



DECENNIAL LIABILITY/ INHERENT DEFECTS

**Workshop discussion by:
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INDEX

DEFINITIONS	Slide 3
OPERATING CLAUSE	Slide 4
SCOPE/COVERAGE	Slide 5
SUM INSURED, AVERAGE CLAUSE AND DEDUCTIBLE	Slide 6
ADDITIONAL BENEFITS	Slide 7
INHERENT DEFECTS	Slide 8
CRITERIA OF COVERAGE	Slide 9
EXCLUSIONS	Slide 10-12
CONDITIONS	Slide 13-14
CASE STUDY	Slide 15
FAULTY MATERIALS	Slide 16
WAY FORWARD	Slide 17

DEFINITIONS

Any defect in the structural works notified to Insurers during the period of insurance which is attributable to a defect in design or workmanship or materials that was undiscovered at the date of issuance of certificate of practical completion.

Imperative Elements:

A- certificate of practical completion for policy to take effect

Must confirm substantial completion by stakeholders

B- certificate of approval issued by technical inspection service (independent) and needs to be mutually agreed with **Insurers**.

Technical Inspection Service (TIS) provide insurers of the expected insurance risk under the policy i.e. normal, moderate, high.

Period commences 9 years from 1 year after practical completion.

OPERATING CLAUSE

Insurers agree to indemnify the Insured against the cost of repair, replacing and/or strengthening...

A- Destruction of the premises

B- Physical damage to the premises; or

C- Threat of imminent collapse to the premises which requires immediate remedial measures for the prevention of an actual collapse within the period of insurance.

*** Additional Benefits:

Any defect or deficiency in weatherproofing or waterproofing discovered during the first 12 months following practical handover maybe endorsed at a sub-limit for any one loss and/or in the aggregate i.e. limit of liability.

Limits on damages to façade, professional fees and debris removal may be extended at very high limits i.e. relative to the risk.

SCOPE/ COVERAGE

Named Insured, main contractor with insured interest including the principal added to the policy.

Period: 10 Years, with 1 year waiting period on weather proofing and water proofing.

Sum Insured: Cost of reinstatement including design and engineering fees, contingencies, escalation but excluding profit margin buried in the contract price.

******Subject to indexing on an annual basis.***

SUM INSURED, AVERAGE CLAUSE AND DEDUCTIBLE

1. Sum Insured

- Each independent risk exposure unit carries its own Sum Insured and policy inception as on the date of a) practical Handover b) approved TIS report mutually agreed by Insurers

2. Average Clause

- Adequacy of Insurance carried is assessed on the reinstatement costs as on the date of the loss. Such costs include demolition and design.

3. Deductibles

- High deductibles are applied

** Indexing a key factor is determining the adequacy of Sum Insured and Deductibles respectively. A flat rate is commonly applied i.e. – 3% per annum from the date of policy inception to the anniversary date (Pro Rate not applicable if incident occurs mid way through the year). This rate is additionally applied to the deductible on an annual basis.

ADDITIONAL BENEFITS

-
- The cost of demolishing the premises and/or removal of debris from the premises reasonably incurred by the Insured.
 - The reasonable legal, professional or consultants fees incurred by the Insured.
 - The additional costs of repair or replacing and/or strengthening in connection with the mentioned events.

INHERENT DEFECTS

- **Structured works**

All internal and external load-bearing structures essential to the stability or strength of the premises including but not limited to **foundations, columns, walls, floors, beams etc.**

All other works forming part of external walls and roofing of the premises but excluding **moveable elements** and the non-structural works. i.e. **external windows, doors, skylight, fixtures and fittings.**

- **Non-structured works, equipment, fixtures and fittings**

All non-load bearing parts of the premises other than those mentioned above, including but not limited to **MEP, mechanically fixed cladding, boilers, apparatuses and many more...**

- **External works**

All external non-structural works owned by the insured and the subject of the building contract including but not limited to **pavement, pedestrian, sewers, external drains etc...**

CRITERIA OF COVERAGE

Insurers and appointed adjusters concluded that the sun protection system does not form part of the core structure works and would not affect the steadiness or stability of other portions of the premises.

Prompt action on securing rights of recourse played a critical part and hence, involvement of the sub contractor was essential.

The parts were shipped back to the manufacturer who concluded the connectors non conformity with the contract specifications.

Sub-Contractor liable and bears the full cost of replacing the 370 connectors!

EXCLUSIONS

Primary

1. ANY DESTRUCTION, DAMAGE OR THREAT OF IMMINENT COLLAPSE CAUSED BY, ARISING FROM OR CONSEQUENT UPON:

- Any fault, defect, error or omission in the design, workmanship or materials of the non-structural works, equipment, fixtures and fittings or of the external works
- Any structural alterations, repairs, modifications to the premises during the period of insurance unless the Insurers have been informed
- Inadequate maintenance or abnormal use of the premises or the imposition of any load greater than that for which the structure of the premises was designed or the use of premises for any purpose other than that for which they were intended (as stated in the schedule)
- The willful acts or willful omissions of the Insured
- Fire, lightning, explosion, earthquake, storm, tempest, flood, frost, bursting or overflowing of water tanks, pipes or other apparatus, water discharged or leaking from an automatic sprinkler installation, pressure waves caused by aerial devices

- Ionising radiation or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel.
- War, invasion, act of foreign enemy, hostilities, civil war, revolution, rebellion, riot, civil commotion, confiscation or requisition by any government or public or local authority.
- Faulty or deficient waterproofing in the premises. ***Unless otherwise endorsed***
- Faulty or deficient waterproofing in those parts of the premises below ground level. ***Unless otherwise endorsed***
- The failure by the insured or their contractors or agents to carry out and complete the finishing operations.
- Subsidence, heave or landslip unless due to inherent defect.
- Any matter notified to Insurers by the Technical Inspection Service and referred to as a reservation in the certificate of approval or recorded in the certificate of practical completion unless subsequently approved in writing by Insurers.
- Defects which are the responsibility of the Insured's professional advisors or contractors whether within the terms of the building contract or otherwise identified and notified to the insured before issue of certificate.

