

IFAA

The Basic Principles of Insurance Law and IIA

Date: 28 May 2013

Presented by: Mrs Christine Koo



Christine M. Koo & Ip, Solicitors & Notaries

**Address : Room 601, Tower 1, Admiralty Centre
18 Harcourt Road, Hong Kong**

Tel. No. : (852) 2524 8996

Fax No. : (852) 2523 6922

E-mail : christinekoo@cmkoo.com.hk

1. Existing ICO (Cap. 41)
2. Proposed IIA
3. Existing Part X: Insurance Intermediaries
4. Brokers & Agents

Existing IA

Insurance Companies Ordinance (Cap 41)

Function

- Regulate and supervise the insurance industry
- Protect policyholders
 1. supervise insurers' and intermediaries
 2. reform of the law
 3. promote prudent business practice among insurers
 4. proper standards of conduct of insurance intermediaries
 5. promote self regulation
 6. co-operate with financial services authorities

IIA

1. Enhance regulations of Insurance Company and Insurance Intermediaries provide better protection of insurance policyholder
2. Implementation of international regulatory standards
3. Facilitate market innovation
4. Raise consumer confidence

Proposed IIA



Governing Board

- A Chairman
- A Chief Executive Officer
- Predominant non-executive directors (at least 6)
 - One or two members with knowledge/experience of the insurance industry
 - Actuarial science
 - Accountancy
 - Law
 - Consumer affairs
 - Academia
 - Professional or occupational experience
- All of the above shall be appointed by CE

Independent Process Review Panel

- Review internal operating procedures of the IIA and HKMA in respect of regulation of insurer and insurance intermediary activities
- Appointed by CE

Industry Advisory Committees

- Life insurance
- Non-life insurance
- Insurance practitioners
- Industry body representatives
- User / Consumer Groups
- Appointed by Financial Secretary

Expert Panel

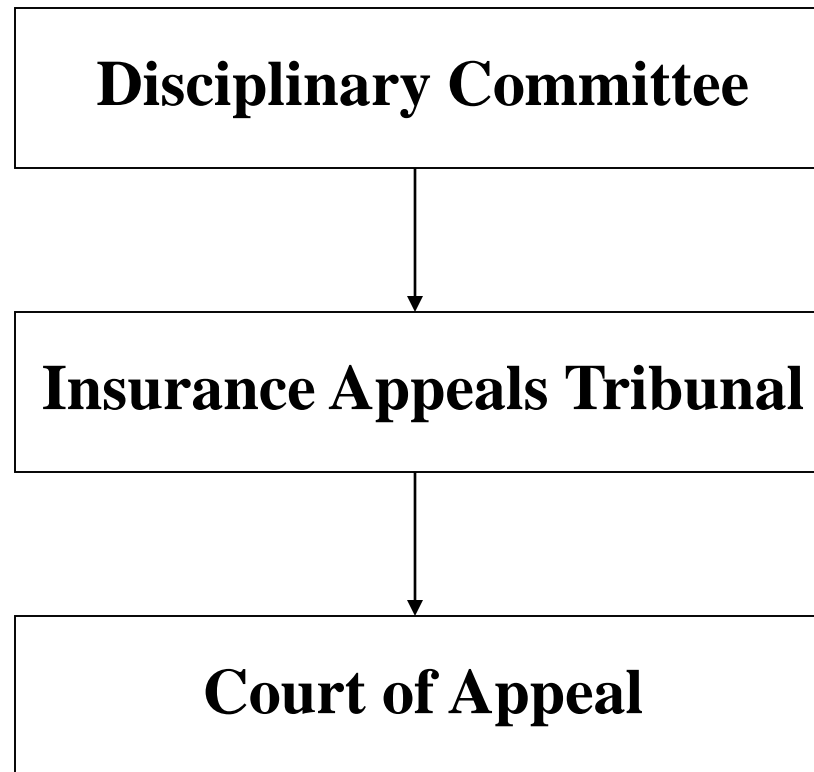
- Members having industry knowledge to provide advice on product, related industry practices
- The IIA may seek advice from the expert panel during disciplinary process

