Nanotechnology
– the next big thing
Diagnostic pills, pollution guzzling enzymes and more efficient energy production could all be on the cards thanks to nanotechnology. But, while this form of technology is set to deliver some major humanitarian advances, it’s not without its risks. These risks relate to the size of the particles that are used in nanotechnology. As the name suggests, these are incredibly small, where a nanometre is one billionth of a metre.

At this scale, which is just a matter of a few atoms, nanomaterials can behave very differently to when they are in much larger forms. Properties that can be altered include behaviour in chemical reactions, their ability to conduct electricity and their melting point. As a result, there are a number of risks that are raised in the context of nanotechnology:

**Human health**

As the particles are so small, there is a risk they could be inhaled, ingested or absorbed through the skin and, either due to their size or their altered characteristics, lead to health problems. The Health and Safety Executive recommends a precautionary approach when dealing with any nanomaterials while more data is collected on the health risks.

**Environmental**

Pollution is another concern. As well as potentially damaging waterways and air quality, there are worries about nanomaterials getting into the food chain. This could also have ramifications for health.

In addition to these risks raised above, other more speculative risks associated with nanotechnology have been discussed. For instance, nanotechnology could be used to support military action with weapons potentially much more powerful and destructive than existing weaponry. Nanotechnology also offers the potential to conduct electricity and their melting point. As a result, there are a number of risks that are raised in the context of nanotechnology:

**Human health**

As the particles are so small, there is a risk they could be inhaled, ingested or absorbed through the skin and, either due to their size or their altered characteristics, lead to health problems. The Health and Safety Executive recommends a precautionary approach when dealing with any nanomaterials while more data is collected on the health risks.

**Environmental**

Pollution is another concern. As well as potentially damaging waterways and air quality, there are worries about nanomaterials getting into the food chain. This could also have ramifications for health.

In addition to these risks raised above, other more speculative risks associated with nanotechnology have been discussed. For instance, nanotechnology could be used to support military action with weapons potentially much more powerful and destructive than existing weaponry. Nanotechnology also offers the potential for artificial intelligence, with the possibility that future applications will be able to build self-awareness into devices.

But, while there are risks, it’s essential to get the balance right between these and the significant opportunities nanotechnology presents. The insurance industry has a key role to play as, without its support, many of the companies involved in this area would be unable to continue with their developments.

A company using nanotechnology, whether incorporating it into products, developing new materials or using it within its production processes, will rely on new forms of equipment. As well as potentially being more expensive, and therefore requiring higher levels of cover, the specialist nature of this new kit may mean it is difficult to replace quickly. This, combined with the rapid pace of change in such technologies, will have implications for clients in terms of how the need for, and extent of, business interruption cover is assessed.

Similarly, insurers will also need to factor in changes to the working environment. For example, due to the size of nanoparticles, clean room environments are required to avoid contamination. This high specification requirement will have an effect on cover such as Erection All Risks and Contractors All Risks. In this instance, experience in other related areas such as biotech and electronics is useful. Clean room environments are used extensively in semiconductor manufacturing so it will be possible to transfer understanding of this when insuring facilities using nanotechnology.

While drawing on experience will help to shape underwriting for property risks, the emerging nature of nanotechnology means that liability is likely to present even more challenges.

Even with extensive modelling, no one can really know for certain how a new material might perform in 10 years time or whether it has caused health problems, environmental damage or safety issues.

Concerns around carbon nanotubes are a good example of this. As they resemble and behave like asbestos fibres, studies have found that, if inhaled, they could cause mesothelioma. This is a disease that can take 30 to 40 years to develop, therefore it is essential to reduce the risk of employees or third parties being exposed.

And it’s not just the risk of inhaling nanoparticles that can cause worries for liability insurers. Particles can also be ingested or absorbed through the skin. This, coupled with the lack of understanding around how the characteristics of these materials might change over time, means a robust approach to health and safety is key to minimising risk.

Because of these risks, as with any new product or process, thorough testing and research is essential to gain a full understanding of the potential issues.

Taking a balanced approach to nanotechnology is essential. The new risks associated with it will mean modifications to the way we insure these businesses. The potential advances nanotechnology brings in areas such as medicine and energy production mean insurers must work with the industry to ensure the risks don’t outweigh the benefits.
Taking sanctions seriously

Sanctions and embargoes are political trade tools used against identified countries or individuals. They are usually designed to encourage changes in behaviour that will maintain or restore international peace and security or address humanitarian concerns.

