PREPARING FOR RISK

Insurance policy shifts for the tourism industry

Covid-19's impact tested some of the murkiest areas of the insurance market's most used and stable policy wordings and contracts, resulting in a long mess of legalities to untangle and court challenges.

This has highlighted the compelling need for insurers to offer policy wordings with greater clarity of intent about coverage and less ambiguity in interpretation.

Insurers are most comfortable underwriting risk when there is a clear understanding between all stakeholders about the scope of cover provided – both in terms of what is covered and, more importantly, what is not covered. Covid-19's sudden impact on the business landscape forced insurers to change their previous lethargic approach to policy crafting and tailor policies to include new Covid-19 exclusions and endorsements. The pandemic's urgency meant changes were at times rushed to market in an uncharacteristically hurried fashion.

Now, having had some time to adapt to business in the Covid-19 environment, insurers have become more comfortable with and capable about measuring pandemic risk. Consequently, a slew of new 2021 policy wordings have been issued by insurers, reflecting, at times, drastic changes to insurers' risk appetites.

Businesses are now entering a different insurance market as they prepare to return to greater normality in a Covid-19 operating environment.

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INSURANCE BROKERS

Exclusions exit to fine print

As commercial entities, insurers have always used policy exclusions to cover large-scale devastating events, such as nuclear wars or pandemics, because government responses and systems are far better suited to respond to those events than insurers, both economically and ethically.

A standard exclusion in many policies references Australia's Quarantine Act 1908 and shows an intention to exclude cover for pandemic losses. However, in 2015, the Quarantine Act was revoked and the Biosecurity Act introduced, but many insurers' wordings were not updated to reflect the revised legislation.

The failure to update wordings has erupted against insurers, despite their intention not to cover pandemics, and put them in a difficult legal battle with potentially massive financial consequences.

With legal challenges expected to continue for some time, insurers quickly updated their intention of cover after the initial Covid-19 outbreak, using clear and heavy Covid-19 exclusions, stating that any loss resulting from Covid, or associated with it, or any of its mutations in any way, would be excluded coverage.

JMD Ross Insurance Brokers is now noticing that, rather than applying specific exclusions by way of endorsements to their policies, insurers are embedding their intentions to exclude cover within the policy wording. These may (or may not) be clearer from a legal perspective and have the ability to stand up in court. And, unfortunately, they are not always clearer to policy holders.

No mention of a Covid-19 exclusion will no longer be a possible loophole that triggers a policy to provide cover for a pandemic loss claim. Standard wordings are being specifically designed to strengthen pandemic exclusions in court, so if cover is needed for Covid-19 losses, a clear expression of cover via written endorsement is crucial.

Travel insurers suffered the insurance industry's heaviest losses from Covid-19. However, that does not mean cover for Covid-19 cannot be acquired. Several travel insurers have become increasingly confident in underwriting pandemic risk. With a more expansive question to ascertain the specifics around purpose of travel and regular areas of travel, these analytically minded insurers are bucking trends and becoming flexible enough to underwrite Covid-19 exposures, increasing the value of the cover far beyond standard-entry travel insurance policies.

In many cases, cover can be available, but must be reviewed and specifically included. Insurers' approaches are not uniform. A standard wording will provide standard cover whether pandemic exclusion is mentioned or not.

Same face, different insurer

Specialist underwriting agencies rely on capacity provided to them by larger insurers to underwrite insurance risk for their niche client portfolios. The pandemic took hold as the insurance market was already hardening, which drastically reduced the confidence of capacity providers who, in many instances, began retreating from several stressed industry sectors, seeking to deploy their capital elsewhere. This is particularly true for the tourism industry.

Specialist underwriters have a vested interest in continuing to support their chosen industries, typically investing much into formulating their brand to stand out among the crowd for specific client bases. With their ability to underwrite risk in these spaces reduced by loss of insurer support, many were forced to greatly amend the terms of their offering, seek new insurer capacity, or exit the market at great loss to brand and profit.

Obviously, contraction in the number of available underwriters in the market makes placement of insurance risk much more difficult, and the natural laws of supply and demand drive premium pricing upwards. Of no less concern, however, is the not always transparent change in supporting insurers, and the significant impact this potentially has on your organisation's insurance cover and the ability to address financial and claim disputes with industry regulators and within Australian legal jurisdictions.

In replacing their insurers, some specialist underwriters have returned for the 2022 financial year with the same brand but significantly different terms and risk appetites. As a result, you can no longer take it for granted that your insurer, even one of several years, will offer continuation of the same terms of cover, or even be able to offer cover at all.