Expert Panel

- i. Lay members of existing SROs;
- ii. Senior executives from insurers with cross-jurisdictional operations;
- iii. Senior executives from insurers with only local operations;
- iv. Agents in life business (ILAS, non-ILAS, MPF);
- v. Agents in non-life business (corporate and consumer business);

Expert Panel

- vi. Senior executive of brokers with cross-jurisdictional operations;
- vii. Senior executive of brokers with only local operations
- viii. Senior executives from banks with insurance intermediary business;
- ix. Senior executives from travel agencies with insurance intermediary business; and
- x. Representatives from consumer interest bodies (e.g. the Consumer Council and the proposed Investor Education Council).



Disciplinary Committee

- Chaired by a senior IIA executive
- Members from both IIA and HKMA
- Established by CEO of IIA (?)
- Assist IIA in exercising its disciplinary power

Complaints Handling

- Against Insurer
- Against Intermediaries

Discipline

- DC will conduct hearing and make decisions
- HKMA will be represented in the DC

Independent Insurance Appeals Tribunal

- Appeals from insurers and intermediaries
- Relevant decisions made by the regulator
- including disciplinary decisions

Appeal

- Appeal to the Court of Appeal against the decision on a point of law, fact, or mixed law and fact
(consented by the Judiciary?)
- Judicial Review (?)

The strongest chain is
as weak as the weakest link

Functions

- Promotion of the general stability of the insurance industry
- Protection of existing and potential policyholders.

Powers

- Regulation of Insurers
- Regulation of Intermediaries

Powers

- Similar power over Insurers and Intermediaries: e.g.:
- Entering into premises
- Inspection
- Access to documents
- Apply to H. C. to compel compliance
- Apply to M. C. for search warrant

HKMA

- Inspection of banks' insurance intermediary activities will be carried out jointly by IIA and HKMA
- Why can't Bank set up subsidiary to do the Insurance agency business?

Requirement of R. O.

- Broker
- Agency
- Insurer CEO (?)

Conduct Regulation of Intermediaries

- “Regulated Activities”
- What about Conduct Regulation of Insurer?

Intermediaries

What Does the current Law Say?

Comparison between Broker and Agent

Insurance Brokers

- agent of the insured
- should not tied to any insurer
- paid by the insurer
- carries out preparatory work
- assists in the event of a claim

Insurance Agents

- agent of the insurer(s)
- contracted to sell their policies
- paid by the insurer
- carries out preparatory work
- assists in the event of a claim

What Does the current Law Say?

Insurance Companies Ordinance S2

1. Insurance Broker: Definition

“Insurance Broker” means a person who carries on the business of negotiating or arranging contracts of insurance in or from Hong Kong as the agent of the policy holder or potential policy holder or advising on matters related to insurance.

What Does the IIA Say?

- To define a licensed insurance broker as a person who carries on or holds himself out to carry on any regulated activity as an agent of an existing or potential policy holder, and includes two types of licensees viz. licensed insurance broker companies and licensed TRs(broker).

What Does the current Law Say?

2. Insurance Agent: Definition

“Insurance Agent” means a person who holds himself out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or subagent of one or more insurers.

What Does the IIA Say?

- To define a licensed insurance agent as a person who carries on or holds himself out to carry on any regulated activity as an agent of an authorized insurer, and includes three types of licensees viz. licensed insurance agencies, licensed individual insurance agents and licensed TRs(agent).

Brokers

What Does the Law Say?

Minimum Requirement under S69(2)

- a) Good character and reputation;
- b) Utmost good faith and integrity;
- c) Independent and impartial;
- d) Shall not give misleading information or make false statements;
- e) Avoid conflict of interest;
- f) Due care and diligence; etc.,

Brokers

What Does the Law Say?

Minimum Requirement under S69(2) (Con't)

g) Priority of Clients Interest

- i. shall not prejudice his client's selection of insurer by unreasonably limiting the choice of insurers
- ii. shall not be unreasonably dependent on any particular insurer in transacting insurance brokers business.

Brokers

What Does the Law Say?

- Place these requirements above all other considerations.
- A broker must ensure that he uses a sufficient number of insurers to satisfy clients' needs.
(Exclusive agreement with insurer?)


