Pi-Property Insurance
SPECIALIST INSURANCE FOR PROPERTY PEOPLE

# Important Notice to Policyholders

PLEASE READ THE FOLLOWING:

It is important that every material circumstance which is known or ought to be known by the policyholders senior management, or those responsible for arranging insurance, following a reasonable search, is declared to us. Senior management includes anyone who has a key role in making decisions on behalf of the business, even if they do not sit on the board or if they do not officially have a management role.

## Terms relating to Disclosure

Your insurance is based upon the information provided to the insurance company.

Unless you are a Consumer (an individual buying insurance wholly or mainly for purposes unrelated to their trade, business or profession) you must present the risk (i.e. the subject matter of the proposed insurance) fairly. This means that you must disclose to insurers, before the setting up or renewal of your insurance policy is concluded, anything that might influence the judgement of an insurer in fixing the premium, setting the terms or determining whether they would take the risk. If you are uncertain whether anything is material, you should disclose it.

In order to identify what must be disclosed, you are obliged to carry out a reasonable search before presenting the risk to insurers. This includes (but is not limited to) consulting with all senior managers. A senior manager is anyone who plays a significant role in the making of decisions about how your activities are to be managed or organised, regardless of whether or not that individual is a member of your board or is formally in a management role. You must also consult with anyone who has particular knowledge about the risk to be insured.

If you deliberately or recklessly (i.e. without care) fail to comply with your obligations to present the risk fairly, insurers may avoid the policy. This means they can retain all premiums and treat the policy as if it never existed and refuse to make any claims payments.

You could also be obliged to repay any claims payments that had already been made.

If you fail to present the risk fairly, but your failure was neither deliberate nor reckless, insurers' response will depend upon what would have happened if you had complied with your obligations:

- If insurers would not have provided the policy, they may treat the policy as if it never existed, refuse to make any claims payments and demand the return of any claims payments already made. However, insurers would have to return any premium payments already made;
- If insurers would have provided the policy but on different terms, the policy will remain in force but will be treated as if those different terms applied from the start of the policy. This could result in a claim not being met in part or in full;
- If insurers would have provided the policy but charged a higher premium, insurers may reduce any payment in proportion to the difference between the premium charged and the premium that would have been charged if you had fairly presented the risk. This could result in a significant reduction to the amount of any payment under the policy.

All statements and facts disclosed on proposal forms, statement of facts, claim forms and other documents should be full, true and accurate and must be given after undertaking a reasonable search, including consulting with your senior management. Where forms are completed on your behalf you must check them for accuracy and completeness before signing them. You must always read the declaration and make sure you understand it before you sign.

## Important Notice – Terrorism Cover

Pool Re have announced a number of changes to their proposition which take effect for New Business and Renewal on 1st April 2018 and is applicable only where cover has been extended to include Terrorism Insurance.

The principle changes are:

- An element of Cyber cover is now included which means that subject to policy terms and conditions material losses arising from a Cyber Terrorism Attack which leads to physical damage will be covered by Pool Re. You should refer to the attached policy wording for further information
- An amendment to the rating structure for SME (Small Medium Enterprise) for Insured's with a total Material Damage sum insured less than £2m (either under one policy or multiple policies)

We have not applied any amendments to the Terrorism rating structure as we would need a declaration to me made which confirms your total exposure is below £2m. Should you believe that you satisfy the criteria noted above then please contact us to discuss further.

## Insurance Act 2015

As a result of a recent act of parliament, the Insurance Act 2015 (the "Act"), significant changes have been made to the law in relation to commercial insurance. The Act has a significant impact on the operation of your insurance policy, including your disclosure obligations towards insurers, warranties and fraud. The Act also impacts upon the remedies insurers may adopt in the event of your obligations not being complied with.

The purpose of this note is to highlight some of the key changes introduced by the Act and to explain the steps you need to take to comply with it.

The Act introduces some new obligations, which are coupled with strict remedies for insurers. We therefore recommend that you read this guide carefully. If you have any queries in relation to the content of this guide, please contact your usual advisor who will be happy to explain your obligations.

### What policies are caught by the Act and from when does it apply?

The Act applies to all non-consumer insurance policies commencing on or after 12 August 2016. The Act also applies to policies commencing before 12 August 2016 but whose terms are varied after that date. However, it is important to note that many insurers intend to adopt the new regime in advance of 12 August 2016. We will advise you where an insurer intends to do so.

