



فراخوان ترجمه کتاب

پژوهشکده بیمه، به منظور کمک به گسترش دانش بیمه‌ای، ترجمه کتاب

Commercials insurance contract wording M21

را در دستور کار خود قرار داده است. لذا از کلیه اساتید، پژوهشگران، صاحب‌نظران و کارشناسان دعوت می‌شود که در صورت تمایل به ترجمه کتاب مذکور، کاربرگ درخواست ترجمه پیوست را به همراه سوابق علمی و اجرایی خود و ترجمه صفحات ذکر شده با ذکر عنوان کتاب، حداکثر تا تاریخ ۱۴۰۵/۰۳/۲۰ به آدرس ایمیل nashr@irc.ac.ir ارسال فرمایند.



کاربرگ درخواست ترجمه کتاب

Commercials insurance contract wording M21

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Introduction

So far, we have looked at the regulatory and legal background against which commercial insurance contract wordings are drafted. In this chapter, we will explore the core components of typical commercial contract wordings common to most classes of business. These components will be considered from the perspective of someone who has to either draft or check a wording (a drafter or checker), including what is involved in these roles.

We will consider the importance of using consistent and clearly-defined language, look at the features of an insuring clause, and address the terms and conditions that generally apply in insurance contract wordings.

Finally, we will explore some of the practicable considerations when drafting and reviewing clauses and commercial (re)insurance contract wordings.

The features examined should appear in some shape or form in any commercial insurance contract wording, whether the contract wording is a standard form or a manuscripted contract wording.



Key terms

This chapter features explanations of the following terms and concepts:

Addenda	Arbitration	Basis of attachment	Buy-backs
Cancellation	Claims handling	Contract or commercial insurance contract wording	Coverage trigger
Deductible	Definitions	Disputes	Duty of due diligence
Endorsements	Excess	Insuring clause	Limit of indemnity
Loss/claim notification	Manuscripted or bespoke contract wording	Memoranda	Policy
Recourse/subrogation	Schedule	Scope of coverage	Standard form
Sum insured	Write-backs		

For reference only

A Components of a commercial (re)insurance contract wording

In this section we will look at the elements of commercial insurance contract wordings in a generic way. Almost all contract wordings will contain these elements in some shape or form. Beyond these, the contents and format of a contract wording will depend on:

- the class of insurance business;
- the nature of the insured or the insured's business;
- the territory in which the insured risk is located; and
- the territory from which the insurance policy is provided.

It is beyond the scope of this course to examine all of the special requirements for every class of insurance business available in the market today. However, in this section we will look at some of the key factors that should be considered, and provide some illustrative examples of some requirements for certain classes of business.

A1 Terminology

A1A Standard form

A standard form is a complete wording, which is given a specific title or reference. The body of the text of the contract wording will not be altered, except by endorsement, addenda or memoranda attaching to the policy.

A1B Manuscript (or bespoke) contract wording

A **manuscripted** (or **bespoke**) contract wording is one that has been individually drafted for a specific risk and tailored to incorporate all of the terms mutually agreed between the parties to the contract. A manuscripted contract wording is likely to be based on a standard industry form, and the body of the text amended according to the requirements of the risk.

A1C Schedule

A schedule is often incorporated within contract wordings. This shows the specific details of the risk insured, name and address of the insured, limits of insurance, period of insurance, premium and any other specifically agreed information. It should be noted, however, that in the London Market the risk details section of the MRC, if completed fully and correctly, negates the need for a schedule.

A1D Policy, contract wording and contract

Throughout this chapter and the next reference is made to '*policy*' and '**contract wording**'. In many ways, these two words are interchangeable. However, when reference is made to the '*policy*', we are talking about the insurance purchased by the insured. When reference is made to the '**contract wording**', we are talking about the precise contents of the policy document, i.e. the clauses, conditions and exclusions that set out the full terms of the insurance purchased by the insured.

In recent years there has been a general move away from using the term '*policy*' to using the term '**contract**', when describing the insurance purchased by the insured. A useful phrase, which helps reinforce the distinction between '*policy*' and '**contract wording**', is '**contract certainty**'. As we discussed earlier, for a contract to be certain, the precise details of the contract wording forming the (policy) contract should be agreed by both parties at the inception of the risk.

