

# TABLE OF CONTENTS

<i>Foreword</i> .....	v
<i>Preface</i> .....	vii
<i>Acknowledgements</i> .....	ix
<i>Table of Cases</i> .....	xxv
<i>Table of Legislation</i> .....	clxxxix

## CHAPTER 1 CONTRACT OF INSURANCE

Definition of Insurance .....	1.001
Formal Requirements for Insurance Contracts .....	1.012
Formation of Insurance Contracts .....	1.019
Offer .....	1.020
Acceptance .....	1.022
Formation and increase of risk .....	1.025
Commencement of the insurer's liability .....	1.027
London Market Procedures .....	1.030
Background to reform in England .....	1.031
The Market Reform Contract .....	1.032
Slip and policy .....	1.033
Potential difficulties arising from the Lloyd's procedure .....	1.034
Placement arrangements used in the London market .....	1.040
Renewal of Insurance Contracts .....	1.043
Temporary Cover .....	1.047
Creation of temporary cover .....	1.048

## CHAPTER 2 CONFLICT OF LAWS

Jurisdiction of the Hong Kong Courts .....	2.001
Service of writ outside jurisdiction .....	2.003
Insurance illustrations .....	2.006
Proper Law .....	2.007
Legal framework .....	2.007
Proper law of insurance contracts .....	2.012

## CHAPTER 3 CONSTRUCTION OF THE POLICY

Principles of Construction .....	3.001
Intentions of the Parties .....	3.004
Rules for Construing Words and Phrases .....	3.006

Custom .....	3.013
Incorporation.....	3.014
Judicial Control of Policy Terms.....	3.018

#### CHAPTER 4 INSURABLE INTEREST

Significance of Insurable Interest.....	4.001
Principle of Indemnity .....	4.003
Present Regulatory Structure .....	4.004
Meaning of Insurable Interest .....	4.007
Insurance Effected by an Agent .....	4.013
Ratification .....	4.016

#### CHAPTER 5 RISK

Commencement and Duration of Risk.....	5.001
Commencement of cover .....	5.001
Termination of risk.....	5.005
Goods in transit policies.....	5.010
Increase of Risk.....	5.017
Increase of risk.....	5.018
Change of risk.....	5.025
Proximate Cause .....	5.030
Burden of proof.....	5.031
Losses arising from concurrent causes .....	5.034
Illegality and Misconduct.....	5.037
Loss following assured's negligence .....	5.049

#### CHAPTER 6 UTMOST GOOD FAITH

Non-Disclosure and Misrepresentation.....	6.001
Duty of disclosure .....	6.002
Misrepresentation .....	6.007
Materiality and Inducement .....	6.021
Limb 1: The prudent insurer test.....	6.022
Limb 2: Inducement .....	6.027
Previous acceptance of the same risk .....	6.029
Utmost Good Faith and Agency .....	6.034
Insurance effected by an agent .....	6.039
Material Facts.....	6.044
Moral hazard .....	6.045
Physical hazard .....	6.060
Facts Which Need Not Be Disclosed .....	6.062

Remedies for Breach of Duty .....	6.075
Right to avoid.....	6.075
Damages .....	6.079
Contracting out of remedies.....	6.082
Exclusion of misrepresentation .....	6.085
Waiver .....	6.091
Duration of the Duty of Utmost Good Faith .....	6.103
Duty terminates at the date of contract .....	6.103
A general continuing duty of good faith? .....	6.109
Declaration policies and good faith .....	6.119
The Insurer's Duty of Utmost Good Faith.....	6.124
Duration of the duty .....	6.128
Reform of the Law of Utmost Good Faith.....	6.133
Reform in the UK .....	6.133
Scope of the 2012 Act .....	6.134
Abolition of the duty of disclosure .....	6.135
The duty not to misrepresent.....	6.136
Remedies for misrepresentation.....	6.137
The role of intermediaries .....	6.138
Basis clauses .....	6.139
Special cases .....	6.140

#### CHAPTER 7 TERMS OF INSURANCE CONTRACTS

Terminology .....	7.001
Insurance Conditions .....	7.002
Other conditions.....	7.005
Creation of conditions precedent .....	7.011
Waiver of breach of condition.....	7.018
Insurance Warranties.....	7.020
Nature of a warranty .....	7.020
Creation of warranties.....	7.022
"Basis of the contract" clauses.....	7.028
Construction and scope of warranties.....	7.031
Breach of warranty.....	7.035
Waiver of breach .....	7.044

#### CHAPTER 8 PREMIUM

Payment of Premium.....	8.001
Amount of Premium .....	8.008
Renewal Premiums and Days of Grace.....	8.009

Consequences of Non-Payment .....	8.011
Return of Premium .....	8.019
Return of premium in specific cases .....	8.024