### Duty of Fair Presentation

The Act imposes an obligation on all policyholders to "make a fair presentation of the risk" prior to the policy commencing. A fair presentation is one that discloses, in a manner that is reasonably clear and accessible, every material circumstance which is known or ought to be known by the policyholder's senior management, or those responsible for arranging insurance, following a reasonable search.

We explore below the meaning of the key components of this obligation:

- "Material Circumstance" – this is anything which would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms. There is no specific limitation on what constitutes a material circumstance, but it would typically include any factors pertaining to the risk to be insured including prior claims, your financial history, convictions of key personnel and your business activities. You are not obliged to disclose something that reduces the risk to be insured.
- "Known or ought to be known" – you are obliged to disclose material circumstances that you actually know but also those that you ought to know. This means that if the information is readily available to you but you fail to disclose it owing to either a lack of enquiry or by "turning a

blind eye", you will have breached your duty to fairly present the risk. Equally, any relevant knowledge we have as your broker must also be presented to insurers. We must therefore make you aware that all information you provide to us must form part of the presentation of the risk, if relevant. This includes any information you provide to us in a social or informal setting.

- "Senior Management" – your knowledge, for the purposes of the Act, includes (but is not limited to) that of all senior management. Senior management includes anyone who has a key role in making decisions on behalf of the business, even if they do not sit on the board or if they do not officially have a management role.
- "Reasonable Search" – you are obliged to undertake a reasonable search. What is reasonable will depend upon the nature of your business and the policy you are purchasing. We will provide you with advice in each case as to what might be reasonable. When considering the extent of your search, you should take into account the nature of the insurance you wish to purchase and consider who within your organisation is best placed to provide relevant information.
- "Reasonably clear and accessible" – all information must be provided to insurers in a reasonably clear and accessible manner. This means that information must be provided in an unambiguous way. The new rules also prevent policyholders from concealing key facts amongst large volumes of less relevant or immaterial information.

## What does this mean in practice?

The amount of information to be provided will depend upon the nature of the risk and the insurance you are purchasing. We will guide you through that process, although you should take the time to carefully identify who within your business is best placed to identify any information that may be relevant to insurers when considering the particular risk and type of policy.

For example you should disclose any addition, disposal or change that may affect:

- Business activities or processes
- Buildings / premises or contents
- Fire or security installations or protections
- Changes to sums insured especially increases

In addition you should inform us if there are:

- Any incidents that would normally be covered by insurance whether claimed for or not
- Any criminal convictions
- Any history of you or anyone else connected with owning or running the business ever being declared bankrupt or insolvent

This list is not exhaustive; if you are in doubt as to whether a fact is material or not, please contact us.

You should also note that should a new person become responsible for insurance matters within your organisation, you must immediately inform us to ensure that the new person has the requisite understanding of the duty of disclosure.

## Developments or Changes in Business Activities

Any alteration which may have a bearing on the adequacy or validity of your insurance arrangements should be advised as soon as possible.

For example:-

- Acquisition of new companies and/or mergers.
- Changes in beneficial ownership/shareholdings.
- Changes in description of business or business activities.
- Purchase, construction or occupancy of new premises; alterations, vacation, temporary un-occupancy, extension or demolition of existing premises. Copies of any new leases should be forwarded to us.
- Removal of stocks or equipment to new locations.
- Hiring (in or out), borrowing or leasing of plant.
- Contractual liabilities, granting of Indemnities or Hold-Harmless agreements, preferably before signature.
- Changes in processes, occupancy, products or extension of business operations.
- Alteration, amendment to or disconnection of fire or theft protection systems, e.g. sprinkler systems, burglar alarms, security organization.
- Advise of use of aircraft or waterborne craft except for ordinary travel.
- Circumstances which may require an increased liability insurance limit such as exhibitions or open days.
- Motor convictions, notification of intended prosecution or any physical/mental defect or infirmity of any person who may drive one of your vehicles.

## What happens if you do not fairly present the risk?

If you fail to comply with your obligations, insurers have differing remedies depending upon the nature of the breach and what would have happened had you fairly presented the risk.

If you deliberately or recklessly fail to present the risk fairly (e.g. you deliberately withhold key information or fail to take any care when presenting the information), insurers are entitled to avoid the policy and retain all premiums. In other words, insurers can treat the policy as if it never existed, which would result in no claims being paid. You could also be required to repay any claims payments that have already been made.

