



We are seeing uncertain times. In the past few weeks, a major bank has disappeared and others have merged, while giant insurance group AIG almost fell. So, what to do when one of your insurers suffers?

Alan Weir, special counsel in Ince & Co's insurance group is emphatic. 'First and foremost, an insurance buyer should focus on replacing any insolvent insurer participating on current year insurances which are mandatory for that trade.

'There may be a wrangle about the buyer's right to walk away, not to pay outstanding premium and so on but the commercial imperative to have an ongoing valid insurance for the full risk is pretty overwhelming.'

It is not only insurances that are compulsory at law that are of concern. David Baker, the firm's head of ship finance explains 'Lenders require insurance to be maintained over secured assets. Depending on the covenants an owner has given, an owner who leaves its assets part uninsured, could be in breach of its financing obligations.'

Weir and Baker concur on certain preparatory steps for an insurance buyer to take. On existing insurances, know which insurers your coverage is placed with and which of those insurances are vital to your ongoing business.

Discuss the suitability of your current insurers with your broker. Naturally enough, brokers are very cautious these days but no responsible broker wants to leave a client without cover. It may be possible to agree a mid-term cancellation of an impaired company's participation, though much may

depend on that insurer's readiness to surrender the business.

An insurer taking on a higher share mid-term, or one coming on risk for the first time as a replacement mid-term is, of course, entitled to an up-to-date presentation of the risk. Neither is likely to provide retrospective cover unless, for example, the buyer can give a categorical assurance that there are no known or reported losses or circumstances.

Such assurances usually are worded (and Weir considers they will in any case be treated) as warranties; if the assurance proves to be inaccurate, the new arrangement will fail. Even if the new insurer has the protection of such a warranty, a higher premium may still be demanded by the replacement security, if capacity for that class of risk is tight.

Looking forward, owners should consider agreeing minimum rating standards for their next renewal; rating agencies may not be infallible but they do provide some guidance. Weir points out that in reinsurance markets, buyers sometimes insist on rating clauses, which entitle them to terminate the cover with an insurer if that insurer falls below a certain rating: 'As a device, this does not give you replacement cover, but it does reduce argument and uncertainty over your right to walk away before the insurer closes its doors.'

When the dust settles, what are the options? George Kennedy, an Ince consultant and

insolvency practitioner, believes that the situation is better now than in previous years:

'The increased use of schemes of arrangement for insolvent insurance businesses has significantly improved the speed of dividend payouts. Where an insured loss has already occurred, which the solvent insurers on that policy are happy to pay, those administering a scheme of arrangement for an insolvent company on that risk tend to produce a quicker result than we used to see.'

Weir adds 'There may also be situations, though not common in the maritime field, where the compulsory nature of the insurance brings losses on it within the scope of the policyholders protection legislation. The UK is not unique in this approach, so no one should assume every claim on a commercial policy is a write-off.'

As a last resort, litigation may be a possibility. Weir says 'Brokers have a duty of care to offer appropriate security to their clients. This not a common problem for the courts to consider but the principles are there and once in a while, brokers do fail to meet the standard necessary for the risk and client in question.

'Not so long ago, a major broker renewed a risk using a binder arrangement on which one of the insurance companies was already insolvent. They only needed a little encouragement to compensate the client for the shortfall.'