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BUSINESS INSURANCE AND BUYING BUSINESS INSURANCE

A short guide

2016

Mactavish

Acknowledgements

Mactavish

Mactavish is the UK's leading expert on insurance governance. The firm has been operating in the commercial insurance sector for over 15 years. Its focus has always been on detailed, technical analysis that does not shy away from uncovering and studying uncomfortable truths, or challenging accepted wisdom.

The company is relentless in its focus on driving increased standards across the commercial insurance industry that can cope with increasing risk complexity and work fairly and reliability for all parties. This has given the business an unrivalled depth of expertise on the insurance placement process and a wide spread of clients. Mactavish has also been closely involved with the project to reform commercial insurance law in the UK, an eight-year programme which culminated in the Insurance Act 2015.

Mactavish is licensed by the Bar Standards Board of the Bar Council to access barristers directly, for both contentious and pre-contractual legal work in the field of insurance. We believe the business is unique in the UK in this regard.

Mactavish

Helen-Clare Pope

Head of Insurable Risk, Tesco Stores Limited.

Helen-Clare Pope acted as Executive Editor for this guide and thanks for performing this role are extended to Helen by Airmic.

Helen is board member and a past chair of Airmic.

Helen's career started with a UK water company which expanded into construction and international infrastructure projects giving her experience of global insurance. Over the past twenty years, Helen has also worked for a major international life insurance and fund management company and is now with Tesco Stores Limited, a leading global retailer.

Helen was elected as chair of Airmic for 2014/15, and in her year as chair, she focused on partnership, diversity and youth. During her term in office, Helen worked towards developing true partnerships and fostering openness, trust and transparency between insured and insurers. She has a passion for demonstrating that the risk management profession is one to be proud of and one which today's young people should aspire to join.

Helen is a regular speaker and panellist on a variety of technical and non-technical topics at insurance and risk management events. She spearheaded the Airmic-sponsored initiative with Axco, which supports the compliant management of international risk financing programmes.

Chris McGloin

Thanks are also extended by Airmic to Chris McGloin, a past chairman of Airmic, for his contribution to the production of this short guide

Contents

1 Introduction

This guide is about purchasing insurance for your business as an integral part of your risk management strategy. Almost all businesses buy insurance although the scope of the insurance purchased will vary dramatically depending on the nature of the business and its attitude towards or appetite for risk.

This guide outlines the purpose of insurance and details the different types of insurance policies available to businesses.

It summarises the roles of the insurance buyer, insurance broker, insurer and related service providers in the insurance buying process. Guidance is provided as to how to select your insurer or insurance broker.

2016 is a watershed year for the UK insurance industry following the passing of the Insurance Act in 2015 and the significant changes required for all insurance policies placed, amended or renewed in England, Wales, Scotland and Northern Ireland after 12 August 2016. As a consequence, all businesses should review their approach to buying insurance to ensure that they comply with the expectations of the new legislation.

This document provides up-to-date guidance on buying insurance for your business in the context of the new Act and is designed to replace the Airmic guide produced in 2009.

This guide is intended to be used by Airmic members starting out in their career in the profession, and by those who may be new to this subject, or shared with their business colleagues in areas such as procurement, finance, human resources, IT and internal audit.

Scenario analysis, where the insurance cover is tested against identified events, is increasingly important to many buyers and this is considered in some detail in section 7.

Insurance provides critical support to businesses when suffering damage and disruption from adverse events, and this guide outlines what to do – and what not to do – to make sure that your claims are paid as expected.

Insurance and insurance services are crucial elements of the risk management approach for businesses. Section 9 illustrates the value of these services at every stage of the risk process.

The glossary in the appendix explains some of the words and phrases in common use in the insurance world.

2 Understanding the purpose of insurance

2.1 Why Buy Insurance?

Practically every business will buy insurance, but the type and amount of insurance purchased will vary based on the risks facing the business and its desire to retain or transfer these risks. Insurance provides financial protection and support services for when things go wrong.

Insurance risk can be divided into three categories, as the benefits of buying insurance differ across these categories.

- Risks relating to legal and contractual obligations: where there is a need to satisfy legal or commercial obligations, insurance enables a business to operate. Examples include liability insurance for motor vehicles, liability insurance for employees or third-party liability insurance required as a condition of a commercial contract.

- Risks which impact the balance sheet and profit and loss account: insurance protects the balance sheet and profit and loss account by transferring risks which could be catastrophic to the business. Examples include fire or flood damage to property.

- Risks relating to employees and funding of employee benefits: insurance also provides benefits, to employees, including medical expenses and life insurance.

Insurance provides more than financial protection and can facilitate access to advice on risk management and expertise for handling claims. This can be particularly valuable to help businesses understand and mitigate their risks, thereby reducing the likelihood of a major loss and helping minimise disruption should a loss occur. Most businesses will consider insurance as one source of mitigation alongside wider risk prevention and risk management measures.

Section 3 of this guide summarises the different types of insurances generally available for businesses.

2.2 Making Insurance Work

Insurance provides businesses with capital, for which they pay a premium to access. A key feature is that payment of insurance capital is contingent on a specific set of circumstances applying. This is unlike other forms of business capital where, once the set-up arrangements are completed, the money is available. The circumstances governing what will be paid and when are all set out as part of the insurance policy. Businesses therefore need to be prepared to invest considerable resources to make sure that the insurance policy operates as expected.

The concept of “fair presentation of risk” is an important part of the Insurance Act 2015. This legislation has been designed to promote fairer claims outcomes and to encourage professionalism on all sides of the insurance transaction. However, it does carry pitfalls for the unwary customer, in particular by introducing changes to the duties falling on the customer when arranging insurance. The Act is summarised in section 6 of this guide.

When considering the most catastrophic exposures, the quality of insurance is a key consideration. What is being purchased is a promise by the insurer to pay in future, so the conditions of that promise are important. This means that it is vital to get the details of the contract right, including meeting company’s own legal duties in putting risk information together and making a “fair presentation of risk”.

3 Types of insurance policies

Insurance cover is available for a wide range of risks and perils faced by organisations.

These are summarised below using the three categories set out in section 2:

- Satisfying your Legal and Contractual Obligations
- Providing Balance Sheet/ Profit and Loss Protection
- Providing Employee Benefits and Protecting Employee Assets

3.1 Satisfying your Legal and Contractual Obligations

Your business will need to purchase certain types of insurance policies because they are required by law, or because they are demanded by customers, business associates, your bank or landlord. The most important examples of these insurances are:

Motor Insurance
By law, any vehicle used on the road or other public place must have Third-Party Motor insurance. If you, your employees or other parties acting on your behalf use a vehicle in connection with your business, you should check that:

- Any personal vehicle insurance that you have covers business use
- Employee vehicles have their insurance extended to cover business use
- Vehicles owned by your business are covered by appropriate insurance

Employers' Liability
Employers' Liability (EL) insurance cover enables businesses to meet the cost of compensation claims (and the associated legal fees) from employees who are injured or become ill at work through the fault of the employer. Employees injured due to the negligence of their employer can seek compensation even after the business goes into liquidation or receivership. You will sometimes see EL insurance referred to as Employers' Liability Compulsory Insurance. A growing number of EL insurers offer policies that provide rehabilitation options, so that injured or sick staff can return to work sooner, and significantly reduce absenteeism.

