

# UNDERSTANDING LIABILITY PROTECTION COVER

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**Asian  
Institute of  
Insurance**

# 4 Topics

No.	Modules
1.	Overview
2.	Product Specifications
3.	Product Operations
4.	Claim Management



# Overview

No.	Subtopics
1.	Introduction to liability
2.	Brief overview of Tort Law
3.	The importance of liability protection
4.	Type of liability protection

# Introduction to Liability

- It is legal responsibility to **others (person or corporation) for damages** caused by our actions or activities.
- Damages are monetary awards. In a legal sense, “damages” refers to monetary compensation been injured or suffered loss because of the wrongful conduct of another party. that is claimed by a person or awarded by a court in a civil action to a person who has committed the act of negligence.

# Introduction to Liability

## How it can exist?

- It may arise from injuries to person or damage to property consequent upon:
  - ❖ A breach of Law of the Land enacted by the Parliament
  - ❖ A breach of Common Law - Tort
  - ❖ A breach of Contract.



# Introduction to Liability

## Breach of Common Law under Tort

A tort is a wrongful act that injures or interferes with another person or his property.

- This sets the relationship between individual as to how they should conduct the relationship themselves in not “hurting” others.
- tends to non-natural persons i.e. Corporation. Individual to Corporation and vice versa.

# Introduction to Liability

## In a Nutshell

- **Litigation** cases can be brought by anyone to us which could lead to financial difficulties depending on the outcome of the court decision.
- Engaging defense lawyer nowadays could be really expensive and beyond our means. Not to mention possible damages that we have to be responsible to pay to the claiming party.
- It is best to equipped ourselves with necessary contingency protection including by having insurance/ takaful coverage to avoid us from getting in serious problems.



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# Brief Overview Of Tort Law

## TORT

- ***A tort is a civil breach committed against another in which the injured party can sue for damages.***
- In personal injury cases, the injured party will attempt to receive compensation with the representation of a lawyer in order to recover from damages incurred.
- Tort law decides whether a person should be held legally responsible for injury against another, and what type of compensation the injured party is entitled to.
- In order to claim damages, there must be a breach in the duty of the defendant towards the plaintiff, which results in an injury.

# Brief Overview Of Tort Law

## **Cuai: Hospital Diarah Bayar RM870,000 Kepada Pasangan Suami Isteri**

Muar: Mahkamah Tinggi di sini, semalam mengarahkan dua hospital kerajaan membayar sejumlah RM870,000 kepada pasangan Zainab Sam, 45, dan suaminya Rosli Mohd Amin, 53, akibat kes kecuiaan perubatan, kira-kira 10 tahun lalu.

## **MENANG SAMAN RM870,000**

Penantian suami isteri selama tujuh tahun berhasil apabila kes saman mereka terhadap Kerajaan Malaysia, Hospital Segamat dan Hospital Muar berjaya



# Brief Overview Of Tort Law

There are basically three (3) types of torts:

## 1. ***Negligence***

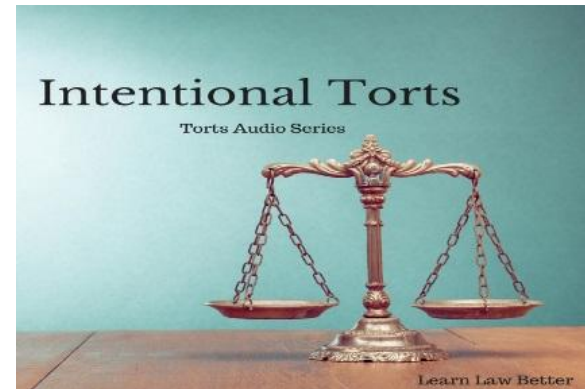
Careless conduct that results in damage to another

## 2. ***Strict Liability (Absolute Liability)***

Situation when there is damage with no intention to cause harm or negligence to another

## 3. ***Intentional torts***

When the wrongdoer engages in intentional conduct that results in damages to another.