Imposed by governments and bodies such as the United Nations and the European Union and carrying serious penalties for any violations, it’s essential that any companies operating internationally are aware of how to comply with them.

A variety of different sanctions operate including sports sanctions, where a country is barred from competing in international events, and diplomatic sanctions, where restrictions are placed on diplomats and embassies, but the ones most pertinent to the insurance industry are economic, trade and financial sanctions.

The nature of these sanctions can vary but could include a freeze on assets or restrictions on carrying out trade, transferring funds or providing financial services including insurance. As well as being taken out against a country or its government, they can also apply to corporate entities and named individuals such as political leaders or terrorists. Sanctions are always targeted and rarely affect all forms of trade with a particular country.

Those most frequently applied include:

- Embargoes on exporting or supplying arms
- Financial sanctions on identified individuals
- Bans on imports of raw materials

Stiff penalties

Breaching the terms of a sanction carries some serious penalties. In the UK, it is a criminal offence with anyone found guilty of a breach facing a fine and/or up to two years’ imprisonment. This increases to seven years where terrorist assets are involved.

Fines can be significant too. There have been well publicised examples in financial services areas with a fine of $1.9bn (£1.2bn) imposed by US regulators in 2012 over allegations that a company had violated US sanctions by allowing itself to be used for money laundering and terrorist financing. Another example involved $100m (£65m) settlement in respect of sanctions breaches relating to Iran, Sudan and Cuba.

The UK regulator imposed a fine of £5.5m in 2010 for failure to have adequate systems and controls in place to prevent breaches of UK financial sanctions.

Apart from fines the reputational damage arising from involvement in a high profile case of this type can be extremely serious.

Insurance position

As the provision of insurance is considered part of financial services, insurers and brokers must ensure they do not enter into transactions that would result in a breach of sanctions. To support this, as part of its responsibilities to prevent financial crime, the Financial Conduct Authority (FCA) requires firms to have adequate systems and controls in place to comply with UK sanctions requirements.

At Allianz, we do all we can to ensure we don’t enter into transactions that breach sanctions. At case level we’ll ask customers about their mix of business as this can highlight whether they are dealing with countries where there could be an issue.

Further checks are also made at the point of a claim to ensure that payments are not made in breach of any sanctions prohibition.

As well as referring to HM Treasury’s Consolidated list of targets, it is also prudent to make this assessment part of your client fact find. Asking questions about the nature of their business, the items they produce, and the countries they have relationships with can help to highlight any potential issues.

Taking this approach is also sound business sense. As well as being part of the FCA’s Know Your Customer approach and helping to safeguard your business, it can also show you where a client might benefit from additional insurance cover.

Checks should also be run on a regular basis to ensure that a new sanction hasn’t been placed on an existing client. Signing up to HM Treasury’s financial sanctions mailing list will keep you up to date with any changes to its consolidated list of targets for financial sanctions in effect in the UK. This can be done on its website at https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets

Making these checks part of your business processes will ensure you don’t inadvertently breach a sanction and risk the stiff penalties this entails.

Know your customer

Although the probability of insuring a client that conducts business with a country or individual with sanctions is relatively slim, the seriousness of the offence and the size of the penalties means it’s essential to make these checks part of your due diligence too.

Apart from fines the reputational damage arising from involvement in a high profile case of this type can be extremely serious.

Further information can be found on the Government website

www.gov.uk/sanctions-embargoes-and-restrictions
Building information modelling, or BIM as it’s commonly known, is a process through which a digital 3D model is created to give insight into the design, construction and management of the building. It is a collaborative approach, with all parties involved in the project feeding in their design elements and specifications to give a better understanding of how they interact.

Benefits of BIM

Working in this way delivers benefits for all parties. As well as making it possible to rehearse a construction project to ensure there are no design shortfalls, modelling using BIM can also drive savings throughout a project’s life cycle.

A good example of this is the First Direct Arena in Leeds. This was managed by Bam, which used BIM to achieve a variety of savings including 9,000 drawings, 15,000 man hours and numerous major design clashes during the build. Going from the typical 100 design clashes to just two saved in the region of £350,000.