Public Liability
Public Liability (PL) insurance covers any award of damages to a member of the public or other business because of death, injury or damage to their property caused by you or your business activities. As with EL cover, PL insurance also covers any related legal fees, costs and expenses. You may need to consider your public liability risks very carefully if your business employs home workers who are not your employees. The advice of your insurance broker may be essential.

Product Liability
In Product Liability insurance, a product is defined as any physical item that is sold or given away. Products must be 'fit for purpose' and you are legally responsible for any damage or injury that is caused by the products that you supply. It is important to note that such liability cover does not normally extend to either: a) funding the cost of product recall (a separate cover extension); or b) a product simply failing to effectively perform its intended function ("product efficacy").

If you directly sell, give away or otherwise supply a product and something goes wrong with it, claimants are likely to try to claim first from you as the supplier, even if you did not manufacture the product. It is important to note that if you import products into the European Union (EU), you will probably not be able to reclaim the cost of insurance claims from a manufacturer based outside the EU. In these circumstances, you will have to pay the compensation.

Professional Indemnity
Professional Indemnity (PI) insurance protects your business against the payment of compensation to a client who alleges that you made mistakes or were negligent in the advice that you provided. PI will also cover the associated legal costs. You may need PI cover even if the advice that you give is incidental to your main business activities, including, for example, design work undertaken as part of preparing a quotation.

"In today's dynamic business environment, insurance matters to companies and to directors who run them. One of the key roles of the board members is to understand the importance of business insurance as part of their overall responsibility for and oversight of their company's management of risk."

Critical Business Insurance – A practical guide for board members 2016. IoD Director Guide

3.2 Providing Balance Sheet/ Profit and Loss Protection

Some events would be very serious for your business, either by hitting your balance sheet or impacting your profit and loss account more than you are willing to tolerate. These events and the associated insurances are likely to relate to the property, plant, machinery and other assets of the business.

Business Premises
Your business premises can be vulnerable to a range of adverse events. These include fire, explosion, malicious damage, storm, flood and damage caused by the impact of vehicles. If you are a tenant, confirm with your landlord whether they are responsible for insuring the premises. Then check that the lease is consistent with the response.
Note that there may be additional specific insurance requirements placed on you by your landlord in respect of the liability classes of insurance.

In some overseas jurisdictions, tenants may have additional responsibilities to the landlord in the event of damage caused to their building or to neighbours – and this should again be checked before determining the scope of appropriate insurance cover for your own operations.

Contents Insurance
Premises insurance only covers the physical building, so you will need to evaluate your requirements for separate insurance arrangements for stock, machinery and contents. You will have the choice of insurance either on the basis of replacement as new, or on the basis of indemnity insurance. Indemnity cover is cheaper, but you will receive less in the event of a loss, because the insurer will take wear and tear into account when settling the claim.

Business Interruption
You can purchase a Business Interruption policy that insures against loss of profit and increase in cost of working/higher overheads resulting from, for example, fire, storm damage or machinery breakdown. Most Business Interruption policies will include increased cost of operation to provide reimbursement for additional expenditure incurred by you in order to avoid or reduce a reduction in turnover following an insured event. You will need to identify the extra costs that could arise and also determine how long it will take you to get back to business as usual. Finally, you will also need to think about whether all of your customers will return immediately when you get back to normal operation. Losses can seriously disrupt cashflow, and your insurance arrangements will need to provide appropriate protection.

Additional cover is available to protect interruption to your business due to supply chain disruption.

Assets Protection
Depending on the nature, size and complexity of your business, you may decide to purchase specialist types of insurance, including:

- **Loss of cash**
  Cover for loss of money, in transit or from business premises
- **Goods in transit**
  Covers goods against damage while being transported
- **Credit**
  Cover against debtors unable to pay as a result of bankruptcy
- **Crime**
  Loss of money or stock resulting from dishonesty/theft
- **Engineering**
  Specialist cover for machinery, including computers
- **Aviation**
  Relating to use or ownership of aircraft
- **Marine**
  Relating to use or ownership of vessels

Although it is strictly speaking a liability class of insurance, you should be aware that it is a legal requirement for some types of machinery, such as lifting equipment, boilers and pressure vessels to be inspected regularly. A specialist insurer will be able to tell you if this applies to your plant and machinery, and can usually arrange for the necessary inspections to be undertaken.

Terrorism

Businesses in Great Britain can purchase terrorism cover for property and business interruption through the Pool Re scheme, which is backed by the Government. This terrorism cover can only be purchased as an extension of existing Property Damage/Business Interruption policies and not on a stand-alone basis. Your insurance broker will be able to provide you with more information on this and terrorism cover available from commercial insurers.

3.3 Providing Employee Benefits and Protecting Employee Assets

Providing injury, illness or death insurance to staff is a valued benefit that can help you to recruit and retain the right people, whilst protecting the business. Health insurance for your employees will facilitate early intervention in any illness, which should help reduce absence and save money for the business.

Life and Health

Life and Health insurance can often be relatively low cost and highly attractive to employees, as an employee benefit. Whilst the precise terminology used to describe the different types of Life and Health insurance may vary, the following options should be considered:

- **Life**
  Pays out lump sum/regular income on death of the life insured
- **Critical Illness**
  Provides cover following diagnosis of a serious disease
- **Income Protection**
  Pays regular income following illness or injury
- **Private Medical**
  Covers the cost of private medical care
- **Permanent Health**
  Provides benefits in the event of prolonged illness or disability
- **Personal Accident**
  Pays fixed benefits in the event of death or loss of limb or sight
- **Travel**
  Covers employees travelling and working aboard.

Loss of a Key Person
If your business relies heavily on one or two members of staff, there could be serious consequences if they become ill or die. Small businesses in particular often depend on a key person for generating sales, managing a vital client or providing core expertise. You can purchase Key Man insurance, which makes a payout in the event of his or her death. In any case, this type of cover may be required by your bank or financier. Critical Illness insurance would respond in the event of serious disease or illness.

Directors' and Officers' Liability
Directors and officers of companies can be held responsible for a range of issues, including data protection, fraud, negligence, as well as health and safety. Directors' and Officers' Liability (D&O) insurance pays the cost of defending lawsuits and any compensation that may be awarded. There may be restrictions on the scope of D&O insurance cover that you can purchase, because of the limitations and restrictions in the Companies Act and the exclusions found in many D&O policies.
Your insurance broker will be able to provide you with more information.

Pension Trustee Liability
Pension fund trustees have a personal liability for breach of trust in connection with their role. Pension Trustees Liability insurance can provide cover for the trustees, pension scheme and sponsoring employer for damages, settlements, civil fines/penalties, defence costs and other expenses.

"An insurance programme must be robust, fit for purpose and meet the real-world needs of the organisation – which is why efficacy must be a board level responsibility."

Critical Business Insurance – A practical guide for board members 2016. IoD Director Guide

3.4 Additional Specialist Policies

Package or combined insurance policy
Some insurers offer a wide range of different insurance covers within a single document. These are often referred to as package or combined insurance policies and can be particularly suitable for SMEs.

Contractor's all risks insurance
Contractor's All Risks (also known as CAR or Contract Works) insurance is appropriate for new buildings, extensions and other refurbishment contracts.

