and Guest* (1999) (“*Brocklesby*”).

Section 32(1)(b), which relates to claims in both contract and tort, deems that the limitation period shall be postponed if any fact relevant to the claimant’s right of action has been deliberately concealed from the claimant by the defendant. The limitation clock will only start running once the claimant discovers the concealment or could, with reasonable diligence, have discovered it.

The Court of Appeal in *Brocklesby* had found that all that was necessary for the deliberate concealment provisions to apply was for the solicitor to have deliberately committed an act in the sense of intentionally acting or omitting to act in a particular way which amounted to a breach of duty. It was therefore irrelevant whether or not the solicitor knew he was acting negligently.

The decision meant that claims arising from almost all negligent acts and omissions by professionals could be brought at any time until six years after the claimant had discovered the “concealment” or could, with reasonable diligence, have discovered it. It also meant that professional people could face claims of negligence many years after their retirement and after they had ceased to be covered by professional indemnity insurance.

The House of Lords in *Cave v Robinson Jarvis & Rolf* held that the construction given to section 32 in *Brocklesby* was wrong and that to deny a defendant a limitation defence under section 32(2), the claimant must show that the defendant *knew* he was committing a breach of duty, or intended to commit the breach of duty, in circumstances where the claimant was unlikely to discover for some time that the breach of duty had been committed.

With the decision, professionals can now take a more certain view as to the length of time in respect of which their liabilities will run and make their insurance arrangements accordingly. Insurers should review their claims in which the claimants have pleaded section 32.

This decision is relevant to Hong Kong accountants in light of the fact that English cases have persuasive authority in Hong Kong and section 26(1)(b) of Hong Kong’s Limitation Ordinance is the same as section 32(1)(b) of the Limitation Act 1980.

Extracted and/or sourced from “Limitation – deliberate concealment redefined”, Barlow Lyde & Gilbert Briefing Note, May 2002.

An article analyzing the above cases was also published in the November 2002 issue of The Hong Kong Accountant titled “Limitation periods – no cause for alarm” which can be viewed at:

<http://www.hksa.org.hk/professionaltechnical/riskmanagement/index.php>.

D. AON HONG KONG INTEGRATION INTO AON HONG KONG LIMITED

To better achieve Aon's core value of customer focus and interdependence, Aon Hong Kong has integrated three of its four operating companies in Hong Kong under one operating company namely **Aon Hong Kong Limited** (formerly known as Aon Risk Services Hong Kong Limited). The fourth operating company remains as Aon Re China Limited, being Aon's reinsurance brokers.

This integration involved the merger of the business of Aon Commercial Risks (HK) Limited and the business of Aon Consulting Hong Kong Limited into Aon Risk Services Hong Kong Limited. With effect from the 1st September 2002, this enlarged company was renamed Aon Hong Kong Limited.

From 1 September 2002, the three original companies have become divisions under Aon Hong Kong Limited, namely Aon Risk Services, Aon Commercial Risks and Aon Consulting. There will be no change to the Account Executive structure or the team responsible for the account.

From 1 September 2002, all accounts should be submitted and settlements made in the name of Aon Hong Kong Limited. Please continue to utilise our current banking details and account numbers unless we advise otherwise. All addresses, telephone and fax numbers remain unchanged. Members currently insured under the Master Policy should have already received a similar letter from Aon notifying the change.

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 (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, the Professional Risks team at 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.....

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