## CHAPTER 9 CLAIMS

Claims Conditions.....	9.001
Compliance with claims conditions .....	9.008
Cooperation and Proof of Loss .....	9.014
Submitting proofs of loss .....	9.016
Fraudulent Claims .....	9.019
Meaning of fraud.....	9.021
Reform .....	9.034
Limitation of Actions .....	9.035
Statutory limitation period .....	9.035
Variation of limitation period .....	9.038
Reform .....	9.041
Declaratory Relief .....	9.042

## CHAPTER 10 INDEMNITY

Measure of Indemnity.....	10.001
The meaning of loss .....	10.001
Measure of indemnity under a valued policy.....	10.007
Measure of indemnity under an unvalued policy.....	10.012
Consequential loss .....	10.019
Interest .....	10.023
Limits on Recovery.....	10.027
Aggregations and event limits .....	10.030
Series clauses .....	10.036
Mitigation of loss .....	10.037
Reinstatement .....	10.039
Contractual reinstatement .....	10.039
Settlements .....	10.050
Settlement contracts .....	10.051
Payments in the absence of a settlement contract .....	10.056

## CHAPTER 11 THE RIGHTS OF INSURERS

Subrogation .....	11.001
Subrogation and related doctrines .....	11.003
Provision of an indemnity .....	11.005

Rights of insurers prior to provision of indemnity .....	11.008
Rights of the insurer following the provision of an indemnity .....	11.011
Allocation of subrogation recoveries .....	11.017
Persons immune from subrogation proceedings .....	11.024
Payments to the assured not affected by subrogation rights .....	11.029
Loss of subrogation rights: agreements by the insurer .....	11.033
Loss of subrogation rights: agreements by the assured .....	11.035
Double Insurance and Contribution .....	11.039
Double insurance .....	11.039
Policy variations on the assured's rights .....	11.046
Contribution .....	11.052
Determining the amount of contribution .....	11.061

## CHAPTER 12 REGULATION OF INSURANCE BUSINESS

Regulatory Framework .....	12.001
Basic definitions .....	12.006
Regulated Insurance Business .....	12.009
Specific forms of insurance business .....	12.035
Authorisation to Carry on Insurance Business .....	12.039
Conditions for authorisation .....	12.044
Regulation of Authorised Insurers .....	12.049
Transfer of insurance business .....	12.053
Intervention by Insurance Authority .....	12.055
Winding-up of Insurance Companies .....	12.075
Petitioner .....	12.077
Winding-up of insurers involved in long-term business .....	12.080
Regulation of Lloyd's .....	12.085
Other Matters Affecting Insurance Policies .....	12.086

## CHAPTER 13 ASSURED

Contractual Capacity .....	13.001
Co-Insurance .....	13.003
Forms of co-insurance .....	13.003
Creation of co-insurance .....	13.005
Unnamed Co-Assureds .....	13.019
Assignment .....	13.021
Assignment of policy .....	13.022
Assignability of proceeds of policy .....	13.028

**CHAPTER 14 INSURANCE INTERMEDIARIES**

General Agency Principles.....	14.001
Authority of agents .....	14.001
Regulation of Insurance Intermediaries .....	14.010
The self-regulatory system for insurance intermediaries .....	14.010
Regulation of insurance agents .....	14.016
Regulation of insurance brokers .....	14.024
Agents of Insurers .....	14.031
Illustrations of authority .....	14.032
Underwriting Agents .....	14.038
The pool's outwards reinsurance .....	14.040
Brokers .....	14.043
The role of brokers .....	14.043
Duties of brokers on placement .....	14.051
Assistance during the currency of the policy .....	14.054
Documents in the broker's possession .....	14.060
Remedies for breach of duty .....	14.062
Defences open to brokers .....	14.068

**CHAPTER 15 REINSURANCE**

Definition of Reinsurance .....	15.001
Formation of Reinsurance Contracts .....	15.004
Utmost good faith .....	15.005
Terms of Reinsurance Contracts .....	15.010
Reinsurance Losses and Claims .....	15.015
Proof of loss under treaties .....	15.018
'Follow the settlements' .....	15.019

**CHAPTER 16 LIFE AND ACCIDENT INSURANCE**

Nature of Life and Accident Policies .....	16.001
Insurable Interest.....	16.004
Consequences of lack of insurable interest .....	16.009
Examples of insurable interest in lives: personal and family relationships .....	16.013
Insurable interest in lives: business relationships .....	16.018
Reform of the law .....	16.022
Assignment of Life Policies .....	16.023
Utmost Good Faith.....	16.025
Coverage of Life Policies .....	16.031
Suicide.....	16.032