Environmental and cyber risks
In recent years some businesses have recognised the need to obtain wider coverage to address the evolving risks associated with environmental and cyber exposures. These policies can address a wide range of asset and liability covers associated with these often complex exposures.

Uninsurable risks
Commercial business risks are usually uninsurable. However, as the demand for new insurance solutions increases, it is likely that elements of these exposures, including the cost of rebuilding reputation, will attract the attention of innovative insurers.

Some insurers are already offering insurance cover for certain non-damage business interruption risks, where hitherto there has been very limited appetite from the insurance market.

A table summarising common features and the corresponding types of insurance policies used to address these is included in the appendix.

"The risk environment for businesses continues to evolve. Specific insurance products are evolving as risks become more complex and less tangible. However companies need to ensure they have clarity about the boundaries of insurance contracts, what can and cannot be covered, and what information and risk behaviours insurers expect of them when discussing coverage."

Critical Business Insurance – A practical guide for board members 2016. IoD Director Guide

4 Selecting your insurance intermediary or insurer

The internet allows access to a wide range of intermediaries and insurers. In addition, depending on your business sector, your trade association may be able to assist with the identification of suitable insurance providers.

Even if your trade association can help, you should consider appointing a professional insurance broker because they have specialist skills and can save you time and money.

4.1 Choosing your broker

If you are choosing a broker for the first time, think about asking business associates for recommendations. There are many brokers to choose from and some specialise in particular types of insurance and/or different types of industries.

Decide whether you want to use a large or small broker. Large brokers will deal with more insurance companies and should be able to negotiate a preferential premium based on the volume of business placed with a particular insurer. Also, large brokers may have more expertise if you are a specialised type of business, although small brokers will often focus on niche activities or businesses. You should always discuss and agree the level of service that you expect from your broker.

The broker is legally your agent and may keep a percentage of your premium (often referred to as brokerage), but may also receive an additional commission from the insurers. It is your legal right to know how much the insurance broker or agent is earning on your account and how the income arises, so that you can be confident there is no conflict of interest and that you are getting good value. If the broker does not volunteer this information, you should ask for it and ensure it covers all types of commission/brokerage.

Your broker will be able to advise you on the practical interpretation of the requirement for you to always act in good faith. An insurance broker can undertake a range of services as outlined later in this guide.

If your broker makes a mistake and you suffer a loss and fail to have a claim paid by an insurer, you will need to be sure that the broker will make good their mistake. You are entitled to know that your interests are protected and your broker is adequately insured. So, it is worth asking your broker what Professional Indemnity (PI) or Errors and Omissions (E&O) insurance they have in place and reviewing their terms of engagement or Terms of Business Agreement (TOBA).

When you select an insurance broker, make sure that the broker has the expertise you require, by asking:

- What experience the broker has in your business sector so that he understands your insurance needs
- What help and support the broker will provide when you make a claim
- Can they provide required specialist support, for example, risk surveys
- Can they demonstrate how they will help you manage the new requirements of the Insurance Act
- Can they demonstrate transparency and clarity over any potential conflicts of interest
- Can they provide appropriate references for you to review

4.2 Choosing your Insurance Company

Most buyers of insurance regard cost and suitability of cover as important criteria when choosing their insurer; however, price and policy cover should not be the only consideration. The most important service purchased from your insurance company is the full and prompt payment of the claim when a loss occurs, so securing certainty around claims response will often be the prime consideration.

Several other factors are relevant to your choice of insurance company. In the first instance, the overall reputation of the insurance company is important, both in general and in relation to your specific business sector.

In addition, you should include the following in your evaluation:

- Financial strength and credit rating of the insurance company
- Does the insurance underwriter understand your business
- Areas of specialism relevant to your business
- Level of service support and range of advice available
- International capability if you have overseas operations
- Ability to explain coverage so that you are clear how the policy responds to a loss
- Scope of claims service so you know what they will do, and what they need from you, when a claim occurs

The financial strength of the insurance company is vitally important. Your insurance broker is likely to have solvency criteria for insurance companies that must be fulfilled before placing business with them. However, you should check that this is the case. In the UK, the insurance market divides into commercial insurance companies, mutual insurers and the Lloyd's market:

- Commercial insurance companies offer a very wide range of insurance covers
- Mutual insurers are usually specific to a particular business sector
- The Lloyd's market tends to concentrate on more specialised or unusual risks

The Financial Conduct Authority (FCA) regulates all insurers in the UK. For some types of cover, you can opt for an insurer based in the European Economic Area or Switzerland, provided they are regulated in their own country. However, for Employers' Liability and Third-Party Motor insurance, you must use a FCA-regulated insurer.

If you are a small business and have a complaint about your insurance broker or insurance company, then the Financial Services Ombudsman Scheme may be able to assist.
If one of your insurers fails to pay a claim because of insolvency, you should notify the Financial Services Compensation Scheme (FSCS), which is the statutory fund of last resort for customers of authorised financial services businesses in the UK.

5 Insurance buying process and responsibilities - explained

An insurance policy is a legal contract between the buyer and the insurer arranged with the support and advice of the insurance broker.

This section outlines the nature of the insurance contract and summarises the relevant information required by the insurer on the risks to be covered in the context of the new obligations being introduced from August 2016. Additionally, it includes information on the broker contract. Finally it considers the responsibilities of buyer, insurer, broker and other potential service providers.

5.1 Understanding Insurance Contracts

An insurance policy is a contract made up of a number of elements. The policy does not exist in isolation and its reliability is affected by: a) the risk information disclosed by the customer when arranging it; and b) the contractual duties assumed by the broker as part of placement. The following elements are all pertinent to a contract of insurance. (Key terms are further explained in the glossary)

- The **insurance policy** or contract:
    - Policy document or wording which sets out the full terms and conditions
    - ‘Policy Schedule’ summarising key terms and showing the limits, deductibles or excesses, and the structure of cover. This may be a separate document, or it may be attached to the policy
    - ‘Broking Slip’ is often used by brokers for insurers to physically or electronically agree to provide the insurance cover. This will detail broker commissions and administrative aspects, but may also contain additional policy terms

- ‘Insurance Cover Certificate’ – an evidence of cover provided for certain classes of business insurance, in particular where required for regulatory or legal purposes

- ‘Summary of Insurance’ – produced by some insurers as a simplified document showing cover, terms and conditions; normally not a legally binding document.

- **Risk information** supplied by the insurance buyer is likely to consist of one or more of the following:

    - Submission documents – bespoke, client-specific documents setting out key risk information for insurers (typically used for larger and more complex clients or classes of insurance)

    - Proposal forms – standardised Q&A based forms containing essential risk information for the class of business concerned (typically used for smaller businesses and specific classes of business such as Professional Indemnity insurance or Director's and Officer's Liability insurance)

- ‘Statements of Fact’ – used more commonly by insurers for smaller business clients; this is normally an insurer produced document setting out assumptions regarding business activity. This should be reviewed carefully by the buyer to ensure accuracy.

- The **broker contract** is likely to consist of one or more of the following:

    - Terms of Business Agreement (TOBA) – the core terms and conditions of broker service provision

    - Service Level Agreement (SLA) – where required, it specifies service expectations and any client-specific fee structures or key performance indicators

    - Letter of Engagement – where required, it sets out a client-specific summary of key terms, in particular any issues which vary from the standard TOBA position (such as a specific limit of liability or the term of the broker's appointment).

