

Commercial insurance contract wording

P21: October 2013 edition

Web update 2: 30 April 2015

Please note the following updates to your copy of the October 2013 edition of the **P21: Commercial insurance contract wording** study text:

Chapter 1

Section C3, International Underwriting Association of London (IUA), page 1/15

Replace the bullet list with the following:

- improve process efficiency and business attraction to London;
- promote expertise and innovation in underwriting and claims; and
- influence public policy and compliance.

Section C3A, IUA Clauses, page 1/15

Amend the web address at the end of the first paragraph to read as follows:

www.iaclauses.com

Section C4, London and International Insurance Brokers' Association (LIIBA), page 1/15

Amend last bullet point to read as follows:

- supporting members with regards to legislative and technical changes.

Section C6, Association of Insurance and Risk Managers (Airmic), page 1/16

2nd paragraph, 4th sentence onwards including bullet points – amend to read as shown in bold text:

In 2009, for example, it issued a contract certainty guide for members **and, since then, separate guides on conditions precedent and warranties in insurance policies.**

Section D4A High level standards, page 1/21

1st paragraph – amend to read as shown in bold text:

Another High Level Standard is Senior Management Arrangements, Systems and Controls (SYSC) where it is a rule that a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

2nd paragraph, 1st sentence – amend to read as shown in bold text:

This standard addresses operational risk, which is the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events.

1st paragraph (page 1/22) – amend to read as shown in bold text:

However, of particular relevance is the prudential guidance on the establishing of systems and controls for the management of insurance risk. Insurance risk can be defined as fluctuations in the timing, frequency and severity of insured events, relative to the expectations of the firm at the time of underwriting, or in timing and amount of claims settlements. The **(risk control)** guidance provides...

Chapter 2

Section B1, The insurer, page 2/4

4th paragraph, 2nd sentence - amend to read as shown in bold text:

If the authorisation is contained in the **Subscription Agreement Section of the MRC**, the framework of that document must not be exceeded unless the authorisation permits this.

Section D1, Underwriting agents and delegated authorities, page 2/9

4th paragraph - amend to read as shown in bold text:

Many coverholders are well established and remain with the same insurers for many years. By 2013 there were over **3,000** delegated authorities in Lloyd's producing £3bn of income. **The largest coverholder markets are currently the USA, the UK, Canada, Europe and Australia, but Lloyd's coverholders can be found as far afield as Chile, Tahiti and South Africa.**

Chapter 3

Section B1C, The Law Commission and Consumer Insurance (Disclosure and Representations) Act 2012, page 3/8

1st paragraph, last two sentences – delete

Useful websites – delete the following from the list of useful websites (as provided on web update no 1):

'To monitor the Insurance Bill's progress through Parliament see: <http://services.parliament.uk/bills/2014-2015/insurance.html>

Insert new section B1D as follows:

B1D The Insurance Act 2015



Be aware

The **Insurance Act 2015**, which received Royal Assent in February 2015, introduces certain amendments regarding the duty of disclosure, the law of warranties and insurer remedies for fraudulent claims in respect of **business insureds**.

The new Act also abolishes basis of contract clauses in business contracts. The Act is due to come into force in August 2016 and you will not be tested on its provisions in CII examinations until 1 October 2016.

The following summary of the Act's provisions is provided for information and guidance.

Duty of disclosure

The Act provides greater clarity in respect of the information a purchaser of insurance has to provide, who is responsible for providing such information and to whom the information should be provided. An insured should make a **fair presentation** of the risk before entering into a contract. It does this by disclosing all material circumstances the insured knows or ought to know, or by making a disclosure which gives insurers sufficient information to put a prudent insurer on notice that it should make further enquiries to reveal such material circumstances. All material representations should be substantially correct and made in good faith.

The Act provides more proportionate remedies (compared to the existing remedies of avoiding the policy or refusing to pay claims) where an insured fails to provide accurate information, such as a proportionate reduction of the claims settlement.

Warranties

Currently a breach of warranty discharges insurers from its obligations from the date of the breach, regardless of whether the insurer has been prejudiced by the breach. The Insurance Act provides that cover is reinstated if an insured remedies the breach.

Fraudulent claims

The current law is unclear as to the remedies available to insurers on the submission of a fraudulent claim (unless the policy includes an express term). The Act provides clearer guidelines as to the appropriate actions to be taken:

- if an insured makes a fraudulent claim the insurer is not liable to pay the claim;
- the insurer may be able to recover any payments made to the Insured in respect of such claim;
- the insurers may treat the contract as being terminated from the time of the fraudulent act and may refuse all liability under the contract in respect of a 'relevant event' that occurs after the fraudulent act;
- the insurer does not have to return any premium paid under the contract; and
- termination of the contract by an Insurer, will not affect the rights and obligations of parties to the contract with respect to a 'relevant event' (a loss, claim or notification of a potential claim) occurring prior to the time of the fraudulent act.

Be aware

Insurers have the right to opt out of certain elements of the Insurance Act 2015 (there are some exceptions), provided it is done in a 'transparent manner'.



Section B5, Does a breach terminate the whole or part of a policy? page 3/9

Add the following new paragraph to the end of this section:

You should bear in mind the changes to the law surrounding warranties and their breach which will be introduced by the **Insurance Act 2015** in August 2016 (discussed in section B1D).

Chapter 5

Section D6, Fraudulent claims, page 5/11

Add the following new paragraph to the end of this section:

As we saw in chapter 3, section B1D, the **Insurance Act 2015** introduces certain amendments regarding the duty of disclosure, the law of warranties and insurer remedies for fraudulent claims. With regard to fraudulent claims, the Act provides clear guidelines in respect of fraudulent circumstances and the rights and obligations of the insurer and the insured relating to events occurring prior to the fraudulent act.

You will not be tested on the provisions of the new Act until 1 October 2016 onwards.