- Failure or omission of the insured to commence or substantially undertake the repair, replacement or strengthening of the premises for which indemnity is provided within a reasonable period of time

Additional Exclusions: Insurers will not be liable for:

- The amount shown in the schedule as deductible
- Any change in colour, texture, opacity or discolouration or staining or superficial or marring of finishing or surface appearance or ageing processes
- Any damage to furniture and professional equipment
- Any consequential or economic loss or damage of any kind or description whatsoever including but not limited to loss, costs, damages, expenses or penalties as a result of delay
- The amount of any tax, duty, charge, rate or levy arising out of capital appreciation

CONDITIONS

GENERAL CONDITIONS

1. DUTIES OF THE INSURED

- Supply the Insurers with a copy of the certificate of practical completion within one month of the date of issue of such certificate.
- At their own expense, or through **tenants**, take all reasonable precautions to prevent destruction, physical damage or threat of collapse to the premises and shall comply with building or other regulations.
- Not enter into or permit third parties who are within their control to enter into any agreement, lease or contract with any person or persons involved to any extent whether directly or indirectly in the design, supply of materials for or construction of the premises.
- Not exercise or seek to exercise any legal rights or remedies whether directly or indirectly against insurers of acts or omissions of the technical inspection service.

2. BASIS OF SETTLEMENT

Any additional premium due must be paid to the Insurers within 30 days of notification to the Insured of the amount due.

- Destruction of or physical damage to the premises, the basis of settlement of the claim shall be the cost of repairing the damage to relieve the effect of the inherent defect directly causing the said destruction or damage
- Costs incurred by way of remedial measures to prevent actual collapse.

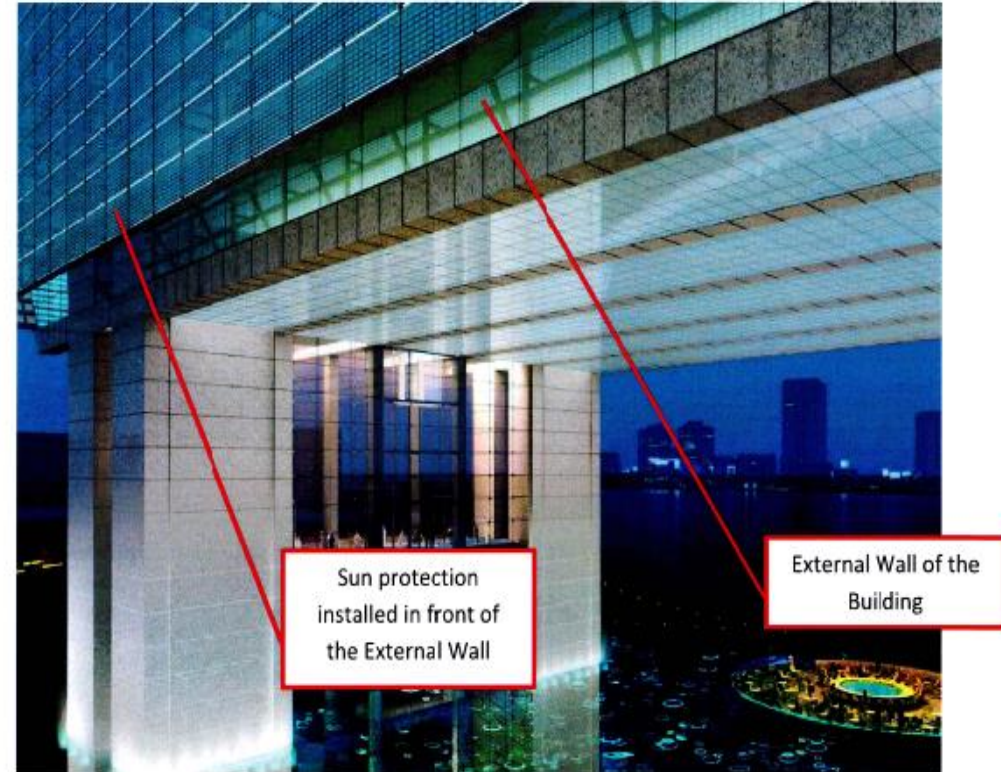
***Contribution: The policy may respond as an excess of loss coverage in the event overlapping policies prevail.

CASE STUDY

Partial collapse of overhanging sun protection system of which bracing elements, horizontal and diagonal are dead weight.

The system partially is exposed to atmospheric air and in the absence of an umbrella system that may collapse unto the structure, the sun protection system would technically bear not imminent threat to the structure from imminent partial or total collapse.

Technical Conclusion: Faulty casting of the connector fitted by the sub-contractors that allowed for stress corrosion.



FAULTY MATERIALS



Views showing cracks within the Wind Load Steel Struts



Dead Load Bearing Elements

WAY FORWARD

-
- Work in cohesion with our peers to establish common framework for managing claims of this nature.
 - Insurers to identify suitable TIS companies
 - Localise wording to suite the market requirement in lieu of local regulations
 - Establish claim handling practices
 - Communicate concerns, overlapping matters and views through official channels

Any contribution is of great value and inquires and suggestions can be shared with our H.O.

Indeed we are always available for our colleagues at anytime.

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