The buyer should ensure that he fully understands the nature of his contract with the broker so that the engagement with the broker and insurers in the buying process produces the desired outcome – a fully effective insurance cover which will respond properly to insured losses.

"Choosing an insurance broker is an important decision in the purchase of insurance. The insurance broker is the buyer's gateway to the insurance market and will become the trusted partner of the insurance buyer"

Airmic Broker Tender Guide 2015

5.2 Outlining The Buying Process

The insurance buying process will vary depending on the circumstances of your business. However, there are seven key elements in the insurance buying cycle, which fit around the placement or renewal of your insurances.

The elements are focused on pre-placement preparation for arranging insurance, activities during the placement process, and actions after placement to ensure that the insurance responds effectively if required.

Table 1 The Insurance Buying Cycle

Pre-placement	1) Defining risks and insurance requirements 2) Selecting or confirming a broker and their responsibilities 3) Building relevant risk information – to disclose to insurers and determine insurance coverage requirements
During placement	4) Marketing the risk to insurers 5) Negotiating and agreeing insurance policy terms
Post-placement	6) Managing compliance with insurance policy conditions 7) Handling claims

5.3 Key Responsibilities – Explained

It is common for the insurance buyer to appoint a broker to assist with the engagement with insurers. However, often there is a need to engage with other service providers. This section outlines the main responsibilities of the buyer, broker and insurer, and identifies additional roles which may be undertaken by the identified service providers.

Insurance Buyer

1. Set and agree insurance requirements based on business needs and priorities and legal requirements

2. Engage with your broker – either confirming an existing broker's mandate for the renewal process or when appointing a new broker, agreeing the distribution of duties between you and the broker.

3. Analyse the risks to your business and communicate coverage requirements and disclosure to your insurers – relying on the support of your broker to the extent you have decided but remembering that the core legal duty to make a "Fair Presentation" to insurers ultimately rests with you as the buyer. This obligation repeats at every renewal of the insurance policy (including within a multi-year Long Term Agreement)

4. Manage the placement process, giving instructions to the broker, ensuring effective oversight and engage insurers in discussions directly where practicable

5. Ensure that policy terms are suitable for your business (using specialist legal advice where appropriate), confirms the placement and pay the relevant premiums

6. Once policies are in place, ensures compliance with policy risk management conditions, notification requirements and requirements to disclose material changes to the risk to insurers

7. In the event of a claim, manages the notification and handling of the claim – using additional service providers and the broker for support where appropriate (for further details see section 8).

Broker

The extent of a broker's responsibility will vary depending on the division of responsibilities between you, the broker and any additional service providers. This should be reflected in the terms of the broker's mandate and TOBA/SLA. Key responsibilities common to most broker's mandates include:

- Advice on which insurances to buy, including the specifics of the different types of policy available, their suitability for your business, and benchmarking of limits and premiums against broadly similar businesses
- Support in compiling, checking and presenting risk information to insurers
- Negotiating terms with insurers, generating competition for your risk and acting as the main contact point for insurers during placement
- Executing insurance policies – by completing the placement and ensuring all insurance documentation is issued, and handling your premium payments to insurers
- Providing transparency over remuneration – covering the fee paid by you and any commissions also earned from insurers
- Manage and disclose conflicts of interest arising through the broker's role as an intermediary and as an auxiliary service provider to insurers
- Maintenance and retention of records relating to the placement
- Maintaining appropriate PI/Errors & Omissions insurance to cover their activity.

"On entering a service agreement the insurance buyer must be clear about what services are included and if there is any limit on these over and above any standard Terms of Business Agreement (TOBA)."

Airmic Broker Tender Guide 2015

Additional areas, which can be a broker's responsibility:

- Claims notification and handling – although Third Party Administrators (TPA) and insurers may be involved to varying degrees, depending on the type of claim
- Higher levels of disclosure support – compiling risk information for insurers directly from your business and/or taking a higher degree of responsibility for its adequacy
- Support with international insurance placements – such as ensuring their regulatory and tax compliance and assisting with the issuance of local policies as part of an international programme
- Add-on services: for example captive management, risk engineering or survey programmes, business interruption or supply chain risk analysis, etc.

Insurer

- Understand and underwrite your risk based on the risk information provided (and ask questions naturally arising from that information)
- Once the Insurance Act 2015 is live, specifically notify you and/or your broker of policy conditions that differ from the new legal regime if they could prove disadvantageous
- Issue complete policy wording documentation in a timely fashion
- Inform you or your broker of changes to policy terms
- Maintain capital adequacy and reserve appropriately against potential losses, to ensure that valid claims can be paid
- Investigate and process claims in line with policy conditions and any claims agreements in place between you, the insurer and other third parties
- Pay valid claims fairly (noting that new sanctions are available to insureds in the event of unreasonable delay once the Enterprise Act goes live in May 2017)
- Add-on services: for example risk management or risk engineering advice, or claims handling process support

Additional Service Providers

Many businesses supplement the support of their broker and insurer in specific areas with the services of additional specialist providers. The mix of support and providers depends on the priorities of your business, with significant variation across businesses. Given below are suggestions of some of the areas commonly delivered by other service providers, with some providers working across several areas identified:

- Claims handling – often provided by Third Party Administrators, or specific divisions of brokers
- Loss control surveyors or risk engineers – conducting site visits to review risk exposures and risk management practices and controls to benefit all interested parties; provide recommendations to reduce risk
- Loss adjusters (insurer appointed) or loss assessors (appointed and remunerated by you) – investigate claims and advise on settlements, sometimes in situations where claims are disputed
- Property valuers – valuations on buildings, plant and equipment for inclusion in risk information presented to insurers
- Disclosure specialists – providing specialist advice on the suitability of your business's disclosure
- Legal advisers – advice ranging from pre-contractual support advising on policy terms through to litigation support in the event of a disputed loss
- Risk analysis or risk modelling specialists – assist with setting policy cover limits
- Policy wording support – from a variety of specialist analysing the detail of policy wording to ensure terms are optimum for your business, with the most comprehensive support including legal review and drafting of revised policy terms.

6 Understanding the insurance act 2015

The Insurance Act is the most fundamental change to the law of England and Wales, Scotland and Northern Ireland governing commercial insurance and reinsurance since the Marine Insurance Act 1906.

The Act, which will govern policies placed, amended or renewed after 12th August 2016, makes amendments to the Marine Insurance Act 1906 to reflect modern commercial practice. The Act aims to address the imbalance between insurer and insured rights by making significant changes to several areas, including the following:

- The duty of disclosure and the remedies available to the insurer in the event of material non-disclosure and misrepresentation
- The interpretation of warranties and terms not relevant to the loss
- The abolition of Basis of Contract clauses

6.1 Understanding The Changes To The Duty Of Disclosure

As discussed in section 2 the Act will drive a greater emphasis on professionalism in insurance placement. The major change associated with the legislation relating to the duty of disclosure is the “Duty of Fair Presentation” and the effect it will have on how relevant risk information is collated, identified and communicated to insurers (step 3 in the Insurance Buying Cycle, above).