A1E Titles and headings

It should be kept in mind when studying this chapter that the titles given to the different components of the contract wording in this book are those most commonly used in the insurance industry. There may be different names for these components, but they will contain similar features. In some contract wordings, clauses may go completely untitled. It is therefore important to remember that titles and headings within contract wordings generally have no legal effect; it is the contents of each clause that will affect the way the policy operates. An exception to this would be a title such as 'Exclusions applicable to Sections A and B only'. Although this may be given as a title, if there is no further reference that the exclusions apply only to sections A and B and not to section C, for example, the title would be used to construe the context of the exclusions which followed.

Question 3.1

Would you expect the schedules to a standard contract wording and a manuscripted contract wording to differ? If so, how?



For reference only

A2 Proposal forms and underwriting submissions

Traditionally, on certain lines of business (such as personal lines insurance), contract wordings contained reference to and often incorporated a proposal form (also known as an 'application form') completed by the insured. This was viewed as a 'strengthening' of the common law implied condition that the insured's representations form the basis of the contract. However, as we discussed in *Classification of terms in insurance contracts* on page 2/25 the **Consumer Insurance (Disclosure and Representations) Act 2012** and the **Insurance Act 2015** prevent any representation made by a consumer (such as a proposal form) becoming a warranty and bans 'basis of the contract' clauses in consumer insurance.

Be aware, however, that reference to the date of the proposal form will be included under the risk details section of the MRC.

When drafting or checking a contract wording that is to refer to a proposal form, the following items should be considered.

- Is the proposal form identified by its date? If it is identified by the date it was signed, it should be ensured that the date mentioned in the wording or schedule corresponds.
- Does the contract wording make reference to the fact that the proposal form is attached to the contract wording? If so, it should be checked that the proposal form is attached to the back of the contract wording, and that it is clearly identifiable as the proposal form.
- Has the proposal form been fully completed and does it reflect any other information provided about the insured and the insured risk.
- On renewal business, is the correct, updated proposal date referred to in the contract wording.

In the case of business insurance contracts (such as commercial property and liability insurances), a proposal form will not be used. The detailed information that the insurer requires in such insurances will more often be contained in an underwriting submission or renewal submission. Reference to such underwriting submissions should be included under the information section of the MRC.

The insured is still under a general ongoing duty to inform the insurer of any material changes to the risk. Most contract wordings will include an express condition stating that the insured should notify insurers of any material changes during the policy period.

Therefore, if any of the information contained in the proposal form or underwriting submission changes during the policy period, such information should be submitted to insurers and if necessary referenced by endorsement on the contract wording.

In 2016 the LMA designed and introduced a suite of clauses for use under the Insurance Act 2015. The model clause *Insurance Act 2015 – Proposal Forms for non-consumer contracts – Duty of fair presentation (LMA9117)*:



'... is intended for use in proposal forms. It describes the new 'duty of fair presentation' in Section 3 of the Act, which the Insured must fulfil prior to the conclusion of any non-consumer insurance contract. For consumer insurance contracts the pre-contractual representation provisions of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) continue to apply'.



On the Web

For the LMA's guidance, see: bit.ly/2EUXynv.

Insurance Act 2015 – Basis of contract clauses

Basis of contract clauses have been regularly included in either the policy, proposal forms or both, and essentially convert all statements made by the insured to the insurers into warranties.

Therefore, if the information given by insureds proves inaccurate or incomplete, they may not only face an allegation of material non-disclosure or misrepresentation but also one of breach of warranty.

The Act abolishes basis of contract clauses, and the insurer is not able to contract out of this, that is to say it is absolute and not merely a default position.

A3 Insuring clause and classes of business

Each class of business will have its own version of the insuring clause, depending on the cause of loss that is being insured against. Whether it is fire damage to a house, the death of a racehorse, the liquidation of a business, the sinking of a ship or crashing of an aircraft, there is an insuring clause to deal with it. Two examples of such clauses are given here.