This situation is prevalent within Lloyd's of London. While universally known as Lloyd's, the market is actually separate legal entities operating within a single framework. Lloyd's comprises many different syndicates that operate under the Lloyd's banner. In some cases, even though the insurer's name may appear the same, the underlying security and reinsurance may vary from year to year.

Some Australian leisure insurance underwriters have had no option but to source capacity from unauthorised foreign insurers (UFIs) to replace exiting insurer capacity. UFIs are not obliged to adhere to the rules and guidelines of the Australian finance and insurance regulators, namely APRA. This is especially concerning as it means that, even though cover may be offered, you or your broker may have little to no recourse to argue or elevate coverage disputes, or even enforce legal guarantees to pay claims. Of course, some insurers with UFI status are large, reputable firms, such as Aviva UK. Others can be minnows with limited capital operating from highly unregulated markets, such as the Seychelles.

JMD Ross believes it is paramount that, wherever possible, your selected insurer should be one that falls under the auspices of regulatory bodies such as APRA and ASIC.

With Australian insurers still limited in their offerings for "extreme activity leisure operators", use of UFIs may be necessary, but we strongly encourage you to discuss this with insurance advisers first and develop a strong understanding of the potential complications and regulatory shortfalls of placing cover outside the scope of Australian financial regulators.

Knowledge of these significant shifts in the leisure insurance market is more important than ever as businesses prepare to re-enter what is still a stressed market, high in operational risk. It is crucial that your insurer can support you in accordance with the terms and conditions of your policy wording and Australian regulators' guidelines.

Risks to prepare for

With our insight into policy coverage and our experience with underwriters over the last year, here are JMD Ross's top insurance tips for the leisure industry as we progressively emerge from Covid restrictions.

1. Engage early

For reasons outlined above, many insurers are declining to renew cover for the leisure industry, especially for what they deem "extreme activities". However, even wholesalers are facing a continuingly fickle and limited market as professional indemnity and specialist lines insurers refrain from offering cover until industry conditions improve.

With the market limited, we strongly recommend you start the insurance renewal process early and engage with your broker or insurer well in advance of renewal dates. Lockdowns and work-from-home models have significantly impacted on insurers' responsiveness. Their often-complex internal levels of referral have made isolated work environments more challenging for underwriters to seek and gain approval for cover requests that are tailored or out of the box. With increased focus on conservative approaches to underwriting, especially for new business, there is pressure to be tough on accepting new risks.

Greater amounts of information about your business will be requested and the underwriters will not always be speedy about deciding to decline a risk altogether, even if it's one they would have written a month ago. There is currently no easy placement for leisure industry insurance. Being well prepared for your insurance renewal is highly important this financial year. Don't get caught operating without insurance or miss out on a tender due to a lack of adequate insurance coverage.

2. Negotiate broad travel insurance pandemic exclusions

Many direct and commercial insurers are holding onto their broad Covid-19 cancellation cover exclusions, but the market is more competitive and negotiable than their financial lines and liability insurance counterparts. Broad travel insurance coverage, even for pandemic cancellations, is still available, especially for business travel. Do not simply accept the risk – engage with your broker to explore alternative insurer options or discuss inclusion of cover for specific critical travel risk.

3. Choose cover for your new working environment risk

Work-from-home arrangements are likely here to stay, at least for the foreseeable future, and virtual connection with suppliers and consumers will be the preferred way of conducting business.

The lack of interpersonal connection with suppliers and isolated co-workers means some incidental checks and details, normally quickly reaffirmed through office chats, go without proper compliance checks. This vulnerability has led to a surge in successful cyber frauds where business owners have been duped into fraudulent supplier payments or locking their systems *en masse* for ransom purposes.

Statistics show there has been a 170% increase in global ransomware attacks since 2020 and a 290% increase in ransomware payments in the US market.

With this success, cyber criminals have become increasingly bold and sophisticated in their frauds, leading to a new cyber insurance underwriting mantra: Only two types of companies exist, those that have been hacked, and those that will be hacked.

Our own insurance claim reviews show cyber criminals' attacks are not confined to any one company size or industry, and the losses incurred have been substantial and far too frequent.

Ensure your business is prepared for modern threats and take out a cyber insurance policy to protect your greatly exposed operating risk.

4. Use your broker

Insurances are not all equal. That statement is truer now, given the raft of updates and adjustments to policy wordings across the market. Ensure your broker knows your risk and your intended activities so adequate coverage is placed and thoroughly understood by underwriters.

If you're looking to replace or renew your insurances for the upcoming tourism season or wish to discuss and understand the risks and changes to the insurance market for the coming year, please contact the JMD Ross Insurance Brokers office or our specialist tourism broker Jonathan Ross.

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