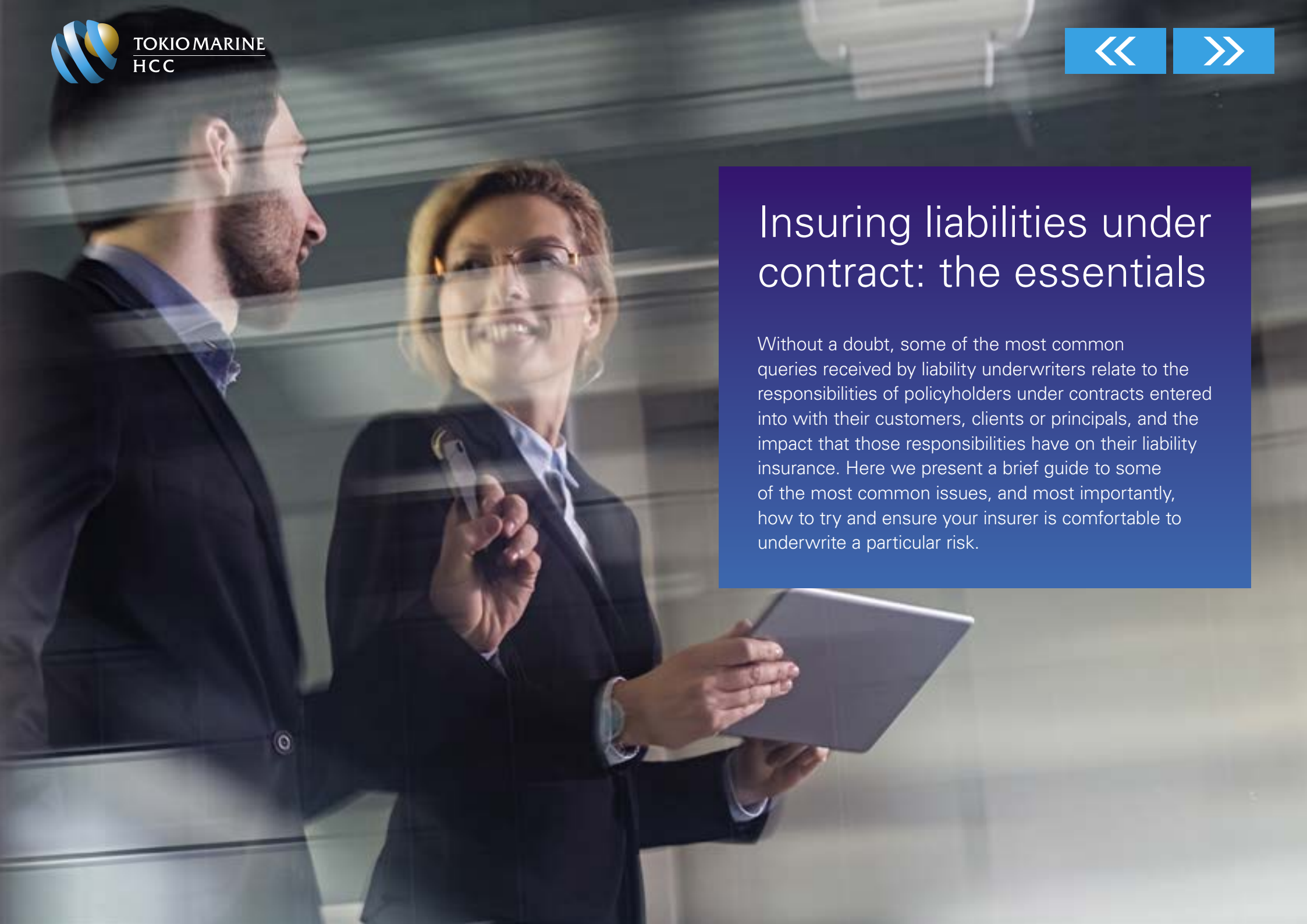
Professional Risks Division

Liability Insurance - How to Deal with Contracts

TOKIO MARINE HCC

tmhcc.com



TOKIO MARINE HCC

Insuring liabilities under contract: the essentials

Without a doubt, some of the most common queries received by liability underwriters relate to the responsibilities of policyholders under contracts entered into with their customers, clients or principals, and the impact that those responsibilities have on their liability insurance. Here we present a brief guide to some of the most common issues, and most importantly, how to try and ensure your insurer is comfortable to underwrite a particular risk.

