



EAGLE OCEAN MARINE

CIRCULAR

AUGUST 04, 2016

TO ALL INSUREDS AND BROKERS

Dear Colleagues:

EAGLE OCEAN MARINE (EOM) GENERAL TERMS AND CONDITIONS OF COVER, JULY 1, 2016

The UK Insurance Act 2015 (the 2015 Act) will come into force on August 12, 2016. Certain amendments have been made to the Act by the Enterprise Act 2016 which will come into force on May 4, 2017.

The 2015 Act makes significant changes to English insurance contract law. This is the first significant legislative change to insurance contract law since the Marine Insurance Act 1906 (the 1906 Act). The 1906 Act codified the law as it then stood. The Insurance Act 2015 in certain respects applies to contracts of marine insurance and any variations thereto.

The current EOM General Terms and Conditions of Cover of July 1, 2016 (EOM General Terms) are subject to English law, the Marine Insurance Act 1906 and the Insurance Act 2015 (and any modifications to that Act). This circular sets out a brief description of the how the changes made by the Insurance Act 2015 are dealt with in the current EOM General Terms, the full text of which can be found at www.eagleoceanmarine.com.

Implementation date

The 2015 Act will apply to contracts of insurance entered into, and any variations made, from August 12th 2016. The further changes to insurance contract law made by the Enterprise Act 2016 will apply to contracts of insurance entered into from May 4, 2017.

Duty of fair presentation of risk

Under the Insurance Act 2015, the obligation of disclosure (currently set out in the 1906 Act) is to be replaced by a new duty to make a fair presentation of the risk. This new duty is similar in many ways to the current duty of disclosure, although there are important changes.

For example, an applicant for insurance is obliged to disclose (and not to misrepresent) material circumstances which are revealed by making reasonable searches, not only within its own organisation but also for documents and information which may be held by third parties. Material circumstances are circumstances which would influence the judgment of a

prudent insurer in determining whether to insure the risk or not and if so on what terms, including the terms and conditions of the insurance and/or fixing the premium.

If any new applicant for insurance or any current insured seeking renewal of insurance cover by EOM has any doubt as to whether any circumstance may be material or not it should be disclosed.

Remedies for breach of the duty of fair presentation of the risk

Under the 1906 Act, where there has been a non-disclosure of material facts and circumstances, or alternatively material misrepresentation, an insurer may be entitled to elect to avoid the contract of insurance ab initio, as if the contract never existed.

Under the EOM General Terms, EOM will remain entitled to elect to avoid where the insured commits any breach of the duty to make a fair presentation of the risk.

Warranties and certain other terms

Under the existing law, set out in the 1906 Act, where the contract of insurance contains a warranty and where the insured fails to comply with that warranty, the insurer is automatically discharged from liability.

The 2015 Act makes certain changes in relation to warranties and certain contract terms which tend to reduce the risk of loss of a particular kind, at a particular location, at a particular time. However, the EOM General Terms retain the existing law, as above.

Basis clauses

The 2015 Act now prohibits any term in an insurance contract by which the insured warrants the truth of any representations made before the contract is concluded. Accordingly, where there are any material misrepresentations in the course of presentation of any risk to EOM, any such misrepresentations will not be treated as a breach of warranty (as from August 12, 2016) but will form part of the determination as to whether there has or has not been a fair presentation of the risk.

Fraudulent claims

The 2015 Act makes certain provisions designed to clarify the position in respect of fraud in insurance contract law. EOM has decided to adopt these new provisions as to the treatment of fraudulent claims (for example as to the right to recover any sums paid in respect of such claim and as to the right to terminate on notice).

However, EOM has decided to exclude certain provisions in the 2015 Act regarding fraudulent claims on what is described as “group insurance”; in other words insurance claims which might be made by any party not named in the certificate of insurance (such as an affiliate).


Accordingly, if a fraudulent claim is made by any such affiliate, EOM has taken the view that such fraud will have the same effect on any claim made by any party insured under that contract of insurance evidenced by the particular certificate of insurance, as if that party had made the fraudulent claim. EOM is therefore contracting out of any provision in the Insurance Act 2015 which would have any different effect.

Payment of claims

The Enterprise Act 2016 amends the Insurance Act 2015 in particular by implying into all contracts of insurance a term which requires the payment of claims within a reasonable time. The Insurance Act 2015 amends English insurance contract law to impose a remedy for breach of the implied term of payment within a reasonable time, including the possibility of a claim by an insured for interest and even damages.

The EOM General Terms exclude any such implied term and exclude payment of interest and damages, unless any late payment is deliberate or reckless.

Yours faithfully,



Joseph E.M. Hughes, Chairman & CEO
Eagle Ocean Agencies, Inc.

Eagle Ocean Marine is an American Club fixed premium facility offering gold standard International Group club service, underpinned by the impeccable security of reinsurance at Lloyd's.

