

## **Speech Notes on MAS Policy for Presentation 5 November 2014**

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### **Introduction**

The insurance policy is fundamental to determining the rights of both the insurer and the insured party as regards claims arising out of the earthquakes. While insurers are often fond of creating a measure of mystique around the insurance policy, that should not be so. The insurance policy is simply a contract which records the bargain that has been reached between the insurer and the insured when a party seeking insurance completes an insurance proposal and the insurer then accepts the proposal by writing a policy and charging a premium. The policy simply records the terms upon which both parties have entered into the contract of insurance.

Thus ordinary principles of contract law apply. The policy sets out the terms of the contract and the words in the policy will be construed according to their natural and ordinary meaning.

### **The MAS Policy**

The Gold Shield Policy which I have has the commendable attributes of clarity and simplicity.

The obligations of the insurer are set out right at the start. The insurer undertakes where any unforeseen physical loss or damage occurs then it will compensate you the insured in the manner and to the extent described. That wording immediately conveys that the policy is an indemnity policy whereby the insurer is agreeing to pay the insured a sum of money to compensate the insured for the unforeseen physical damage which has occurred.

That initial undertaking from the insurer is reinforced when we move to the next page under the heading "Types of Cover" and for a dwelling – replacement value the insurer agrees to cover the cost of rebuilding or restoring the dwelling to a condition substantially the same as new. The rest of the wording of the policy confirms that for a dwelling the obligation of the insurer is to pay a sum of money to the insured to compensate for the actual loss suffered.

The wording of this policy is quite different from the policies of other insurers which give the insurer the option of paying compensation or reinstating the property i.e. carrying out the work. This insurance policy does not provide for the insurer to pay a third party for the replacement or repair of the dwelling that has been destroyed or damaged. An option for reinstatement is available to an insurer only if expressly given by the contract of insurance. This insurer has no right under the Gold Shield policy to be involved in the replacement or repair of any dwelling.

## **Time for Payment of Compensation**

The policy does not specify when the insurer is required to pay compensation for the damage suffered to the property. There is therefore an implied term of the contract that payment of compensation is to be made within a reasonable time of the loss. The insurer is not entitled to additional time to make payment because an earthquake has caused multiple claims to have been made at the same time.

An insurer who has unreasonably delayed in paying compensation due under a policy and causes distress to an insured will be liable for damages for inconvenience and mental stress.

In my view MAS should have resolved all its claims by now 4 years after the earthquakes because all it was required to do under the policy was assess in each case the extent of the loss and pay compensation.