Financial Institutions Professional Liability Insuring Clause

Subject to the terms of this Policy Underwriters shall indemnify the Assured for Loss resulting from good faith (save for Insuring Clause (d)) acts or omissions which result in a Claim first made by a Claimant against the Assured during the Policy Period provided such Claim arises out of the provision by the Assured of Financial Services to that Claimant after any Retroactive Date and is for:

1. loss caused by a negligent act, negligent error or negligent omission by an Employee; or
2. loss caused by a negligent breach of trust (including a negligent breach of constructive trust), a negligent breach of fiduciary duty, or a negligent breach of professional duty, by an Employee; or
3. loss caused by any negligent misrepresentation by an Employee; or
4. loss caused by a Dishonest or Fraudulent Act or Omission by an Employee; or
5. actual or alleged Civil Liability.



Institute Time Clauses (Hulls 1/11/95)

PERILS

6.1 This insurance covers loss of or damage to the subject-matter insured caused by

- 6.1.1 perils of the seas rivers lakes or other navigable waters
- 6.1.2 fire, explosion
- 6.1.3 violent theft by persons from outside the Vessel
- 6.1.4 jettison
- 6.1.5 piracy
- 6.1.6 contact with land conveyance, dock or harbour equipment or installation
- 6.1.7 earthquake volcanic eruption or lightning
- 6.1.8 accidents in loading discharging or shifting cargo or fuel.

6.2 This insurance covers loss of or damage to the subject-matter insured caused by

- 6.2.1 bursting of boilers breakage of shafts or any latent defect in the machinery or hull
- 6.2.2 negligence of Master Officers Crew or Pilots
- 6.2.3 negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder
- 6.2.4 barratry of Master Officers or Crew
- 6.2.5 contact with aircraft, helicopters or similar objects, or objects falling therefrom provided that such loss or damage has not resulted from want of due diligence by the Assured, Owners, Managers or Superintendents or any of their onshore management.

6.3 Masters Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the Vessel.



For reference only



Lloyd's Accident and Illness Policy (KA) (UK) (2019) LMA 3133A 16 August 2019

Section One

Accident

This section only covers claims which fall within the definition of **bodily injury** and does not cover any claim caused or contributed to by **illness**.

What is Covered

We will pay the benefit shown in the schedule of benefits if the **insured person** suffers **bodily injury** during the **period of insurance** which results in the **insured person's**:

1. Death.
2. **Loss of one limb.**
3. **Loss of two or more limbs.**
4. **Loss of sight** in one eye.
5. **Loss of sight** in both eyes.
6. **Loss of sight** in one eye and **loss of one limb.**
7. **Permanent total disablement** (other than total and irrecoverable **loss of sight** of one or both eyes or **loss of limb(s)**).
8. **Temporary total disablement.**

Section Two

Illness

This section only covers claims which fall within the definition of **illness** and does not cover any claim caused or contributed to by **bodily injury**.

What is Covered

We will pay the benefit shown in the schedule of benefits if the **insured person** suffers an **illness** during the **period of insurance** which results in the **insured person's**:

1. **Loss of sight** of both eyes.
2. **Permanent total disablement by paralysis.**
3. **Temporary total disablement by illness.**

For reference only

Of particular note are so-called 'all risks' policies, which are seldom intended to cover absolutely all risks. A typical insuring clause may read as follows.



This policy covers all risks of physical loss or damage to the property insured except as may be hereinafter excluded.

When utilising such a policy it is up to the insurer to determine and define what perils are to be excluded, bearing in mind that all others will be covered by the policy. A word of caution, however, is that some countries, such as Australia, do not allow use of the term 'all risks' in commercial insurance contract wordings and recommend the alternative term 'industrial special risks'.

A4 Definitions in classes of business

For some classes of insurance business, the parties rely heavily on definitions contained within the contract wording, to give effect to their exact intentions. Sometimes it is necessary to artificially define the insured event as used in the insuring clause.

This is often the case where insurance against the losses caused by natural disasters is concerned. There is a wide range of losses that may arise from natural disasters. For instance, a windstorm may give rise to flooding after the wind has receded; an earthquake may be followed by fires and aftershocks. Any such disaster may be accompanied by human factors too, such as looting. For these reasons, it is usual to insert an hours clause which defines such losses by time and, in some cases by area, in order to define the event covered. An example of such a clause is given here.