# Brief Overview Of Tort Law

## 1. Types of torts – **Negligence:**

**Careless conduct that results in damage to another**

The constituents of negligence. To succeed in an action, the plaintiff must clear the followings:

- a) the defendant owed the plaintiff a duty of care
- b) the defendant was in breach of his duty
- c) the plaintiff sustained damage as a result provided that the damage was not too remote



# Brief Overview Of Tort Law

## 2. Types of torts - **Strict Liability:**

**Situation when there is no intention to cause harm or negligence.**

- Injuries or other damages caused by a defective product, damages caused by animals, and engaging in certain hazardous activities. An individual or entity may be held strictly liable in both civil and criminal actions.
- **Rylands vs Fletcher** - It was proven in courts that “the defendants were not negligent” but still the judges ruled that “the defendants ought to pay damages to the plaintiff and they conformed”.

# Brief Overview Of Tort Law

## 3. Types of torts – **Intentional Torts:**

**When the wrongdoer engages in intentional conduct that results in damages to another.**

- Examples: Trespass, Battery, Assault, Fraud, Steal, False Imprisonment
- **Many intentional torts are classified as both criminal and civil acts.**

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# The importance of Liability Protection

We could cause injury to anyone or damage to their property including third party as accident can happen anytime unintentionally. If it happens on our property, we may have to assume responsibility for it and prepare for the consequences.

Liability policies are important as it provides the followings:

## **1. Protection After an Injury or Property Damage**

After an injury accident has occurred on our company's premises, liability insurance can cover the cost of medical bills and other expenses incurred by the injured party. Without liability insurance, our company may be responsible for all of this and more.

## **2. Protection in Court**

If the injured party rejects our insurance provider's offer of payment and he or she decides to sue, our policy may offer protection to defend us in court.

# The importance of Liability Protection

## 3. Protection Against Property Damage Costs

If one of our employees, products, or services causes damage to someone's property, our policy may provide compensation. Without liability insurance, your company will likely have to pay the total cost on its own.



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# Type of Liability Protection

The followings are typical liability coverage available in the market:

Potential Buyer	Liability Cover
Individuals	1. Personal Liability
Home Owners	1. Personal Liability
Business Owners	1. Public Liability 2. Employer's Liability 3. Product Liability 4. Directors & Officers Liability 5. Professional Indemnity Liability
Professionals	1. Professional Indemnity Liability
Project Owners/ Contractors	1. Public Liability 2. Comprehensive General Liability

# Type of Liability Protection

General insurance products which have section of Liability cover:

Class of Insurance/ Takaful	Liability Cover
Contractor All Risks Erection All Risks	Section 2 – Third Party Liability
Boilers & Pressure Vessels	Section 2 - Third Party Liability
Motor	Section 2 - Third Party Liability

# Product Specifications

No.	Subtopics
1.	Introduction to Liability Protection
2.	Common features of Liability type Protection
3.	Description on type of liability protection

# Introduction to Liability Protection

*The liability insurance coverage are designed to protect the policyholder against financial loss if his/her actions, his/her negligence or the condition of his/her property is found to cause a person to be injured or a person's property to be damaged or destroyed or they suffer loss as a result of relying on his/her services or advice.*

A single liability policy may not be adequate to cover every liability exposure that we have and thus we may require to purchase more specific liability policy depending to our need.

## Insurable Risks

- Generally, liability insurance covers only the risk of being sued for **negligence or strict liability torts**, but **NOT** any tort or crime.
- In other words, liability insurance does not protect against liability resulting from crimes or intentional torts committed by the insured.





# Introduction to Liability Protection

## Who can/ should purchase Liability Insurance/ Takaful

Every person or corporation is exposed to certain level of liability risks while performing or conducting their daily activities.

- Individuals
- Home owners
- Business Owners
- Vehicle Owners
- Project Owners
- Contractors
- Consultants
- Professionals
- Tenants
- others



# Product Specifications

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# Common Features of Liability Protection

## Type of Wordings

There are 2 types of policy wording:

### a) Loss Occurrence Basis

An Occurrence policy protects you from any covered incident that “occurs” during the policy period, regardless of when a claim is filed.

An occurrence policy will respond to claims that come in – even after the policy has been cancelled – so long as the incident occurred during the period in which coverage was in force.

### b) Claims Made Basis

A policy providing coverage that is triggered when a claim is made against the insured during the policy period, regardless of when the wrongful act that gave rise to the claim took place.