If your failure to present the risk fairly was neither deliberate nor reckless (e.g. it was a simple oversight on your part), insurers may still avoid the policy if they can demonstrate that the policy would not have been provided if you had represented the risk fairly. In this scenario, insurers would be required to repay the policy premium to you, although they would be required to make no payment in respect of claims and you would be required to repay any claims payments already made.

If insurers are able to demonstrate that they would have provided the policy but on different terms, the policy would be treated as if those terms had applied from the beginning. Those additional terms could be, for example, increased excesses or additional exclusions. Those additional terms may result in no payment being made in respect of any particular claim (e.g. if insurers would have excluded that particular activity or imposed additional conditions which you did not comply with).

If insurers would have provided the policy but charged an increased premium, the amount insurers will pay will be reduced by proportion to the difference between the premium actually paid and the premium that would have been charged had the risk been fairly presented. By way of example, if a fair presentation would have resulted in the premium doubling, any claims payment under the policy will be halved. This is an extremely draconian policy remedy and therefore it is essential that you present the risk fairly. This remedy applies regardless of whether there is any connection between the shortcoming in the presentation of the risk and the subject matter of the claim.

## Conditions OR Conditions Precedent (Previously referred to as Warranties)

A warranty in an insurance contract is a promise by the policyholder to the insurer to do (or not do) something or a promise to maintain a certain state of affairs. Under the old regime, insurers can refuse to pay a claim if the policyholder breaches a warranty, even if the breach is unconnected with the loss or if the breach is remedied before the loss occurs. Insurers routinely use a 'basis of contract' clause to convert all presentations and information given by policyholders to insurers into warranties. This enables insurers to refuse to pay claims if any aspect of the presentation of a risk is inaccurate.

From August 2016, the position will be fairer for policyholders. Firstly, insurers will no longer be able to rely on basis of contract clauses to convert all representations into warranties. Furthermore, in the event of a breach of warranty, insurers will only be allowed to refuse to pay a claim where the loss arose during a period of non-compliance. In other words, if you breach a warranty (e.g. by failing to set a fire alarm), cover will be re-instated as soon as you re-establish compliance. Cover is simply suspended during periods of non-compliance. Finally, if the warranty is designed to reduce the risk of a certain type of loss or a loss at a certain place or time and the

policyholder can demonstrate that the breach could not have increased the risk of that loss occurring, insurers must still pay the claim.

## Fraud

Historically, in the event of a fraudulent claim being made against the policy, all cover under the policy ceased and insurers were entitled to retain the premium. The policyholder would also have to repay any claims payments already made. However, under the new regime, insurers will be entitled to terminate the policy from the date of a fraudulent claim or act, but must still cover claims arising from incidents occurring before the fraudulent act.

## Zurich's Approach to the Act

Charging an additional premium is not a remedy available to insurers under the Act. Under the Act, if an insured's failure to make a fair presentation is not deliberate or reckless and the insurer would have charged an additional premium if it had been aware of the relevant material facts, the insurer has the right to reduce the amount to be paid on any claim during the period of cover in proportion to the amount of premium that would have been charged. This remedy is often referred to as 'proportionate reduction of claim' or 'proportional settlement'.

By way of example:

If the proportionate reduction in claim remedy was applied to a £5,000,000 claim where the premium underpayment was £10,000 (representing 50% of the insured premium), the insured's claim would be reduced by 50% (i.e. £2,500,000).

Previous and subsequent claims may also be reduced in the same manner, leaving the insured with reduced cover.

Under Zurich's additional premium remedy, they would pay the claim in full and recover underpayments to the premium. Accordingly, they would charge the insured an additional £10,000 in premium and pay the £5,000,000 claim (and any subsequent claims) in full.

- Proportionate reduction in claim:
  (10,000/20,000) * £5,000,000 = £2,500,000 paid on claim

- Zurich's additional premium approach:
  £5,000,000 claim paid with an additional premium charge of £10,000

Zurich has 'opted-out' of the proportionate reduction of claim remedy. Rather than reducing a claim proportionally, they have instead decided to charge the additional premium that they would have charged if they had known the relevant material facts and pay any claim(s) in full, as per the example provided above.

If you have any questions in respect of the above please do not hesitate to contact our office on the telephone numbers detailed on our covering letter.

For training and quality purposes, telephone calls may be monitored or recorded.
Pi-Property Insurance is arranged by Morrison Edwards Insurance Services Ltd, Authorised and Regulated by the Financial Conduct Authority (FCA)

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