Definition of Loss Occurrence (Risk) (LMA 5224)



1. The words 'Loss Occurrence' shall mean all individual losses arising out of and directly occasioned by one catastrophe. However, the duration and extent of any 'Loss Occurrence' so defined shall be limited to:
 - 1.1 72 consecutive hours as regards hurricane, typhoon, cyclone, windstorm, rainstorm, hailstorm and/or tornado and all ensuing loss directly resulting therefrom, including but not limited to water damage and storm surge;
 - 1.2 72 consecutive hours as regards earthquake, seaquake, tidal wave, tsunami and/or volcanic eruption and all ensuing loss directly resulting therefrom, including but not limited to water damage;
 - 1.3 168 consecutive hours and within the limits of the United Kingdom and Ireland as regards strikes, riots, civil commotions, malicious damage and all ensuing loss directly resulting therefrom;
 - 1.4 504 consecutive hours as regards flood by the same instance of high water which may have more than one peak and may occur in more than one catchment area. However flood losses directly caused by any of the perils stated in paragraphs 1.1 and 1.2 above shall be subject to the applicable hourly limitation stated in paragraphs 1.1 and 1.2 above;
 - 1.5 168 consecutive hours for any 'Loss Occurrence' of whatsoever nature which does not include individual loss or losses from any of the perils mentioned in any of the paragraphs 1.1, 1.2, 1.3 and/or 1.4.
2. No individual loss from whatever insured peril, which occurs outside these periods or areas, shall be included in that 'Loss Occurrence'.
3. It is understood that losses arising from a combination of two or more perils as a result of the same catastrophe shall be considered as having arisen from one 'Loss Occurrence'. Notwithstanding the foregoing, the hourly limitations as stated above shall not be exceeded as respects the applicable perils.
4. For all Loss Occurrences referred to in paragraph 1 above, the Reinsured may choose the date and time when any such period of consecutive hours commences, provided no period commences earlier than the date and time of the happening of the first recorded individual loss to the Reinsured in that catastrophe and provided that only one such period of consecutive hours shall apply with respect to one catastrophe, regardless of the duration of the catastrophe.

LMA5224

19 May 2015

For reference only

Definitions – Lloyd's Accident and Illness Policy (KA) (UK) (2019) LMA 3133A 16 August 2019



Bodily injury means identifiable physical injury which

- is caused by an **accident**, and
- solely and independently of any other cause (except sickness or disease directly resulting from, or medical or surgical treatment rendered necessary by, such injury) which results in the death or disablement of the **insured person** within twelve months from the date of the **accident**.

Illness means sickness or disease of the **insured person** the symptoms of which first appear during the **period of insurance** and which solely and independently of any other cause results in the **insured person's** total disablement within twelve consecutive months after the symptoms first appear.



Hiscox War Terrorism and Political Violence Policy

Act of terrorism means an activity that:

1. is committed for political, religious, ideological or similar purposes and involves a violent act or the unlawful use of force or an unlawful act dangerous to human life or tangible property; and
2. is carried out by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s); and
3. is intended to:
 - a. intimidate or coerce a civilian population; or
 - b. disrupt any segment of the economy of a government, state or country; or
 - c. overthrow, influence, or affect the conduct of any government de jure or de facto by intimidation or coercion; or
 - d. affect the conduct of a government by mass destruction, assassination, kidnapping or hostage taking.

A5 Exclusions and conditions in classes of business

As with the necessarily wide variations in insuring clauses, there are similarly many and varied exclusions and other conditions that can be used with different classes of insurance business. Some of these can occur across classes. For instance, for many years it was a market convention to exclude cover for losses caused directly or indirectly as a result of war or similar activity (we give an example of such an exclusion below). Although the convention is no longer in place, it remains usual for such an exclusion to feature in most classes of business. A notable exception is marine insurance, where coverage can be provided in limited terms. In the examples below, the War and Civil War Exclusion is a broad exclusion which would be considered absolute, whereas the WeiCar Pollution Exclusion is not absolute in that actually provides certain pollution liability subject to given provisions and criteria.

A6 Period of insurance

There are seldom special requirements regarding the period, but it is to be noted that not all insurances are for fixed periods of time. For example, a marine policy may provide cover for the period of a voyage or voyages and a contractor's policy for the duration of the contract. It is common, however, for a maximum time to be specified, or sometimes for coverage to terminate automatically upon the occurrence of a defined event or circumstance.