The key things to note about the Insurance Act and Fair Presentation are:

- It will affect all new policies, renewals or variations to insurance policies on or after 12th August 2016
- Existing requirements remain to ensure disclosure to insurers is accurate and made in good faith
- Procedural requirements for disclosing will have greater clarity, arguably making them more challenging. The main areas buyers should be aware of are:

- **Reasonable search** – which will require adequate enquiries to be conducted to identify information which would be important to insurers. These searches are expected to seek out information which could be material for insurers, from business units, relevant third parties involved with the business, or anyone insured by the policy

- **Senior management** and the **insurance team's** knowledge (including the broker's knowledge) – is required to be included in the disclosure if relevant

- Information needs to be **clear and accessible** – presenting information clearly for insurers, including highlighting unusual activities or concerns about the risk and avoiding data dumping

- Complying with the Act will require consideration of what is appropriate and reasonable for your specific business.

To adapt to the new regime, all insurance buyers should:

a. Allow sufficient time for the placement process – this may be longer than that previously required

b. Ensure clear records are maintained, including those covering your broker's interactions with the business and with insurers.

6.2 Impact Of Warranties Explained

A warranty is a term in an insurance contract which must be strictly complied with by the insured. Prior to the Act, a breach of a warranty would discharge the insurer from any liability under the policy even if the breach was unrelated to a claim. Under the Act, the effect of a breach of warranty is to suspend liability, potentially a less severe situation for the insured. See the Airmic guide *Warranties in Insurance Policies: A practical guide to warranties in insurance policies – Guide 2013* for a full explanation of this.

6.3 Abolition Of Basis Clauses Explained

A basis clause is a declaration contained in either a proposal form (if submitted) or insurance policy that certain representations made by the insured (including answers given in a proposal form and any other information supplied) are true and accurate. This declaration is, by operation of the basis clause, incorporated into the policy as a warranty given by the insured. Such clauses have been considered to be unduly onerous and unfair as it can be very difficult for an insured to comply with the strict terms of such a warranty.

Basis clauses are prohibited by the Act. See the Airmic guide *Basis Clauses: A practical guide to basis clauses in insurance contracts (Airmic 2013)* for a full explanation of basis clauses.

"Put simply, scenario analysis is the exercise of considering unexpected events, occurrences and change by asking the questions 'what might happen?' and 'what could we do?' It is an important part of an organisation's risk management system, and involves understanding the extreme but plausible events that can affect the business and their effect on its strategy, operations and financial health"

Airmic Scenario Analysis: A practical system for Airmic members – 2016

7 Validating your insurance programme by scenario analysis

Scenario analysis is an exercise of considering potential events or occurrences and asking the questions "what might happen, how might this impact our business, what could we do?". Scenario analysis is an important part in any insurance buyer's tool-kit and supports most stages of the buying process outlined in the previous section

From the insurance programme perspective, the primary objective is to establish how your insurance policies would respond to a specific type of loss. This creates certainty as to coverage or identifies weaknesses for further attention. Scenario analysis is therefore most critical for stages 1 and 3 and 5 – 6 of the Buying Cycle outlined earlier, but it also has implications for the whole process.

It is recommended to approach scenario planning in two phases:

Phase one
Establish a framework to prioritise risks and scenarios

Not all risks have the same potential impact on the business. Scenario analysis should be applied to the scenarios associated with risks which could be seriously damaging to the business if the insurance cover failed to respond. Initially therefore, the buyer should conduct an analysis to establish the level of financial disruption which could not be tolerated. This may be a smaller sum than first envisaged.

The key benefits of such objective financial analysis are twofold:

1. It enables you to position insurance alongside other sources of finance, focused on its value to the business, rather than seeing insurance as a commodity.

2. It brings clarity as to which policies will be included in the exercise, i.e. those which are relevant to the risk and could incur a loss above a defined level.

Phase two
Conduct scenario analysis for the most material risks.

Once it has been decided where to focus, the next step is to determine the most critical exposures and conduct workshops, with all relevant personnel, to make sure the insurance policy is structured appropriately and wordings are tailored to any particular circumstances. The main objectives are:

- Clarifying what cover is required
- Building internal understanding of the scope of the insurance cover
- Clarifying what business information is material to a fair presentation of the risk
- Stress-testing policies in advance of an actual loss, identifying any limitations or gaps
- Considering what steps are required post-loss to ensure full and rapid claims payment.

It is important to recognise that this is a business-specific exercise. The broker and insurer can offer valuable support, in particular to work through how policies will respond to a given situation, but fundamentally the scenario workshop is an internal buyer responsibility. Personnel involved will vary from business to business and could include:

- Internal personnel: divisional operational management, senior technical and commercial personnel closest to unusual or new activities, internal 'owners' of relevant risk areas (such as health & safety, product quality, security or those tasked with business resilience/ continuity planning, etc.)
- External personnel: brokers, underwriters, insurer claims staff, loss adjusters, risk surveyors.

Once convened, making the best use of the mix of knowledge and expertise is critical, and usually requires a very structured forum. Areas for attention include:

1. Setting a clear agenda: focus on defined risks and business critical risk scenarios as agreed in advance

2. Clarifying required outputs: not just the scenario itself but documenting wider business impacts and costs as well as the corresponding analysis of policy response

3. Noting any unusual or notable material information arising that is likely to be key to any future risk disclosure

4. Follow-through: required operational or insurance policy changes must be put into practice. In particular, formal amendments should be made to the insurance contract and reliance should not be placed on letters of understanding or similar correspondence which are not an integral part of the insurance contract.

Scenario analysis is a valuable way to help a business understand its risk exposures, supports strategic planning and brings benefits far beyond the operation of the insurance programme. For more detailed guidance on scenario analysis refer to the separate Airmic guide (see the reference in the appendix).

"Insurance managers report that it can be more difficult to engage the rest of the business in insurance scenario testing. To overcome this, the insurance manager can consider previous losses within their own organisation and industry and ask operational and key people how these would impact the business and what their exposures to such an incident would be."

Airmic Scenario Analysis: A practical system for Airmic members – 2016

8 How to get your claims paid

Much of what's important to getting any claim paid lies in the actions and approach taken by buyers of insurance long before the loss event.

Assessing potential weaknesses pre-loss enables policyholders to be prepared for when a loss does happen and to have considered defences if an insurer seeks to query a loss.

8.1 Pre-Loss Priorities Explained

Getting the contract right at placement will limit the scope for any future dispute. Mactavish research shows that fundamental arguments over whether a claim is intended to be covered are the most common cause of dispute, far more common than issues around whether the disclosure of risk information was sufficient or policy conditions were met.

Therefore, getting the pre-placement and during placement steps outlined in section 5 above right is essential – especially in relation to coverage.

Reviewing whether 'standard' levels and categories of cover are sufficient, reviewing policy exclusions or sub-limits and focusing discussions within the business upon what claims scenarios are expected to be covered can pay dividends and help avoid surprises when a claim occurs.

Insurance buyers need support in this role from their brokers, and should ensure that responsibilities are clearly defined. Specifically, if advice is required from brokers on wordings and coverage, this should be explicit in the broker contract or Service Level Agreement. If it is not, the customer can then consider if their own knowledge of what the cover means is sufficient or whether expert input is required for more complex or critical policies.