Agents

- Code of Practice for Administrations of Insurance Agents
- Model Agency Contract

Insurer

Code of Conducts for Insurers

Clear Distinction of

- Insurer
 - Agent
 - Broker
- 
- Supervision
 - Conduct
 - Complaint
 - Investigation
 - Disciplinary Procedure
 - Penalty

IIA

Chapter 5

5.1.2 says: A licensed insurance intermediary “must act honestly, fairly, in the best interest of the policyholder...”

- Difference of legal nature of Agent and Broker
- Magnitude of misconduct
- Effect on Policyholder
- Agents’ liability borne by Principal subject to exceptions

At common law, an agent acts for his
Principal only

- His duty is owed to the Principal
- One servant cannot serve 2 masters

Agent

HKFI – Model Agency Agreement

- Agreement clause 2:
- “The Agent shall use such forms and documents supplied to him by the Company.”

Broker

Hobbin’s case

Back Office

Definition of “Regulated Activities”

- a) A person carries on a “regulated activity” if the person –
 - i. Negotiates or arranges a contract of insurance;
 - ii. Invites or induces, or attempts to invite or induce, another person to enter into a contract of insurance;
 - iii. Invites or induces, or attempts to invite or induce, another person to make a material decision; or
 - iv. Gives regulated advice

Definition of “Regulated Activities”

- b) A person makes a material decision if the person makes a decision as to any matter specified in para. (d) below

- c) -

Definition of “Regulated Activities”

- d) The following matters are specified for the purposes of para. (b) and (c) –
- i. Making of an insurance application or proposal;
 - ii. Issuance, continuance or renewal of a contract of insurance or any supplementary contract attached thereto;
 - iii. Cancellation, termination, surrender or assignment of a contract of insurance or any supplementary contract attached thereto;
 - iv. Exercise of a right under a contract of insurance or any supplementary contract attached thereto;
 - v. Changes of any terms and conditions of insurance or any supplementary contract attached thereto;
 - vi. Making or settlement of an insurance claim.

Definition of “Regulated Activities”

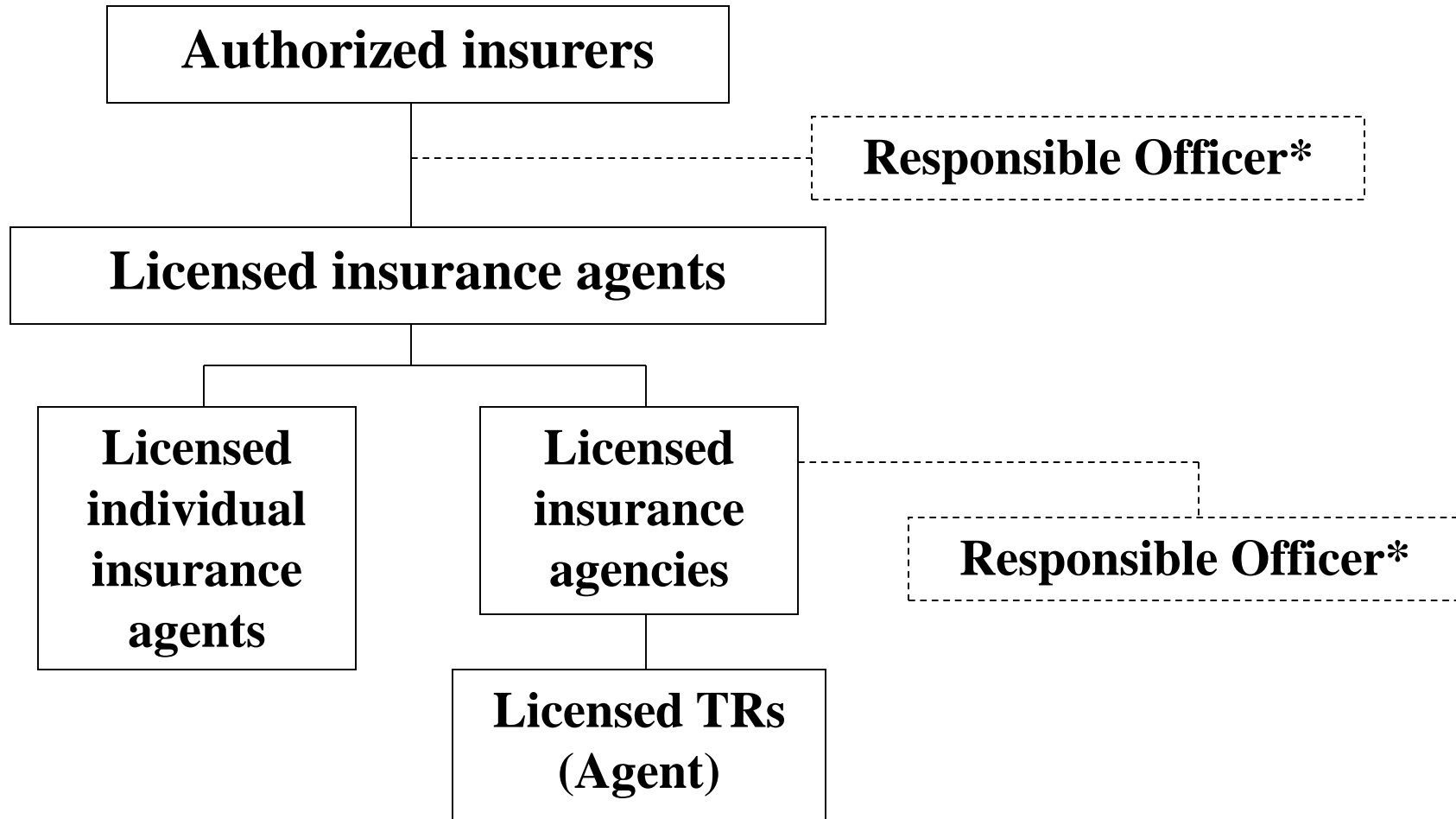
May affect back office:

