

Liability insurances

Purpose

At the end of this unit, candidates should be able to demonstrate an understanding of:

- the risks associated with employers' liability, public and product liability, professional indemnity and directors' and officers' liability insurances;
- the policy cover and market practices associated with these insurances;
- the management and evaluation of liability risk;
- the main considerations of liability underwriting.

Assumed knowledge

It is assumed that the candidate already has the knowledge gained from a study of the fundamental principles of insurance as covered in IF1 Insurance, legal and regulatory and P05 Insurance law, or equivalent examinations.

Summary of learning outcomes

1. Understand the nature of employers' liability risk.
2. Understand the cover and practices of employers' liability insurance.
3. Understand the risks, cover and practices of public and product liability insurance.
4. Understand the risks, cover and practices of professional indemnity insurance.
5. Understand the risks, cover and practices of directors' and officers' liability and corporate reimbursement insurance.
6. Understand the management and evaluation of liability risk.
7. Understand the main considerations of liability underwriting.

Important notes

- **Method of assessment:** Part I 14 compulsory questions (140 marks). Part II 2 questions selected from 3 (60 marks). Total of 200 marks. Three hours are allowed for this exam.
- The syllabus is examined on the basis of English law and practice unless otherwise stated.
- The general rule is that the exams are based on the English legislative position six months before the date of the exams.
- Candidates should refer to the CII update website www.cii.co.uk/updates for the latest information on changes to law and practice and when they will be examined.

1. Understand the nature of employers' liability risk

1.1 Workplace legislation

- 1.1.1 Main features of the Health and Safety at Work Act 1974;
- 1.1.2 Main work of the Health and Safety Executive:
 - Regulations, Codes of Practice, Guidance;
 - Courses of Action, Enforcement.

1.2 The duties of an employer and how they are discharged

- 1.2.1 Duties concerning employees working environment and practice;
- 1.2.2 Compliance with statutory duty, including risk assessments.

1.3 Disease exposures from workplace hazards

- 1.3.1 Exposures from dust, chemicals and operational activities.

2. Understand the cover and practices of employers' liability insurance

2.1 The legal framework

- 2.1.1 Purpose and main features of Employers' Liability (Compulsory Insurance) Act 1969 and Employers' Liability (Compulsory insurance) Regulations 1998;
- 2.1.2 The effect of the law on the operation of an employer's liability policy.

2.2 Scope of cover

- 2.2.1 The operative clause and key definitions – the definition of an employee, limit of indemnity, legal costs;
- 2.2.2 Other clauses;
- 2.2.3 Common exclusions, conditions and extensions.

2.3 Market practices

- 2.3.1 Apportioning disease claims among insurers;
- 2.3.2 Transfer of Undertakings (Protection of employment) Regulations 1981 – TUPE;
- 2.3.3 Code of Practice for tracing Employers' Liability Insurers 1999;
- 2.3.4 Employers' Liability and insolvent insurers and the role of the Financial Services Compensation Scheme;
- 2.3.5 Key underwriting information;
- 2.3.6 The common rating bases.

3. Understand the risks, cover and practices of public and product liability insurance

3.1 Risks

- 3.1.1 The liability of organisations in general;
- 3.1.2 The legal framework – main health and safety and consumer protection legislation;
- 3.1.3 The main risks inherent in key occupations, activities & products – importance of the Business Description;
- 3.1.4 Trades where insurance is compulsory;
- 3.1.5 The impact of Civil Justice Reforms and case law.

3.2 Policy coverage

- 3.2.1 Operative clause and the various triggers;
- 3.2.2 The different forms of indemnity and differences in accidental and non-accidental wordings;
- 3.2.3 Legal costs;
- 3.2.4 Typical market exclusions;
- 3.2.5 The insurance of pollution write-back clauses;
- 3.2.6 Financial loss extensions and products guarantee/recall policies.

3.3 Market practices

- 3.3.1 Key underwriting information;
- 3.3.2 The common rating bases.