8.2 Post-Loss Process Explained

Once a loss occurs, it is critical that the business takes control of the process and that nothing is done to prejudice your ability to make a claim. The early phases are vital and are where errors are most often made, often before lawyers are appointed or even before a claim is definitively recognised as a claim. Advance planning and agreeing post-loss protocols will help this process to run more smoothly and ensure that everyone knows what information is needed and how to react in such a situation.

Policy requirements around when and how a loss must be notified to insurers vary widely; therefore major policies should be reviewed in advance to ensure all post-loss obligations are understood and realistic.

For example, policies may require the inclusion of details such as the specific cause and time of loss for a notification to be valid. Recording as much detail as possible, keeping damaged items for inspection and advising insurers of any emergency repairs prior to action being taken will all help in this regard.

Post-loss policy requirements are not limited to the initial notification. It is common for there to be conditions governing how a claim must be handled. These often include a duty to forward immediately to insurers all correspondence relating to the loss and an obligation to seek the insurer's consent prior to any costs being incurred. Claims can also be contested where a policyholder has accepted responsibility for a loss without the consent of the insurer.

Taking actions such as responding to (or even acknowledging) third-party or early-stage legal correspondence may seem innocuous, but could also be raised by insurers as a basis to dispute a claim and be breaches of policy detail. In light of this, it is vital that communications around any loss are carefully managed, including oversight of any concurrent dialogue with third-party claimants as well as with brokers and insurers.

"Running through claims scenarios allows the insured to establish the financial impact of a loss, gain clarity on the intent of their policy wordings and understand their priorities in the event of a loss, including the process of loss notification."

Airmic Scenario Analysis: A practical system for Airmic members – 2016

Large or complex claims will frequently also involve additional service providers such as loss adjusters or claims handlers. These are often appointed by the insurer. Clearly, there is potential for a divergence of interests to arise, where for example the customer may not be provided with access to the full report of the claim or to loss adjuster recommendations.

In order to maintain control of the process, you should think about agreeing preferred service providers with the insurer at the commencement of the policy, or potentially even appointing your own advisers (such as loss assessors) in addition if an independent opinion is appropriate. Discussions in advance with pre-appointed loss adjusters or insurers can also ensure that policyholders are aware of the type of information they will need to provide to value a loss, or actions which must be taken to mitigate against further damage.

Obtaining specialist legal support may be necessary to manage the complexities of such claims and duties. However, it is again important to recognise the potential for conflicts of interest to arise: many large law firms are retained by insurers and brokers and may be limited in who they can act against.

Customers should also be aware that the rules of the game have changed: the inception of the Insurance Act (in 2016) and Enterprise Act (in 2017) will both over time further impact what factors need to be managed through the course of the claim to maximise and speed up recovery.

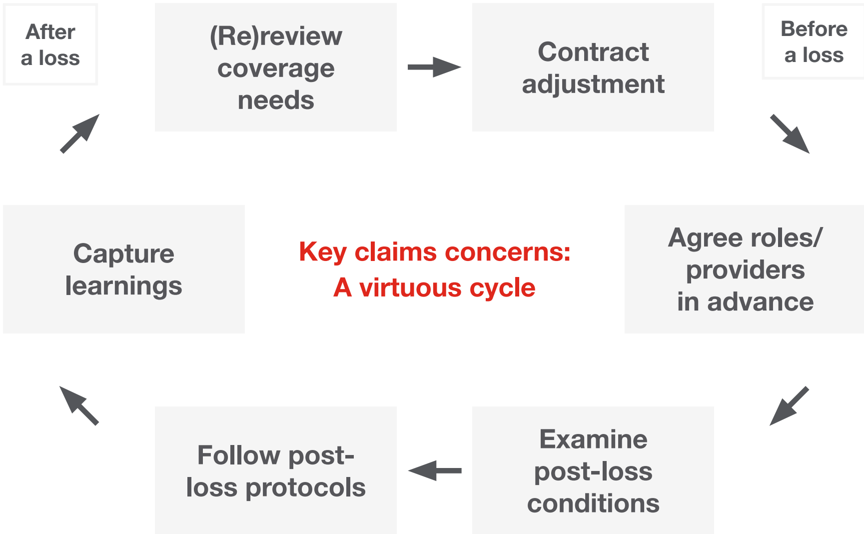
Finally, learning from losses and near misses or incidents (whether or not they ultimately led to an insurance claim) is important. This includes recording and implementing any relevant risk management learnings following a loss. It also may include learnings which can be applied to the placement and claims handling process. Any key changes should also be communicated to insurers, along with how they might be expected to affect the likelihood of reoccurrence of such an event.

A summary of key claims concerns is at Figure 1.

The Enterprise Act

The Enterprise Act, supported strongly by both AIRMIC and Mactavish, caters (for the first time under English and other UK law) for insurers to pay for customer damages suffered if they unreasonably delay payment of a claim. It was passed in May 2016 and comes into force in May 2017, and is expected to provide a useful deterrent to prevent insurers acting unreasonably. However, upholding a claim for damages also requires that the customer meets several new criteria (such as advance disclosure of any specific financial vulnerabilities), and specialist advice may be required.

Figure 1 Summary of key claims concerns



> "Airmic members identified late notification as a principle reason for the non-payment of claims in full or in part."
>
> *Airmic Pre-conference Survey 2016*

9 How insurance supports risk management

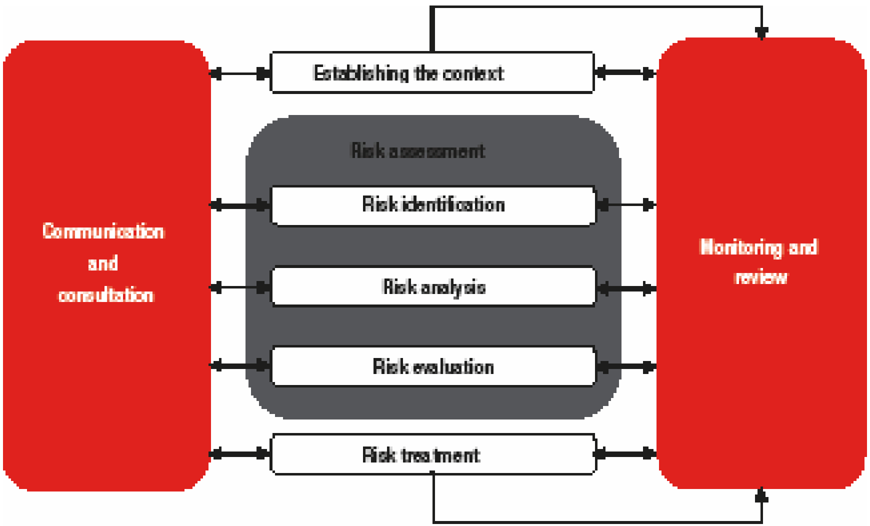
This section summarises how insurance forms an important part of the risk management programme for businesses and demonstrates where insurance, and insurance-related actions, influence and support the risk management process.

All organisations face many risks, some of which will be well known and understood. Indeed risk-taking is fundamental to the success of any organisation. The leaders of an organisation must decide the extent to which risk needs to be sought, accepted, addressed or avoided, and their approach to this will determine how risks are managed across their organisation.

The concept of risk management has been of increasing relevance and importance in recent years and has attracted much attention across the whole of society. Risk management is the identification, assessment and prioritisation of risks followed by co-ordinated and economic application of resources to maximise the realisation of opportunity or address the impact and/or likelihood of adverse events (see the Airmic publication “A Brief Guide to Risk management”).