- Claims Department
- Underwriting Department
- Banks accepting Assignment etc.

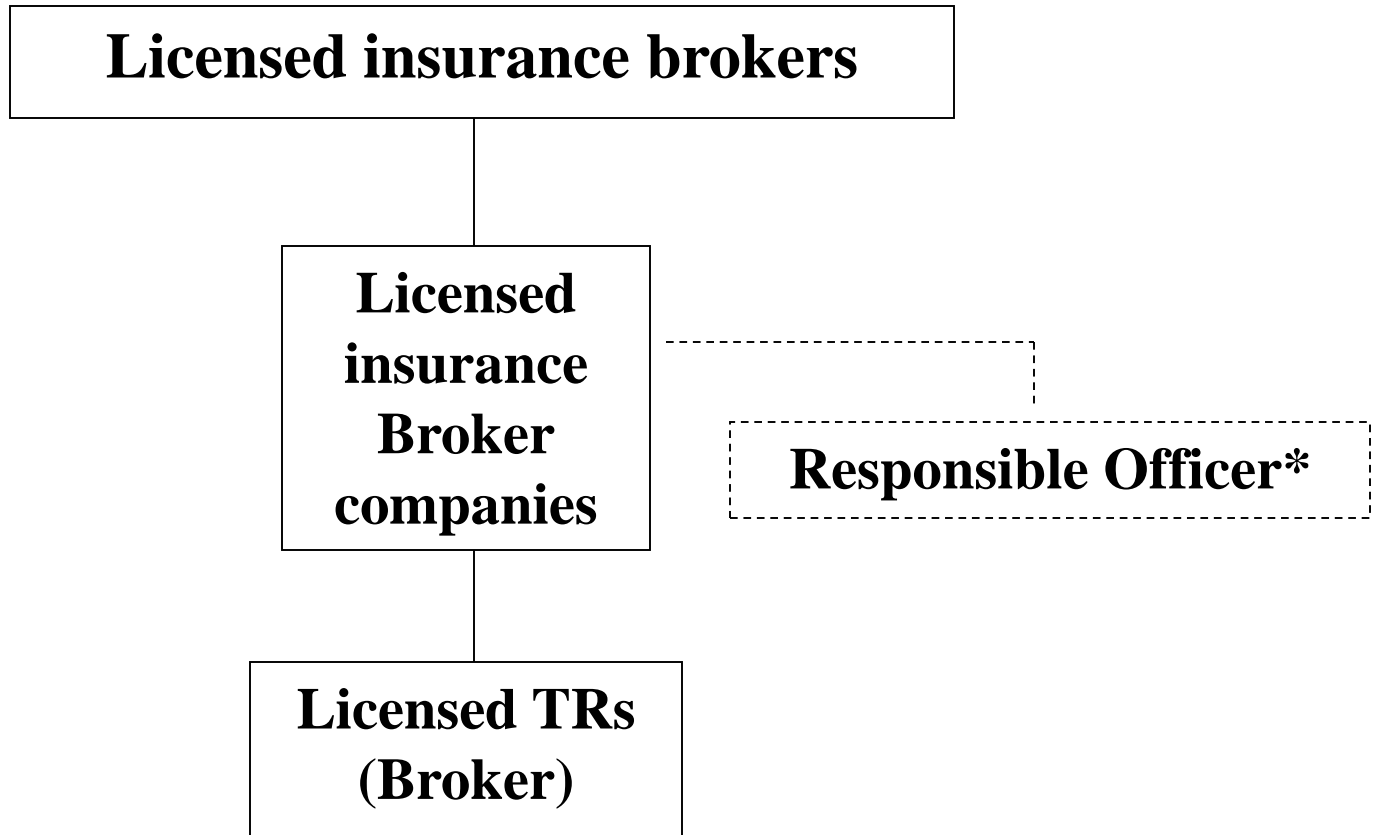
Current Situation

- Insurance Co. – “Controller”
- Broker Disciplinary Committee
CO. + RO. + TR.
- Agency = Agent

In Future



In Future



Notes:

- Every licensed insurance agency / licensed insurance broker company shall appoint a responsible officer (“RO”) and the appointment shall be subject to the IIA’s approval.
- Chief executive officer of each authorized insurer shall be deemed to be the RO of the authorized insurer.

Limited Company

Same

Joint Venture

?

What is Business Succession (“BS”)?

- ◆ “Business Succession” is the process whereby the interest of a deceased’s Business is acquired by Co-owners, with the aim of bringing about the smooth continuation of the Business

(Copy Right Reserved)

The Problem

- ◆ What happens to a Small Business when one of the co-owners dies unexpectedly?
- ◆ What happens to the control of the Business?
- ◆ Can the surviving owners quickly get together enough cash to buy out the deceased person's interest at a fair and reasonable price?

The Problem (Con't)

- ◆ Will the surviving owners be forced into business with outsiders or with their former associate's heirs?
- ◆ Could the Business collapse because the survivors cannot get their hands on an immediate source of cash?
- ◆ Does the Business have to be sold in order to pay out the deceased's Estate?

The Answer

Life Insurance Policy

(Copy Right Reserved)

The Insurance Product

- ◆ Term Life
Tax deductible – running expenses of business

- ◆ Endowment (?)

- ◆ Whole Life (?)

(Copy Right Reserved)