4. Understand the risks, cover and practices of professional indemnity insurance

4.1 Risks

- 4.1.1 How liability arises in law – common law and tort, under contract, under statute and personal liability;
- 4.1.2 The tort of negligence – the definition of negligence;
- 4.1.3 The duty of care and the case of Donoghue vs Stevenson (1932) on foreseeability and proximity;
- 4.1.4 The duty of care concerning negligent misstatements – Hedley Byrne & Co vs Heller & Partners (1963);
- 4.1.5 How liability arises in practice – construction and property professions, the legal profession, the medical profession, financial services including accountants and auditors, other consultancies and professions, and internet liability.

4.2 Policy coverage

- 4.2.1 The operative clause – claims made;
- 4.2.2 Breach of professional duty and dishonesty;
- 4.2.3 The limit of indemnity;
- 4.2.4 Costs and expenses;
- 4.2.5 Common policy exclusions, extensions and conditions;
- 4.2.6 Common claims notification conditions and the operation of the 'sunset' clause.

4.3 Market practices

- 4.3.1 Typical proposal form information;
- 4.3.2 Underwriting rating factors.

5. Understand the risks, cover and practices of directors' and officers' liability and corporate reimbursement insurance

5.1 Risks

- 5.1.1 Main features of the common law liability of directors and officers;
- 5.1.2 The statutory liability of directors and officers – main features of Companies Act 2006 & other legislation;
- 5.1.3 Personal liability;
- 5.1.4 Indemnity or relief under Companies Act;

- 5.1.5 Definitions – director, de facto director and shadow director, subsidiary and associated companies, outside directorships;
 - 5.1.6 How liability arises in practice – merger and acquisition, insolvency, other cases giving rise to director litigation including liability under the Bribery Act 2010;
 - 5.1.7 Sarbanes Oxley Act of 2002 and its impact on executive risk in North America;
 - 5.1.8 Liability for corporate manslaughter in the UK – the legislative position, vicarious liability.
- 5.2 Policy coverage**
- 5.2.1 The operative clause;
 - 5.2.2 Definitions of Wrongful Act, Claim, Loss and Defence Costs;
 - 5.2.3 Common exclusions;
 - 5.2.4 The Limit of Indemnity;
 - 5.2.5 Common extensions, including securities claims and employment practices claims;
 - 5.2.6 The operation of policy cover on merger or takeover.
- 5.3 Market practices**
- 5.3.1 Typical proposal form content and accompanying information;
 - 5.3.2 Typical claims questions in the proposal form;
 - 5.3.3 Proposal form declaration and signature;
 - 5.3.4 Underwriting rating factors;
 - 5.3.5 Use of prior and pending exclusions.

6. Understand the management and evaluation of liability risk

- 6.1 Risk assessment – types of hazard, identification and perception of risk, risk analysis, role of the risk manager and risk controls;
- 6.2 Typical underwriting information;
- 6.3 Loss control surveys and the role of the loss control surveyor;
- 6.4 Risk improvement options;
- 6.5 The impact of other legal systems on liability underwriting;
- 6.6 Evaluating the historical claims record – the main approaches and their advantages and disadvantages in outline.

7. Understand the main considerations of liability underwriting

- 7.1 The operative clause – the different triggering events, cover of costs;
- 7.2 Underwriting the risk – main rating factors, determining claims costs, the final rate, decision making on specific cases, applying the rate over time;
- 7.3 Policy conditions and issues arising from admitted and non-admitted policies, DIL/DIC and umbrella clauses;
- 7.4 Indemnity limits – increased limits, operation of excess of loss covers, risk sharing options.

Reading list

The following list provides details of various publications which may assist with your studies.

These will help candidates keep up-to-date with developments and will provide a wider coverage of syllabus topics.

Note: The examination will test the syllabus alone. However, it is important to read additional sources as 10% of the exam mark is allocated for evidence of further reading and the use of relevant examples.

The reading list is provided for guidance only and is not in itself the subject of the examination.

CII/Personal Finance Society members can borrow most of the additional study materials below from Knowledge Services.

CII study texts can be consulted from within the library. For further information on the lending service, please go to www.cii.co.uk/knowledge/resources.

CII study texts

- Liability insurances. London: CII. Study text P96
- Insurance law. London: CII. Study text P05
- Insurance, legal and regulatory. London: CII. Study text IF1

Additional reading

Additional reading materials are available through the library or on the Knowledge Services website.