Figure 2 shows the risk management process as detailed in the risk management standard,

Figure 2 The risk management process – ISO 31000:2009



ISO 31000:

Table 2 identifies each element of the process, summarises the risk management actions expected, and illustrates how insurance and the insurance process bring tangible value at every stage.

Insurance is an important risk management tool which allows business to minimise the impact of an adverse event by transferring the risk to another party, the insurance company. However, as shown above, this is only one of the risk management benefits of insurance. Insurers, brokers and other service providers bring considerable value through the expertise of specialists and the pooling of risk and claims information.

Table 2 The risk management process

Element of Risk Process	Summary of Action	Insurance Value Added
Establish context	Consider internal and external landscape, business objectives, risk criteria	Advice and information available from insurance service providers – drawn from their client databases
Risk identification	Consider outcomes from all significant risk sources	Information and reports on internal and external risks from risk specialists employed by service providers
Risk analysis	Quantitative or qualitative analysis using risk criteria	Use of insurance industry data to inform risk impact and likelihood considerations
Risk evaluation	Construct risk profile of key risks to prioritise importance and time to address	Validate by lessons learned from past losses by reference to claims databases
Risk treatment	Options to change controls which avoid, seek, modify, share or retain risk	Risk transfer to insurers using insurance contracts Claims expertise supports business response to and recovery from major losses
Monitor and review	Ensure risk actions and outputs meet requirements	Site audits to validate effectiveness of controls. Training on risk issues
Communication	Consultation on the whole risk process or for specified risks	Information on new and developing risks Risk mapping e.g. for flood or earthquake

Appendix 1

Insurance needs assessment
The table below outlines the types of insurance required to address specific business features. In some cases, there is a mandatory action to purchase insurance, some insurances are recommended as good practice and others should be evaluated to take account of the nature and size of the business. Please refer to your insurance broker for specific guidance.

Feature of the Business	Insurance Requirement	Action
Business has employees	Employers' Liability to pay compensation for injury Employment Practices Liability covers unfair dismissal or discrimination claims	Mandatory Evaluate
Employees travel outside UK for business	Employee Travel covers medical and other costs	Recommended
Activities could impact the public	Public Liability covers legal liability for damages to third parties for death, bodily injury or property damage	Recommended

Supplies products or components to customers	Product Liability covers legal liability for damages to customers for death, bodily injury or property damage caused by faulty products. Includes legal costs	Recommended
	Product Recall covers the costs of recalling a product known or suspected to be defective	Evaluate
Provides professional or design advice to customers	Professional Indemnity covers legal liability arising from negligent professional advice	Recommended
Employee dishonesty would be costly	Crime insurance covers loss of money or stock arising from employee dishonesty	Evaluate
Occupy business premises	Premises insurance should cover the full rebuilding cost including professional fees and site clearance. This may be a landlord responsibility. If working from home ensure that the domestic House insurance provides the required business cover	Recommended
Has stock, machinery or other contents	Contents insurance should cover stock at cost price with allowance for seasonal fluctuations. Plant and machinery can be insured either on the basis of replacement as new or indemnity value (wear and tear will be taken into account when settling claims on indemnity basis)	Recommended

Dependency on computers or machinery	Engineering insurance provides cover for electrical or mechanical breakdown, including for computers	Recommended
	Inspection and testing required for certain items including lifting equipment and pressure vessels.	Mandatory
Fire, flood or denial of access to premises would disrupt business	Business Interruption insurance covers shortfall in gross profit and pays increased working costs following disruption to your business after an insured loss	Recommended
Transports goods or products	Goods in Transit/Marine Transit insurance covers loss in own vehicle or when sent by carrier	Recommended
Operates motor vehicles	Motor Third Party insurance covers legal liability for injury to third parties and damage to their property arising from vehicle use on public roads. Employees should check their own policies if they use private vehicles for the business	Mandatory
	Motor Vehicle Damage insurance is available if required on a Comprehensive Insurance policy	Evaluate
Provides employee benefits to employees	See separate Airmic guide (see the reference in the appendix).	Evaluate

Reliant on certain critical people	Key Person insurance provides funds to protect against disability or death of a key employee	Evaluate
Concern over non-payment of debts	Trade Credit insurance covers bad debts due to insolvency or default of the buyers or customers.	Evaluate
Employs directors or officers	Directors' and Officers' Liability insurance covers legal costs and expenses arising from allegations of breach of duty	Recommended
Internet-based risks	Cyber insurance covers losses relating to damage to, or loss of information from, IT systems and networks	Evaluate
Aircraft ownership or usage	Aviation insurance available for aircraft hull and liabilities	Evaluate
Marine vessel ownership or usage	Marine insurance available for marine hull and liabilities	Evaluate
Business has a Pension Fund	Pension Trustees' Liability provides protection for trustees, pension scheme and sponsoring employer	Recommended

Appendix 2

Insurance buying glossary
The insurance industry uses quite a number of technical terms, usually for reasons of precise meaning. Here is a list of the most important insurance terms. A more comprehensive list of insurance terms and definitions can be found at:

www.biba.org.uk/consumer/support/jargonbuster.html

www.abi.org.uk/Display/

www.lloyds.com/Help/Glossary.html

Aggregation
The manner in which different losses are grouped together under one limit of indemnity, and usually one deductible. A wide aggregation position will mean multiple claims are subject to only one limit, whereas a narrow clause may mean the insured has access to multiple limits but may have to pay multiple deductibles.

All Risks
Term used to describe insurance against loss of or damage to property arising from any fortuitous cause except those that are specifically excluded from the policy.

Average
A clause in insurance policies whereby, in the event of under-insurance, the claim paid out by the insurer is restricted to the same proportion of the loss as the sum insured under the policy bears to the total value of the insured item.

Captive Insurance Company
An insurance company that is owned and controlled by the business it is insuring. The primary purpose of the captive is to insure this business's risk. The business benefits from the captive's underwriting profits and may have a greater degree of control over its insurance. Captives are commonly operated by larger businesses.

Claim Or Loss
Injury or loss to the insured arising so as to cause liability to the insurer under a policy it has issued. Loss is another name for a claim.

Clear And Accessible Disclosure
An explicit new requirement included in the Insurance Act 2015 (as part of the "Duty of Fair Presentation") stipulating that risk information presented to insurers at renewal should be "clear and accessible" – including appropriate structuring and sign-posting of key risk information and avoiding data dumping large quantities of unstructured information.

Contract Certainty
Describes a situation where the terms and conditions of an insurance contract are fully agreed and finalised before the inception date of the contract. It has been the subject of a major FSA/FCA initiative since 2004 to improve industry practices around policy issuance.

Coverage
The scope and extent of protection afforded by an insurance policy. This may be defined in multiple ways such as specifying perils, defining the necessary circumstances of insured loss, locations covered, individuals insured, elements of cost for which indemnity is provided and/or specified policy benefits, etc.

Deductible Or Excess
Deductible is the amount that a loss must exceed before a claim is payable.

Only the amount above the deductible can be claimed. Excess is the amount of the claim to be paid by the insured and it can be either voluntary to obtain premium benefit or imposed by the insurer.