A7 Special requirements for regulatory purposes

Regulators of insurance in many territories will have a range of requirements that need to be taken into account in commercial insurance contract wordings. These are likely to differ from territory to territory, sometimes subtly and sometimes radically. They are generally imposed to protect the local buyer of insurance, or for fiscal or 'public policy' reasons, and tend to be more extensive the more developed the insurance industry is in the territory concerned. It should be noted particularly that regulators' requirements are quite likely to vary between states in the USA and between provinces in Canada. Regulatory requirements may apply in relation to the following.

The type of document:	for example, mandatory provisions relating to the form or content of locally issued insurance certificates may not be applicable to open market policy wordings
A market sector:	typically, there will be an emphasis on non-marine direct insurance activity and relatively few requirements relating to international (marine, aviation and transport) business and reinsurance; an example of such requirements in the UK is that motor policies be unlimited in respect of third party liability (technically this is not a requirement placed on insurers but on the buyer of the policy to operate on the roads)
Individual classes of business:	for example, in the highly sophisticated and regulated Canadian market, there are various prohibited exclusions (for fire insurance), prohibited coverages (defence costs in civil liability insurance in Quebec) and compulsory inclusions (individual personal accident and sickness mandatory conditions)

For reference only

Model wordings:	for example, a service of suit clause may need to be in a form approved by the local regulatory authority, and there are a number of 'post 9/11' terrorism wordings mandated in some territories
Local law ramifications:	for example, all policies made subject to Spanish law must include the amount of taxes payable by the insured, whereas this is not generally a legal requirement in other EU Member States
Presentation and language:	for example, exclusions, restrictions, limits etc. may be legally required to be in bold typeface to be enforceable and/or there may be language requirements regarding the policy wording itself or associated notices

Regulatory requirements can thus be very extensive and prescriptive in relation to both the content and the form of the product provided to the insured. It is essential, for both sound commercial and compliance reasons, to ensure that each policy meets them fully. Lloyd's has developed a web-based system called *Crystal*, through which Lloyd's brokers and managing agents can access detailed manuals listing requirements by individual territory.

Activity

Visit www.lloyds.com/conducting-business/regulatory-tools/crystal/ and see what's new in a territory or country where you do business.



B Definitions and consistency of language

We examined in *Legal factors affecting commercial contract wordings* on page 2/2 the legal rules governing the construction and interpretation of commercial insurance contract wordings. However, it is worth mentioning again, from a practical drafting or checking point of view, that the words used in a contract wording will be given their common everyday meaning, unless the contract wording states to the contrary. An exception to this would be where certain terms have acquired a technical meaning that is commonly understood, either in the particular trade or industry to which the insurance relates, or in the insurance industry itself. It is not always possible to know what such meanings may be and so the best practice to follow in drafting a contract wording is this: if in doubt, define the term within the contract wording itself.

Most commercial contract wordings will contain a section entitled 'definitions' in which certain key words or phrases are defined. The definition of a term that is given in the contract wording will prevail over any everyday or common meaning of the word. This is because the term will be presumed to have been defined in accordance with the intention of both the insured and the insurer. A definition therefore brings a greater level of certainty to the contract.

If a term is defined in the contract wording, the following points should be kept in mind when drafting or checking the contract wording.

Defined terms should be identifiable as such throughout the wording

This can be achieved by the use of:

- capital first letters for defined words or
- italicised words or
- words in bold font or
- terms within inverted commas or quote marks

Whichever method is used to identify the defined term, this should be used consistently throughout the wording, wherever the meaning given in the definition is intended.

If a defined term is shown in a different style in certain parts of the wording it may lead to the presumption that it was not intended that it be interpreted in accordance with the definition, but in accordance with its everyday or industry meaning

For example, problems of interpretation can arise from the use of terms such as 'injury', 'bodily injury' and 'personal injury' or 'damage' and 'property damage' within a wording

A definition should be as full and complete as possible

When defining a word or term, it is good practice to avoid the use of the words 'including without limitation', followed by a list. There are certain rules for the interpretation of what else could be deemed to be included within the definition. Nevertheless, it can detract from the certainty of the definition to use such a phrase