

2015 Insurance Act - Important Information

Fair presentation of the risk

Under the Insurance Act 2015, there is a statutory duty applicable to commercial clients to disclose important or relevant information known to them, or which ought to be known to them after a reasonable search has been conducted within the business. A fair presentation of all facts which could affect the Insurer's assessment of the risk must be provided, and the Act places a responsibility on the Insured at the time of effecting a new Policy, every renewal and any variation to:

- Be clear and accurate in giving information
- Make enquiries of anyone within the company and any other relevant outside source to give material information (and keep adequate records of such enquiries)
- Give full details of the risk to be insured ☑ Ensure all claims or incidents are reported
- Notify any changes in the business, or planned
- Advise of any unusual processes for the trade
- Notify any adverse circumstances e.g. bankruptcy / liquidation / administration / Voluntary arrangement / Insolvency / Receivership / H&S / H&S at Work Act / Customs & Excise / Inland Revenue / CCJ's / Disqualified from being a company director / Winding up Order or similar, criminal conviction (and the like) involving the business, its directors / partners/ managers/ trustees, or any other business in which they are or were involved
- Notify all temporary breaches of a warranty during the policy year, even where subsequently rectified If you are unsure whether something needs to be notified, you should refer to E&P for advice.

POLICY TERMS & VALIDITY OF QUOTATIONS

Insurance policies contain specific terms, general conditions, specific conditions, clauses, warranties and exclusions within the policy wording or schedule, all of which are of the utmost importance, as failure to adhere to these could allow Insurers to proportionately reduce or decline your claim. Where we issue a summary of the cover it is impossible to show these fully, though we may highlight points that we know are relevant to you. Nevertheless, it is essential that you are aware of the full policy/schedule wording and adhere to the content within as appropriate.

WARRANTIES / CONDITIONS/EXCLUSIONS

Warranties or conditions precedent to liability are terms of the agreement between you and the Insurers and must be fully complied with otherwise the Insurers may have the right to cancel the policy from the date of breach and not pay any claims, or reduce a claim proportionately. Under the Insurance Act 2015, Insurers can still apply warranties to the policy but a breach by the Insured will not automatically terminate the policy; rather it will lead to suspension of liability. Whilst some breaches can never be remedied, where the breach is remedied, the insurance will automatically be

reinstated. Furthermore, Insurers will not be able to avoid liability for non-compliance with a warranty or any other term of the contract (other than a term defining the risk as a whole) if the Insured can show that non-compliance could not have increased the risk of that loss occurring in the same circumstances. A requirement under the Insurance Act 2015 is to notify Insurers if you ever breach a warranty during the policy year, so you must inform us if that occurs, even when the breach has been rectified. Exclusions and exceptions modify or restrict the general cover promised by the insurer under a contract of insurance. They may reduce or remove from cover an entire risk, such as Terrorism, or a particular event that would otherwise fall within the cover.

THE INSURED

It is essential that all companies and persons for whom insurance is required should be advised to insurers. Any company and persons not mentioned may not be insured. The full name may vary between different policies and will be shown on the policy schedule: you must ensure this is kept accurate at all times.

INSURABLE INTEREST In the law of insurance, the policyholder must have an interest in the subject matter to be insured under the policy, or such policy cover will be void and unenforceable in the event of a loss. Note that all motor vehicles must be owned or leased or hired by the policyholder unless insurers have been advised otherwise and agreed and accepted this.

BUSINESS DESCRIPTION

Your policies only operate for risks arising within the business description applicable to the policy. Often it is not practicable to utilise one wording for all policies. Any inaccuracies or changes to your activities should be notified to us immediately.

AVERAGE or UNDERINURANCE

Many policies are subject to “average”, whereby if your sum insured is not adequate then insurers will reduce your claims settlement by the same proportion as the underinsurance. In simple terms if a sum insured is £70,000 and the item valuation is £100,000 the Insurers will pay 70% of any loss. It is therefore, very important that you choose the right sums insured for your policies that meet your demands and needs. We would recommend that you appoint professional advisers to provide valuations in order to ensure that the figures insured are accurate, as underinsurance can lead to the application of average as detailed above. It may feel like an unnecessary expense but in the event of a claim it would be extremely useful.