# Common Features of Liability Protection

## **Territorial Limit**

It stipulates cover area for occurring liability within the specified country or territory where the Insured is engaged in the business.

## **Period of Cover**

It has standard 12 month policy coverage

# Common Features of Liability Protection

## **Basis of Limit of Indemnity/ Liability**

- a) There is no specific rule to determine how much is the limit of indemnity for Liability cover.
- b) The limit could range between lesser than RM100,000 to RM10 million or more and can be determined by various factors:
  - Business activities
  - Location & Size of network
  - Financial strength
  - Underwriter's Acceptance
- c) Also subject to aggregate limit of liability for the period of insurance/ takaful
- d) Indemnity limit is the maximum amount that an insurer will pay out for any one claim/ accident/ event.
- e) It may be referred as an “any one occurrence” or “any one accident” limit



# Common Features of Liability Protection

## **Aggregate Limit**

- a) Aggregate limit is usually the maximum amount that the insurer liable to indemnify for all covered losses during a policy period.
- b) Nonetheless aggregate limit is not applicable in most of Public Liability cases for the period of insurance – or “Unlimited”

## **Retrospective Date Cover**

- a) Cover granted to new reported claims occurred prior to the inception date. It can be backdated to a specific period with the agreement by the underwriter.
- b) Cover will not apply to claims made against the Insured by reason of any incidents committed or alleged to have been committed before to the said Retrospective Date.
- c) Applicable to Product Liability, Professional Indemnity & Directors & Officers

# Product Specifications

No.	Subtopics
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# Description on type of liability protection

**For the purpose of this training, we will be discussing the following type of liability protection:**

1. Public Liability
2. Employer's Liability
3. Product Liability
4. Directors & Officers Liability
5. Professional Indemnity

# 1. Public Liability (Business Premises Risk)

**The policy will indemnify the insured against:**

A. Legal liability in respect of:

- Accidental death or bodily injury or illness of any person
- Accidental loss of or damage to material property

- occurring during the period of insurance in connection with the trade or business
- happening anywhere within the situation of risk

B. All costs and expenses of litigation:

- Recoverable by any claimant against the Insured incurred with the written consent of the Company

provided always that the liability of the Company under A & B shall not exceed the limits of indemnity stated in the Policy Schedule.

# 1. Public Liability (Business Premises Risk)

## Common Extensions

- Alteration and Repairs carried out in the premises
- Automatic inclusion of new branches
- Car Park Liability
- Defective Sanitary arrangement
- Fire and Explosion (other than Boilers & Pressure Vessels)
- Food and Drinks served in the premises
- Loading and Unloading outside the thoroughfare
- Motor Vehicle contingent Liability
- Sudden accidental pollution and contamination
- Special Events
- Social Club activity
- First Aid
- Use of Fire Arms

## 2. Employer's Liability

### **The policy will indemnify the insured:**

In respect of injury or disease to any person under a contract of service or apprenticeship with the insured arising out and in the course of employment

- a) At law for damages and claimant's cost and expenses
- b) To reimburse SOCSO and pay all additional incurred costs and expenses

Also cover the insured's legal representative in respect of liability incurred by the insured in the event of the death of the insured.

### Common Extensions

- Employee to Employee (Vicarious Liability)
- Temporary Visits Overseas
- Work Away Risks
- Loss Notification

# 3. Product Liability

**The policy will indemnify the insured against:**

Claims of personal injury or property damage caused by products sold or supplied through the business.

It is designed to help protect the business by ensuring that if this happens, they don't have to pay any legal or court costs.

## Common Extensions

- Legal defence costs
- Financial loss cover
- Retrospective cover
- Indemnity to other parties

## 4. Directors & Officers Liability

The core purpose of a D&O policy is to provide financial protection for managers against the consequences of actual or alleged “wrongful acts” when acting in the scope of their managerial duties.

### Side A:

Cover the personal liability of company directors and officers as individuals

### Side B (Company

### Reimbursement Cover):

The reimbursement of the insured company in case it has paid the claim of a third party on behalf of its managers in order to protect them

### Side C (Entity Cover):

Covers a company's own liabilities when it is named along with its directors and officers in shareholder litigation.



