

TIPSHEET 13 – CERTIFICATE OF CURRENCY

TALK BEFORE YOU SIGN!

Have you been asked to sign an agreement that requires you to supply evidence of insurance? Talk to your insurance broker before you sign on the dotted line –and not just to obtain a certificate of currency!

Many commercial contracts require you to produce a certificate of currency as evidence of insurance coverage. Often the contract you are entering into will impose other insurance requirements and you may need to review the contract to check that these have been met – otherwise you could be exposed to uninsured losses.

WHEN WILL EVIDENCE OF INSURANCE BE REQUIRED?

Typical examples of contracts that require evidence that you have insurance are:

- + Leases;
- + commercial lease and hire purchase arrangements;
- + construction projects;
- + service agreements;
- + product supply agreements; and
- + 'hired in' labour and labour supply agreements.

In some cases you may be receiving products or services from a contractor who requires evidence of your insurance.

HOW DO YOU PROVIDE THIS EVIDENCE?

Generally, evidence of insurance is provided through a certificate of currency. Your broker will

be able to obtain this certificate for you from your insurer.

WHY HAVE A CONTRACT REVIEWED?

Commercial contracts frequently contain clauses that either expose you to uninsured losses or breach the requirements of your insurance policy.

You may not have considered the operation of these clauses in conjunction with your insurance, or not considered the need to negotiate amendments to certain clauses.

THE INSURANCE CLAUSE

Simply providing a certificate of currency may not satisfy the requirements of the insurance clause in a contract.

Frequently, insurance clauses have requirements as to the sum insured, limits of liability and excesses and reinstatements. Sometimes, they require the insurer to have a minimum credit rating. You should also confirm that the professional business described for your business in the insurance policy covers the services to be provided under the contract.

Some insurance clauses stipulate what the policy should include. Contracts that require cover for all obligations under the agreement should be



amended, as it will be extremely difficult to obtain such cover.

EXAMPLE: "The Contractor must obtain professional indemnity insurance in respect of all of the obligations of the Contractor and their Employees under this Agreement".

If you accepted a clause of this nature in an agreement with another party, it could be in breach of that agreement from the date it commences, even if you have provided a certificate of currency.

NAMED AND INTERESTED PARTIES

Some insurance clauses may also require the principal to be a named insured or interested party on your insurance cover. Tip sheet 7 – Insurance clauses- Named insured vs. Interested Party will explain what the difference is between these two terms and what common traps you should look out for.

For example, another named insured to your policy will run the risk that you will exhaust the insured sum more quickly.

UNINSURED LOSS

Liability for uninsured loss may be assumed by you where an agreement includes clauses such as the following:

- + Indemnity clauses that transfer responsibility to you to an extent greater than that which would have been assumed at common law;
- + "Hold harmless" clauses that transfer all responsibility for loss, injury or damage to you; and
- + Warranty clauses, especially when they include obligations to comply with laws,

policies and codes or to perform the contract to a specified standard.

EXAMPLE: "The Contractor must perform the services under this agreement with such skill, care and expertise that would represent best practice in the industry."

In addition, to increasing your liability to the other party, many typical clauses found in agreements breach key provisions of your insurance policy.

EXAMPLE: A "hold harmless" clause will compromise the insurer's right of subrogation. You may also not be able to claim under a policy that includes a contractual liability exclusion clause.

So:

- + Take care that you do not accept liability beyond that assumed at law, especially if your insurance policy includes a contractual liability exclusion provision;
- + Discuss indemnities included in your contract with a lawyer, especially in light of the proportionate liability principles; and
- + Remember that insurance policies do not cover fines, penalties and taxes.

The clauses discussed here are a not exclusive list of the exposures you may face. Consult the other tip sheets for more information.

Note: It is important to obtain specific legal advice on the suitability of any examples before using or incorporating them into your own contracts.

For more assistance, speak to your broker.



If you would like a legal review of your contracts and insurance policies, contact The Fold on 02 8353 6600.

CAN WE HELP YOU.

DISCLAIMER

This Tip sheet has been prepared for Steadfast Group Limited and its brokers. It contains general information about contractual liability issues. It is not tailored to the individual circumstances of any recipient and is not a substitute for obtaining specific advice about the contractual liability issues that arise in your business.

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For further assistance, contact:

The Steadfast Contractual Liability Helpline

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ABOUT THE FOLD

The Fold is a leading provider of legal and compliance services to insurance intermediaries.