

**Submission to the LegCo Panel on Financial Affairs Meeting 15/03/03**

**Insurance and the Construction Industry**

We are very grateful and to have the opportunity to bring to your attention the problems being faced by the construction industry in insurance related matters. We first would like to draw your attention to the good work, and the progress made, by the Provisional Construction Industry Co-ordination Board's Working Group on Construction Site Safety and Employees' Compensation Insurance. This Working Group was set up in response to certain parts of the Construct for Excellence Report published in January 2001 to provide recommendations on employees compensation insurance and worker safety and HKCA has supported its efforts from inception.

There are four principle insured risks that attract the substantial part of the cost of premiums paid by contractors viz:-

- (1) Employees' Compensation (ECI)
- (2) Contractors All Risks (CAR)
- (3) Third Party Liability (TPL)
- (4) Professional Indemnity (PI)

There are some general problems that affect all four types of insurance. Contractors are having difficulty in getting the full range of cover being demanded and the cover they can get is increasingly expensive. This is partly market driven and partly performance driven. On top of the cost of premiums, there is the steadily increasing weight of mandatory levies and contributions in respect of Employees Compensation

Insurance. These will have risen from around 2% of the value of the works to 11.3%, when the next contribution comes into effect on 1<sup>st</sup> April.

The problem for contractors is compounded by, among other things, lack of transparency in determining the premium to be paid, the short notice of termination of policy coverage given by insurance companies and the uncertainty surrounding renewal of insurance treaties. This leaves contractors scrambling to fulfill their obligations, at significantly higher cost. A large proportion of these costs are not reimbursed to them.

We feel that these high premiums are, in part, generated by the escalating compensation awards ordered by the courts. This appears to be an international problem, which has been addressed in some jurisdictions by “capping” awards to make the costs of employment affordable for the many at the expense of excessive awards to the few.

Problems brought to us by our members suggest that government is significantly out – of – step with the commercial realities of the insurance industry. This is evidenced by Government demanding insurance cover that is not available in the insurance market. Matters such as exclusions for terrorism, asbestos, cyber and pollution are now common and specifically excluded by insurers from the policies they offer the market. There have been repeated requests by Government departments to include cover for these type of risks in insurance policies which is simply not available. At the very least it should be made clear at the outset that some special cover is required when the risk falls outside of the standard cover. The Government must now accept that some risks cannot be insured at affordable costs or simply will not be accepted by

insurers. A thorough review of Government conditions for contract insurance and risk management is overdue and now urgently required.

ECI is mandatory under the law, but was thrown into disarray by the bankruptcy of a leading insurance provider, HIH. This is being addressed by the PCICB, Labour Dept and the HK Federation of Insurers. It should be understood that insurance is not the only solution to risk management. Some in our industry would like to see worker rehabilitation made compulsory under Labour Dept's rules, thereby encouraging an early return to work and generally there needs to be, a more responsible management of injury cases by public hospitals and doctors. The needs to be coupled with private care programmes for injured workers, safety awareness campaigns, and worker registration to reduce the costs associated with injury, rehabilitation and most importantly managing safety matters more effectively. We are pleased to record significant improvements in accident rates but much remains to be done.

We believe that construction insurance needs to be flexible, allowing for the most appropriate party to manage the risk by whatsoever means. The present approach is to live with the extraordinary high premium in order to obtain the most comprehensive coverage the market could offer. This comes with a price that both the client and the contractor have to pay. The second approach is the client to accept some risks with a reasonable cover and premium in return. One other approach is the large scale owner controlled insurance (e.g. the airport programme), or even self insurance by the owner (which is possible for Government projects). However, we must point out that the evidence gained from the airport programme, whilst very

effectively reducing the accident rates on the sites in that programme, arguably resulted in the contractors having safety management removed from their control, with a corresponding loss of experience. This may have contributed, to the higher accident rates when those same contractors and supervisors move to works sites in the private sector. Therefore, measures to upkeep contractors' good safety management are essential if the owner controlled scheme is considered.

The other main advantage of a more flexible approach to insurance is that it will reduce insurance costs. Currently the taxpayer is paying, through the contract price, too much for insurance cover of certain risks, some of which would be better managed by other methods of risk management.