# 4. Directors & Officers Liability

## Common Extensions

- Legal Representation Costs
- Protected Excess Limit for Non-Executive Directors
- Public Relations Expenses
- Extradition Costs
- Emergency Costs Advancement
- Occupational Health and Safety Costs
- Retired Directors and Officers
- Pollution Defence Costs Cover
- Pollution Shareholder Claim Cover
- Advancement of Defence Costs within Thirty (30) Days
- Automatic New Subsidiary Cover
- New Offering of Securities
- Counselling Services Extension

# 5. Professional Indemnity

**The policy will indemnify the insured against:**

Sums which the Insured is legally liable to pay as damages for loss caused by an incident as a result of conducting their profession.

E.g.: Engineers, Doctors, Insurance Brokers, Lawyers, Accountants etc.

- a) In any actual or alleged incident involving negligent act, error or omission in conducting the Insured's profession
- b) Indemnity for Defence Costs;
- c) Indemnity for Damages;

# 5. Professional Indemnity

## Common Extensions

- Extended to include a Partnership or Joint Venture, Employees of the Insured as well as the Insured's Estates, Heirs or Legal Representatives;
- Libel and slander – This are defamatory statement made either in written form or spoken. The Claim is usually financial loss
- Breach of warranty of authority
- Dishonesty, fraudulent, criminal or malicious act or omission of employees
- Loss of customers documents
- Run-off risk and Discovery period where the policy is not renewed
- Libel & Slander
- Consultants, Sub-contractors and Agents
- Incoming and Outgoing Partners
- Intellectual Property
- Newly Created or Acquired Entity or Subsidiary
- Partner's Previous Business

# Product Operations

No.	Subtopics
1.	Underwriting Consideration
2.	Policy Conditions
3.	Policy Exclusions

# Underwriting Consideration

When underwriting Liability Insurance, underwriters look at the hazards present which are divided into three (3) factors:

- a) Physical hazard** – These are related to the physical aspect of the risk
- b) Moral hazard** – This relates to the character or culture and the attitude of the Insured and their management. Moral Risk is co-related to the physical risk on safety matters, checks and control in place.
- c) Financial Conditions** – It relates to financial health check on the business the applicant is conducting.

# Underwriting Consideration

## Physical hazard

- **Insured** - Details is required to as to whether they are a sole proprietor, partnership, limited liability company.
- **Business/occupation** - The policy covers liability arising from the business activity. So detailed information of the business and if such work is carried outside the premises. Activities in the premises, storage and use of dangerous chemicals etc.
- **Premises** - Location, multi-tenanted, beside waterways, rail track, airport, surrounding property, condition of premises.
- **Visitors** - Visitors into the premises and works being carried out at customers premises. Type of customers (young children, old age people, affluent persons etc)

# Underwriting Consideration

## **Moral hazard**

- Past loss experience to determine the frequency and severity
- A survey of the premises will show the housekeeping – whether management takes pro-active steps on safety procedures
- Good Risk Management Culture
- Process – good procedure, good staff relationship

## **Financial Conditions (applicable to Product Liability, Professional Indemnity and Directors & Officers)**

- Financial standing of the company – good result will indicate positive company future outlook - Gross Annual Revenue/ Fees, Audited Financial Statement
- Details of personnel who manage the company or making crucial decision - Annual Report, Form 49 (under Companies Act 1965)

# Product Operations

No.	Subtopics
1.	Underwriting Consideration
2.	Policy Conditions
3.	Policy Exclusions



# Policy Conditions

## Premium Warranty

- Premium/ Contribution must be paid and received within sixty (60) days from the inception date.
- Otherwise the contract is automatically cancelled and the company is entitled for pro rata premium for the period the risk is granted.

## Jurisdiction Clause

The indemnity provided herein shall not apply to:

- Compensation for damages in respect of judgments delivered or obtained in the first instance otherwise than by a Court of competent jurisdiction within Malaysia.
- Costs and expenses of litigation recovered by any claimant from the Insured which are not incurred in and recoverable in Malaysia.