Coverage of Personal Accident Policies .....	16.039
"Accident" .....	16.039
Violent, external and visible means .....	16.044
Relevance of assured's conduct .....	16.048
Disablement .....	16.053
Health Insurance .....	16.061

**CHAPTER 17 PROPERTY INSURANCE**

Insurable Interest in Property.....	17.001
Insurable interest requirement.....	17.001
Vendor and purchaser of land .....	17.008
Bailor and bailee .....	17.011
Mortgagor and mortgagee.....	17.026
Reform of the law .....	17.033
Utmost Good Faith.....	17.034
Coverage .....	17.035
Insured perils.....	17.036
Exclusions from property cover.....	17.057

**CHAPTER 18 LIABILITY INSURANCE**

Principles Governing Liability Policies .....	18.001
Compulsory and voluntary liability insurance .....	18.001
Scope of coverage .....	18.012
Disclosure .....	18.021
Coverage based on the assured's activities .....	18.025
Common policy provisions .....	18.028
Claims under liability policies .....	18.032
Notification obligations .....	18.034
Defending the claim against the assured .....	18.038
Defence costs .....	18.041
Liability of insurers to follow the assured's settlements .....	18.049
Insurable Interest in Liability Insurance .....	18.054
Employer's Liability Insurance .....	18.055
Obligation to insure .....	18.059
Claims .....	18.063
Special cases .....	18.065
Fallback provision of compensation .....	18.068
Product Liability Policies .....	18.073
Directors' and Officers' Liability Insurance .....	18.077
Nature of the policy .....	18.081

Third Party Rights under Liability Policies .....	18.091
Events triggering the operation of the Third Parties Ordinance .....	18.092
Contracts within Third Parties Ordinance .....	18.094
Establishing and quantifying the liability of the assured to the third party .....	18.097
Obtaining payment from the insurers .....	18.102
Contracting out .....	18.118

## CHAPTER 19 MOTOR VEHICLE INSURANCE

Compulsory Motor Insurance .....	19.001
Obligation to insure .....	19.002
Elements of the statutory requirement .....	19.006
Civil consequences of failing to insure .....	19.011
Formal requirements .....	19.013
Liabilities to be insured under policy .....	19.017
Scope of compulsory policy.....	19.020
Protection of passengers .....	19.023
Control of policy terms .....	19.028
Actions for the Proceeds of Compulsory Motor Policies .....	19.030
Right to proceed against the user's insurers .....	19.031
Defences of insurers to an enforcement action .....	19.035
Uninsured and Untraced Drivers: The Hong Kong Motor Insurers Bureau .....	19.040
First Fund Agreement 1981 .....	19.042
Non-Compulsory Cover Under Motor Policies .....	19.050
Condition of the vehicle .....	19.054
Protecting the vehicle .....	19.058
Uses to which the vehicle is put .....	19.060

## CHAPTER 20 FINANCIAL INSURANCE

Mortgagees' Interest Insurance .....	20.001
Institute mortgagees' interest insurance clauses .....	20.002
Legal Expenses Insurance.....	20.008
Litigation buy-out insurance.....	20.011
Guarantee Insurance .....	20.012
Fidelity Insurance .....	20.015
Insurance Of Debts .....	20.023
Business Interruption Insurance .....	20.027
Nature of business interruption policies .....	20.027
The measure of indemnity: the "trends" clause .....	20.029
Increased costs of working.....	20.031
Causation.....	20.032

## CHAPTER 21 MARINE INSURANCE

Coverage of Marine Policies .....	21.001
Hulls and freight clauses .....	21.001
Text of the Marine Insurance Ordinance (Cap 329) .....	21.008
Short title .....	21.009
Marine insurance defined .....	21.010
Marine adventure and maritime perils defined .....	21.011
Insurable Interest .....	21.012
Avoidance of gaming or wagering contracts .....	21.012
Insurable interest defined .....	21.016
When interest must attach .....	21.017
Defeasible of contingent interest .....	21.020
Partial interest .....	21.021
Reinsurance .....	21.022
Bottomry .....	21.023
Master and seamen's wages .....	21.024
Advanced freight .....	21.025
Charges of insurance .....	21.026
Quantum of interest .....	21.027
Assignment of interest .....	21.031
Insurable Value .....	21.032
Measure of insurable value .....	21.032
Disclosure and Representations .....	21.033
Insurance is <i>uberrimae fidei</i> .....	21.033
Disclosure by assured .....	21.034
Disclosure by agent effecting insurance .....	21.040
Representations pending negotiation of contract .....	21.041
When contract is deemed to be concluded .....	21.042
The Policy .....	21.043
Contract must be embodied in policy .....	21.043
What policy must specify .....	21.044
Signature of insurer .....	21.045
Voyage and time policies .....	21.046
Designation of subject-matter .....	21.047
Valued policy .....	21.048
Unvalued policy .....	21.049
Floating policy by ship or ships .....	21.050
Construction of terms in policy .....	21.051
Premium to be arranged .....	21.052