New materials are added frequently – for information about new books and articles in your area of interest, please visit www.cii.co.uk/knowledge or email knowledge@cii.co.uk.

Books (and ebooks)

- The handbook of health and safety practice. Jeremy Stranks. 7th ed. Harlow: Pearson, 2005.
- Health and safety: risk management. 3rd ed. Tony Boyle. Wigston: IOSH Services, 2010.
- Munkman on employer's liability. 15th ed. Barry Cotter and Daniel Bennett (eds) et al. London: LexisNexis, 2009.
- 'Employers' liability insurance'. Chapter – The modern law of insurance. Andrew McGee. 3rd ed. London: LexisNexis, 2011.
- 'Employers' liability'. Chapter – Insurance disputes. Jonathan Mance, Iain Goldrein, Robert Merkin. 3rd ed. London: Informa, 2011.
- 'Professional liability'. Chapter – Insurance disputes. Jonathan Mance, Iain Goldrein, Robert Merkin. 3rd ed. London: Informa, 2011.
- 'Liability insurance'. Chapter – Birds' modern insurance law. John Birds. 8th ed. London: Sweet & Maxwell, 2010.
- 'Employers' liability and other compulsory insurances'. Chapter – Birds' modern insurance law. John Birds. 8th ed. London: Sweet & Maxwell, 2010.
- Professional Indemnity Insurance. Advanced Study Group 228. London: ILL, 2001.

Professional indemnity insurance law. W I B Enright, Digby C Jess. 2nd ed. London: Sweet and Maxwell, 2007.

Directors' and officers' liability insurance. Research Study Group 234A. London: IIL, 2010.

Directors' and officers' liability insurance. Adolfo Paolini and Deepak Nambisan. London: Informa, 2008.

Company law (Law Express series). Chris Taylor. Harlow: Pearson, 2009.

Drafting insurance contracts: certainty, clarity, law and practice. Christopher Henley. London: Leadenhall press, 2010.

Risk analysis. Gordon C A Dickson. London: Witherby, 2003.

Factfiles and other online resources

Recent developments in tort. Alan Peck. Updated as necessary. Available online via www.cii.co.uk/knowledge/resources (CII/Personal Finance society members only).

Recent developments in quantum. Alan Peck. Updated as necessary. Available online via www.cii.co.uk/knowledge/resources (CII/Personal Finance society members only).

Civil Procedure rules. Alan Peck. Updated annually. Available via www.cii.co.uk/knowledge/resources (CII/Personal Finance Society members only).

Risk control. Ian Searle. Updated as necessary. Available online via www.cii.co.uk/knowledge/resources (CII/Personal Finance society members only).

Risk identification. Ian Searle. Updated as necessary. Available online via www.cii.co.uk/knowledge/resources (CII/Personal Finance society members only).

Guidance. Health and Safety Executive. Available online via hse.gov.uk.

Further articles and technical bulletins are available at www.cii.co.uk/knowledge/resources (CII and Personal Finance Society members only).

Journals and magazines

Insurance times. London: Newsquest Specialist Media. Weekly.

The Journal. London: CII. Six issues a year. Also available via www.cii.co.uk/knowledge/resources (CII/Personal Finance society members only).

Post magazine. London: Incisive Financial Publishing. Weekly.

Reference materials

Dictionary of insurance. C Bennett. 2nd ed. London: Pearson Education, 2004. Also available as an ebook via www.cii.co.uk/knowledge/resources (CII/Personal Finance society members only).

Professional negligence and liability. London: Informa Professional. Looseleaf, updated.

Insurance: Conduct of Business sourcebook (ICOB5). Available via fsahandbook.info.

Examination guides

Guides are produced for each sitting of written answer examinations. These include the exam questions, examiners' comments on candidates' performance and key points for inclusion in answers.

You are strongly advised to study guides for the last two sittings. Please visit www.cii.co.uk to buy online or contact CII Customer Service for further information on +44 (0)20 8989 8464.

Older examination guides are available (for members only) via www.cii.co.uk/knowledge/resources.

Exam technique/study skills

There are many modestly priced guides available in bookshops. You should choose one which suits your requirements.