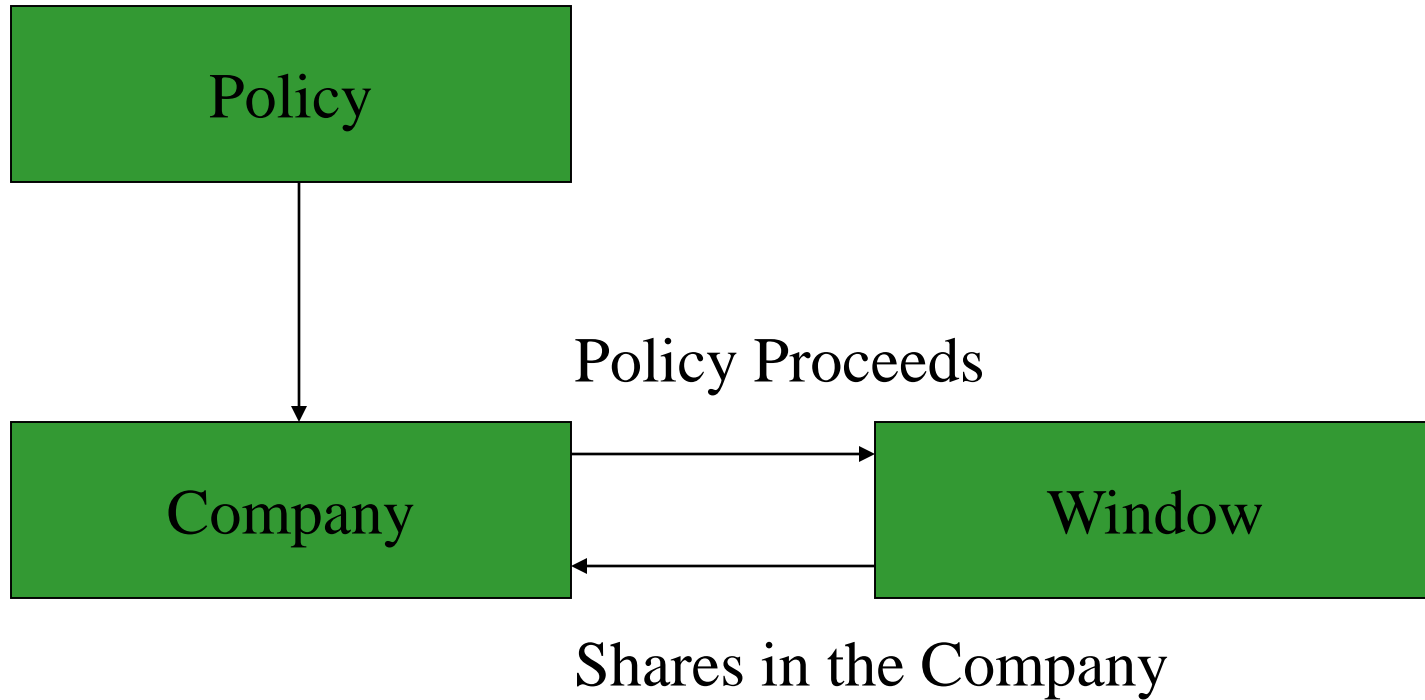
How does insurance policy help?

- ◆ Insurance policy provides pre-agreed pre-estimated, ready fund for the purpose of business succession

(Copy Right Reserved)

How Business Succession Operates?

- ◆ The Business takes out a Policy on each co-owner's life and nominates itself as the Beneficiary.
- ◆ If an insured co-owner of the Business dies the Proceeds are paid by the Insurance Company to the Business.





The Problem

(Copy Right Reserved)

The BS Agreement

- ◆ The BS Agreement should be signed by the partners at the time of taking out the policies
- ◆ It sets out the arrangement in details and each co-owner nominates the person who is going to receive the proceed and release the business interest

(Copy Right Reserved)

◆ Expensive

◆ Depends on which lawyer

(Copy Right Reserved)



The Solution

(Copy Right Reserved)