Unsurprisingly, these benefits mean BIM is becoming much more commonplace. For instance when NBS (the Royal Institute of British Architects Enterprises’ building specification arm), started monitoring adoption in 2010, just 13% of firms were using it; by 2014 this had increased to 54%. And take-up is expected to accelerate further with the government’s construction strategy mandating the use of BIM on all public sector centrally procured construction projects by 2016.

With any new way of working, there are inevitably teething issues. For BIM, the lack of a common standard could potentially cause issues as it becomes more widespread. But this is likely to be resolved relatively quickly, especially with the government mandate coming into effect within the next 12 months.

Insurance considerations

There are some interesting areas for the insurance industry to contemplate. With so many people working on the same model coupled with multiple incremental versions of models, variations to initial specifications and ongoing changes to software or data structures there are potential challenges around the question of liability. If something goes wrong with the build as a result of an error relating to BIM, it will be necessary to determine who is at fault. In order to facilitate this tracking back to source, having tight controls and audit trails in place will be essential.

It will also be important to ensure that the model reflects changes made during the build phase. This will be essential as BIM models are likely to have a much longer lifespan than more traditional drawings, being used for post-completion facilities management and even potentially to help fire and rescue services in the event of an emergency.

This new way of working also raises important questions around intellectual property. Although the final model will have input from a variety of different sources, it will be essential to identify who owns it and what permissions there are around it. The increased use of technology could also create new exposures for the construction sector. Running BIM may mean that a firm needs to invest in more IT equipment, with implications for property and computer covers. In addition, as models may be shared over the internet, there’s also greater exposure to e-risks for which cyber insurance provides valuable protection.

The introduction of BIM could also drive wider change in the construction industry. Not all contractors will be prepared or able to invest in the new technology and may have to consider outsourcing BIM instead. This in turn creates a longer supply chain, with implications for risk and insurance cover. As BIM continues to shape the construction sector, it will be important to keep abreast of how clients’ operations are changing and how this affects their insurance risk. Advising them on the new risks associated with BIM and ensuring they have adequate and appropriate cover and risk management strategies in place will be a key factor in helping to enable the successful adoption of these exciting new methods of working.

How BIM is changing risk

The construction industry is undergoing change as more and more firms adopt building information modelling (BIM). While this brings significant benefits, it’s also set to change the risk profile of this sector, altering existing risks and introducing new ones.
Loss of data, whether maliciously through a cyber attack or as the result of an innocent mistake, can seriously affect a business. As well as generating fines of up to £500,000 under the Data Protection Act, a data breach can potentially put a company out of business. According to the Strategic Research Institute, if a company is unable to resume operations within 10 days of a data disaster, it is unlikely to survive. Even where a business is able to get its operations back up relatively quickly, the cost of a data breach can be significant. Take a malicious cyber attack as an example. Government figures show that the cost of the worst security breach can be as much as £1.15m for large businesses and £115,000 for smaller ones. And, whether malicious or an innocent mistake, the financial implications of a data breach are set to rise too. Under the European Commission’s General Data Protection Regulation, which is scheduled to be introduced in 2015, as well as higher fines, many are expecting tougher requirements when it comes to reporting data breaches.

Managing the risk
Taking steps to reduce the risk of a data breach is essential, especially as statistics indicate that most businesses have been affected. For instance, government figures found that 81% of large corporations and 60% of small businesses reported a security breach in 2014.

To avoid becoming another statistic, robust security is vital to protect your data from cyber attacks. As well as firewalls and virus detection software to keep the cyber criminals out, it’s sensible to have access controls. For example, using a virtual network when employees are signing in from home or distancing retail facing websites from the main systems to prevent someone hacking in.

It’s also important to ensure that, whether lost or stolen, data is of little value to a third party. Ensuring it is password protected and encrypted can help to make it worthless.

With data such an important part of many businesses, a structured approach to regularly backing it up is another must. Exactly what this entails will vary from business to business. For example, one firm may be happy to back-up data every day, storing it off-site so it is not lost in the event of fire or flood. Another may prefer to have ghosted servers, where the data is continuously backed-up to a computer in a remote location or in the cloud.

Insurance solutions
Ensuring data is well protected and regularly backed up will reduce the risk of a data breach and minimise the potential damage if data is stolen or lost. But, as cyber criminals are constantly developing new ways to get round security, it is almost impossible to completely remove this risk.