SUMS INSURED / BASIS OF VALUATION

Reinstatement

A sum insured on a reinstatement basis should be adequate to replace the insured with “new” at the time reinstatement takes place, which could be long after the sum insured was set. So the Insured must make allowance for this and future inflation when arriving at the sum insured, or the figure is likely to be inadequate, unless the Policy is index linked (see below).

Day 1 Reinstatement

With this method the Insured should provide the value of the item(s) to be insured on a reinstatement basis as at the first day of the insurance period, being the 'declared value', to which an agreed percentage increase is applied to allow for increases in value beyond the control of the Insured, e.g., inflation.

Indemnity

This principle seeks to place the insured in the same position as before the loss, as the sum insured is set at a lower level after deductions to take account of age and depreciation.

Index Linking

Some insurers offer an index linking facility, which means the sum insured would increase over the insurance period in accordance with a stated inflation index, e.g., the Retail Price Index. At renewal the inflated sum insured is consolidated as the base sum insured for the coming year unless alternative sums insured are nominated.

CLAIMS MADE BASIS

An Insurance policy underwritten on a "claims made" basis will only cover claims reported or notified during the period of insurance. Professional Indemnity policies are always written on a "claims made" basis but some liability covers may also be on this basis (this would be clearly shown on our quote) for example, a professional negligence claim made against an architect resulting from designs carried out 5 years before but only just reported as the defect manifested itself, would claim on his current policy of insurance as this was the time when he was notified of the claim and hence when the claim was made.

CLAIMS OCCURRING BASIS

This is the normal basis of cover for most policies. An insurance policy underwritten on a claims occurring basis will cover incidents or claims that actually occur or emanate during the period of insurance. e.g., an employer's liability accident in 2015 which was notified in 2022 would fall to be dealt with by the Employers Liability insurers in the year the incident happened (2015). To ensure cover, it is therefore necessary to maintain cover continuously and if changes of Insurers occur during the years, details of the policies should be retained to deal with historical claims for industrial illnesses etc., which often manifest themselves years after actual employment has ceased. We would therefore recommend that you retain copies of employer's liability insurance certificates indefinitely.

CHANGES IN RISK

You have a duty under your contracts of insurance to notify Insurers of any changes in your circumstances, the risk or property insured whether the change increases or, in your opinion, reduces the Insurers exposure. This duty is ongoing and does not just apply at renewal. Examples of changes which should be notified are:-

- Changes in ownership or control of the company

- Changes in processes or types of machinery used
- New markets (especially North America) or products
- Contract conditions which increase your Liability to others
- New premises or storage facilities
- Un-occupancy or change of tenant at any premises
- Disconnection or reduced effectiveness of any fire or theft protections
- Increased asset / values (e.g. buildings, machinery sums insured)

This list is by no means exhaustive and if there is any doubt, our advice should be sought: preferably prior to the event.

TERRORISM

Terrorism cover is excluded from commercial material damage policies. Cover can be purchased separately.

BUSINESS INTERRUPTION

We are making special mention of this type of cover as it is one of the areas that may be difficult for some clients to understand: it can also be referred to as Loss of Profits insurance. The objective is to maintain the company's gross profit (as defined by the policy) following a material damage claim. The business interruption element of a claim can often exceed the actual material damage payment, which is why it is important to think carefully about the different aspects of cover. Following a loss, it will be difficult for the business to operate because there will be a continuing need for cash to pay for fixed costs such as rent, rates, payroll, heating, lighting, motor expenses etc., at a time when the business is receiving nil or reduced income. There are different levels of coverage and extensions available, the relevance of which are dependent on the nature of the business. Consideration should also be given to the maximum time it would take to get the business up and running again and trading at the pre-loss levels. Account needs to be taken of the most serious delays which may be experienced such as site clearance, planning matters, tenders, rebuild time, ease of replacing stock, availability/sourcing of machinery and time to build up production and replace lost customers.

As you will see, there are many variables to think about when choosing the correct level of cover, hence the reason why this should be discussed with your Account Handler at Kudos Brokers Ltd.

The above is a summary of some basic information which should help you in relation to insurance terminology. This is only a brief overview of some aspects of insurance and if you have any queries or wish to discuss matters further, please do not hesitate to make contact with your Account Handler at Kudos Brokers Limited, The Old Gatehouse, 68 New North Road, Huddersfield, HD1 5NE www.kudosbrokers.co.uk

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