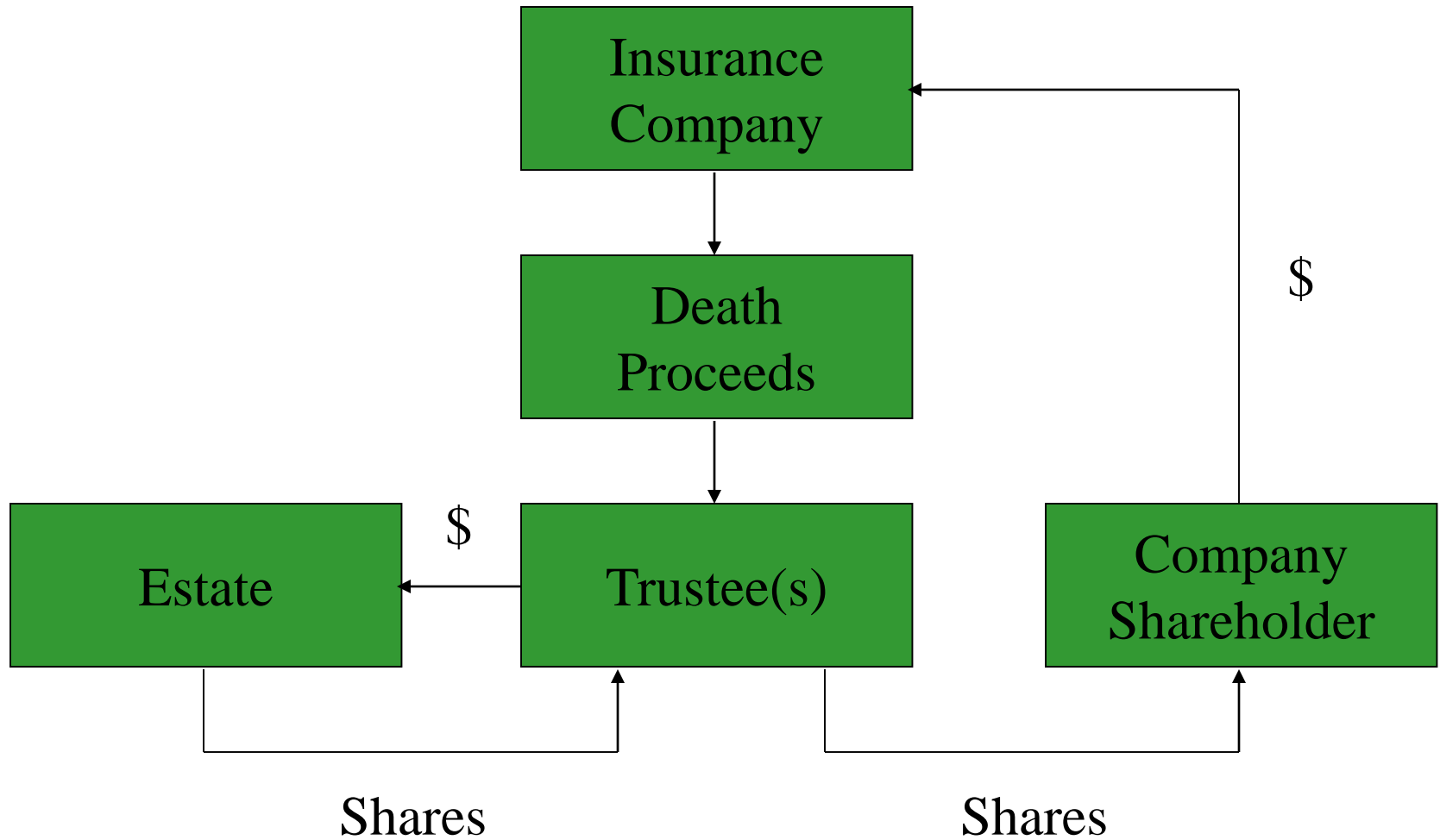


Trust

(Copy Right Reserved)

Use of Trust Company

1. As Executor under Will
2. As Trustee for Discretionary Trust, Family Trust, Charitable Foundation
3. As Trustee under Life Policy for ordinary purpose:
 - Business Succession Plan
 - Policy Finance
 - Juvenile Policy
4. As Trustee of Retirement Fund



Trustee

Incorporated under section 78(1) of
Trustee Ordinance (Cap.29)

A private company without licence
cannot be a “public trustee”.

Gold Haven Trust Co. Ltd.

豐銀信託有限公司

Q & A

問題討論



CHRISTINE M. KOO & IP, SOLICITORS & NOTARIES

Address : Room 601, 6/F, Tower 1, Admiralty Centre,
18 Harcourt Road, Hong Kong

Tel No.: (852) 2524 8996

Fax No.: (852) 2523 6922

E-mail: christinekoo@cmkoo.com.hk

Web-site: <http://www.cmkoo.com>

PLEASE NOTE

The law and procedure on this subject are very specialised. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

請注意

本題目之法律及程序十分專門。此文章只屬一般性之解釋，供你參考，而不應被依賴為關於任何特定事件之法律意見。如需法律意見，請與我所律師聯絡。

Christine M. Koo & Ip, Solicitors & Notaries LLP
顧張文菊、葉成慶律師事務所 有限法律責任合夥