Cyber insurance can provide that final layer of protection. No standardised wording for cyber insurance is available in the UK, but typically cyber insurance could: help a business detect where the data breach has occurred and its nature; rebuild or recreate the data; cover the notification and credit monitoring costs; provide legal and PR support to minimise reputational damage; and cover any losses if the business cannot operate due to the breach. Depending on the type of cover it may also extend to third party liability, which would pick up the costs if a policyholder compromises another entity’s data. Taking this multi-tiered approach to protecting data is essential. With data becoming increasingly important to a business, and the data protection regulations getting tougher, few firms can afford to leave themselves open to this risk.

Please click here for information on Allianz Global Corporate & Specialty’s CyberProtect product.
Damage limitation

Workplace accidents can happen. When they do, taking the right steps can make a significant difference to the outcome, minimising reputational damage and helping to limit the size of any penalty.

When a significant accident does occur, the Health & Safety Executive (HSE) has a number of enforcement actions it can use. These include launching an investigation, which will establish what has happened and recommend ways to prevent recurrence; issuing an enforcement decision or notice; and, where other routes have uncovered serious breaches, prosecution.

**High stakes**

With all of these, the cost to the business can be high. First, costs can be incurred under the HSE’s cost recovery regime, Fee for Intervention. With this, where a company is found in material breach of health and safety law, it will be charged, at the hourly rate of £124, for the amount of time it takes the HSE to carry out any regulatory action.

Where the HSE’s investigation results in prosecution, an employer will also face fines and imprisonment. Although maximum penalties for health and safety offences are set out under The Health and Safety at Work etc Act 1974 (see box on following page), there are no guidelines determining the size of fines for specific health and safety breaches. Instead courts will take a variety of factors into account such as the nature of the breach, the size of the organisation, any history of health and safety breaches, and whether it has taken any steps to prevent a recurrence.

**Insurer support**

With so much at stake, notifying their insurer should be one of the first steps an employer takes when an incident occurs. At Allianz, we recommend appointing a Reporting & Investigations Officer (RIO), responsible for ensuring all workplace incidents, accidents and near misses are thoroughly investigated, recorded and reported, thereby reducing the stress a workplace accident can cause. The RIO can be an existing employee, such as a supervisor or manager or another trusted and diligent employee.

As well as being able to help with a claim, the insurer will be able to instruct lawyers to support the employer throughout any investigation and prosecution.

Being able to access this expertise can be invaluable. A lawyer will understand the processes and legal implications, ensuring the right statements are made and that the incident is properly investigated and defended. For example, where a serious accident occurs, it is customary for the employer to be interviewed by the police as well as the HSE. But, with statements made at this time potentially colouring the prosecution, having legal representation in these interviews is essential. At what can be a very stressful time for the employer, a lawyer will ensure that the right information is provided and their legal rights are respected.

**Support**

With so much at stake, notifying their insurer should be one of the first steps an employer takes when an incident occurs. At Allianz, we recommend appointing a Reporting & Investigations Officer (RIO), responsible for ensuring all workplace incidents, accidents and near misses are thoroughly investigated, recorded and reported, thereby reducing the stress a workplace accident can cause.
Damage control

Working closely with an insurer and its legal representatives will also mean that fines are contained wherever possible. This could include ensuring that any mitigating factors are taken into account, for instance where an employer recognises that something has gone wrong to cause the accident and it has subsequently taken appropriate steps to tighten up systems or educate employees to prevent it happening again.

Similarly, a lawyer may recommend a guilty plea where they believe it will lead to a more favourable outcome. For example, in some instances, a court will give credit where a guilty plea has been entered and the company has taken steps to improve health and safety.

An insurer can also provide plenty of advice and support around complying with health and safety regulations to help a business prevent accidents occurring in the first place.

For example, at Allianz, our Risk Control department employs a wide range of expertise, including tutorials with specialist knowledge in health and safety risk management. Allianz policyholders and brokers can also benefit from our free online risk management portal www.riskdirector.co.uk, which contains comprehensive guidance and support on a broad range of topics.

A lawyer may recommend a guilty plea where they believe it will lead to a more favourable outcome. For example, in some instances, a court will give credit where a guilty plea has been entered and the company has taken steps to improve health and safety.

