



Kidnap and Ransom Policies

New legislation re-emphasises that K&R policies will not respond to terrorist kidnappings.

Recent changes in legislation have put beyond doubt that businesses will be very unlikely to be able to claim indemnity under a kidnap and ransom policy (“K&R”) where there is possible terrorist involvement.

The rise of K&R

As more businesses operate in politically unstable or dangerous jurisdictions, K&R has become an increasingly popular, and sometimes necessary, form of cover. The high incidence of kidnap at the hands of Somali pirates is well known. There is also a significant risk in countries including Mexico, Columbia, Nigeria, Venezuela and, in more recent years, Afghanistan, Iraq and Syria.

A typical K&R policy will indemnify a business for the costs involved in procuring the release of a kidnapped employee, such as ransom money, associated logistical costs such as transit and delivery, and an element of personal injury cover if the hostage is injured.

Anti-Terrorism Legislation

The introduction of the Terrorism Act 2000 (“TACT”) placed a significant constraint on the efficacy of K&R. TACT made it illegal for anyone to make money available to groups or organisations that they know, or suspect, of being engaged in terrorist activity.

However, as a result of a potential ambiguity in TACT, the Counter-Terrorism and Security Act 2015 (“CTSA”) has clarified that it is an offence for (re)insurers to indemnify under a K&R policy where they know or have reason to believe that the kidnappers are engaged in terrorism.

The legislation is far reaching. It applies to financial payments made outside of the UK by UK business, so terrorist demands both inside and outside the UK are captured.

The legislation also provides for corporate and personal offences. An insurer caught in breach is likely to face a hefty fine. In addition, if the insurer’s senior management consent to an illegal payment (or negligently failed to identify terrorist

involvement) they too can be prosecuted and face a jail sentence of to 14 years.

What does this mean for the future of K&R?

It has always been the position that an insurance contract cannot pay out if to do so would be illegal and many insurers include express exclusions to cater for this, often by specific reference to terrorism (and other illegalities such as fraud). So, in that respect, the scope of K&R cover the market will offer will probably not change.

What the CTSA is more likely to cause is a delay in meeting claims. The market bulletin issued by Lloyds in response to CTSA emphasises that the Government recognises that Lloyd’s operates within an effective compliance framework, but re-emphasised the need for effective due diligence procedures to ensure illegal payments are not made.

This aspect of K&R is the most difficult for insurers. Pirates, kidnappers and other criminal groups are, by their very nature, clandestine. Conducting effective due diligence to identify: who controls them; who they are affiliated with; and what they use their money for is inevitably difficult.

With the significant criminal penalties for individuals imposed by CTSA, senior claims managers, company directors and loss assessors will want to be absolutely sure they are not exposing themselves by authorising a payment. With the rise of the Islamic State and its recent propensity to kidnap Westerners, one would expect any claim in respect of a kidnapping in the Middle East to come under heavy scrutiny.

This could lead to claims not being paid as promptly as policy holders might like.

Still worth the premium?

It is important to remember that the offences under CTSA are knowledge based – the offence is only committed if the insurers knew or ought to have known that there was terrorist involvement. The clandestine nature of many terrorist cells means that while it makes due diligence difficult it also means that an insurer may not be able to find any evidence linking it to terrorist activity.

So even if the kidnapper is ultimately involved in terrorism, if there was no reasonably obtainable information available to the insurer at the time to demonstrate or suggest this, it is hard to see how an offence could be committed.

While anti-terrorism legislation has prevented K&R policies from operating where terrorism is involved, not all kidnappings are terrorism related and it is still a valuable cover for businesses to obtain. Indeed, many employees may well require it if, say, they are to be sent to work on oil pipelines in the drug gang controlled Amazon, or to captain ships round the horn of Africa.

Conclusion

The introduction of CTSA is unlikely to cause a significant change in the K&R market but it may affect claims handling procedures. It is also an important reminder for policy holders that it is ineffective in terrorism related situations.

Businesses thinking of sending their employees to jurisdictions where terrorists are known to operate may wish to consider additional security arrangements to minimise the risk of kidnap.

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