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Contracts (Rights of Third Parties) Act

The following information has recently been issued as a circular by the ABI to all their members.

In our circular of 15 November 1999, members were provided with information relating to the Contracts (Rights of Third Parties) Act which will be introduced and take effect on 11 May 2000.

Since that time, a Property Insurers' Working Group has been established to consider whether there are any particular implications for commercial property and household insurers. It is understood that where members wish to confer upon a third party the right to enforce certain terms of the contract they will expressly do so in their policy wording. The intention of the work has, therefore, been to ensure that:

- (a) the parties on whom rights are conferred by the insurance contract are the sole beneficiaries of the policy proceeds; and
- (b) it is understood that insurers do not wish to consult with third parties when rescinding or varying contract terms.

It is possible, however, that third parties may benefit from the terms and conditions of an insurance contract although it was not the intention that they should do so. Of particular concern to property insurers is that such a situation could arise through the practice of the noting of third party interests on a policy. Although the noting of interest by memorandum gives the third party no greater rights under the policy, it is the manner in which such interests are recorded that can cause problems. The noting of third party interests is understood to be a particular feature of the commercial property/household market and one that is widely used by insurers.



A draft model clarification wording was, therefore, produced. The aim of the wording was to make it clear that it was not the intention that third parties should benefit from the terms and conditions of a particular insurance contract nor would an insurer wish to consult with third parties when rescinding or varying contract terms or conditions. At the same time the wording would clarify that an existing party who was identified by name or description in the policy would not see any rights already existing reduced neither would they acquire any additional benefits through the introduction of the Act. The intention was that such a wording could be used in respect of any class of general insurance business most notably commercial property including construction and engineering and household covers.

As part of the work undertaken, a legal view on the model wording and the broader implications of the Act on general insurers was obtained. The response of the solicitor, while agreeing the approach taken, was to suggest an alternative model wording which more closely followed the wording of the Act. This was seen to be beneficial should there be a need for it to be contested in Court. A wording based on his draft wording reads:

"A person or company who was not a party to this policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act".

The solicitor "model wording" is offered in order to allow individual members to take it into account as part of the consideration process of the implications of the Act on their particular policy wordings. Members are advised to seek independent legal advice before adopting the wording and may need to alter it to fit their own type of policy wording.