Fees for intervention under the HSE’s Cost Recovery Scheme. (£124 per hour)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Invoices issued in 2013</th>
<th>Invoices issued in 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>£174,251.66</td>
<td>£200,360.16</td>
</tr>
<tr>
<td>Construction</td>
<td>£1,951,959.38</td>
<td>£2,656,212.89</td>
</tr>
<tr>
<td>Extractive Utilities</td>
<td>£195,364.12</td>
<td>£280,503.24</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>£2,799,624.17</td>
<td>£3,788,424.41</td>
</tr>
<tr>
<td>Service</td>
<td>£1,630,380.38</td>
<td>£2,798,301.20</td>
</tr>
<tr>
<td>Water/Waste Management</td>
<td>£299,395.74</td>
<td>£486,353.34</td>
</tr>
<tr>
<td>Not specified</td>
<td>£31,644.80</td>
<td>£63,266.83</td>
</tr>
</tbody>
</table>

Source: HSE

Penalties for health and safety offences

<table>
<thead>
<tr>
<th>Offence</th>
<th>Lower court maximum</th>
<th>Higher court maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failing to comply with an improvement or prohibition notice or a court remedy order</td>
<td>£20,000 and/or 12 months’ imprisonment</td>
<td>Unlimited fine and/or two years’ imprisonment</td>
</tr>
<tr>
<td>Breach of sections 2-6 of The Health and Safety at Work Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most other breaches of the Act, contravening licence requirements and breaches of all other health and safety regulations under the Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conviction of directors for indictable offences in connections with the management of the company</td>
<td>Five years’ disqualification</td>
<td>15 years’ disqualification</td>
</tr>
</tbody>
</table>
Mid Corporate update

New Professional Services proposition from Allianz

Professional Services is an insurance proposition tailored to address the unique needs of your clients in the Professional Services sector with a combined property and casualty premium of £10,000 - £100,000. Covers and service enhancements include:

- Computers E-Risks – recreation of computer media and additional expenditure losses
- Plans, models and drawings - £250,000 limit within the UK, £100,000 limit within the EU
- Business travel – complimentary business travel cover
- Discounted optional Directors & Officers and Professional Indemnity Cover
- Free legal helpline and legal online services
- Free 10 minute cyber security consultancy
- Free Disaster Recovery Protection

And many more.

Professional Services is the fourth mid-corporate proposition from Allianz, following Wholesale and Retail, General Manufacturing and Metalworking and Precision Engineering.

Additionally, we’ve also enhanced our Commercial Select product which now includes a new Directors & Officers section with increased limits on many extensions.

To find out more about our mid-corporate propositions, please visit www.allianzbroker.co.uk or contact your local Allianz representative.

Insurance Act 2015 Reforms

Following the Law Commission and Scottish Law Commission joint review to reform insurance contract law, the Insurance Act 2015 received royal assent on Thursday 12 February 2015.

The Act introduces changes to warranties, insurers’ remedies for fraudulent claims and duty of disclosure in commercial insurance contracts. These reforms represent the largest overhaul to insurance contract law in England, Scotland and Wales in over a century. The key provisions relate to disclosure, warranties and fraud. They are intended to bring the market into the twenty first century by rebalancing rights and remedies when things go wrong.

As we always have the customer at the forefront of what we do, we have adopted the reforms with immediate effect. We have produced the attached guidance document detailing how we will implement the changes and what this will mean for you and your customers.

Updates to our Telephone Numbers

In line with the forthcoming Ofcom regulations and new proposals from the Financial Conduct Authority, we are undertaking changes to our telephone numbers.

Treating our customers fairly is important to Allianz; it’s essential we give customers the reassurance that they’ll only be charged the equivalent of a basic rate to contact us.

We’re therefore phasing out all existing 0844, 0845 and 0870 numbers and replacing them with a range of 03 prefix numbers. These changes also mean that a small amount of telephone numbers, which were previously Freephone, will now be charged at the equivalent of a basic rate by the Summer of 2015. 03 numbers cost no more to call than the geographic 01 or 02 numbers and are usually included within landline and mobile calling packages.

Timeline for changes

Over the coming months, we’ll be updating our literature, including policy wordings, brochures, leaflets, letters and websites. In the meantime, and for a period of time afterwards, our existing numbers will remain available and will run in parallel with the new numbers to ease the transition.