# Policy Conditions

## **Reasonable Precaution Care:**

- Only competent employees' are employed and trained
- All buildings ways works plant machinery furniture and fittings are substantial and sound and in proper order and fit for the purposes for which they are used
- All statutory requirements and all bye-laws and regulations imposed by any public authority are duly observed and complied with.

# Product Operations

No.	Subtopics
1.	Underwriting Consideration
2.	Policy Conditions
3.	Policy Exclusions

# Policy Exclusions

- Deliberate act or omission
- Liability assumed by agreement
- Any person under a contract of service or apprenticeship with the insured **(May not applicable to EL & D&O)**
- Property belonging to or in the charge or under the control of the Insured or of any servant or agent of the Insured
- Property being that part of any goods or land or building or structure on which the Insured or any servant or agent of the Insured is or has been working
- Bursting of any pressure part of any steam boiler or any economizer or any vessel or apparatus (other than any steam turbine or engine or other steam-driven machinery) intended to operate under steam pressure belonging to or under the control of the Insured or any servant or agent of the Insured

# Policy Exclusions

- Vibration, removal or weakening of support
- Ownership, possession or use by or on behalf of the Insured of any mechanically propelled vehicle (including any type of machine on wheels or tracks) licensed for road use
- Defective design formula or specification
- Any vessel or craft or aircraft
- lifts, cranes, escalators, walkalators or power hoisting machines
- Any goods or any containers thereof sold or supplied or repaired renovated let or hire or handled by the Insured and no longer in the Insured's possession or control (other than food or drink sold or supplied on the Premises and not being part of the business of the Insured)
- Fire, Explosion & Flood

# Policy Exclusions

- War, Strike Riot Civil Commotion, Terrorism
- Ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste
- Nuclear weapons material
- Seepage, pollution or water pollution, contamination, defective sanitary arrangements, chemical effluent fumes or other noxious gas liquid or substance
- Breach of professional duty or service **(May not applicable to PI)**
- Asbestos in whatever form or quantity
- Sub-contractors to the Insured or persons engaged in or upon the service of such sub - contractors
- Liquidated damages or under a penalty clause libel or slander or infringement of copyright or patent **(May not applicable to D&O)**

# Specific Exclusions (Product Liability)

- Replacement of Goods
- Efficacy Clause - product fails to perform its intended function
- Liability for goods installed in aircraft or ships

# Specific Exclusions (Product Liability)

- Known circumstance or incident
- Expected or intended Loss
- Dishonesty, fraud
- Directors' & Officers' Liability
- Claim by or against organization in which the Insured has a financial interest, or owns or controls or manages the Insured
- Professional services for Insured's family member
- Public Officials Liability
- Warranty, guarantee or estimate with respect to fees, costs, quantities or duration, or date of completion
- Insolvency or bankruptcy of any Insured
- Libel or Slander



# Specific Exclusions (Product Liability)

- Dishonest or improper conduct
- Known prior matters and notifications
- Insured v Insured Exclusion (applicable to USA only)
- Employee Retirement Income Security Act of 1974 (USA)
- Bodily injury/property damage
- Professional Services
- Outside Entity
- Securities Act 1933 (USA), Securities Exchange Act 1934 (USA)

# Claim Management

No.	Subtopics
1.	Claim Conditions
2.	Claim Process
3.	Documentation
4.	Role of Agent