TOKIO MARINE HCC

Some common questions

Why are contracts an important consideration for liability insurance?

Liability policies indemnify the policyholder against their legal liability to pay damages. This is important because, if an insurer issues a policy that covers a person’s legal liability, they are, therefore, in addition to any common law liability in tort and statute, including any contractual liability that the person may have, which could affect the potential for claims under their policy.

TOKIO MARINE HCC

Getting your insurer onside

We hope this brief Q&A is helpful in relation to insuring certain liabilities that arise under contract. When it comes to the placement and acceptance of particular risk, we have found that, in our experience, common questions around contractual liability keep occurring:

- Is the insured covered for this contract?
- Should the insured accept the terms of this contract?
- Is this contract acceptable to you (insurers)?

We can't promise to provide comprehensive legal advice, but we do have a long history in this field, and we are happy to help guide you where we can. What we can do is provide a framework for how we expect contracts to run or to be worded. Then you can be confident that, as long as you stick to this framework, you can ensure that the cover that we provide matches as much as it possibly can with the terms of that contract.

Insurers are unlikely to take kindly to being sent through a 200-page contract with the request "can you read this and let us know if it is acceptable to you?" but it is not unreasonable to expect an underwriter to give their view on:

- clauses in contracts that allocate the responsibility for losses
- indemnity and hold harmless provisions
- insurance requirements
- joint insured provisions (we'd rather not agree to these, but we'll try and find an alternative solution!)

As we have said, insurers will step back from giving any specific legal advice, but they should be able to give guidance as to where the contract may go beyond what they are prepared to accept, and this could include:

- The policyholder accepting liability for things that are not its fault, such as agreeing to be liable for damage that could be caused by someone else's activities
- The policyholder accepting liability for things that it would not be liable for in common law. In practice, this usually means things that the policyholder would not be liable for in negligence or under statute
- The policyholder agreeing to indemnify another party without restricting to things that are the fault of the policyholder
- The policyholder agreeing to hold somebody harmless for something that is the other person's fault.

TOKIO MARINE HCC

The solution

When it comes to agreeing contractual terms, insurers should acknowledge that they should not be the drivers of how commercial entities agree to trade with each other, but that doesn't mean the insurance implications shouldn't be a big consideration from the outset.

All too often, these are left until the end of the contract negotiations, resulting in a last-minute panic to get insurers on board with the terms.

As such, insurers generally like to see:

- clear language that defines what each party is responsible for
- each party being responsible for their own mistakes
- hold harmless and indemnity clauses limited so that they simply protect the innocent party from someone else's wrongdoing
- no joint insurance requirement

Contact Us

Julian Goodall
Head of Liability
+44 (0)7824 396 218
jgoodall@tmhcc.com

Chris Ashmead
Underwriting Director - Liability
+44 (0)16 5686 8012
cashmead@tmhcc.com

Midlands, South West and Wales

Fran Rodger
Liability Underwriting Manager
+44 (0)16 5686 8031
frodger@tmhcc.com

Joe Flynn
Development Underwriter - Liability
+44 (0)12 1345 8393
jflynn@tmhcc.com

Gavin Lock
Development Underwriter - Liability
+44 (0)11 7372 7288
glock@tmhcc.com

Bri Sheppard
Underwriter – Liability
+44 (0)16 5686 8019
bmain@tmhcc.com

Ceri Thomas
Underwriting Assistant – Liability
+44 (0)16 5686 8037
cthomas@tmhcc.com

North

Adrian Farnell
Liability Underwriting Manager
+44 (0)16 1880 4724
afarnell@tmhcc.com

Joanne Dent
Development Underwriter - Liability
+44 (0)16 1880 4727
jdent@tmhcc.com

Jenny Campbell
Underwriter – Liability
+44 (0)16 1880 4729
jcampbell1@tmhcc.com

London

Brian Hunt
Underwriting Manager- Liability
+44 (0)20 7680 3020
bhunt@tmhcc.com

Tom Delaney
Development Underwriter - Liability
+44 (0)2076 803 018
tdelaney@tmhcc.com

Kiran Alwani
Underwriter – Liability
+44 (0)20 7680 2962
kalwani@tmhcc.com

Business Development

Chris Christou
Business Development Manager
+44 (0)20 7680 2966
cchristou@tmhcc.com

Ian McFadyean
Business Development Manager
+44 (0)11 7372 7287
imcfadyean@tmhcc.com

A member of the Tokio Marine HCC group of companies