



Briefing

Insurance

August 2014

The all-important insurance contract

The Association of Insurance & Risk Managers in Industry & Commerce ("Airmic") has recently published comprehensive guidance for insurance buyers on the efficacy of business insurance (the "Guide"). As insurance is a significant investment for most companies the Guide aims to assist businesses to make the right investment decisions.

This briefing will take a closer look at the Guide and underline some of the key considerations identified by Airmic for insurance buyers when making that all-important purchase.

The Guide

The purpose of the Guide is to assist Insurance buyers in purchasing the best available cover for their respective organisations.

The Guide focuses on the start of the insurance buying process, the premise being that proper planning and preparation can prevent problems further down the line. Insurance buyers are advised to value their policies not on the level of premium paid, but on the limit of indemnity purchased - insurance is a valuable investment and needs to be approached as such.

Certainty

As John Hurrell, the CEO of Airmic, states: "*with insurance these days the contract is everything*".

A key aspect of any insurance policy is certainty, both in respect of the policy wording and its coverage.

Two significant reasons for non-payment of insurance claims are:

- policy wording fails to cover the circumstances of the loss; or that
- notification of claims or circumstances fails to be made/ properly made

Accordingly, it is pivotal that there are no gaps in the coverage, except those agreed, and that the policy wording is understood, particularly the circumstances in which notifications must be made. For more information on this, see our briefing '**Notification of Claims and Circumstances: Ensuring Maximum Recovery**' (July 2013)

A legal review of policy wording is advocated by the Guide to ensure clarity regarding policy wording and to prevent unexpected and potentially costly coverage gaps.

The Guide suggests a timeline for achieving insurance contract certainty. This is based on the fact that insurance buyers should aim for day one issuance, as set out below. It is important to note that the process is initiated up to six months ahead of the renewal date - early preparation is key.

	Insurance renewal activity	Prior to inception
1	Collection of insurance renewal information	180 - 150 days
2	Compile exposure and loss data for full disclosure	150 - 120 days
3	Discuss with underwriters to ensure understanding	120 - 90 days
4	Legal and professional review of suggested wordings	90 - 60 days
5	Negotiation and testing, including scenario testing	60 - 45 days
6	Agreement by all parties of final terms and conditions	45 - 30 days
7	Accurate and timely policy documentation issuance	30 - 15 days
8	Observe regulatory, tax and warranty requirements	15 - 0 days

The role of insurance brokers

The Guide advocates the use of insurance brokers. Not only can brokers provide insurance specific knowledge and expertise, but they also open up access to broker-only insurance markets.

However, this recommendation comes with a warning - insurance buyers need to be aware of the relationship that the broker has with the insurer, as they may be the insurer's agent. Transparency is therefore key in any broker relationship, particularly where the broker is responsible for preparing the insurance market submission and the policy documentation. For more information on this, see our briefing: '**Insurance: Broker's Duties**' (June 2013).

The law and the need for modernisation

The Guide underlines the need for modernisation of insurance contract law.

The law, as it currently stands in England and Wales, disproportionately favours the insurer over the insurance buyer, providing insurance companies with remedies that are generally considered to be unacceptable.¹ For example, insurers can decline claims and avoid the policy from inception in the event of even innocent non-disclosures that are material to the risk being underwritten.

Insurance buyers need to take steps to adjust this imbalance. The Guide advocates that insurers should only have the power to avoid the policy from inception where there has been fraudulent misrepresentation. It also advocates that more proportionate remedies, in line with those being proposed by the Law Commission, should be incorporated into the contract.

¹ A draft Insurance Contracts Bill was published in 2014 to address the current imbalance in the law. For more information on this, see our briefing: '**Current Insurance Law Reform**' (March 2014)

Conclusion

The Guide provides a useful and detailed review of the insurance purchase/renewal process. It raises important issues that insurance buyers need to be aware of, particularly regarding the timeframe - policy renewal is not something to leave until the last minute.

Detailed planning and early professional and legal advice can all prevent costly problems further down the line.

A link to the full version of the Guide is included below:

http://www.aimic.com/sites/default/files/Efficacy_2014_WEB.pdf

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