If you have any queries regarding this matter, please don’t hesitate to contact your Allianz representative or branch.
It is very unlikely that a standard insurance policy will comply, therefore, in order to receive the loan money the borrower’s insurers have to make amendments to policy coverage.

Lenders’ finance arrangements

Since the demise of the BBA/ABI Bank Agreement in 2012, we have seen a sharp increase in the number of requests for bespoke amendments to policies at the request of lenders. These are creating challenges for insurers and brokers, due to their complexity and nature of the requests. This article explains what is being requested by lenders and looks at the implications from both the insurers’ and policyholders’ point of view.

Why do lenders ask for changes to borrowers’ insurance policies?

When a property or business owner approaches a financial institution for finance or re-finance, the lender will often require a method to secure their interest in the individual property or business. Part of the finance agreement for the loan will include how the lender requires their interest to be secured in the borrower’s insurances. They use this as a way of securitisng their financial interest under the loan. The request from the lender usually takes the form of a letter which sets out various obligations and requirements including confirmation that the insurances are set up in line with the facilities agreement. It is the facilities agreement which contains the detail about how the borrower’s insurances should be arranged.

It is very unlikely that a standard insurance policy will comply, therefore, in order to receive the loan money the borrower’s insurers have to make amendments to policy coverage.

What are lenders asking for?

There are various methods for the lender to securitise their loan. Some are more invasive than others in terms of the structure and operation of the insurance policy.

Noting of Interest

This is the least invasive, and is a simple request for the lender’s interest to be noted on the borrower’s policy document. It achieves little for the lender as it has no specific legal effect. The lender does not become party to the insurance. This request is seen mainly in the domestic insurance market.

First Loss Payee/ Assignment of Policy Proceeds

These designate a third party to accept insurance claims money rather than the insured, so before claims payments are made, the first loss payee/assigned party must be consulted to establish who the money is to be paid to. There is often (but not always) a monetary limit included in order that small claims can be paid direct to the borrower without consultation.

This has implications for the insurer as the claims money may be used to pay down the loan, rather than reinstate or repair following the loss. It also has implications for insurers as a business interruption claim may continue to run if claims money is not used to reinstate the business.
It is worth noting though, that the first loss payee/assigned party have no rights under the policy to claim independently and the insurer retains all their rights under the policy (i.e. they can rely on the standard policy wording). This, however, weakens the lender’s position under the policy, as if a borrower does not comply with policy conditions, the insurers may refuse to pay a claim. Lenders overcome this issue by asking for non-invalidation or non-vitiation clauses to be added to the policy.

Non-Invalidation / Non-Vitiation

These ensure the policy remains operative even if a borrower contravenes a condition of their insurance policy. This has significant implications for insurers as they can no longer rely on their policy terms, and may pay claims they would otherwise not have paid. It is not unusual to see requests for claims to be paid to the first loss payee/assigned party for wilful or criminal acts by the borrower.

Composite Insured

The policy is divided into two, to cover both the borrower and the lender for their respective interests. This enables both parties to make an independent claim under the policy to the extent of their own loss, and in basic terms means that the insurer can pay out twice from the same event. This does mean that the lender picks up the obligations under the policy, but, of the few they could ever contravene (duty of disclosure for example), they usually ask for these to be waived. This is a significant change to the policy structure and must not be underestimated.

Policy Assignment

This is the most invasive of the requested changes, and entails the policy, in its entirety, to be assigned to a third party. The insured retains no rights under the policy, but may still be responsible for the premium. It is possible for the insurance policy to be “sold on” with the loan. Most insurers have realised that there are some basic principles of their policy contract that they are not prepared to change or set aside, examples being the right to enforce reinstatement and the need for disclosure by the lender of any information that materially alters the risk. Insurers are also ensuring that they limit the possibility of paying out twice by stating that where payment is made to one party, it is deemed payment to all parties. Confidence is growing by insurers to suggest alternative wordings and there is some evidence to suggest lenders are becoming more flexible. The ABI has been liaising with lenders and the Loan Markets Association to raise concerns regarding complex and varying requests and policyholders not understanding the implications of the changes to their policy.