# Claim Conditions

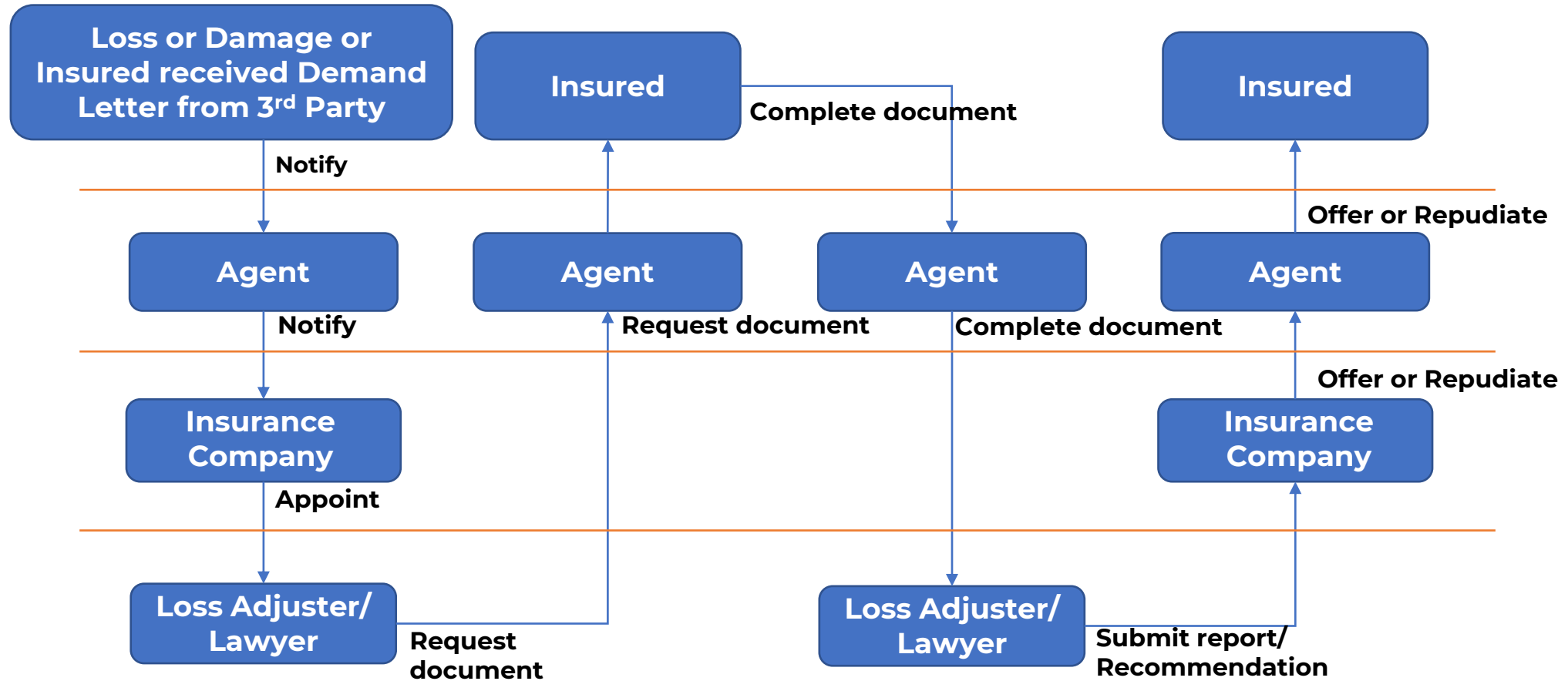
- **Loss Notification:**

As soon as possible (ASAP). For PL & EL: ASAP or fifteen (15) days from the date of occurrence

- **Liability Admission:** Do not repudiate liability negotiate or make any admission offer promise or payment in connection with any accident or claim without consent in writing by the Company

- **Other Insurances:** The Company shall not be liable for more than its ratable proportion if there is any other insurance and/or takaful covering the same risk or any part thereof

# Claim Process



# Claim Documentation (3rd Party Claim)

- Completed Claim Form
- Third Party official letter of demand
- Photographs or sketch of the scene of the incident (if relevant)
- Specialist report where applicable (if relevant)
- Receipt, indemnity form, court order

# Claim Documentation (3rd Party Bodily Injury)

- Completed Claim Form
- Police report
- Letter of demand/Writ/Summon from Third Party.
- Internal investigation or incident report (if relevant)
- Employment Letter, wages records, salary slips, EPF statements and etc. (if relevant)
- Medical Report, Medical Bills, Death/Burial Certificate, Post Mortem Report, Funeral Expenses/Bill and etc.

# Role of a Broker

- Advise client to notify them on any potential liability claim that may escalate
- Guide client not to admit/ accept liability from 3rd Party – leave all correspondence unanswered and pass it to the adjuster
- Forward all requested claim documentation received from client to Loss Adjuster
- Follow up with Loss Adjuster on status of report
- Follow up with Claim Department on status of claim
- Ensure claim resolve within reasonable timeframe

# Thank you for your attention and cooperation

Please scan the QR Code to share your  
experience

