

8 February 2017

The UK Insurance Act 2015 – Additional Insurances

The UK Insurance Act 2015 (the “Act”) came into force on 12 August 2016 and Members have previously been notified of relevant Rule changes to Class 3 (P&I) and Class 6 (FD&D).

The Club has revised its internal quotation procedures in respect of new Members or tonnage entered with the Club. These new quotation procedures will also apply to all renewing Members as well as additional insurances that the Club may provide to Members. The Rule changes and revisions to internal procedures reflect the following changes in statutory and/or contractual rights and duties.

Duty of fair presentation

The obligation of disclosure set out in The Marine Insurance Act 1906 (“MIA 1906”) has been replaced by a duty to make a “fair presentation” of the risk. The new duty shares many of the features of the previous duty of disclosure. However, greater emphasis is given to the insurers’ role in the process of disclosure, with a Member potentially fulfilling its duty of fair presentation by disclosing sufficient information to put the Club on notice that it needs to make further enquiries. The view is that a fair presentation and a professional assessment of the risk are of mutual benefit to Members and to the Club and that, consequently, the new duty of fair presentation has been adopted.

Remedies for breach of the duty of fair presentation

Under the Act, an insurer is entitled to avoid the policy if an insured deliberately or recklessly fails to make a fair presentation. The insurer is also entitled to avoid the policy where an insured’s failure to make a fair presentation was innocent or negligent if that insurer would not have entered into the policy had a fair presentation been made. It is only in circumstances where an insurer would have entered into the policy notwithstanding the relevant information that the policy will continue and the remedy will depend on the terms on which the risk would have been written or the premium the insurer would have charged to write the risk. The remedy of avoidance may therefore remain the usual remedy under the new Act where an insured fails to make a fair presentation of risk.

However, in a P&I and FD&D context and recognising the importance in a mutual club of proper disclosure, the Club has contracted out of the new Act’s provisions on remedies for breach of the duty of making a fair presentation. The Club has kept the MIA 1906 remedy of avoidance in respect of any breach of the duty to make a fair presentation of the risk.

Warranties and other terms

Compliance with certain warranties e.g. maintaining a ship's Class is a condition precedent to cover by a Club irrespective of the type of loss suffered. Previous practice and legislation (specifically the MIA 1906) may give the Club a wider right to reject claims than would be possible under the Act's remedies for breach of warranty.

When considering the Act, importance was given to the mutual nature of the risk, the availability of the Club's Board or Managers' discretion in appropriate cases and also uncertainty on how the Act's provisions on warranties and other terms may be applied. Accordingly, it was felt best to preserve the current position. The Club will, insofar as permitted, therefore maintain previous practice by contracting out of the Act's provisions on warranties.

Basis clauses

The Act prohibits any term in an insurance contract by which the insured warrants the truth of all pre-contractual representations. This prohibition would negate the effect of the current Club Rules which declare such information to be the "basis" of the contract of insurance. This provision is mandatory and, consequently, any such basis of contract wording has been removed from the Rules of the Club. Any inaccuracies in material representations will instead be treated as relevant to the question of whether or not there has been a fair presentation of risk.

Fraudulent claims

The Act's provisions on fraud provide clarity on this area of the law. Therefore, the Club has adopted the new statutory provisions as to the treatment of fraudulent claims.

However, the Club has excluded the operation of the Act's provisions on the continuing validity of policies following a fraudulent claim made by a beneficiary who is not specifically named in the terms of entry, such as an entity associated with or affiliated to a Member against whom a covered claim is enforced. Where a fraudulent claim is made in this context, for consistency, the International Group of Clubs (IG Clubs) takes the view that the fraud should have the same impact on the Member as if it had made the fraudulent claim. The Club has therefore contracted out of these aspects of the Act.

Payment of claims

Section 13(A) of the Act provides remedies for breach of that implied term, including the possibility for the insured to claim interest. Bearing in mind the mutual nature of the risks insured and the manner in which claims are handled in the IG and under the Pooling Agreement, these provisions do not appear to be appropriate for IG Clubs. The Club has therefore contracted out of this provision and will maintain the longstanding exclusion of the payment of interest on Members' claims.

However, the Act does not permit an insurer to contract out of the implied term in circumstances if the insurer deliberately or recklessly fails to reimburse an insured's claim within a reasonable time. Members will therefore have that further protection.