Difference In Conditions/ Difference In Limits (DIC/DIL)
Difference in Limits (DIL) insurance provides cover in excess of other, usually local policies, which the insured has purchased and may have lower limits. Where Difference in Conditions cover (DIC) applies, this would also mean that the cover will drop down where the underlying policy would not provide cover due to application of narrower policy terms and conditions.

Employers' Liability Insurance
Insurance by employers in respect of their liability to employees for injury or disease arising out of and in the course of their employment. With some exemptions, this insurance is compulsory in Great Britain, and can only be provided by an authorised insurer regulated by the FSA.

Exclusion
A provision in a policy that excludes the insurer's liability in certain circumstances or for specified types of loss.

Fair Presentation
The disclosure duty introduced under the Insurance Act 2015. A Fair Presentation of risk is one that discloses every material circumstance which ought to be known and would be revealed through a reasonable search, or that gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

Increase In Cost Of Working (ICOW)
Under a Business Interruption policy, some cover is provided for expenditure incurred by the insured in order to prevent a reduction in turnover following an insured event.

Additional Increase In Cost Of Working (AICOW)
A common extension to Business Interruption policies, AICOW cover allows the insured to incur further reasonable additional expenditure (beyond what would be covered by ICOW alone) in order to continue operations or, more broadly, to limit disruption to the business.

Indemnity Period
The period, beginning with the occurrence of damage, where indemnity is provided under the policy. Under a Business Interruption policy, this is usually an estimate of the time expected to be needed to restore the business to its pre-loss trading level.

Insurance Broker Or Intermediary
An insurance broker is a specialist with professional skills in handling insurance business. An insurance intermediary acts as the agent of his client, but is normally remunerated by a commission (brokerage) from the insurer.

Insurance Governance
Describes an emerging field of policyholder activity focused on ensuring the reliability of insurance. Insurance Governance involves a coherent approach to overseeing all aspects of insurance placement: risk analysis, disclosure and fair presentation, insurance contract analysis, placement conduct and broker management, policy compliance monitoring.

Insurance Policy
The insured pays a premium to the insurer as a consideration for a contract of insurance or policy. The policy should be issued before the inception (start) date of the insurance cover. It is a document detailing the terms and conditions of an insurance contract and provides evidence of insurance. There is usually a schedule attached to the policy containing information specific to the risk.

Insured And Insurer
The insured is the person/organisation buying the insurance. The insurer is an insurance company or Lloyd's underwriter who, in return for a payment (a premium), agrees to make good any loss or damage suffered by the insured as a result of an insured event.

Limit Of Indemnity
Indemnity is the principle whereby the insurer seeks to place the insured in the same financial position after a loss as he/she occupied immediately beforehand. The limit of indemnity is the maximum amount an insurer will pay under a policy in respect of all accumulated claims arising within a specified period of insurance. It is also referred to as the sum insured or the maximum amount payable.

Loss Adjuster
Independent qualified loss adjusters are used by insurers to carry out detailed investigations of complex and large losses. Although the insurers invariably pay the adjuster's fees, the loss adjuster is an impartial professional person. The suggested settlement should be within the terms of the policy and equitable to the insured and insurer.

Loss Assessor
In Motor insurance, the loss assessor is an engineer. In other classes of insurance, the loss assessor is a person who acts for the claimant in negotiating the claim. It is usually only necessary to appoint a loss assessor when the loss adjuster recommendation is unacceptable to the insured. Loss assessors often earn a fee based on a percentage of the amount claimed.

Permanent Health Insurance
Term used to describe contracts of insurance providing continuing benefits in the event of prolonged illness or disability.

Personal Accident And Sickness Insurance
Insurance for fixed benefits in the event of death or loss of limbs or sight by accident and/or disablement by accident sickness. Accident and sickness may be insured together or separately.

Product Liability Insurance
These policies cover the insured's legal liability for bodily injury to persons, or loss of or damage to property caused by defects in goods (including containers) sold, supplied (including as gifts), erected, installed, repaired, treated, manufactured, and/or tested by the insured.

Professional Indemnity Insurance
This policy protects a professional person against legal liability towards third parties for injury, loss or damage arising from that person's own professional negligence or the negligence of employees.

Reasonable Search
An element of the "Duty of Fair Presentation" (introduced by the Insurance Act 2015) which requires appropriate enquires to be conducted to seek out material risk information for presentation to insurers at renewal. These enquiries are expected to be appropriate for your specific business and could also extend to outsourced service providers, individual beneficiaries of the cover and/or across your broker's organisation.

Reinsurance
Insurance that is purchased by an insurance company, whereby the primary insurer lays off or 'cedes' part of their risk in return for a premium. It relates either to an individual risk exposure ('facultative' reinsurance) or to a portfolio of risks ('treaty' reinsurance).

Reservation Of Rights
An insurer's notification to an insured that coverage for a claim may not apply. This notification allows an insurer to investigate and/or progress a claim without waiving its right to later deny coverage.

Senior Management
A specific category of individual included in the Insurance Act 2015's definition of the "Duty of Fair Presentation". The Act stipulates that material information known by these individuals must be included in risk presentations to insurers. Senior Management is defined as those having a significant role in decisions about how a business is to be organised or managed.

Risk Management
The identification, measurement and economic control of risks that threaten the assets and earnings of a business or other enterprise. A risk is defined as the peril insured against or an individual exposure.

Third Party Administrator
A firm which provides administrative support services in the areas of claims administration, risk information, loss control, employee benefits programmes, etc. TPAs may be appointed in this capacity by either a policyholder or by an insurance company.

Third-Party Liability
Liability of the insured to persons who are not parties to the contract of insurance and are not employees of the insured. The third party is the person claiming against an insured. In insurance terminology, the first party is the insurer and the second party is the insured.

Utmost Good Faith
Insurance contracts are contracts of utmost good faith or uberrima fides. A breach in the duty of good faith by the customer would historically have enabled an insurer to avoid an insurance policy. Whilst following the Insurance Act 2015 this specific remedy no longer applies, the principle of good faith is still required as part of the new duty of making a fair presentation of risk.

10 Where to look for further information

- **www.mactavishgroup.com**
  BIBA/Mactavish Guides to the Insurance Act 2015: Introductory Guide (2015), Implementation Guide (2016)

- **www.airmic.com**
  Insurance Act 2015:
  A guide to fair presentation
  (Airmic, 2016)

- **www.airmic.com**
  Basis Clauses: A practical guide to basis clauses in insurance contracts (Airmic 2013)

- **www.airmic.com**
  Innovation in the insurance industry (Airmic 2016)

- **www.airmic.com**
  Broker Tender Guide
  (Airmic 2015)

- **www.airmic.com**
  Business Critical Insurance
  (Airmic 2015)

- **www.airmic.com**
  Scenario Analysis – A practical system for Airmic members
  (Airmic 2016)

- **www.bsigroup.com**
  ISO 31000:2009

- **www.airmic.com**
  Airmic Pre-conference Survey 2016

- **www.airmic.com**
  Business Critical Insurance (IOD 2016)

- **www.airmic.com**
  Claims Best Practice Guide
  Practical tips and suggestions on implementing best practice in claims

- **www.airmic.com**
  Warranties in Insurance Policies –
  A practical guide to warranties in insurance policies
  Guide 2013

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