Double Insurance .....	21.053
Double insurance .....	21.053
Warranties, Etc .....	21.054
Nature of warranty .....	21.054
When breach of warranty excused .....	21.055
Express warranties .....	21.056
Warranty of neutrality .....	21.057
No implied warranty of nationality .....	21.058
Warranty of good safety .....	21.059
Warranty of seaworthiness of ship .....	21.060
No implied warranty that goods are seaworthy .....	21.061
Warranty of legality .....	21.062
The Voyage .....	21.063
Implied condition as to commencement of risk .....	21.063
Alteration of port of departure .....	21.064
Sailing for different destination .....	21.065
Change of voyage .....	21.066
Deviation .....	21.067
Several ports of discharge .....	21.068
Delay in voyage .....	21.069
Excuses for deviation or delay .....	21.070
Assignment of Policy .....	21.071
When and how policy is assignable .....	21.071
Assured who has no interest cannot assign .....	21.072
Premium .....	21.073
When premium payable .....	21.073
Policy effected through broker .....	21.074
Effect of receipt on policy .....	21.075
Loss and Abandonment .....	21.076
Included and excluded losses .....	21.076
Partial and total loss .....	21.084
Actual total loss .....	21.085
Missing ship .....	21.086
Effect of transshipment, etc .....	21.087
Constructive total loss defined .....	21.088
Effect of constructive total loss .....	21.089
Notice of abandonment .....	21.090
Effect of abandonment .....	21.091
Partial Losses .....	21.092
Particular average loss .....	21.092

Salvage charges .....	21.093
General average loss .....	21.094
Measure of Indemnity .....	21.095
Extent of liability of insurer for loss .....	21.095
Total loss .....	21.096
Partial loss of ship .....	21.097
Partial loss of freight .....	21.098
Partial loss of goods, merchandise, etc .....	21.099
Apportionment of valuation .....	21.100
General average contributions and salvage charges .....	21.101
Liabilities to third parties .....	21.102
General provisions as to measure of indemnity .....	21.103
Particular average warranties .....	21.104
Successive losses .....	21.105
Suing and labouring clause .....	21.106
Rights of Insurer on Payment .....	21.107
Right of subrogation .....	21.107
Right of contribution .....	21.108
Effect of under insurance .....	21.109
Return of Premium .....	21.110
Enforcement of return .....	21.110
Return by agreement .....	21.111
Return for failure of consideration .....	21.112
Mutual Insurance .....	21.113
Modification of Ordinance in case of mutual insurance .....	21.113
Supplemental .....	21.114
Ratification by assured .....	21.114
Implied obligations varied by agreement or usage .....	21.115
Reasonable time, etc, a question of fact .....	21.116
Slip as evidence .....	21.117
Interpretation of terms .....	21.118
Savings .....	21.119
Prohibition on gambling on loss by marine perils .....	21.120
Form of Policy .....	21.121
Rules for Construction of Policy .....	21.122
Lost or not lost .....	21.123
From .....	21.124
At and from .....	21.125
From the loading thereof .....	21.126
Safely landed .....	21.127

Touch and stay .....	21.128
Perils of the seas .....	21.129
Pirates .....	21.140
Thieves .....	21.141
Restraint of princes .....	21.142
Barratry .....	21.143
All other perils .....	21.144
Average unless general .....	21.145
Stranded .....	21.146
Ship .....	21.147
Freight .....	21.148
Goods .....	21.149

## CHAPTER 22 WAR RISKS

Insurability of War and Related Risks .....	22.001
Specific War Risks .....	22.002

## CHAPTER 23 INSURANCE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Introduction .....	23.001
Principles and Rules of Insurance Contract Law .....	23.003
The parties .....	23.004
Insurable interest .....	23.008
Contents of contract .....	23.011
Non-disclosure and misrepresentation .....	23.014
Status of contract terms .....	23.019
The risk .....	23.022
Claims .....	23.024
Subrogation .....	23.029
Double insurance and contribution .....	23.035
Construction of the policy .....	23.037
Conflict of laws .....	23.039
Limitation of Actions .....	23.041
Regulation of the Insurance Business in the PRC .....	23.044
Regulatory structure .....	23.044
Regulation of insurers .....	23.047
Insurance agents .....	23.054
Insurance broker organisations .....	23.059
Insurance adjustment organisations .....	23.064

Specific Types of Insurance Contracts .....	23.069
Reinsurance .....	23.069
Personal insurance .....	23.073
Property insurance .....	23.079
Liability insurance .....	23.086
Motor vehicle insurance .....	23.090
Marine insurance .....	23.096
<i>Index</i> .....	1189