

BRIEFING NOTE

Warranty Clauses in Insurance Policies

- ***What are the Consequences for Breach of Warranty?***

Sinyee Ong

22 June 2023

Introduction

Warranties contained within insurance policies are powerful weapons of choice in the arsenal of defences available to insurers. Conventionally, warranties reference statements made or answers given by the policyholder in the proposal form, which forms part of the contract of insurance. That said, additional warranties (or clauses purporting to be warranties) may also appear in the general conditions of insurance policies when the policy is issued to the insured.

If an insured fails to comply with a warranty (or a clause purporting to be a warranty clause), does the insurer remain liable to indemnify? Below, we discuss more.

What are the Consequences of Failing to Comply with a Warranty?

Section 33 of the Singapore Marine Insurance Act 1906 (the “MIA”) stipulates that in contracts of marine insurance, a warranty is:

“a condition which must be exactly complied with, whether it be material to the risk or not; and if it is not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.”

That means that for contracts of marine insurance, where an insured breaches a warranty, then (unless there is waiver) the consequence of that breach is to discharge the insurer from liability from the date of the breach. This position is confirmed by the UK House of Lords in *Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd* [1992] 1 AC 233.

What about contracts of non-marine insurance? Absent legislation, it appears that the Singapore Courts would adopt a similar position for breach of warranties in non-marine insurance contracts. In *L’Union des Assurances de Paris IARD v HBZ International Exchange Co (S) Pte Ltd* [1993] SGCA 49 (which involved a money insurance policy), the Singapore Court of Appeal acknowledged that breach of warranty entitles insurers to repudiate a policy.

Must Insurers be Actually Prejudiced by the Breach of Warranty?

For marine insurance contracts, Section 33 of the MIA sets out clearly that the insurer is discharged from liability regardless of whether the breach was material to the risk.

For non-marine insurance contracts, absent legislation, the position appears to be the same. In *Stork Technology Services Asia Pte Ltd v First Capital Insurance Ltd* [2006] SGHC 101 and *Penguin Boat International Limited v Royal & Sun Alliance Insurance (Singapore) Ltd* [2008] SGHC 83, the Singapore High Court determined that breaches of conditions precedent can be strictly enforced by insurers irrespective of whether actual prejudice is caused to the insurers.

What are the Implications for Insureds?

From the perspective of insureds, it may appear that all is lost once there has been a breach of warranty (or clause purporting to be a warranty). That may be overly pessimistic.

First, not all clauses purporting to be warranties will be construed and applied as warranty clauses. Simply labelling a clause as a 'warranty' does not necessarily make it a warranty clause. The Singapore Courts will look to the substance of the clause to determine whether it should be construed as a warranty or condition (the breach of the latter results in damages).

Second, insurance policies typically stipulate that where breach of warranties are without the knowledge and consent of the insured, then insurers remain liable to indemnify.

Third, if insurers fail to repudiate the policy following knowledge of breach of warranty or where insurers waive the breach of warranty, then insurers remain liable to indemnify.

Fourth, if the insured remedies the breach before loss or damage occurs, there is an argument that insurers may still be held to be on risk at the time of the loss or damage.

Commentary

For any insurance policy, insureds should pay attention to warranty clauses and ensure compliance with such clauses. When faced with a repudiation of policy following alleged breach of warranty, it is worth keeping in mind that insurers may still be liable to indemnify. As insurance lawyers, we work across most policy lines and advise on a spectrum of complex insurance claims. To find out how we can help, do reach out to any member of our team.

Sinyee Ong



sinyee.ong@sjlaw.com.sg

65 6694 7281 | 65 9148 5059