

Liability insurances

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
- Policy cover and market practices associated with these insurances
- Management and evaluation of liability risk
- Main considerations of liability underwriting

Assumed knowledge

It is assumed that the candidate already has knowledge of the fundamental principles of insurance as covered in IF1, Insurance, legal and regulatory, and P05 Insurance Law, or equivalent exams.

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.

Notes:

- **The syllabus is examined on English law and practice.**
- **The April session will test the legal position as of 31 August of the preceding year.**
- **The October session will test the legal position as of 28 February of the same year.**

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;

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 – 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. Periodicals and publications listed as additional reading will be of value in ensuring candidates keep up to date with developments and in providing a wider coverage of syllabus topics. Any reference materials cited are authoritative, detailed works which should be used selectively as and when required.

Note: The examination will test the syllabus alone. The reading list is provided for guidance only and is not in itself the subject of the examination.

CII/PFS members can borrow most of these additional study materials from CII Knowledge Services and may be able to purchase some at a special discount. For further information on lending and discounts go to www.cii.co.uk/knowledge.

Liability insurances. London: CII. Coursebook P96.

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

Essentials of health and safety at work. 4th ed. London: HSE Books, 2006.

Professional Indemnity Insurance : report of Advanced Study Group 228 London: Insurance Institute of London, 2001.

Directors' and Officers' liability insurance: report of Advanced Study Group 234. London : Insurance institute of London, 1999.

Reference materials

Kluwer's handbook of insurance. Kingston upon Thames, Surrey: Croner, CCH. Looseleaf, updated.

Product Liability: law and insurance. London: LLP, 2000.

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

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

The Willis worldwide directory of directors' and officers' liability. Willis Limited. 3rd ed. London: Willis, 2005.

Periodicals

Insurance Times. London: Newquest Financial Media. Weekly.

The Journal. London: The CII. Six issues a year. Also available online (CII/PFS members only) at www.cii.co.uk/knowledge.

Liability, risk and insurance. London: Informa Professional. Monthly.

Post Magazine. London. Incisive Media. Weekly.

Websites

Health & Safety Executive – www.hse.gov.uk

Barlow Lyde & Gilbert – www.blg.co.uk

Beachcroft – www.beachcroft.co.uk

Cameron McKenna – www.law-now.com

CII Knowledge Services – www.cii.co.uk/knowledge

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 020 8989 8464. Older examination guides are available (for members only) at www.cii.co.uk/knowledge/examguides.

Exam technique/study skills

There are many modestly priced guides available in bookshops. You should choose one which suits your requirements. You will also find advice at www.cii.co.uk/knowledge/careersupport (CII/Personal Finance Society members only).

For a more interactive approach, you should consider: Winning the brain game. London: CII, 2006. CD-ROM.