Many insurers have realised that there are some basic principles of their policy contract that they are not prepared to change or set aside, examples being the right to enforce reinstatement and the need for disclosure by the lender of any information that materially alters the risk. Insurers are also ensuring that they limit the possibility of paying out twice by stating that where payment is made to one party, it is deemed payment to all parties. Confidence is growing by insurers to suggest alternative wordings and there is some evidence to suggest lenders are becoming more flexible. The ABI has been liaising with lenders and the Loan Markets Association to raise concerns regarding complex and varying requests and policyholders not understanding the implications of the changes to their policy.

The market situation

Undoubtedly some lender’s letters have been signed by either brokers or insurers without a full understanding of the implications, but market understanding is now improving and this should be happening less frequently. Some insurers have formed expert teams who attempt to understand exactly what each lender’s request is trying to achieve, and have taken legal counsel regarding the best way to respond. Insurers are attempting to charge some additional premium where appropriate and may try to limit their ongoing obligations due to concerns that they may not be able to comply.

NB, the term “Policy Assignment” is often misused, when what is actually required is “Assignment of Policy Proceeds”.

Claims funding may be diverted to pay down their loan

The agreement dilutes the client’s control of their own assets

Their own business premises may not be able to be repaired or rebuilt

They may have tenants who expect the premises to be rebuilt

They pay their insurance premium but may not benefit from any claims payments

Claims funding may be diverted to pay down their loan

Theirs insurer is likely to cap their BI claim at the point funds are paid to the lender

Potential implications for our clients

Bank finance agreements

Theirs own business premises may not be able to be repaired or rebuilt

They may have tenants who expect the premises to be rebuilt

They pay their insurance premium but may not benefit from any claims payments

Claims funding may be diverted to pay down their loan

Theirs insurer is likely to cap their BI claim at the point funds are paid to the lender

Potential implications for our clients

Bank finance agreements

Theirs own business premises may not be able to be repaired or rebuilt

They may have tenants who expect the premises to be rebuilt

They pay their insurance premium but may not benefit from any claims payments

Claims funding may be diverted to pay down their loan

Theirs insurer is likely to cap their BI claim at the point funds are paid to the lender
What’s Next?

Some insurers are working with chosen lenders to agree wordings but it seems unlikely that a market wide approach will be re-established. Some brokers are pre-empting issues by ensuring their client’s lenders are advised upfront of what their insurers will/won’t accept. However, there are still some questions worth considering:

- What happens when multiple lenders start to layer requests onto a single policy?
- Will the addition of lender’s requests be remembered by brokers and clients at the point of a policy moving to a different insurer?
- Will the situation change if, in the event of a large claim where the money is diverted to the lender, media interest leads to negative publicity?

For now, the situation continues to evolve. Increased understanding in the market is vital to ensure all parties to the contract fully understand the implications and brokers give the best advice possible to their clients.

What can brokers do to help?

<table>
<thead>
<tr>
<th>What can brokers do to help?</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure you and your colleagues are as well informed as possible</td>
<td>✓</td>
</tr>
<tr>
<td>Be able to hold an informed conversation with your client about what their lender may be asking them to do with their insurance covers</td>
<td>✓</td>
</tr>
<tr>
<td>Flag the complexity of the situation and ensure insurers are given as much notice as possible. Because all finance agreements are different they have to be considered individually.</td>
<td>✓</td>
</tr>
<tr>
<td>Explain that there may be an additional charge as the insurer is widening cover at their lender’s request</td>
<td>✓</td>
</tr>
<tr>
<td>Do not sign the lenders letter! Your client’s policy is unlikely to be compliant. The implications of wrong information sit with you</td>
<td>✓</td>
</tr>
<tr>
<td>Prepare your client for the fact that their insurer may not simply agree to all that is being asked for</td>
<td>✓</td>
</tr>
</tbody>
</table>
Win £200 of John Lewis vouchers

To be in with a chance of winning, all we want is your feedback. Please click here to give your views on this edition of Allianz Commercial’s Property & Casualty Newsletter, ideas for future articles and topics you would like to see covered in our Breakfast Clubs.

As a thank you, we will automatically enter you into our free prize draw. For full terms and conditions, click here.

Closing date is 11am on Friday 17th July and only one entry may be made per person. One winner will be chosen at random from all entries received and the winner will be notified by email on the closing date.