

BRIEFING NOTE

***Sompo Insurance Singapore Pte Ltd v Royal & Sun Alliance Insurance Plc* [2021] SGHC 152 – Do Subrogation Rights Extend to Performance Bonds?**

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Introduction

Subrogation actions, where insurers step into the shoes of the insured to pursue the legal rights of the insured, are fairly common. However, it is not too common to hear of insurers calling on performance bonds issued by third parties to insureds.

In *Sompo Insurance Singapore Pte Ltd v Royal & Sun Alliance Insurance Plc* [2021] SGHC 152, the Singapore High Court decided that subrogation rights extend to calling upon performance bonds provided to the insured by a third party. We discuss the decision below.

Background

The Singapore Government contracted with a shipper to transport military cargo by sea freight. Some of the cargo was damaged during the shipment.

The Government had purchased indemnity insurance from Royal & Sun Alliance (“**RSA**”). RSA indemnified the Government for loss occasioned by the damage. On behalf of the Government, RSA then wrote to Sompo Insurance (“**Sompo**”), who had issued a performance bond in favour of the Government, to call on the performance bond.

Sompo refused RSA’s claim on the basis that RSA’s subrogated rights were limited to pursuing an action against the shipper and do not extend to calling on the performance bond.

Decision of the High Court

The High Court disagreed with Sompo’s position. RSA had the option of pursuing a subrogated action against the shipper or the issuer of the performance bond.

The juridical basis for the law of subrogation is that there is:

- (a) an implied promise by the insured to account to the insurer for monies recovered from third parties in relation to the insured loss; and
- (b) an implied promise that should the insured not pursue recovery against such third parties, the insurer may exercise the rights of action vested in the insured against any such third parties for recovery of the insured loss.

Calling on the performance bond was one of the remedies available to the Government. Had the Government called on the performance bond before claiming from RSA, that performance bond would have covered the insured loss. Alternatively, had the Government called on the performance bond after claiming from RSA, the Government would have to account to RSA for any monies recovered. It follows that once RSA had indemnified the Government, RSA was subrogated to the Government's contractual rights to call on the performance bond.

The High Court therefore determined that RSA had properly exercised its subrogated rights, in writing to Sompo on behalf of the Government, to call on the performance bond.

Implications

The High Court's decision is important for it confirms that insurers may pursue all the rights and remedies available to the insured. To put it into context, RSA was not limited to issuing subrogated proceedings against the shipper (who damaged some cargo during shipment); RSA was entitled to pursue its subrogated rights under the performance bond as well.

This is an important development for both insureds and insurers. For insureds who had taken out performance bonds, there is an option of seeking indemnification from insurers (and having insurers recover from issuers of the performance bonds subsequently). For insurers, there is assurance that recovery under performance bonds may be sought after indemnifying the insured.

How We May Assist

Our lawyers have been assisting the insurance market (including insureds, brokers and insurers) across all lines of insurance claims in the region. We would be delighted to assist you or your company in considering your claim and/or the extent of your insurance coverage.

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